

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2010-017

September 22, 2010

Subject: Procedures for Processing and Handling of Appeals from Decisions Under Circular 230
Cancel Date: Upon incorporation into CCDM

Purpose

This notice describes the procedures within the Office of Chief Counsel for the processing and handling of appeals from decisions of Administrative Law Judges for disciplinary cases brought under Circular 230, 31 C.F.R. Subtitle A, Pt. 10.

Background

The Office of Professional Responsibility establishes, communicates, and enforces consistent ethical standards of competence, integrity, and conduct for tax professionals who represent taxpayers before the Internal Revenue Service.

OPR derives its grant of authority from the Treasury Practice Statute, 31 U.S.C. § 330, which invests the Secretary of the Treasury with authority to regulate the practice of persons before the Department of the Treasury and from the Circular 230 regulations which govern the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers before the Service. Section 10.1(a) establishes OPR within the Service and provides that the Director of OPR will be appointed by the Secretary of the Treasury (or delegate).

General Legal Services advises and represents OPR in disciplinary cases before Administrative Law Judges. CCDM 39.4.1.2.

Appellate Authority

Pursuant to a series of delegations (Treasury Order 107-24, General Counsel Order No. 9, and CC-2009-020), Ronald Pinsky, Appellate Authority, hears and independently decides appeals to the Secretary of the Treasury from the decisions of Administrative Law Judges in OPR cases. He does not report to anyone within the Office of Chief Counsel or the Service with respect to those matters delegated to him as the Appellate Authority. The Appellate Authority's delegated authority is separate and apart from his other assigned duties within the Office of Chief Counsel.

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The Circular 230 regulations contain rules governing appeals from the decisions of Administrative Law Judges in OPR cases in sections 10.77 and 10.78.

Any party to an OPR proceeding may appeal the decision of the Administrative Law Judge to the Secretary of the Treasury (or delegate). The appeal must include a brief that states exceptions to the decision and supporting reasons for such exceptions. Section 10.77(a). The appeal and brief must be filed, in duplicate, with the Director of OPR within 30 days of the date that the decision is served on the parties. The Director will immediately furnish a copy of the appeal to the Appellate Authority. Section 10.77(b).

Under his delegated authority, the Appellate Authority makes the agency's final decision. The agency's final decision should be made within 180 days after receipt of the appeal. Section 10.78. In the absence of an appeal to the Appellate Authority, the decision of the Administrative Law Judge becomes the agency's final decision 30 days after the date of the Administrative Law Judge's decision. Section 10.76(d).

OPR Initiated Appeals

GLS evaluates the initial decision of the Administrative Law Judge and advises OPR of any adverse findings of fact or determinations of law. CCDM 39.4.1.3.7(1). If OPR determines that an appeal is warranted, GLS prepares an appeal, a brief in support thereof, and any reply or supplemental briefs that are required. Id. GLS serves the practitioner with OPR initiated appeals, briefs, responses, etc. Id. GLS is responsible for confirming that the necessary documentation for an appeal has been submitted to the Appellate Authority. CCDM 39.4.1.3.7(3).

Practitioner Initiated Appeals

GLS prepares briefs in opposition to a practitioner's appeal. CCDM 39.4.1.3.7(2). OPR sends the Notice of Appeal to the appropriate GLS Area Counsel with a copy to the Claims, Labor & Personnel Law Branch of GLS. Id. GLS coordinates with OPR and the Office of Associate Chief Counsel, Procedure & Administration, as appropriate. Id. GLS is responsible for confirming that the necessary documentation for an appeal has been submitted to the Appellate Authority. CCDM 39.4.1.3.7(3).

Case Processing

OPR transmits the appeal, brief, and OPR's original case files to the Legal Processing Division of P&A. LPD transmits the appeal, brief, and OPR's original case files to the Appellate Authority. The Appellate Authority's secretary opens a legal file for the Appellate Authority. OPR subsequently transmits additional documents to the Appellate Authority, as they are received, and the Appellate Authority associates those documents with OPR's original case files. If the Appellate Authority does not receive all necessary documents, the Appellate Authority may request them by contacting the parties informally or by issuing an appropriate order that the deficiency be cured.

Extensions of Time to Appeal

When an extension of time to file an appeal is sought, the Appellate Authority seeks the views of the non-moving party, unless the request for extension states the position of the non-moving party.

