

IRS News Release

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Attorney Censured by the Office of Professional Responsibility for Mishandling Conflicts of Interest

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WASHINGTON —The Internal Revenue Service’s Office of Professional Responsibility (OPR) has censured an attorney for his failure to disclose multiple conflicts of interest as required by section 10.29 of Circular 230.

In 1998, the attorney wrote several short form tax opinions for prospective plan participants concerning the qualification of a benefit plan under section 419A of the Internal Revenue Code while at the same time maintaining an attorney-client relationship with the promoter of the plan, and eventually becoming a co-trustee of the plan. During this entire period, the attorney was compensated by the promoter. When the scheme was challenged by the IRS, the attorney advised and represented individual plan participants before the IRS with respect to their individual tax disputes while continuing to serve as co-trustee of the plan.

Throughout this period, and the multiple engagements and roles played by the attorney, he failed to advise any of his clients that there were conflicts of interest with respect to his multiple adverse representations and because of his personal interests, and he failed to obtain their informed consents to continue with the representations. In agreeing to perform multiple services for parties who did not have mutuality of interests; in agreeing to become a co-trustee of the plan; in accepting compensation from the promoter; and in representing individual plan participants with their respective tax disputes before the IRS without explaining the conflicts of interest, the attorney created the risk, if not the reality, that his representation of any one of his clients would be materially limited by his responsibilities to his other clients, and by his own personal interests. Because the attorney did not advise his various clients of the conflicts of interest present in their relationships with him, these clients were not afforded the opportunity to seek other counsel, or to give informed consent for the attorney’s continuing representation of them, notwithstanding the conflict.

“Whenever a tax practitioner represents more than one client with respect to the same transaction, that practitioner must think through the ramifications of what she or he is doing,” said OPR Director Karen L. Hawkins. “The conflict of interest provision in Circular 230 is not a mere nicety: taxpayers who pay handsomely for tax advice and representation have a fundamental right to expect competent and diligent representation unfettered by a practitioner’s responsibilities or obligations to someone else, or by the practitioner’s self-interest.”

The level of sanction imposed in this case reflects that the attorney cooperated with OPR's inquiry into his conduct, acknowledged the violations, and agreed to take additional tax ethics continuing education for the next two years. The settlement agreement includes authorization for the disclosures made in this press release.