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OPR Discipline What You Need To Know



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Learning Objectives

- Rules Governing Authority to Practice
- OPR Referral and Complaint Process
- Common Circular 230 Violations and Considerations



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Statutory Authority

- 31 U.S.C. §330 (1884)
- Regulate the practice of representatives of persons before the Department of the Treasury
- Authorizes determinations of practitioner “fitness” to practice



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“Fitness to Practice”

- Good character
- Good reputation
- Necessary qualifications to provide valuable service to the client
- Competency to advise and assist persons in presenting their cases



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“Practice”

- All matters under laws or regulations **administered** by the IRS relating to a taxpayer’s rights, privileges, or liabilities
- Preparing, filing, corresponding, communicating, written advice (including emails), advocating/representing, giving appraisals for tax positions
- Not mere tax return preparation



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Regulatory and Other Authority

- 31 C.F.R. Subtitle A, Part 10 (1886)
- Treasury Circular No. 230 (1921)
- 31 C.F.R. 10.1(a)(1)
- Delegation Order 25-16 (Rev. 1)
 - Rev. Proc. 81-38
 - Rev. Proc. 2014-42



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Guidance for all Administrative Practice

- Subpart A – Rules governing authority to practice (licensing, renewals, continuing education)
- Subpart B - Duties and restrictions relating to practice before the IRS
- Subpart C - Sanctions for violations of Circular 230
- Subpart D – Rules applicable to disciplinary proceedings (due process)



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Rules Governing Authority to Practice

- OPR has exclusive responsibility for discipline, including disciplinary proceedings and sanctions
- Regulated community, principally:
 - Attorneys; CPAs; and unlicensed/unenrolled return preparers who practice before the IRS
 - All enrolled agents, enrolled retirement plan agents, enrolled actuaries, and Annual Filing Season Program record of completion holders
 - Appraisers who submit appraisals supporting tax positions, written tax advisors, others who submit Forms 2848



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OPR Referral & Complaint Process

- Sources of referrals/complaints:
 - IRS divisions and employees, other government agencies and authorities, tax practitioners and taxpayers
- Determine OPR jurisdiction
- Evaluate whether there has been a potential violation of Circular 230 and consider options for an appropriate sanction or alternatives to discipline



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OPR Referral & Complaint Process

- Notice of allegation
 - Written notice to practitioner
 - Before or soon after investigation begins
 - Outlines allegations (information received/developed and Circular 230 implications) with opportunity to respond



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OPR Referral & Complaint Process

- Investigation
 - Evaluate evidence received
 - Database searches
 - Interview referent or complainant/other witnesses
- Allegation letter



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OPR Referral & Complaint Process

- Dispute
 - Conference/settlement opportunity
 - Complaint – pleading/charging document
 - Administrative hearing – ALJ
 - Decision
- Appeal



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Closing a Case and Sanctions

- **Non-disciplinary Closure**
- **Private Reprimand** (director's discretion)
- **Censure**
- **Suspension** (1 – 59 months)
- **Disbarment** (for at least 5 years)
- **Disqualification** (appraisers)
- **Monetary Penalty** (limited to the gross income derived from the conduct giving rise to the penalty)



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Expedited Proceedings

- OPR can impose a suspension prior to filing a complaint if the practitioner has already received an opportunity to be heard in another forum or repeatedly failed to file required federal tax returns
 - Suspension/revocation of law license or CPA certificate for cause by the licensing authority
 - Criminal convictions
 - Violation of conditions imposed on a prior OPR sanction
 - Certain court sanctions
 - Repeated failures to file required federal tax returns

Common Conduct Violations and Considerations

- Fraudulent Form 2848 submissions
 - Number and purpose (convenience is not an excuse)
 - Pattern (is this the first time we have been made aware of the fraudulent submissions)
 - Refer to TIGTA, reprimand or suspend
- Stall and Delay
 - Were bypass procedures required
 - Aggravating factors
 - No action, reprimand, DDA, or suspension
- Threatening or Abusive Language
 - No tolerance for threats
 - TIGTA referral and suspension/disbarment



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Common Conduct Violations and Considerations

- False Statements
 - Context
 - Patterns
 - Reprimand to disbarment
- Diligence Penalties
 - Number and egregiousness
 - Multiple years?
 - Reprimand to disbarment
- Understatements Due to Willful or Reckless Conduct
 - Amount and egregiousness
 - Section 6694(b) penalties - not a cost of doing business
 - Reprimand to disbarment



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Common Compliance Violations and Considerations

- Failure to file or timely file personal Federal income tax returns
 - Successive years and balances due
 - How late were the filings?
- Failure to timely file business tax returns or employment tax returns
 - Successive years and balances due
 - TFRPs
- Evasion or Attempted Evasion
 - Affirmative acts
 - Closing entities and forming new entities
 - Improper use of the filing-extension procedures



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Final Agency Decisions Compliance

- There are a number of FADs where the practitioner willfully failed to *timely* file for 4 or more successive years prior to OPR contact
 - Willful simply means a "voluntary intentional violation of a known legal duty." *United States v. Pomponio*, 429 U. S. 10, 12 (1976).
 - Evil motive or bad faith not required
 - Successive failures (4 or more years) to timely file usually results in disbarment, even if no outstanding balances
 - Age, illness, or marital discord are generally not mitigating factors



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Final Agency Decisions Compliance

- Willfully evading, attempting to evade, or participating in any way in evading or attempting to evade assessment or payment of Federal tax
 - Disbarment is likely and will almost always be sought by OPR
 - Evasion: “[f]or Circular 230 purposes a pattern of culpable omissions may be sufficient to establish an effort to circumvent the payment of tax sufficient to establish evasion”
 - Affirmative acts of evasion:
 - Failure to disclose assets on relevant IRS forms
 - Disposal of assets while failing to pay tax
 - Routinely seeking extensions and repeatedly failing to pay
 - Failures to pay quarterly estimated taxes
 - Lack of forthrightness with the IRS



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Final Agency Decisions Conduct

- Threatening an IRS agent
 - Objective standard regarding whether statements could be construed as threatening
 - Suspension
- Submitting Forms 2848 with a suspended license
 - Usually by individuals who have been indefinitely suspended
 - Disbarment
 - Can't apply for reinstatement for a minimum of 5 years
- Federal and State Felony convictions
 - Disbarment (usually after the practitioner is indefinitely suspended using expedited-suspension procedures and seeks review in a formal disciplinary proceeding before an ALJ)



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Final Agency Decisions Conduct

- Multiple failures to provide information on a proper and lawful request, threatening not to furnish information, and making false statements to influence an IRS employee to take a favorable action
 - Making false statements to influence an IRS employee to take a favorable action on behalf of one's client are particularly egregious violations of both the rule and the spirit of the rules of practice.
 - Suspension
- Fraudulent Form 2848 submissions and false statements
 - Respondent submitted Forms 2848 that falsely identified cosigners as EAs and submitted Forms 2848 that the named taxpayers had not signed, but whose signatures had been “cut and pasted” onto the forms
 - Falsely stating on a website that persons associated with Respondent were EAs when they were not
 - Suspension



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Final Agency Decisions Conduct

- Providing false information to a client
 - While representing a taxpayer, Respondent provided his client a document on IRS letterhead that he indicated was from the IRS
 - The document was not written/generated by the IRS and was actually a fabrication created by Respondent (which Respondent admitted in an interview to TIGTA)
 - 48-month suspension
- Improper deductions, theft of client funds, and failure to provide agreed upon services
 - Respondent was engaged to prepare an OIC on behalf of a client and failed to do so, but did alter and cash money orders that the client provided related to the OIC
 - Respondent also prepared or assisted in the preparation of a number of returns that contained Schedule C deductions that were disallowed due to a failure to provide documentation to support the deductions.
 - Respondent was also assessed several section 6694(b) penalties.
 - Disbarment.



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Final Agency Decisions Hybrid

- A number of practitioners have been sanctioned for both misconduct related to their representational activities and misconduct related to their personal tax compliance
 - The combination speaks to one’s “fitness to practice”
 - The sanction sought by OPR and ultimately imposed by the ALJ is generally more severe
- OPR has instituted proceedings on a number of occasions after a practitioner failed to respond to one or more lawful requests for information sent by OPR related to the practitioner’s noncompliance
 - A failure to respond to a lawful request from OPR will generally result in one or more additional charges, and when proven, a more severe sanction
 - Practitioners have a duty to respond, don’t assume OPR won’t take further action



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Resources Available on IRS.gov

- Treasury Department Circular No. 230 (Rev. 6-2014) Regulations Governing Practice before the Internal Revenue Service
- Subscribe to News and Updates from the Office of Professional Responsibility
- Guidance to Practitioners Regarding Professional Obligations Under Treasury Circular No. 230
- Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases
- Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service



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Contact Information

- Office of Professional Responsibility
1111 Constitution Ave. N.W.
SE:OPR Room 7238
Washington, D.C. 20224



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Duties and Restrictions Relating to Practice before the IRS

- § 10.20 Information to be furnished
- § 10.21 Knowledge of client's omission
- § 10.22 Diligence as to accuracy
- § 10.23 Prompt disposition of pending matters
- § 10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees
- § 10.25 Practice by former government employees, their partners and their associates
- § 10.26 Notaries
- § 10.27 Fees
- § 10.28 Return of client's records
- § 10.29 Conflicting interests



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Duties and Restrictions Relating to Practice before the IRS

- **§ 10.30 Solicitation**
- **§ 10.31 Negotiation of taxpayer checks**
- **§ 10.32 Practice of law**
- **§ 10.33 Best practices for tax advisors**
- **§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers**
- **§ 10.35 Competence**
- **§ 10.36 Procedures to ensure compliance**
- **§ 10.37 Requirements for written advice**
- **§ 10.38 Establishment of advisory committees**



Incompetence and Disreputable Conduct

- **§ 10.51(a) – Incompetence and disreputable conduct for which a practitioner may be sanctioned includes, but is not limited to –**
 - (1) Conviction of any criminal offense under the Federal tax laws
 - (2) Conviction of any offense involving dishonesty or breach of trust
 - (3) Conviction of any felony for which the conduct involved renders the practitioner unfit to practice before the IRS
 - (4) Giving, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof
 - (5) Solicitation of employment as prohibited under §10.30, the use of false or misleading representations with intent to deceive a client or prospective client to procure employment, or that the practitioner is able improperly to obtain special consideration or action from the IRS
 - (6) Willfully failing to file a required Federal tax return, or evading (or attempting/participating) any assessment or payment of any Federal tax



Incompetence and Disreputable Conduct

- **§ 10.51(a) – Incompetence and disreputable conduct for which a practitioner may be sanctioned includes, but is not limited to –**
 - (7) Willfully assisting, counseling, encouraging a client or prospective client to violate any Federal tax law/evade Federal taxes or payment
 - (8) Misappropriation or failure to properly remit funds received from a client for the payment of taxes
 - (9) Directly/indirectly attempting to influence an IRS employee by the use of threats, false accusations, duress or coercion, or a gift/favor
 - (10) Disbarment or suspension from practice as an attorney, CPA, or actuary by any duly constituted authority of any State or any Federal court of record or any Federal agency, body or board
 - (11) Knowingly aiding and abetting another person to practice before the IRS when that person is ineligible to practice
 - (12) Contemptuous conduct in connection with practice before the IRS, including the use of abusive language, making false accusations knowing them to be false, or circulating or publishing malicious or libelous matter



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Incompetence and Disreputable Conduct

- **§ 10.51(a) – Incompetence and disreputable conduct for which a practitioner may be sanctioned includes, but is not limited to –**
 - (13) Giving a false opinion, knowingly, recklessly, or through gross incompetence
 - (14) Willfully failing to sign a tax return prepared by the practitioner when required unless due to reasonable cause and not willful neglect
 - (15) Willfully disclosing or using a tax return or tax return information in a manner not authorized
 - (16) Willfully failing to file electronically a tax return prepared by the practitioner when required to do so
 - (17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a valid PTIN
 - (18) Willfully representing a taxpayer before the IRS unless the practitioner is authorized to do so