Gain an understanding of the:

- Rules that apply to disciplinary proceedings—how the proceedings are conducted and decided
- Applicable sanctions
- Evidentiary matters
- Other factors and considerations
Fitness to Practice

• Under 31 U.S.C. § 330, a practitioner should possess:
  – Good character
  – Good reputation
  – Necessary qualifications to provide valuable service to clients
  – Competency to advise and assist persons in presenting their cases
Disciplinary Proceedings In General

- The rules for disciplinary proceedings are in Subpart D of Circular 230 (§ 10.60 et seq.)

- Those who are subject to disciplinary proceedings:
  - Circular 230 practitioners: attorneys, CPAs, enrolled agents, enrolled retirement plan agents
  - Appraisers
  - Firms or other entities that knew or should have known of misconduct in violation of Cir. 230
Disciplinary Proceedings – The Why?

- OPR commences a disciplinary proceeding:
  - To prove violations of the regulations in Circular 230
  - To obtain a sanction commensurate with the proven violations, based on all of the relevant facts and circumstances, including any aggravating or mitigating factors
Disciplinary Proceedings - When

• Normally only after OPR concludes its investigation
• Avenue of last resort
  – Settlement is always preferable
    • Result may be a lesser sanction (or, more rarely, no sanction)
    • Practitioner’s actions are very much determinative
Disciplinary Proceedings - Sanctions

A practitioner may be sanctioned in a disciplinary proceeding for:

• Incompetence and disreputable conduct described in § 10.51(a)

• Willfully violating any of the regulations in Circular 230 (In particular, the Duties and Restrictions in Subpart B (§§ 10.20 – 10.31 and §§ 10.34 – 10.37))

• Recklessly or through “gross incompetence” violating §§ 10.34, 10.35, 10.36, or 10.37
Disciplinary Proceedings - Sanctions

- Censure
- Suspension from practice (1 – 59 months)
- Disbarment (for at least 5 years)
- Disqualification (appraisers)
- Monetary Penalty
Disciplinary Proceedings In Detail

• If OPR determines a disciplinary proceeding is necessary, there is a prescribed process

• Stages of the process:
  – Start of the proceeding
  – Conducting it
  – Decision
  – Appeal
Disciplinary Proceedings – Initiation

- OPR initiates a proceeding (under § 10.60) by filing a complaint with an Administrative Law Judge (ALJ)

- A complaint’s elements are described in § 10.62
  - Director OPR = Complainant
  - Affected Practitioner = Respondent
A complaint must:

• Provide a clear and concise description of the facts and law that constitute the basis for the proceeding
  – Typically phrased as “Counts” for each separate alleged violation of Circular 230

• Specify a sanction
OPR initiates a disciplinary proceeding, via a complaint, against a practitioner, Jane A. Jones, who is a CPA and who regularly practices before the IRS.
THE DEPARTMENT OF THE TREASURY
OFFICE OF PROFESSIONAL RESPONSIBILITY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C.

DIRECTOR,
OFFICE OF PROFESSIONAL RESPONSIBILITY,

Complainant,

v.

JANE A. JONES,

Respondent.

COMPLAINT NO. 2019-0000X
Violations Pled in the Complaint

I. Failure to exercise due diligence (§ 10.22(a)), and willfully attempting to understate tax on taxpayers’ income tax returns (§ 10.34(a)(1)) – Seven Counts

II. Willful failure to file Federal income and employment tax returns (§ 10.51(a)(6)) – Five Counts

III. Conflict of interest (§ 10.29) – One Count
Violations Pled in the Complaint

I. Counts 1 thru 7

• Advised clients to claim on their individual income tax returns:
  – Deductions for personal expenses as unreimbursed business expenses
  – Deductions for medical expenses incurred but not paid
  – EIC, when the practitioner should have known taxpayers were ineligible for the credit because a child was not a “qualifying child” or because earned income was too high
II. Counts 8 thru 12

- Unfiled returns:
  - Form 1040 — Tax Years 2015 — ’18
  - Form 1120-S — Tax Years 2015 — ’17
  - Form 941 — TY 2015, 2Q – 4Q; TY 2016 1Q, 3Q and 4Q
  - Form 940 — TY 2016

III. Count 13

- Conflict of interest in representation of a taxpayer during an exam in 2017
Disciplinary Proceedings In Detail

A complaint must also:

- Inform the respondent of the responsibilities in answering the complaint
- Be validly served on the respondent
  - Acceptable methods of service include:
    - Certified mail
    - First-class, regular mail (if service by certified mail fails)
    - Private delivery service
Disciplinary Proceedings In Detail

The complaint is filed by OPR’s representative in the proceeding

- An attorney in the IRS’s Office of Chief Counsel
- Specifically, a field attorney with the Office of the Associate Chief Counsel, General Legal Services (GLS)
Disciplinary Proceedings In Detail

• Respondent’s answer to a complaint generally must be filed within 30 days of service of the complaint on the respondent

• Requirements:
  – Contain a statement of facts that are respondent’s “grounds of defense” (§ 10.64(b))
  – Admission or denial of each allegation
  – Raise any affirmative defenses
  – Bear the respondent’s (or representative’s) signature attesting to the truth and accuracy of statements in the answer
Evidence

• The core of a proceeding
• There are procedural and substantive rules and issues regarding evidence
• Among the procedural:
  – Within 10 days of service of the complaint, copies of the evidence that supports the complaint must be served on the respondent
  • OPR assembles and delivers to the GLS attorney an evidentiary file for service on respondent

Disciplinary Proceedings In Detail
Disciplinary Proceedings In Detail

• Respondent or complainant may put evidence into the record as exhibits to their initial pleadings, or as exhibits to a motion

• The parties may present evidence at a hearing (if one is held)

• They may obtain evidence through discovery
Two methods of discovery:

1. Depositions
2. Requests for admissions

Prerequisite is a motion demonstrating the relevance, materiality, and reasonableness of the requested discovery

The opposing party may file objections to a discovery request
Disciplinary Proceedings In Detail

• A party may raise objections to proffered evidence in other contexts, as well

• Formal rules of evidence that apply to court cases do not apply

• A substantive requirement, however, is that evidence must be relevant and material to the issues, and an ALJ can exclude evidence if it is irrelevant, immaterial, or unduly repetitious
Disciplinary Proceedings In Detail

• Each party bears the burden of proof as to their respective allegations of fact

• OPR has the burden to prove the violations alleged in the complaint; the respondent has the burden to prove affirmative defenses

• The standard of proof that OPR must satisfy varies:
  – Preponderance of the evidence
  – Clear and convincing evidence
Disciplinary Proceedings In Detail

Motions

• Can be procedural or substantive
• Must concisely specify the grounds for the motion and the relief sought
• When appropriate, the moving party should include a memorandum of facts and law in support of the motion
Disciplinary Proceedings In Detail

Hearings

• Evidentiary hearings in which each party can examine and cross-examine witnesses, subject to objections and rulings on objections
• The parties may offer documentary evidence for admission
• Deposition transcripts may be used during a hearing
• The ALJ may allow for closing arguments
Decision

- Except for default decisions, and unless a respondent failed to appear at a hearing, the ALJ must allow the parties to submit proposed findings and conclusions and supporting reasons, before issuing a decision.

- A decision must:
  - State findings (absent summary adjudication) and conclusions
  - State the reasons or bases for the above
  - Include an order of a sanction imposed on the respondent or an order dismissing the complaint

- In imposing a sanction, the ALJ must “take into account all relevant facts and circumstances” (§ 10.50(e))
Disciplinary Proceedings In Detail

- The ALJ’s decision is final unless appealed within 30 days.
- Each party may appeal, by filing a notice of appeal, along with a brief that states the party’s exceptions to the decision and supporting reasons.
- The appellee may file a timely response brief.
- The Treasury Appellate Authority decides the appeal:
  - Standard for reversal is clearly erroneous.
  - Legal issues are reviewed de novo.
- The appellate authority’s decision is the final agency decision.
Disciplinary Proceedings In Detail

- Disciplinary announcements resulting from final agency decisions are published in the Internal Revenue Bulletin.

- OPR also maintains a disciplinary look-up, available at: https://www.irs.gov/tax-professionals/search-for-disciplined-tax-professionals, which contains searchable information on over 3,000 OPR censures, suspensions, disbarments, and miscellaneous restrictions on practice.
Contacting OPR

- Questions or comments, contact OPR at
  - Efax no. (855) 814-1722
  - Office of Professional Responsibility
    1111 Constitution Ave., N.W.
    SE:OPR  Rm. 7238
    Washington, DC 20224

- For more info on OPR and Circular 230, visit http://www.irs.gov/
  Search: “Circular 230 Tax Professionals”