

Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases

Who is subject to discipline under Circular 230? Attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents and registered return preparers are subject to the rules of Circular 230, *Regulations Governing Practice before the Internal Revenue Service*. These practitioners are subject to discipline under Circular 230 for failing to comply with these rules. Appraisers and any person who gets paid to prepare all, or a substantial portion, of a document relating to a taxpayer's tax liabilities for submission to the IRS are also subject to discipline under Circular 230 for failing to comply with the rules.

See *Circular 230, Section 10.3 – Who may practice; Circular 230, Section 10.8 – Return preparation and application of rules to other individuals; Circular 230, Section 10.50 – Sanctions; Circular 230, Section 10.51 – Incompetence and disreputable conduct; and Circular 230, Section 10.60) - Institution of proceeding.*

The Office of Professional Responsibility (OPR) has exclusive authority for all matters related to practitioner discipline, including disciplinary proceedings and sanctions. See *Circular 230, Section 10.1 - Offices*. OPR is committed to processing referrals and conducting investigations in a timely and fair manner. The investigative process and disciplinary proceedings follow established due process guidelines designed to ensure that practitioners receive notice of the allegations against them and an opportunity to present their side of the story at multiple stages.

Receipt and Review of Complaints: OPR receives referrals about practitioners from a variety of sources. The majority of referrals come directly from IRS field personnel, such as Revenue Agents, Revenue Officers, Special Agents and Appeals/Settlement Officers. OPR also receives referrals from other government agencies, such as the Treasury Inspector General for Tax Administration (TIGTA), the Department of Justice and state licensing authorities. An OPR manager reviews all referrals when they arrive in OPR. If it appears that a violation of Circular 230 has occurred, the manager will assign the case to an attorney or paralegal for communication with the referred individual and for further investigation.

Right to Representation: During an OPR investigation, you may choose to be represented by someone authorized to practice before the IRS. If you choose to have a representative during an OPR investigation into issues relating to your own tax compliance, your representative must file a Form 2848, Power of Attorney and Declaration of Representative. You can obtain a Form 2848 from the forms section of www.irs.gov. If your investigation relates to a conduct matter, your representative must provide a representation letter at first contact with OPR.

Notice of an Investigation: Whenever OPR receives a referral that describes a possible violation of Circular 230, OPR will mail a letter to your last known address on file with the IRS. The letter will describe the nature of the allegations and the specific provisions of Circular 230 that appear to have been violated. The letter will also include the name and contact information of the OPR attorney or paralegal assigned to the case.

Opportunity to Respond: You should respond promptly to any correspondence from OPR. You will have an opportunity to respond to the allegations and to provide evidence throughout the investigation. You may provide evidence when OPR initially contacts you and determines the case warrants additional investigation. You also may provide evidence after OPR informs you of its conclusion that the Circular 230 violations identified call into question your fitness to continue practicing before the IRS. During the course of its investigation, OPR may request, in writing, additional information and/or documentation from you. Any failure to respond to such an inquiry is a separate violation of *Circular 230, Section 10.20*. Any letter from OPR staff will include a deadline by which a response from you will be required. If you are unable to meet the deadline,

you must ensure that you or your representative communicates that to the OPR contact immediately.

Right to Submit Evidence: OPR encourages you to submit any evidence that will aid in resolving the issue as early as possible in the investigative stage. If the matter proceeds to an administrative hearing, the judge does not have to admit evidence that you try to produce at the last minute.

Negotiated Sanctions: OPR will attempt to negotiate any sanction it believes is warranted in connection with your violations of Circular 230. Possible options include censure, suspension or disbarment from practice before the IRS, or a monetary sanction. See Circular 230, Section 10.50 – Sanctions. Monetary sanctions may be applied to individuals or firms. Generally, OPR may not impose a sanction on you if you do not agree. Nevertheless, OPR does have discretion to reprimand you privately without Notice, or opportunity to be heard, if sufficient evidence exists that you have violated Circular 230.

Administrative Hearing: If OPR is unsuccessful in negotiating acceptable discipline with you, OPR will commence a proceeding by drafting a complaint, which is sent to the IRS Office of Chief Counsel, General Legal Services, for filing with an Administrative Law Judge (ALJ). The ALJ will come from another federal agency.

The ALJ will set discovery, motion, and hearing dates for the case. The ALJ holds hearings in Washington, D.C, unless you request a location where a federal courthouse is located closer to your residence. Anyone authorized to practice before the IRS, or a licensed attorney, may represent you at the hearing. See Circular 230, Sections 10.60-10.76 – Rules applicable to Disciplinary Proceedings.

Hearings before the ALJ generally involve a relaxed application of the Federal Rules of Evidence. Both parties may present documentary evidence and testimony relevant to the issues raised in the case. Most hearings will last one day or less. The ALJ will issue an Initial Order and Decision, usually within 180 days of the conclusion of the hearing. The ALJ may: 1) confirm OPR's position with respect to the Circular 230 violations and the appropriate level of discipline; 2) reject OPR's position entirely; 3) modify OPR's position with respect either to the Circular 230 violations or the appropriate level of discipline.

Appeal from Administrative Decision: Both OPR and you have the right to appeal the Initial Decision and Order of the ALJ to the Department of the Treasury within 30 days of being served. A specially designated senior attorney (called "the Appellate Authority") within The Department of Treasury's Office of Chief Counsel reviews the appeals and accompanying briefs and renders the Final Agency Decision in the case. See Circular 230, Section 10.77 – Appeal of decision of Administrative Law Judge; and Circular 230, Section 10.78 – Decision on review.

Filing Suit in U.S. Federal District Court: If you disagree with the Appellate Authority's Final Agency Decision, you may file a complaint against the Director, OPR in U.S. Federal District Court in the district where you reside. The Administrative Procedure Act contains provisions governing that proceeding. See 5 U.S.C. Sections 551-559, 702. The proceeding will not be a new trial. Rather, the district court will review the entire administrative record already in existence in the case to determine if the agency's action against you was arbitrary, capricious, contrary to law or otherwise an abuse of discretion.