

OFFICE OF CHIEF COUNSEL 2008 REPORT ON PROFESSIONALISM

The Office of Chief Counsel, Internal Revenue Service, prepares an annual Report on Professionalism to inform employees about the procedures followed and actions taken by the Office with respect to allegations of misconduct and unprofessional conduct. This eleventh annual report contains data regarding cases opened and closed for the period January 1, 2008 to December 31, 2008.

Background on the Office of Chief Counsel Professionalism Program

The Office of Chief Counsel is committed to maintaining the highest standards of ethical and professional conduct. Through formal training sessions and in daily oversight and management activities, the Office seeks to ensure that all employees adhere to the letter and spirit of the Tax Court Rules of Practice and Procedure, the ABA Model Rules of Professional Conduct, the Office of Government Ethics Standards of Conduct, and the Treasury Department's Rules and Supplemental Standards of Conduct, and that the Office as a whole maintains the highest standards of professionalism, honesty, and fair play.

The Office of Treasury Inspector General for Tax Administration (TIGTA) performs audits and conducts investigations concerning the Office of Chief Counsel and its employees. The following conduct matters must be referred to TIGTA: all allegations or evidence concerning the possible existence of criminal or other misconduct constituting a violation of law, rules or regulations or mismanagement; gross waste of funds; abuse of authority; substantial and specific threats to public health and safety; and integrity issues (unless otherwise covered by established procedures such as the employee tax compliance, UNAX or EEO programs).

The Chief Counsel's Professionalism Program was established in August 1998. The Program is designed to ensure that the Office fully complies with Treasury directives, that all allegations of misconduct are promptly and thoroughly investigated, and that in all instances employees are treated in a fair and uniform manner. It established uniform procedures for handling allegations or evidence of misconduct or unprofessional behavior that does not need to be referred to TIGTA.

Under the Professionalism Program procedures, all allegations or evidence of an employee's serious or significant failure to comply with the accepted standards of legal practice must be referred to the Deputy Chief Counsel (Operations). Matters that must be referred to the Deputy Chief Counsel (Operations) include non-frivolous allegations of professional misconduct; any ethical violation; failure to protect the statute of limitations; failure to coordinate a legal position with responsible offices; and repeated failures to meet pleading deadlines.

Inspector General Cases – Overview

During 2008, the Office of Chief Counsel received 40 referrals from TIGTA alleging that Counsel employees committed misconduct or violated professional standards.

Fourteen of these referrals were previously transmitted to the Deputy Chief Counsel (Operations) by offices within the Counsel organization or other sources. All fourteen matters were directly referred to TIGTA for investigation or other action. The remaining 26 referrals were forwarded to the Deputy Chief Counsel (Operations) by TIGTA, with a request that the Deputy Chief Counsel (Operations) investigate the matter and report back to TIGTA upon final disposition.

Of the 40 cases under active consideration in 2008 by either TIGTA or the Office of Chief Counsel; 38 were closed, 2 remain pending. The following chart sets forth the disposition of the 38 cases closed in 2008, compared with the cases closed in 2007.

	Calendar Year 2007	Calendar Year 2008
Cases Not Substantiated	26	15
Employee Separated Before Review Completed	2 retired 1 resigned	2 retired 5 resigned
Substantiated	17	15
Undetermined	1	1
TOTAL	47	38

The Office of Chief Counsel took disciplinary action in 14 of the substantiated cases and other appropriate personnel actions in the remaining case. The disciplinary actions taken in 2008, compared to that taken in 2007 can be summarized as follows:

Disciplinary Action	Calendar Year 2007	Calendar Year 2008
Counseling	Written: 7 Oral: 3	Written: 2 Oral: 5
Admonishment	0	0
Reprimand	0	4
Suspension	2	3
Removal	0	0
Downgrade	0	0
TOTAL	12	14

Additional Disciplinary Action

In addition to the action taken in the 15 substantiated cases noted above, Counsel imposed discipline in 46 other cases which were not transmitted directly to the Deputy Chief Counsel or referred back to the Deputy Chief Counsel by TIGTA. The table below reflects the actions taken.

Chief Counsel 2008 Disciplinary Actions Report			
Actions Taken	Tax Related	Other	Total
Written Counseling	6	9	15
Admonishment	3	11	14
Reprimand	5	8	13
Suspension	0	4	4
Removal	0	0	0
TOTAL	14	32	46

Example cases:

A clerical employee tried to use an attorney's name (without the attorney's permission) in connection with an outside personal dispute. The clerical employee tried to make it appear as if the attorney was giving advice or representing the clerical employee. Because these statements were lies and the clerical employee was attempting to misuse her position and relationship to the attorney, the clerical employee was given a choice to either resign or face a proposed removal. Because the employee chose to resign, this case is not reflected in the statistics stated above.

An employee was given an official government credit card for travel in connection with her job. All government credit cards are to be used for official government purposes only. Despite these rules, the employee repeatedly used the card for personal purposes such as buying groceries and gas. The employee's excuses for these actions were that she was facing financial difficulties and only used the card when necessary (such as gas to get to work). Because there is no good excuse for misusing a government credit card, the employee received a 14 day suspension and was prohibited from using a government credit card in the future.

Through an under-reporter contact, an employee was assessed less than \$1000 in additional taxes. The employee promptly paid the additional tax. Because the dollar error in filing the tax return was relatively small amount and involved a tax issue the employee had not faced before and was unlikely to recur, the employee received a written counseling in lieu of more serious discipline.

Conclusion

The Office of Chief Counsel will continue its efforts to ensure that allegations and

evidence of misconduct are promptly reported to the proper officials, that they are thoroughly investigated, and that these matters are handled in a fair and uniform manner.