

## **OFFICE OF CHIEF COUNSEL 2012 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 fifteenth annual report contains data regarding cases opened for the period January 1, 2012 to December 31, 2012.

### **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 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 the Office of Treasury Inspector General for Tax Administration (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. 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).

### **TIGTA Cases – Overview**

During 2012, the Office of Chief Counsel received 41 referrals from TIGTA alleging that Counsel employees committed misconduct or violated professional standards. Two of these referrals were previously transmitted to the Deputy Chief Counsel (Operations) by

offices within the Counsel organization or other sources. Both matters were directly referred to TIGTA for investigation or other action. The remaining 39 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 41 TIGTA cases under active consideration in 2012, 40 were closed and one remains pending. The following chart sets forth the disposition of the 40 cases closed in 2012, compared with the cases closed in 2011.

	<b>Calendar Year 2011</b>	<b>Calendar Year 2012</b>
Cases Not Substantiated	16	15
Employee Separated Before Review Completed	7	0
Substantiated	27	25
Undetermined	0	0
<b>TOTAL</b>	<b>50</b>	<b>40</b>

The Office of Chief Counsel took disciplinary action in all of the substantiated cases. The disciplinary actions taken in 2012, compared to that taken in 2011 can be summarized as follows:

<b>Disciplinary Action</b>	<b>Calendar Year 2011</b>	<b>Calendar Year 2012</b>
Counseling	Written: 4 Oral: 16	Written: 1 Oral: 20
Admonishment	3	1
Reprimand	1	1
Suspension	3	0
Resignation	0	2
Downgrade	0	0
<b>TOTAL</b>	<b>27</b>	<b>25</b>

**Additional Disciplinary Action**

In addition to the action taken in the 25 substantiated TIGTA cases noted above, Counsel imposed discipline in 25 other non-TIGTA cases. The table below reflects the actions taken.

<b>Chief Counsel 2012 Disciplinary Actions Report</b>			
<b>Actions Taken</b>	<b>Tax Related</b>	<b>Other</b>	<b>Total</b>
Written Counseling	1	10	11
Admonishment	0	7	7
Reprimand	0	4	4
Suspension	0	3	3
Demotion			
Removal			
<b>TOTAL</b>	<b>1</b>	<b>24</b>	<b>25</b>

Of the 25 substantiated TIGTA cases and the 25 non-TIGTA cases relating to conduct or performance, disciplinary action was taken in 50 cases, or 100 percent.

**Example cases :**

The discipline cases involved in the 2012 professionalism report shows several important themes.

- ✓ When Counsel attorneys fail to responsibly handle legal matters for our client, the IRS, there can be discipline consequences.
  - An attorney was required to provide legal advice to an IRS client by a set internal deadline. The attorney was overwhelmed by personal matters so failed to complete several of these work assignments on time. However, the attorney told their manager and the CATS operator that the work was done. After a long lapse in time, the IRS client asked the attorney’s management chain why the advice had not been received. When management learned about what the attorney had done, the attorney was suspended.
  
- ✓ An employee’s reaction to a difficult situation makes a difference in the level of discipline received.
  - An attorney got into an argument with a doctor’s office about the charge for a particular service. In the course of the argument, the employee mentioned their job as an IRS attorney. The doctor’s office complained to TIGTA about this matter alleging that the employee was trying to misuse their position to intimidate the doctor’s office. Even though it may have

been a difficult situation, the employee was wrong to mention their job as a part of this personal dispute. Because this was a misuse of the employee's official position, the employee was reprimanded.

- An employee faced a situation where they could not timely pay the full amount of taxes due when they filed their tax return in April. The employee was worried because the employee had previously received minor tax discipline. But, this time the employee acted responsibly in the situation by timely filing the tax return, requesting an installment agreement, and paying off the full amount due over several months. Even though the employee had previous personal tax issues, this issue was resolved through written counseling because the employee acted responsibly when faced with a difficult situation.

✓ Employees must follow the directions of their supervisors and treat their managers in a professional manner.

- In several discipline cases this year, the issues involved how an employee interacted with their manager. Employees should know that they must interact with their managers (even when they disagree with management) in a professional manner. Failure to do so can subject the employee to discipline. Examples:
  - A manager frequently failed to follow their manager's direction to seek approval on personnel matters and to accurately record absences from work. This manager resigned in lieu of termination.
  - An attorney who reviewed the work of others failed to follow management direction to interact professionally with others. The attorney received an admonishment for saying that an attorney's work was "worthless and stupid."
  - A secretary received an admonishment for saying that they would not do a particular task and that a manager could "shove" the work.
  - A secretary received written counseling for telling the manager "don't go there, don't go there" when the manager tried to get the employee to get off the phone to handle an important work matter.

**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.