



DEPUTY
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MEMORANDUM FOR CHIEF COUNSEL EXECUTIVES AND MANAGERS

FROM:

Debra K. Moe

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SUBJECT:

Chief Counsel 2016 Report on Professionalism

I am transmitting the eighteenth annual report on Professionalism for the Office of Chief Counsel. The Chief Counsel Directives Manual provides that the office will publish an annual report that will inform employees and the public about the office's actions regarding allegations and evidence of misconduct. This report has been designed to protect privacy rights of employees. Please feel free to share the report with your subordinate managers and employees.

Attachment

OFFICE OF CHIEF COUNSEL 2016 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 nineteenth annual report contains data regarding cases opened for the period January 1, 2016 to December 31, 2016.

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, 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 2016, the Office of Chief Counsel received 52 referrals from TIGTA regarding allegations that Counsel employees committed misconduct or violated professional standards. Fifty-one TIGTA cases under active consideration in 2016 were closed and one remains pending. The following chart sets forth the disposition of the 51 closed cases received in 2016, compared with the cases from 2015.

	Calendar Year 2015	Calendar Year 2016
Not Substantiated	22	16
Substantiated	45	35
Undetermined	0	0
TOTAL	66	51

The Office of Chief Counsel took action in 32 substantiated cases, to include discipline if appropriate. In the remaining three cases where no action was taken, those employees separated during the investigation. The actions taken in 2016, compared to those taken in 2015 can be summarized as follows:

Actions Taken	Calendar Year 2015	Calendar Year 2016
Counseling	Written: 1 Oral: 34	Written: 0 Oral: 27
Admonishment	0	1
Reprimand	0	2
Suspension	3	1
Resignation in lieu of Termination	0	0
Resigned Before Adjudication	0	3
Termination	1	1
TOTAL	39	35

Additional Actions Taken

In addition to the action taken in the 35 substantiated TIGTA cases noted above, Counsel took action in 36 other cases which were non-TIGTA cases. The table below reflects the actions taken.

Chief Counsel 2016 Actions Report			
Actions Taken	Tax Related	Other	Total
Written Counseling	11	9	20
Admonishment	1	5	6
Reprimand	2	4	6
Suspension	0	3	3
Demotion			
Removal	0	1	1
TOTAL	14	22	36

Of the 35 substantiated TIGTA cases and the 36 non-TIGTA cases relating to conduct or performance, action was taken in 68 cases.

Examples:

Government travel cards are closely monitored by IRS officials in the IRS Credit Card Services Branch and Counsel cannot tolerate personal use of these cards. Here is an example of one such misconduct case this year:

- An employee used the government travel card to buy personal airline tickets. The employee did not do this just once but three times in a short period of time. The employee claimed to be facing personal financial difficulties and needed to make trips in order to see family and had no other way to pay for the trips. This is not an acceptable excuse for personal use of the card. Then the misconduct was compounded when the employee failed to timely pay Citibank resulting in a bounced check. This was serious misconduct and the employee received a long suspension for this misconduct.

UNAX/IDRS misconduct has been a subject of annual briefings for many years and employees should understand all the rules surrounding UNAX. This year Counsel had a case where an employee used IRS taxpayer records for personal purposes – here are the facts of this case:

- A Counsel attorney did not have access to IDRS, but the employee had access to a similar system (the IRS Transcript Delivery Service) and to Accurint. The attorney used these two systems to access information to assist a person the employee was dating. The person the employee was dating was said to have problems with a refund and needed help. The attorney had no work-related

reason to access these systems. The attorney should have referred the acquaintance to the resources available to all taxpayers like the IRS 1-800 line, Taxpayer Assistance Centers or the Taxpayer Advocate's office. The attorney's use of the government systems to help a friend was discovered by TIGTA and the misconduct resulted in serious discipline. The attorney was not fired because the accesses happened very early in the attorney's career, and the attorney did not fully understand the UNAX rules when the incident happened. However, the employee did receive a 30-day suspension for this serious misconduct.

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.