



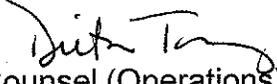
DEPUTY  
CHIEF COUNSEL

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

MAR 13 2019

MEMORANDUM FOR CHIEF COUNSEL EXECUTIVES AND MANAGERS

FROM:

Drita Tonuzi   
Deputy Chief Counsel (Operations)

SUBJECT:

Chief Counsel 2017 Report on Professionalism

I am transmitting the twentieth 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 2017 REPORT ON PROFESSIONALISM**

The Office of Chief Counsel, Internal Revenue Service, prepares an annual Report on Professionalism to inform employees and the public about actions taken by the Office regarding allegations and evidence of misconduct and unprofessional conduct. This twentieth annual report contains data regarding cases opened for the period January 1, 2017 to December 31, 2017.

### **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 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; ethical violations; 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 2017, the Office of Chief Counsel received 30 referrals from TIGTA regarding allegations that Counsel employees committed misconduct or violated professional

standards. Of the 30 TIGTA cases under active consideration in 2017, 27 were closed and three remain pending. The following chart sets forth a comparison of the TIGTA dispositions of the 27 closed cases received in calendar year 2017, and the 51 closed cases in 2016.

<b>Chief Counsel TIGTA Referral Dispositions</b>		
<b>Disposition</b>	<b>Calendar Year 2016</b>	<b>Calendar Year 2017</b>
Not Substantiated	16	7
Substantiated	35	20
Undetermined	0	0
Pending	0	3
<b>TOTAL</b>	<b>51</b>	<b>30</b>

The Office of Chief Counsel took action, including discipline, if appropriate, in 18 of the 20 substantiated cases. In the remaining two cases where no action was taken, one employee separated during the investigation, and the other case had no nexus to employment. The actions taken in 2016, compared to those taken in 2017 can be summarized as follows:

<b>Chief Counsel Actions Report – TIGTA cases</b>		
<b>Action Taken</b>	<b>Calendar Year 2016</b>	<b>Calendar Year 2017</b>
Counseling	Written: 0 Oral: 27	Written: 0 Oral: 17
Admonishment	1	0
Reprimand	2	1
Suspension	1	0
No nexus to employment	0	1
Resigned Before Adjudication	3	1
Termination	1	0
<b>TOTAL</b>	<b>35</b>	<b>20</b>

**Additional Actions Taken (non-TIGTA cases)**

In addition to the action taken in the 18 substantiated TIGTA cases noted above, Counsel took action in 21 other cases which were non-TIGTA cases. The table below reflects the additional actions taken.

<b>Chief Counsel Actions Report - Non-TIGTA</b>			
<b>Actions Taken</b>	<b>Tax Related</b>	<b>Other</b>	<b>Total</b>
Written Counseling	3	5	8
Admonishment	5	2	7
Reprimand	0	4	4
Suspension	0	0	0
Demotion	0	0	0
Removal	0	2	2
<b>TOTAL</b>	<b>8</b>	<b>13</b>	<b>21</b>

**Examples:**

This year Counsel terminated a probationary period attorney who had serious performance problems. The attorney had issues adapting to the practice of law as a public servant and representative of the government. For example, the attorney argued with the manager about the necessity for certain discovery rules and following procedures, such as notifying the opposing party prior to filing a motion. The attorney said he would be willing to debate the rules with the Tax Court judge. This is inappropriate and unacceptable conduct for an attorney who represents the government.

This year Counsel also imposed minor discipline on support staff employees who failed to follow directions from management and made inappropriate comments after being directed what to do by managers. For example, it is inappropriate to angrily use four-letter words or otherwise "mouth off" while telling your manager what work you will not do. Counsel employees need to follow the directions of their managers and behave in a professional manner.

**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.