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Issue Number: 2026-21. Advocacy Done Right: Staying Ethical While Fighting for Your Client

The Office of Professional Responsibility (OPR) has sole authority for administering and enforcing the regulatory rules of conduct governing tax professionals who practice before the Internal Revenue Service (IRS). This responsibility includes investigating and taking action in cases of reported misconduct committed by attorneys, certified public accountants (CPAs), enrolled agents, and other enrolled practitioners under Treasury Circular 230, *Regulations Governing Practice before the Internal Revenue Service*.

The OPR regularly receives referrals about practitioners from IRS employees regarding alleged Circular 230 violations. Common reasons for referral include practitioners being uncooperative, unresponsive, obstructive, profane, threatening, abusive, or offensive in their behavior or language. These actions or inactions (commissions or omissions) often violate the standards in Circular 230 and may compromise the integrity of IRS proceedings. They also expose the practitioner at fault to being disciplined with a sanction (described below), which can have significant repercussions for their reputation, including loss of trust by current or prospective clients, as well as the individual's livelihood.

The Rule

Section 10.51(a)(12) of Circular 230 prohibits practitioners from engaging in "contemptuous conduct" during their practice before the IRS. A violation of the prohibition is treated as "incompetence and disreputable conduct."

In its broadest sense, "contemptuous" can be defined as, "Showing that one thinks someone or something deserves no respect; ostentatiously disdainful." BLACK'S LAW DICTIONARY (12th ed. 2024).[1] In the legal sense, "Contemptuous behavior is conduct which tends to bring the authority and *the administration of the law* into disrespect." *Burns v. Universal Health Servs. Inc.,* 340 S.C. 509, 515, 532 S.E.2d 6,10 (S.C. Ct. App. 2000) (internal citations and quotations marks omitted) (emphasis added).

For purposes of applying section 10.51(a)(12), it includes, but is not limited to:

- Use of abusive, derisive, profane, or offensive language in oral communications with the IRS
- Making false accusations or statements directed at IRS employees

[1] Similarly, "feeling or showing contempt," meaning "a feeling of intense dislike for someone or something regarded as unworthy of respect or approval." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/contemptuous (accessed 22 Jun. 2026).

- Circulating or publishing malicious, libelous, or defamatory material about agency staff
- Threatening them or engaging in behavior that is intimidating or coercive

The OPR's jurisdiction enables us to address practitioner conduct that falls between, on the one end, civil and courteous but still "zealous advocacy" (e.g., firmly and forthrightly advocating a taxpayer's side of a dispute) and, at the other extreme, threats of physical violence (reported to the Treasury Inspector General for Tax Administration (TIGTA))[2]. This 'in between' space includes the categories noted above: using grossly rude or abusive or derisive speech when conversing with IRS compliance functions, such as revenue agents and revenue officers; leveling untrue accusations or statements against IRS employees; or circulating or publishing malicious or libelous matter about them. Actions and words rise to a sanctionable level of "contemptuous conduct" under section 10.51(a)(12) when the practitioner's behavior is so seriously offensive or obstructionist that it interferes with the mission of the IRS.

NOTE: A similar but separate provision is section 10.51(a)(9), which, like paragraph (a)(12) of section 10.51, describes a type of incompetence and disreputable conduct for which a practitioner may be sanctioned. More specifically, paragraph (a)(9) proscribes "attempting to influence," directly or indirectly, "the official action of any [IRS] officer or employee . . . by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value."

The standard for liability, to be sanctioned for violating the prohibitions in section 10.51(a), is having acted "willfully" (see section 10.52(a)(1)). A willful violation is a voluntary and intentional disregard of a known legal duty. BLACK'S LAW DICTIONARY, *Willfulness* (also defining "willful misconduct" as "Misconduct committed voluntarily and intentionally").[3]

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[2] TIGTA's Office of Investigations is charged with investigating "external attempts to corrupt or threaten IRS employees." See About TIGTA | U.S. Treasury Inspector General for Tax Administration OIG; *TIGTA Semiannual Report to Congress*, October 1, 2025–March 31, 2026, p. 14 ("TIGTA is statutorily mandated to protect the integrity of federal tax administration."); p. 16 ("Threats and assaults directed at IRS employees, facilities, and infrastructure impede the effective and safe administration of the federal tax system and the IRS's ability to collect tax revenue. TIGTA receives referrals of threats, assaults, and forcible interference against IRS employees performing their official duties.").

[3] See also *Owrutsky v. Brady*, 925 F.2d 1457 (4th Cir. 1991) (rejection of attorney's challenge to disbarment from IRS practice for willful failure to file personal tax returns and applying the meaning given to "willfully" in the context of criminal tax laws as "a voluntary, intentional violation of a known legal duty" to hold that there was "substantial evidence to support a determination of willfulness" by plaintiff-appellee Owrutsky) (internal citation and quotation marks omitted)); see also *Fishman Transducers, Inc. v. Paul*, 684 F.3d 187, 191 (1st Cir. 2012) (stating, in part, "In federal civil litigation willfulness [generally] requires a conscious awareness of wrongdoing by the defendant . . . ."); *Anderson v. Massillon*, 2012-Ohio-5711, ¶ 32, 134 Ohio St. 3d 380, 388, 983 N.E.2d 266, 273 ("Willful misconduct is an intentional deviation from a clear duty or from a definite rule of conduct . . . .").

Noncompliance Has Consequences

Practitioners who have or may have violated section 10.51(a)(12) or (a)(9) (or any of the other regulations governing practice) are subject to investigation by the OPR, usually based (as earlier indicated) on referrals received from IRS personnel. Those referrals are typically submitted to us on Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility. Complaints from taxpayers are another source. IRS Form 14157, Return Preparer Complaint, may be routed to our office when it concerns a Circular 230 practitioner and reports conduct within the scope of the OPR's jurisdiction.

When the OPR determines that a practitioner violated Circular 230, the individual may face adverse actions that depend on the facts and circumstances of the violation(s). In cases that don't merit discipline, the OPR may send the practitioner a warning letter or written reprimand, which is private. See section 10.60(a). In more serious cases, the OPR will consider pursuing a disciplinary sanction, especially if a discernible pattern of violations is present.

Sanctions prescribed in Circular 230 and its underlying statute (section 330 of Title 31 of the U.S. Code) are censure (i.e., a public reprimand), suspension from practice before the IRS, disbarment, and monetary penalties. See section 10.50, *Sanctions* (paragraphs (a), (c)); 31 USC 330(c).

Conclusion

In accordance with the Taxpayer Bill of Rights (TBOR), taxpayers have the right to representation by a representative of their choice. See IRC 7803(a)(3) and TBOR No. 9. Further, they deserve meaningful and tactful representation of their interests. The OPR and the IRS encourage robust, thorough, and skillful advocacy from practitioners, consistent with the competence requirement in section 10.35 of Circular 230 and mirroring the general ethical obligation of diligence in the legal profession. See, for example, Comment [1] to ABA Model Rule of Professional Conduct 1.3, *Diligence.*[4]

But no matter how contentious the tax issue or matter is, incivility, and certainly that of an extreme kind, has no place in practice before the IRS.[5] Therefore, please leave it at the door, so to speak, before entering a meeting with the IRS.

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[4] The comment states, "A lawyer should pursue a [client's] matter . . . despite opposition, obstruction or personal inconvenience . . . and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy . . . ." See also the legal encyclopedia CORPUS JURIS SECUNDUM (C.J.S.), Vol. 7, Attorney & Client, section 80, *Attorney's duty as to representation of client; limits of zealous advocacy* (2026 Update) ("An attorney must represent a client to the best of the attorney's abilities under the circumstances, devoting the attorney's entire energies to the client's interests. . . . . An attorney is charged with zealous representation of a client provided the attorney's conduct is consistent with obligations to the court and the justice system." (internal footnotes omitted)).

[5] Reciprocally, the same norm of acting with civility holds true for, and practitioners should rightly expect it from, IRS frontline employees who interact with taxpayers' representatives.

If you have questions about this article, please contact the OPR by phone at 202-317-6897 or eFax at 855-814-1722.