

March 10, 2025

Issue Number: 2025-3. Due Process Procedures in Circular 230 Matters

The Office of Professional Responsibility (OPR) is taking the opportunity to highlight for the practitioner community the due process protections incorporated throughout the handling of a Circular 230 case, including an investigation and any disciplinary proceeding.

Referrals to the OPR alleging violations of Circular 230 (*Regulations Governing Practice before the Internal Revenue Service*) come from a variety of internal and external sources. When a referral¹ is received, the OPR first determines whether the office has jurisdiction over the tax professional who is the subject of the referral—that is, whether the individual is a practitioner or is otherwise regulated by Circular 230. “Practitioners,” who are the focus of this article, are attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries. Appraisers who submit appraisals supporting tax positions and tax return preparers granted limited-practice privileges under the IRS's voluntary Annual Filing Season Program must also comply with Circular 230, as applicable. Assuming jurisdiction exists, the OPR independently determines whether the alleged violations concern a practitioner’s fitness to practice before the IRS and, if so, whether the allegations merit further scrutiny through inquiry or investigation, the extent of which will depend on the facts and circumstances.

The OPR does so by evaluating the content of reports of suspected practitioner misconduct and any accompanying or supporting documentation sent to our office and through preliminary research and case development, based on the specific situation. The OPR then makes initial determinations on a course of action, and unless a case is closed at the outset, the case (assigned to an attorney or specialist, with a reviewer) will proceed forward and follow its natural progression.

Non-Sanctionable Conduct

The OPR may determine that alleged misconduct is not sanctionable, meaning, the alleged misconduct was or is not in violation of the practice regulations or does not warrant a Circular 230 sanction or a Deferred Discipline Agreement.² Sometimes the OPR receives a referral or complaint that does not contain sufficient or clear evidence that the practitioner acted willfully. The OPR may conclude that contacting the practitioner is nevertheless called for. If so, the office

¹ “Referral” is used broadly in this article; it is intended to encompass those made by IRS employees on the prescribed form; taxpayer complaints (such as on Form 41157, *Return Preparer Complaint*, naming a practitioner); receipts from the Treasury Inspector General for Tax Administration (TIGTA), the Department of Justice, or other federal agencies; notices from state licensing authorities; and other sources.

² A Deferred Discipline Agreement is a written agreement entered into between the OPR and a practitioner in which the practitioner admits to specified violations of Circular 230 and the OPR and the practitioner agree that while the violations are subject to a sanction, the OPR will defer discipline for a probationary period of time, with the objective of closing the matter out at the end of the period with no further action. Conditions are invariably part of these agreements, including prospective compliance with Circular 230.

will often pursue a “Soft” letter process. This process gives the practitioner notice of the information we have received and an opportunity to be heard.

Under this process, the OPR, prior to case closing, corresponds with practitioners regarding referrals determined to be not actionable or that do not merit a sanction, such as a censure or suspension. An initial “Soft” letter informs a practitioner of the information referred and provides the practitioner 60 days to submit a written response and any supporting documentation, if the practitioner wishes to do so. Upon receipt of a response from the practitioner (or their authorized representative), the OPR will carefully consider the contents. After consideration or when the 60-day period has lapsed, the OPR will mail either a clearance letter or, more typically, a closing “Soft” letter. This second “Soft” letter notifies the practitioner that the OPR is not taking any further action on the referral, the associated case is closed, and the administrative file for the case will be retained by the OPR for the retention period prescribed in the applicable records control schedule.

The issuance of the “Soft” letters and any communications between the OPR and the practitioner (or their authorized representative) related to these letters is not made public.

Sanctionable Conduct

If the OPR determines one or more alleged violations are actionable and discipline is in order (including deferred discipline, when appropriate), the office will inform a practitioner of the purported misconduct by mailing a letter to the practitioner's “last known address” as defined in IRC 6212. This letter describes the allegations and gives the practitioner an opportunity to respond. Practitioners under investigation have the right to retain representation, to submit evidence or mitigating information, to request materials from the OPR's case file pursuant to IRC 6103, and to hold a conference with OPR's attorneys or Legal Administrative Specialists. This process, which precedes the commencement of any formal proceeding, allows a practitioner to access evidence supporting alleged violations of Circular 230 without submitting a Freedom of Information Act (FOIA) request. This process is designed to give the OPR and the practitioner a full and thorough understanding of the surrounding circumstances.

Most of the OPR's cases are resolved without the office filing a complaint with an administrative law judge (ALJ) that starts a formal disciplinary proceeding.³

Reprimands

Instead of pursuing a disciplinary sanction, the OPR may, for the same conduct, send the practitioner a written reprimand. Unlike censures, reprimand letters, which are solely at the discretion of OPR's Director, are private (see section 10.50(a) (“Censure is a public reprimand.”)).

Consent to be Sanctioned

³ See Subpart D of Circular 230, *Rules Applicable to Disciplinary Proceedings*.

In some instances, a practitioner may propose settlement during or at the end of an investigation, including consensual discipline. In response, the OPR will attempt to negotiate a suitable outcome, commensurate with the facts of the case, the seriousness of the violations, the practitioner's overall fitness to practice, and preventing future harm to taxpayers or federal tax administration, among other factors. Possible options include agreed-upon sanctions of censure, suspension, or disbarment from practice or the payment of a monetary penalty. All consensual sanctions are made public.

When the OPR believes a sanction is necessary yet is unable to negotiate a resolution with the practitioner, a formal "complaint" is drafted⁴ and the case is referred to the Office of Chief Counsel, General Legal Services (GLS). GLS sends a letter to the practitioner offering a final opportunity to resolve the matter without a proceeding. If settlement is not reached, GLS files the complaint to commence a civil proceeding before an ALJ. The ALJ presides over the proceeding and decides the merits of the case that OPR and GLS have charged against the practitioner. The proceeding is generally governed by the Administrative Procedure Act (5 USC 500, *et seq.*). The ALJ may order a hearing to be held, during which the OPR (represented by GLS) and the practitioner (or their counsel) present each side's evidence and arguments. Although rare, the case may be settled by concurrence of both parties at any time prior to entry of a decision.

If a hearing is conducted, and after post-hearing briefs are submitted, the ALJ issues an Initial Decision and Order. The ALJ may find the OPR has proven the allegations pled in the complaint and find the practitioner committed violations of Circular 230 for which the practitioner should be sanctioned. The ALJ may find that the OPR met its burden of proof for some of the counts of the complaint but not others; the ALJ may find there are aggravating factors and/or mitigating factors. Whatever the breakdown (e.g., in one case, all rulings may be favorable to OPR, while in another case, only some), the ALJ may then go on to impose the sanction that the OPR proposed. Alternatively, the ALJ may rule in the OPR's favor on the facts and law but increase or reduce the recommended sanction. Or the ALJ may reject both the OPR's version of events and its recommendation of a sanction, and thus dismiss the case.

After the ALJ's Decision and Order, either party may appeal the case to the Treasury Appellate Authority (an attorney in another division of the Office of Chief Counsel who had no previous involvement with the case). If neither party appeals within 30 days, the ALJ's Initial Decision and Order becomes the Final Agency Decision. If either party appeals, the Appellate Authority will, after receiving briefs from both parties and reviewing the record, render the Final Agency Decision. For the OPR, a decision by the Appellate Authority is a final determination in the case.

⁴ Captioned as:

DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
Complainant,
v.

Respondent

A practitioner who is not satisfied with the Appellate Authority's Final Agency Decision may file a complaint in U.S. district court to contest it. This proceeding is also conducted according to the Administrative Procedure Act, under which the federal district judge will review findings of facts based on the administrative record and review conclusions of law “de novo” (anew) and will set aside agency action found to be arbitrary or capricious, contrary to law, an abuse of discretion, or otherwise improper.

The OPR recognizes the enormous authority and trust vested in the office and the substantial impact disciplinary action can have on a practitioner, as well as taxpayers. The OPR takes its mission seriously. As such, the office follows a cautious and measured approach when acting on a referral and ensures practitioners are given proper due process during the life of a case, from beginning to end.