



DEPUTY
CHIEF COUNSEL

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

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MEMORANDUM FOR CHIEF COUNSEL EXECUTIVES AND MANAGERS

FROM:

Christopher B. Sterner 
Deputy Chief Counsel (Operations)

SUBJECT:

Chief Counsel 2011 Report on Professionalism

I am transmitting the fourteenth 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 2011 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 fourteenth annual report contains data regarding cases opened and closed for the period January 1, 2011 to December 31, 2011.

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 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 2011, the Office of Chief Counsel received 52 referrals from TIGTA alleging that Counsel employees committed misconduct or violated professional standards. These 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 52 TIGTA cases under active consideration in 2011, 50 were closed and 2 remain pending. The following chart sets forth the disposition of the 50 cases closed in 2011, compared with the cases closed in 2010.

	Calendar Year 2010	Calendar Year 2011
Cases Not Substantiated	18	16
Employee Separated Before Review Completed	0	7
Substantiated	15	27
Undetermined	0	0
TOTAL	33	50

The Office of Chief Counsel took disciplinary action in 27 of the substantiated cases and appropriate personnel actions are under consideration for the pending cases. The disciplinary actions taken in 2011, compared to that taken in 2010 can be summarized as follows:

Disciplinary Action	Calendar Year 2010	Calendar Year 2011
Counseling	Written: 1 Oral: 8	Written: 4 Oral: 16
Admonishment	2	3
Reprimand	1	1
Suspension	2	3
Removal	0	0
Downgrade	0	0
TOTAL	14	27

Additional Disciplinary Action

In addition to the action taken in the 27 substantiated TIGTA cases noted above, Counsel imposed discipline in 35 other non-TIGTA cases. The table below reflects the actions taken.

Chief Counsel 2011 Disciplinary Actions Report			
Actions Taken	Tax Related	Other	Total
Written Counseling	6	9	15
Admonishment	3	4	7
Reprimand	1	6	7
Suspension	1	2	3
Demotion	0	0	0
Removal	0	3	3
TOTAL	11	24	35

Of the 27 substantiated TIGTA cases and the 35 non-TIGTA cases relating to conduct or performance, disciplinary action was taken in 62 cases, or 100% percent. As previously stated, two cases remain pending.

Example case (TIGTA):

Suspension -- An employee used official Office of Chief Counsel letterhead (including an official work title) to write a letter to a court. The letter was written on behalf of the employee's personal friend who had pleaded guilty to tax-related criminal charges. The letter asked for leniency in sentencing and raised questions about why the friend was criminally prosecuted. Because this was a misuse of the employee's official position and because this matter caused embarrassment to the IRS, the employee was suspended.

Example cases (non-TIGTA):

Suspension -- A supervisory-level employee forwarded an email through the work email system concerning a partisan political matter. The email raised issues about a particular political candidate and said people should not vote for the candidate. The supervisory-level employee forwarded the email on to at least one person who was a subordinate. Even though this was an isolated one-time occurrence, this matter was investigated by the Office of Special Counsel and the employee was found to have violated the Hatch Act by sending a political email to a subordinate. The employee was suspended for 30 calendar days for this violation of the Hatch Act.

Admonishment -- An attorney handling a matter in Tax Court failed to comply with the Judge's order to submit decision documents within 75 days. Instead, after the deadline,

he submitted a status report to the Court indicating that the matter was still in process. Because the attorney did not comply with the Court's order, a Show Cause Order was issued which caused embarrassment to Counsel and additional work. The employee was issued an admonishment for failing to perform his professional duties.

Counseling -- An employee neglected to report income on their personal income tax return from an account related to a relative's estate. The IRS contacted the employee through an Underreporter audit and the employee was assessed approximately \$3000 in additional taxes which the employee promptly paid. The employee notified management about the problem when it occurred. Because the failure to report income was negligent vs. intentional and because the employee acted promptly to resolve the matter, the employee received a written counseling vs. more serious discipline.

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.