




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 2013 Report on Professionalism

I am transmitting the sixteenth 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 2013 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 sixteenth annual report contains data regarding cases opened for the period January 1, 2013 to December 31, 2013.

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 2013, the Office of Chief Counsel received 45 referrals from TIGTA alleging that Counsel employees committed misconduct or violated professional standards. Of the 45 TIGTA cases under active consideration in 2013, 44 were closed and one remains

pending. The following chart sets forth the disposition of the 44 cases closed in 2013, compared with the cases closed in 2012.

	Calendar Year 2012	Calendar Year 2013
Not Substantiated	15	15
Substantiated	25	29
Undetermined	0	0
TOTAL	40	44

The Office of Chief Counsel took disciplinary action in 24 of the 29 substantiated cases. In the remaining five cases where no discipline was issued, three employees separated prior to the issuance of discipline and two cases involved misplaced or stolen items of minimal value and the investigation did not warrant disciplinary action. The disciplinary actions taken in 2013, compared to that taken in 2012 can be summarized as follows:

Disciplinary Action	Calendar Year 2012	Calendar Year 2013
Counseling	Written: 1 Oral: 20	Written: 0 Oral: 20
Admonishment	1	1
Reprimand	1	0
Suspension	0	1
Resignation in lieu of Termination	2	1
Termination	0	1
TOTAL	25	24

Additional Disciplinary Action

In addition to the action taken in the 29 substantiated TIGTA cases noted above, Counsel imposed discipline in 34 other non-TIGTA cases. The table below reflects the actions taken.

Chief Counsel 2013 Disciplinary Actions Report			
Actions Taken	Tax Related	Other	Total
Written Counseling	5	9	14
Admonishment	4	2	6
Reprimand	4	5	9
Suspension	0	5	5
Demotion	0	0	0
Removal	0	0	0
TOTAL	13	21	34

Of the 29 substantiated TIGTA cases and the 34 non-TIGTA cases relating to conduct or performance, disciplinary action was taken in 58 cases, or 92 percent.

Example Cases:

- An employee used his government computer to try to access sexually related material on the internet. Some searches were blocked by the computer software but on some occasions the employee was able to view sexually related materials. Because this violates the computer use rules, the employee was suspended. In addition, one of the consequences of such misconduct is that based on the Telework Enhancement Act, the employee is ineligible for any flexiplace in the future.
- An allegation was filed with TIGTA claiming that an employee was misusing administrative leave by claiming to give blood but not actually doing so. TIGTA investigated the allegation and it was true that on some occasions the employee did not donate, but reported administrative leave anyway. The employee was not entitled to administrative leave on the days they did not donate and the employee was suspended.
- An attorney handling a matter in Tax Court learned an adjustment should have been made which meant a taxpayer owed zero dollars to the IRS. It was the attorney's responsibility to start the actions necessary to have the adjustment made to the taxpayer's account. Over an extended period of time, the attorney told his supervisor, the taxpayer, and the Tax Court that he had done so and that the IRS was updating the taxpayer's account information. But the information the employee provided was not correct since the attorney did nothing about the matter. When questioned, the attorney admitted the problem was one of procrastination. The attorney was reprimanded because the attorney's failure to act had an impact on the taxpayer and because the attorney had an ethical

responsibility to be truthful to the Tax Court when incorrect information was provided as part of status updates.

- A manager failed to timely satisfy personal income tax liabilities for 2011 and 2012. The manager said part of the payment problems were because their spouse did not have proper withholdings from their earnings. Since the manager had taken steps to pay the liabilities by installment agreement prior to being contacted by management, the discipline was limited to a reprimand.
- A manager made sexually related comments to several subordinates. The comments included explicit references to female and male anatomy and performance. They were made while in the office and during work-related social activities. At least one of the comments was made in a joking manner, but the subordinates were nevertheless offended by the comments. In light of the seriousness of a manager making such comments to subordinates, the manager was suspended.

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.