Chapter 1

Ethics

Page1

1

LEARNING OBJECTIVES

- Define what constitutes 'practice before the IRS'
- Identify which Circular 230 rules apply exclusively to practice before the IRS
- Identify incompetence and disreputable conduct under Circular 230
- Describe the Office of Professional Responsibility (OPR) disciplinary process under Circular 230
- Explain possible sanctions under Circular 230 and factors considered by OPR in determining the appropriate sanction

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Incompetence and Disreputable Conduct-Background Pg 3

Circular 230 §10.51defines incompetence and disreputable conduct that may be sanctioned.

Proposed Circular 230 §10.50(a) would explain that a practitioner can be sanctioned for conduct affecting their overall fitness to practice, **even if it occurs outside of representing clients 'before the IRS.'**

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Incompetence and Disreputable Conduct-Background Pg 3

31 U.S.C. §330 (Circular 230) grants the Treasury Department and IRS authority to regulate **practice before the IRS**.

Loving v. IRS:

- Plaintiffs challenged IRS's authority to regulate tax return preparation because return preparation was not 'practice before the IRS.'
- Courts agreed – completing a tax return assists taxpayers but does not rise to the level of representing a taxpayer before the IRS.

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Practice Before the IRS Pg 3

Proposed Circular 230 amends definition of 'practice before the IRS.'

Includes the preparation and submission of tax returns **in connection with** representing a client in a matter before the IRS.

- Eliminates provisions related to registered tax return preparers and standards on tax preparation that are unrelated to representation before the Treasury Department and the IRS.

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Application of Circular 230 Rules Pgs 4-5

See Figure 1.1 (PP. 4-5)

Under 31 U.S.C. §330(c), Treasury & IRS have authority to censure, suspend, or disbar practitioners who engage in incompetent or disreputable conduct, even if not related to practice before the IRS.

Important Note: Even when Circular 230 does not directly apply, penalties and sanctions may still be imposed under other professional standards or state/federal rules

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Incompetence

Pg 5

Defined as:

Lack of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.

Can include failure to recognize or avoid a conflict of interest

Proposed Circular 230 would add a duty to maintain **technological competence**.

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Incompetence

Pg 5

Cross Reference – Safeguard Data

Practitioners have a duty to protect taxpayer information from data breaches and identity theft.

Practitioners must also have a written information security plan (WISP)

See pages 444-452 in 2025 *National Income Tax Workbook*

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Disreputable Conduct – Current Circular 230

Pg 6

Includes crimes, violations of rules and regulations, tax noncompliance and other wrongful acts.

Criminal Convictions include:

- Conviction of any criminal offense under **federal tax laws**;
- Conviction of any criminal offense involving **dishonesty** or **breach of trust**; and
- Conviction of any **felony** under federal or state law that involves **conduct rendering the practitioner unfit** to practice before the IRS.

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Disreputable Conduct – Criminal Convictions Pg 6

Dishonesty – an individual, directly or indirectly,
- cheats or defrauds
- wrongfully takes property
- acts that lack integrity

Example 1.1: Misuse of client trust funds → criminal offense involving breach of trust.

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Disreputable Conduct – Current Circular 230 Pg 6

Giving False or Misleading Information

Applies when information is provided **in connection with any matter pending or likely to be pending** before the IRS or court.

Practitioner must **know** the information is false or misleading.

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Disreputable Conduct – Current Circular 230 Pg 6

"Information" includes testimony, tax returns, financial statements, affidavits, or any other **written or oral** document/statement.

Example 1.2: Advising clients to fabricate business expenses and falsifying tax returns → giving false or misleading information.

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Disreputable Conduct – Current Circular 230 Pg 7

Tax Law Violations and Tax Evasion

Knowingly assisting, counseling, or suggesting to a client violations of federal tax law or illegal tax evasion plans is disreputable conduct

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Disreputable Conduct – Current Circular 230 Pg 7

False Opinions

Providing false, misleading, or incompetent opinions on federal tax law (**knowingly, recklessly, or through gross incompetence**) is prohibited

Reckless conduct – highly unreasonable omission or misrepresentation that shows an extreme departure from ordinary care standards.

Gross incompetence – gross indifference, grossly inadequate preparation, and consistent failure to perform obligations to the client.

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Disreputable Conduct – Current Circular 230 Pg 7

Solicitation of Employment

Circular 230 §10.30 **prohibits**:

1. Using false, fraudulent, coercive, misleading, or deceptive statements in any public communication or private solicitation;
2. Using "certified" or implying an IRS employer/employee relationship when describing your designation as an EA, ERPA, or RTRP (***See Example 1.3***);
3. Uninvited solicitation of IRS-related employment that violates federal, state, or other applicable rules.

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Disreputable Conduct – Current Circular 230 Pg 8

Solicitation of Employment

Practitioner Note: Social media or website marketing must comply with Circular 230, other applicable professional standards, **and** state law.

Promotional efforts are not to create false or unjustified expectations of favorable results nor imply the ability to influence any court or regulatory agency.

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Disreputable Conduct – Current Circular 230 Pg 8

Failure to File and Failure to Pay

Willfully failing to file a federal tax return or willfully evading (or attempting to evade) any federal tax assessment or payment is disreputable conduct.

"Willful" – to voluntarily and intentionally violate a known legal duty (not negligence).

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Disreputable Conduct – Current Circular 230 Pg 9

Misappropriation of Funds Due to the U.S.

Disreputable conduct includes **misappropriating** or **failing to promptly remit** client funds intended for payment to the United States.

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Disreputable Conduct – Current Circular 230 Pg 9

Attempt to Influence the IRS

Includes attempting to influence IRS officers or employees through:

- threats
- false accusations
- duress
- coercion
- special inducements
- gifts
- favors

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Disreputable Conduct – Current Circular 230 Pg 9

Professional Discipline

Disbarment or suspension from practice as an attorney, CPA, public accountant, or actuary by any state, territory, federal court, or federal agency is disreputable conduct.

Example 1.6: CPA failed to promptly file client tax return and failed to promptly return client's original tax records despite repeated requests, resulting in 6-month suspension of CPA license and a fine→ Professional discipline that is considered disreputable conduct under Circular 230.

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Disreputable Conduct – Current Circular 230 Pg 9

Failure to Sign or Have Authorization to Represent

Disreputable conduct includes:

- **Willfully** preparing or signing a tax return without a valid PTIN
- **Willfully** representing a taxpayer before the IRS without proper authorization.
- **Knowingly** aiding and abetting another person to practice before the IRS during a period of suspension, disbarment or ineligibility.

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Disreputable Conduct – Current Circular 230 Pg 10

Example 1.7: CPA with a suspended license represented a taxpayer before the IRS → Unauthorized representation

Contemptuous Conduct

Using abusive language, making false accusations, or publishing/circulating malicious/libelous matter is prohibited and is disreputable conduct.

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Disreputable Conduct – Current Circular 230 Pg 10

Failing to Sign a Return

Willfully failing to sign a tax return when the practitioner's signature is required by federal tax laws is disreputable conduct.

Unless failure is due to a reasonable cause.

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Disreputable Conduct – Current Circular 230 Pg 10

Unauthorized Disclosure

Unauthorized, **willful** disclosure or **use** of tax return information in a manner not authorized by the I.R.C., a court order, or an administrative law judge's order is disreputable conduct.

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Disreputable Conduct – Current Circular 230 Pg 10

Failing to Electronically File

Willfully failing to e-file a tax return when required by federal law is considered disreputable conduct.

Unless the failure was due to reasonable cause and not due to willful neglect

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Incompetence and Disreputable Conduct Pg 11

Proposed Circular 230:

- Explains that a practitioner may be sanctioned for conduct affecting their **overall fitness to practice**;
- Clarifies what constitutes **contemptuous conduct**; and
- Provides that both noncompliance with federal tax law and the assessment of certain practitioner penalties constitute **disreputable conduct**.

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Contemptuous Conduct – Proposed Circular 230 **Pg 11**

Clarifies that **contemptuous conduct** will include conduct in connection with:

- Practice before the IRS;
- Any OPR disciplinary proceeding; or
- Any investigation by the Treasury Inspector General for Tax Administration.

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Noncompliance With Federal Tax Law – Proposed Circular 230 Pg 11

Proposed Circular 230 provides that the **willful** failure to follow **any** federal tax law is disreputable conduct because **knowingly** violating tax law reflects a **lack of due regard** for the law.

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Assessment of Penalties – Proposed Circular 230 Pg 11

Proposed Circular 230 would treat certain practitioner penalties as disreputable conduct.

Applicable penalties include:

- Willful or reckless understatement of tax liability;
- Aiding or abetting in the understatement of tax liability;
- Careless, reckless, or intentional disregard of rules and regulations; and
- Promotion of abusive tax shelters.

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I.R.C. §6694(b) Willful or Reckless Understatement Pg 11

I.R.C. §6694(b) imposes a penalty on tax return preparers who understate tax liability.

- Triggered by **willful attempt** to understate tax liability; or
- A **reckless** or **intentional disregard** of rules and regulations.

IRS bears burden of proof for willful understatement.

"Reckless Conduct" – highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care.

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I.R.C. §6694(b) Willful or Reckless Understatement Pg 11

Penalty is the **greater of**:
- $5,000; or
- 75% of the income derived by the preparer.

Example 1.8: Tax preparer knowingly deducted client's personal expenses as wages paid in client's business → Willful understatement, subject to penalty.

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I.R.C. §6694(b) Willful or Reckless Understatement Pg 12

Cross-Reference:

Section 6694(a) – no penalty imposed if understatement was due to reasonable cause and preparer acted in good faith → "reasonable cause relief."

Section 6694(b) – **NO** reasonable cause relief from penalties imposed under 6694(b).

See page 118 in 2023 National Income Tax Workbook for further discussion.

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I.R.C. §6694(b) Willful or Reckless Understatement Pg 12

NO reckless or intentional disregard of a rule or regulation if preparer's position that is contrary to the rule has a **reasonable basis.**

For IRS revenue rulings/notices:
- No disregard if **substantial authority standard** is met.

Example 1.9: Preparer deducted interest incurred on personal debt → No reasonable basis for position (i.e. willful understatement)

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I.R.C. §6701 Aiding or Abetting in the Understatement of Tax Liabilities Pg 12

Penalty imposed on anyone who **aids, advises, or assists** in preparing tax related documents that will result in an understatement of tax liability.

Preparer must have **knowledge** that document will **cause a tax understatement**.

Penalty: $1,000 per document ($10,000 for corporate matters)

Only one penalty per person in each tax period.

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I.R.C. §6662(b)(1) Careless, Reckless, or Intentional Disregard for the Rules or Regulations Pg 12

Imposes a penalty for underpayment due to **negligence** or **disregard** of rules/regulations.

"Negligence" – includes any failure to make a reasonable attempt to comply with I.R.C.

Penalty = 20% of underpayment amount

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I.R.C. §6662(b)(1) Careless, Reckless, or Intentional Disregard for the Rules or Regulations Pg 12

"Disregard" – includes **careless**, **reckless**, or **intentional** violation of tax rules or regulations.

- **Careless disregard** – lack of reasonable diligence in checking correctness of a contrary position.
- **Reckless disregard** – little or no effort to determine if rules exist, under circumstances showing a substantial deviation from reasonable conduct.
- **Intentional disregard** – knowingly ignoring applicable rules or regulations.

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I.R.C. §6700 Promotion of Abusive Tax Shelters Pg 13

I.R.C. §6700 penalizes those who **organize**, **assist**, or **sell interests** in abusive tax shelters, **and** makes or furnishes:

1. A statement regarding a tax benefit of a shelter that preparer knows or has reason to know is false/fraudulent; or
2. A gross valuation overstatement.

Penalty is lesser of:

$1,000 for each organization or sale of an abusive plan; or
100% of income derived

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The Office of Professional Responsibility Disciplinary Cases

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Office of Professional Responsibility (OPR) Pg 14

Investigates and disciplines violations of Circular 230

Has exclusive delegated authority and oversight responsibility for tax practitioner conduct and discipline

Enforcement activities include disciplinary proceedings and sanctions for confirmed violations

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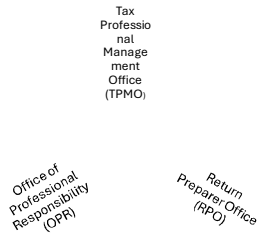
Practitioner Note

Pg 19



- Same leadership structure
- Operate independently

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Referrals

Pg 14

Sources of referrals:

- IRS employees
- Taxpayer complaints (Form 14157)
- Return Preparer Complaint
- TIGTA
- DOJ
- Other federal agencies and state licensing authorities
- Self-reporting
- Other practitioners

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Referrals

Pg 14

IRS Referrals

Under Circular 230, If an IRS employee suspects a violation, they **must** promptly make a written report
Using Form 8484

Referrals are **discretionary** if certain penalties have already been assessed (*see* P. 14 for a complete list).

Examples include: (1) accuracy-related penalty; (2) failure to furnish a copy of return to taxpayer; (3) failure to sign a return.

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Referrals

Pg 16

- Referrals to the OPR are **mandatory** if the IRS assesses the following penalties:
  - §6694(b) understatement penalty
  - §6700 promoting abusive tax shelters
  - §6701 aiding and abetting an understatement
  - §7407 injunction of tax preparer
  - §7408 injunction restraining specified conduct relating to tax shelters and reportable transactions

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Other Referrals

Pg 15

OPR receives referrals from multiple internal and external sources, including:

1) Return Preparer Office (RPO)
- Flags cases as OPR referrals

2) TIGTA or Criminal Investigation (CI)
- Submits investigative memoranda involving potential Circular 230 violations
- Provides sentencing information generated from their database

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Other Referrals

Pg 15

3) DOJ
- Notifies OPR of court orders permanently enjoining practitioners

4) Business Operating Divisions (BODs)
- Submit Form 8484

5) External Sources (e.g. state bar or board of accountancy)
- Notify OPR of license suspension or revocation

6) The Lead Development Center
- Forwards injunctions to OPR

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Jurisdiction

Pg 15

- OPR first determines jurisdiction over the referred tax professional.
- Jurisdiction applies to individuals regulated by Circular 230.
- Treasury Department and IRS have the authority to censure, suspend, or disbar practitioners who engage in incompetent or disreputable conduct, even outside IRS representation. (31 U.S.C. §330(c))

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OPR Procedure

Pg 16

OPR evaluates referrals to determine potential Circular 230 violations and whether conduct affects practitioner's fitness to practice.

***Practitioner Note: Case Assignment**

OPR handles matters involving violations of Circular 230. Other matters (e.g., tax fraud and identity theft) may be referred to other offices.

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OPR Procedure

Pg 16

- **Practitioner Notification**
  - OPR sends an **initial contact letter** notifying practitioner of the investigation.
  - Practitioner is given an opportunity to submit a written response, evidence, and documentation.
  - Practitioner (or authorized representative) may request a conference.
- **Resolution**
  - After full analysis, including mitigating factors, OPR decides how to resolve the investigation and whether to seek corrective action, which may include sanctions.

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OPR Procedure

Pg 16

Practitioner Note: Disciplinary Proceedings Circular 230, Subpart D

1) Proceedings begin with the filing of a formal complaint
2) Complaint filed with Administrative Law Judge (ALJ) who decides the case
3) Practitioner may pursue an administrative appeal
4) If no appeal is filed, ALJ's decision, including sanctions, becomes final
5) After appellate review (if any), a final administrative decision is issued and any sanctions become effective

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Non-Sanctionable Conduct

Pg 16

- OPR may conclude that alleged misconduct is not sanctionable.
- Reasons may include:
  - Conduct does not violate Circular 230
  - Conduct does not warrant sanctions or a **deferred discipline agreement**

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Non-Sanctionable Conduct

Pg 16

Practitioner Note: Deferred Discipline Agreement

- Written agreement with OPR that defers sanctions but imposes conditions that practitioner must comply with for a probationary period.
- If conditions are met, matter will be closed with no further action.

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Non-Sanctionable Conduct

Pg 17

Soft Letters

- OPR may receive referrals/complaints lacking sufficient evidence of misconduct.
- OPR **may still** contact practitioner, alerting them of a referral that OPR has determined to be not actionable.
- Practitioner may respond with evidence or documentation.
- OPR will issue a **clearance letter** or **closing soft letter.**
- Soft letters and related communications are **not public.**

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Non-Sanctionable Conduct

Pg 17

Written Reprimand

- Instead of formal discipline, OPR may issue a **private written reprimand.**
- Not public and issued at Director's discretion.

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Sanctionable Conduct

Pg 17

- When alleged violations are actionable and discipline is warranted, OPR issues a **formal notice letter.**
- Practitioner is given an opportunity to respond
- **Practitioner Rights**
  - Right to retain representation
  - Submit evidence and mitigating information
  - Request relevant case materials
  - Request a conference

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Sanctionable Conduct

Pg 17

- Precedes formal proceedings
- Allows practitioner to access evidence without submitting a FOIA request.
- Most OPR cases are resolved without filing an ALJ complaint.

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Sanctionable Conduct

Pg 17

Practitioner Note: Consent to Discipline

- Practitioner may **voluntarily consent to sanctions**
- May offer a settlement during or after an investigation
- OPR negotiates outcomes consistent with the facts and circumstances
- All consensual sanctions **are public**

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Circular 230 § 10.50 Sanctions

Pgs 17-18

After notice and an opportunity for a proceeding, sanctions may be imposed on practitioners who are incompetent or disreputable, violate Circular 230, or engage in willful or fraudulent misconduct.

Available Sanctions

- Censure (public reprimand)
- Suspension from practice (1-59 months)
- Disbarment (minimum 5 years)
- Monetary penalty (can accompany other sanctions)

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Circular 230 § 10.50 Sanctions

Pgs 18-19

Sanction Determination

- OPR considers all evidence and applies guidance from **OPR Guide to Sanctions.**

Severity Considerations

- Longer suspensions or disbarment are pursued when misconduct indicates an **ongoing harm** or **lack of fitness to practice.**
- Sanctions may be adjusted upward or downward based on aggravating or mitigating factors. (*See* Pgs 18-19 for non-exhaustive lists).

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Case Study 1: Disreputable Conduct

Pg 31

Rigo King:

- Worked seasonally as a hunting guide and sought supplemental income during the off-season.
- Enrolled in (and completed) an online tax return preparation course after seeing an advertisement promising easy, part-time income as a tax preparer.

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Case Study 1: Disreputable Conduct

Pg 31

Rigo King (cont'd):

- Marketed tax services locally, mostly to friends and coworkers.
- Prepared 17 individual tax returns for a fee using a tax software purchased at an office supply chain.
- **Did not**: (1) have a PTIN; (2) complete Paid Preparer section of the returns; and (3) sign the returns.

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Case Study 1: Disreputable Conduct

Pg 31

Rigo King(cont'd):

- Once a return was completed, Rigo directed clients to sign return and mail it to IRS with payment.
- Advised co-employees to deduct camo clothing, ammunition, and ATVs as work expenses, claiming they were reasonable and necessary to be employed as a hunting guide.

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Case Study 1: Disreputable Conduct

Pgs 36-37

1. **Has Rigo engaged in practice before the IRS for which he can be sanctioned?**
   - Yes, practice consisting solely of tax return preparation is not representation before the IRS, but tax preparation conduct is subject to Circular 230.

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Case Study 1: Disreputable Conduct

Pgs 36-37

2. **Did Rigo engage in disreputable conduct that is otherwise subject to discipline?**

   Yes.
   - Use of off-the-shelf software
   - No PTIN
   - Not signing returns
   - Not E-filing returns
   - Assisting/advising clients to violate federal tax law

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Case Study 2: Scenario A

Pg 31

Zena Das:

- Circular 230 preparer and a business owner (S Corporation)
- Failed to file Forms 1040 for 2023, 2024, and 2025
- Failed to file first 2 quarter Forms 941 for 2026
- Has made all the payments on all taxes due and is owed a refund

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Case Study 2: Scenario A

Pg 31

Zena (cont'd):

- Has never been sanctioned by OPR before
- When contacted by OPR about delinquent filings, she became unreasonably confrontational and asserted OPR has no authority over her because she does not represent clients before the IRS

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Case Study 2: Scenario A

Pgs 38-39

1. Can OPR sanction Zena?

- Zena's failure to file income and payroll tax returns, refusal to take corrective action, and confrontational remarks demonstrate a willful failure to file and contemptuous conduct in violation of Circular 230.

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Case Study 2: Scenario A

Pgs 38-39

2. If the OPR can sanction Zena, what are the mitigating or aggravating factors that the OPR should consider?

- Failure to recognize and remedy compliance with tax obligations; confrontational behavior outside bounds of zealous defense → aggravating factors

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Case Study 2: Scenario B

Pg 32

Xavier Jefferson:

- Circular 230 practitioner
- Operates Tax Services LLC w/3 employees
- Failed to file income taxes for 2023, 2024, and 2025
- Failed to file first 2 quarter Forms 941 for 2026

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Case Study 2: Scenario B

Pg 32

Xavier Jefferson (con't):

- Made all payments on all taxes due and is owed a refund
- Responded promptly when contacted by OPR
- Provided mitigating evidence for delinquent returns
- Filed delinquent returns after being contacted by OPR

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Case Study 2: Scenario B

Pgs 38-39

1. **Can the OPR sanction Xavier?**
   - Xavier only filed delinquent returns after being contacted by OPR and has a pattern of non-filing which could indicate a willful failure to file in violation of Circular 230.

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Case Study 2: Scenario B

Pgs 38-39

2. **If the OPR can sanction Xavier, what are the mitigating or aggravating factors that the OPR should consider?**
   - Xavier's personal hardships do not correlate with his non-filing. Furthermore, Xavier took no corrective action before OPR contact which can all be aggravating factors.

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Case Study 2: Scenario C

Pg 32

Quentin Flores :

- Circular 230 practitioner (sole proprietorship)
- Individual and trust and estate returns
- Received extension for 2025 return, but filed and paid in January 2027 (before OPR inquiry)
- When contacted by OPR, Quentin explained that a flood destroyed tax documents and needed to recreate those documents before he could file
- Always timely filed and paid his taxes

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Case Study 2: Scenario C

Pgs 38-39

1. **Can OPR sanction Quentin?**
   - Quentin presented credible evidence of a flood that caused the delay in filing and paying the 2025 taxes. Moreover, Quentin filed and paid those overdue taxes before OPR contact and as soon as practicable. These likely show that Quentin's conduct was not willful.

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Case Study 2: Scenario C

Pgs 38-39

2. **If the OPR can sanction Quentin, what are the mitigating or aggravating factors that the OPR should consider?**
   - **If** the OPR decides to sanction Quentin, Quentin's evidence of a flood that destroyed his 2025 tax documents is a mitigating factor. Further, Quentin's timely correction of the violation before OPR contact is another mitigating factor.

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Case Study 3: Tax Advice

Pgs 32-33

Grant Williams:

- **Clients**: Sara and Carter Trembley (2 years)
- Sara emails about pending divorce; Moving to Canada; Sara purchased Mackinac Island property; put Carter's name on deed; Sara wants to know if Carter can transfer interest back to Sara?
- Grant conducted AI search on "divorcing spouses transfer house tax issues"

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Case Study 3: Tax Advice

Pgs 39-40

1. **Should Grant Respond?**
   - Providing tax advice through email is not necessarily the best practice.
   - Grant must consider if he can provide a full and complete answer through email to be sufficient to fulfill his ethical obligations.

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Case Study 3: Tax Advice

Pgs 39-40

2. **If he chooses to respond, should he copy Carter on the reply, and how much information should Grant include?**
   - At a minimum, Grant should indicate that since he jointly represents both spouses, any information provided by one spouse will be shared if it is material to the common representation. Grant should also state that he will have to withdraw if one client wants to keep material information from the other.

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Case Study 3: Tax Advice

Pgs 39-40

2. **(Cont'd)**
   - Grant must also follow Circular 230 when providing tax advice, including advice given by email or text. This requires him to gather and consider all relevant facts, apply the law accurately, and act competently and truthfully. Because Sara has not provided enough information, and given the importance and complexity of the issue, Grant should request additional information and request a follow-up by phone or in-person meeting.

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Case Study 3: Tax Advice

Pgs 39-40

3. **Can Grant rely on his internet search results, and what other due diligence obligations does he have?**
   - Grant may use online data search engines when providing tax advice, but professional standards require him to independently verify the information and conduct his own analysis of the facts. In responding to Sara, he should give general guidance, highlight important exceptions, request a meeting for further discussion, and clearly disclose potential conflict of interest.

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