

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

N o t i c e

N(30)487-1

August 5, 1998

Standards of Ethical
Subject: and Professional Conduct

Cancellation Date: February 1, 1999

(30)487 Policy

(1) The Office of Chief Counsel has always been committed to maintaining the highest standards of ethical and professional conduct. Our employees must adhere to the letter and the 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 Rules of Conduct, and Treasury Supplemental Standards of Conduct in handling our cases. Moreover, our legal practice and conduct should always be characterized by adherence to the highest standards of professionalism, honesty, and fair play. Allegations or evidence of employee misconduct must be investigated and acted upon in a uniform and consistent manner.

(2) The organization recognizes that uniform procedures must be established which will assure consistent treatment of allegations or evidence of employee misconduct, unprofessional behavior, or the failure to follow established procedures, and which will build public and internal confidence in the processes used to investigate and evaluate such allegations or evidence of misconduct. In addition, the organization recognizes the need for clarification of which matters should be referred to Treasury's Inspector General and which matters should be retained and handled as management matters. Finally, the Office recognizes that inconsistent treatment of employees may result from confusion as to whether an event should be dealt with in the evaluation/feedback or disciplinary process, or whether an allegation warrants referral to higher levels of management. To address these issues, the Office is establishing the following procedures, which cover matters to be referred to the Inspector General, the Deputy Chief Counsel, or local management, and the investigative procedures which may follow such referrals.

(3) The procedures described below apply to all allegations or evidence of misconduct by a Counsel employee received from any source, including --

- (a) an administrative or judicial body;
- (b) a taxpayer or other member of the public;

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(c) an employee of the Internal Revenue Service or Office of Chief Counsel, or other Treasury bureau; and

(d) an official or employee of another federal agency.

(30)487.1

Matters to be Referred to the Deputy Chief Counsel for Referral to the Inspector General

(1) 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, or a substantial and specific danger to the public health and safety should be referred to the Deputy Chief Counsel for referral to the Inspector General. See Treasury Directive No. 40-01 (Sept. 21, 1992).

(2) Complaints or allegations referred by the Deputy Chief Counsel to the Inspector General for investigation include allegations or evidence of potential criminal conduct occurring on the job or in connection with official duties, and all integrity issues, unless the conduct is otherwise covered by established procedures (e.g., EEO complaints, grievances, and employee tax compliance issues).

(3) Examples of matters which should be referred to the Inspector General include, but are not limited to, allegations of --

(a) misuse of office or official credentials;

(b) unauthorized outside employment raising conflict of interest issues; and

(c) unauthorized access to taxpayer information.

(4) Referral Procedures

(a) While all employees have the right to refer matters directly to the Inspector General (see (5) infra.), it assists in the management of Counsel offices if managers and executives are made aware of allegations of misconduct of subordinates. Accordingly, referrals should generally be made through the management chain. Management may be able to add additional information to the referral that the Inspector General will find useful in determining whether to investigate the complaint.

(b) Managers should refer all potential Inspector General matters to the Deputy Chief Counsel through the management chain. If an allegation involves an individual in the chain of referral, the referral should be made to the next higher official in the chain.

(5) The foregoing referral requirement does not limit any person's right to report an allegation of misconduct directly to the Inspector General for investigation.

(6) Questions as to whether a matter should be referred to the Deputy Chief Counsel should be coordinated with the Claims, Labor and Personnel Law (CL&P) Branch of the Office of the Assistant Chief Counsel (General Legal Services).

(30)487.2

Matters to be Referred to the Deputy Chief Counsel for Consideration

(1) Matters, not described in (30)487.1, or reserved for local handling in (30)487.4, will also be referred through the appropriate management structure to the Deputy Chief Counsel.

(2) Allegations or evidence of an employee's serious or significant failure to comply with the accepted standards of legal practice within the Office of Chief Counsel, including the standards of practice set forth in the CCDM, will be referred through the appropriate management chain to the Deputy Chief Counsel.

(3) Serious or significant matters include actions which potentially prejudice the client's interest and which are more than an isolated, unintentional occurrence. There may be situations, however, when an isolated, unintentional matter must be referred due to the dollar impact, sensitivity or significance of the issue, or the importance of the legal standard to the efficiency or mission of the organization. It is in the client's interest to protect the taxpayer's right to fair and ethical treatment by Counsel employees, and to assure that the taxpayer's interests are not prejudiced as the result of unprofessional conduct.

(4) Examples of serious or significant matters which should be referred include, but are not limited to, the following:

(a) a nonfrivolous allegation or evidence of professional misconduct;

(b) the failure to properly coordinate a legal position, settlement or policy matter with the appropriate party as required by the CCDM; i.e. ISP, a Notice case, a case involving a prior criminal matter, etc.;

(c) the failure to protect a statute of limitations;

(d) any alleged ethical violation; and

(e) repeatedly failing to meet pleading dates.

(5) Managers should coordinate with the CL&P Branch of Office of the Assistant Chief Counsel (General Legal Services) as to whether a matter requires referral to the Deputy Chief Counsel. In determining whether a serious or significant matter is involved, managers and CL&P should consider, among other factors, the following:

(a) whether the failure to follow standard practices and procedures was willful;

- (b) the number of similar or related instances; and
- (c) the effect of the employee's actions on the functioning of the Office.

(6) Upon receipt by a manager of an allegation or evidence of a matter which is referable to the Deputy Chief Counsel under the above provisions, the matter should be referred through the appropriate management chain to the Deputy Chief Counsel. If a matter involves an individual within that management structure, the referral should be made to the next higher official in the management chain.

(30)487.3 Follow Up and Investigation

(1) The Deputy Chief Counsel shall determine the appropriate action to be taken with respect to referrals to that office. While referral of a matter to higher levels of management serves the objective of informing management of matters of which it should be aware, the Deputy Chief Counsel may determine that a referred matter should be handled locally rather than centrally. Such matters may be returned for further investigation and handling under local procedures. See (30)487.4 below.

(2) The Deputy Chief Counsel shall determine whether a referred matter warrants a centrally coordinated investigation by the Office. The Deputy Chief Counsel shall, with the assistance of the appropriate Regional or Associate Chief Counsel and the CL&P Branch of GLS, determine the composition of the investigative team. In matters in which the action in question results in actual prejudice to the client's interest, and in matters which have been returned by the Inspector General for further investigation, the investigative team shall generally include individuals outside the employee's district, region, or national office division, but may include, at the discretion of the Deputy Chief Counsel, individuals from within the office or region in which the alleged misconduct occurred.

(3) Upon completion of an investigation requested by the Deputy Chief Counsel, the investigative report will be transmitted to the Regional or Associate Chief Counsel, with a copy to the Deputy Chief Counsel. Management shall consult with the CL&P Branch of GLS regarding whether the matter should be dealt with through the evaluation/feedback process or through disciplinary procedures, and if the latter, as to an appropriate range of discipline.

(4) The Deputy Chief Counsel is responsible for reporting to the IG on the disposition of matters investigated at the request of the IG.

(30)487.4 Matters Which May Be Handled Under Local Procedures

(1) Matters which may be handled under local procedures include evaluation and discipline matters which --

(a) are covered under other formal procedures within the Office of Chief Counsel, the Treasury Department, or the federal government;

(b) do not require referral to the Inspector General (see (30)487.1);

(c) do not require referral to the Deputy Chief Counsel (see (30)487.2); or

d) have been returned to local management by the Deputy Chief Counsel for handling under local procedures.

(2) Matters returned by the Deputy Chief Counsel (including matters returned by the IG), and other matters which, after consultation with CL&P, have been determined not to require referral to the Deputy Chief Counsel will be handled as directed by the Regional Counsel or Associate Chief Counsel.

(3) Examples of matters which may be handled under local procedures, absent special circumstances, include, but are not limited to:

(a) employee tax compliance issues;

(b) personnel practices subject to grievance procedures;

(c) EEO matters;

(d) office altercations;

(e) failure to follow standard office procedures.

(30)487.5

Employee Rights and Obligations

(1) Union Representation. Bargaining unit employees who are the focus of an investigation have the right to union representation in an investigation conducted by Counsel investigators. However, the Court of Appeals for the District of Columbia Circuit has held that bargaining unit employees do not have the right to be represented by the union in an Inspector General investigation. Department of Justice v. FLRA, 39 F.3d 361 (D.C. Cir. 1994).

(2) Duty to Respond Truthfully. Employees are required to respond truthfully to questions, whether oral or written, in connection with any matter of official interest. 31 C.F.R. § 0.208. An employee may be subject to disciplinary action, including removal, when during the course of an investigation relating to the employee's official duties the employee does not answer truthfully concerning his own conduct or the conduct of other employees. See CCDM (30)483 for procedures involving disciplinary and adverse actions.

(30)487.6
Annual Report

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. The manner of presentation will ensure that the privacy rights of employees are protected.

/s/

RICHARD J. MIHELICIC
Associate Chief Counsel
(Finance and Management)