

# Ethical Challenges for the Nonprofit Organizations Advisor

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UT Law Nonprofit Organizations Institute

Panelists:

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## Agenda

- Overview of IRS Office of Professional Responsibility
- Overview of Circular 230 and State Rules
- Case Studies
  - Applications for Tax-Exempt Status
  - Form Preparation
  - Written Opinions

# What Rules Apply?

- Circular 230 – Regulations Governing Practice Before the IRS (applicable to all tax “practitioners”)
- State Courts/Bar Associations – Rules of Professional Conduct (applicable to attorneys)
- AICPA Code of Professional Conduct & Statements on Standards for Tax Services (applicable to CPAs)
- IRC provisions
  - §§ 6694, 7407 (applicable to “return preparers”)
  - § 6701 (applicable to advisors or preparers)

# Overview of Circular 230

- “Practice before the IRS” is defined in Circular 230 § 10.2(a)(4) as
  - “all matters connected with a presentation to the [IRS] relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by” the IRS
- Such presentations include, but are not limited to:
  - Preparing documents
  - Filing documents
  - Corresponding and communicating with the IRS
  - Representing a client at conferences, hearings, and meetings
  - Rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion

# Overview of IRS OPR

- OPR created in 2003
- OPR has exclusive responsibility for discipline, including disciplinary proceedings and sanctions
  - Circular 230 – Regulations Governing Practice Before the IRS
  - “Practice before the IRS” defined in §10.2(a)(4)
    - “all matters connected with a presentation to [IRS] relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by” the IRS (e.g., preparing and filing documents, correspondence with IRS, including conferences and meetings, written advice)
    - narrowed by *Loving v. IRS*, 742 F.3d 1013 (DC Cir. 2014):
      - Statutory authority for Circular 230 does not cover preparation of tax returns – thus, portions of Circular 230 covering return preparers are invalid

# Overview of IRS OPR

- How does OPR get involved?
  - Referrals and complaints from IRS divisions and employees, other government agencies and authorities, tax practitioners and taxpayers
  - In general, OPR does not become involved in any matter until it is concluded
- Interpretative guidance
- No ability to consult OPR to get an opinion
  - In contrast to State Bar rules

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