

2009

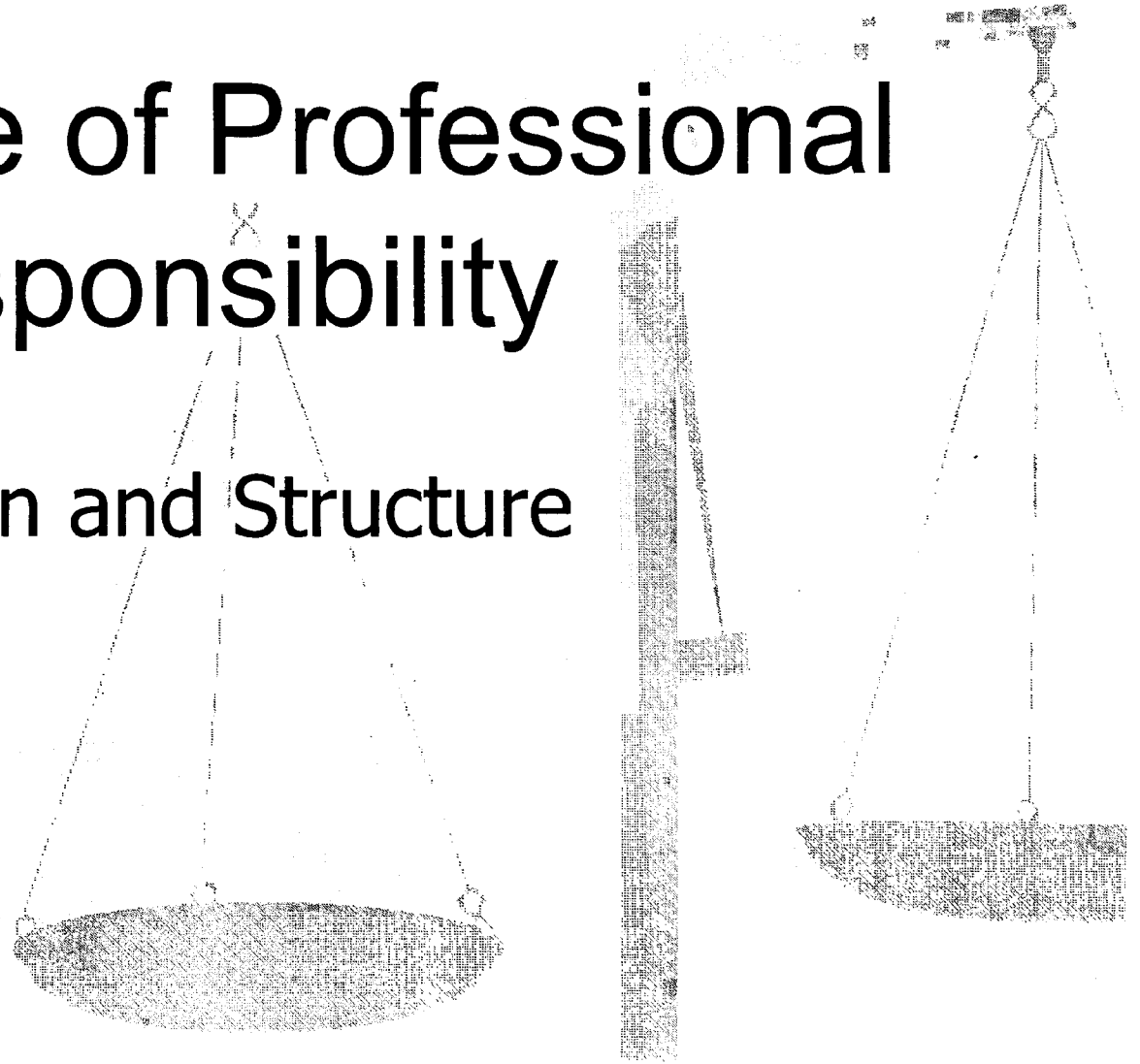
The Office of Professional Responsibility - Mission and Structure (Slides)

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The Office of Professional Responsibility

Mission and Structure



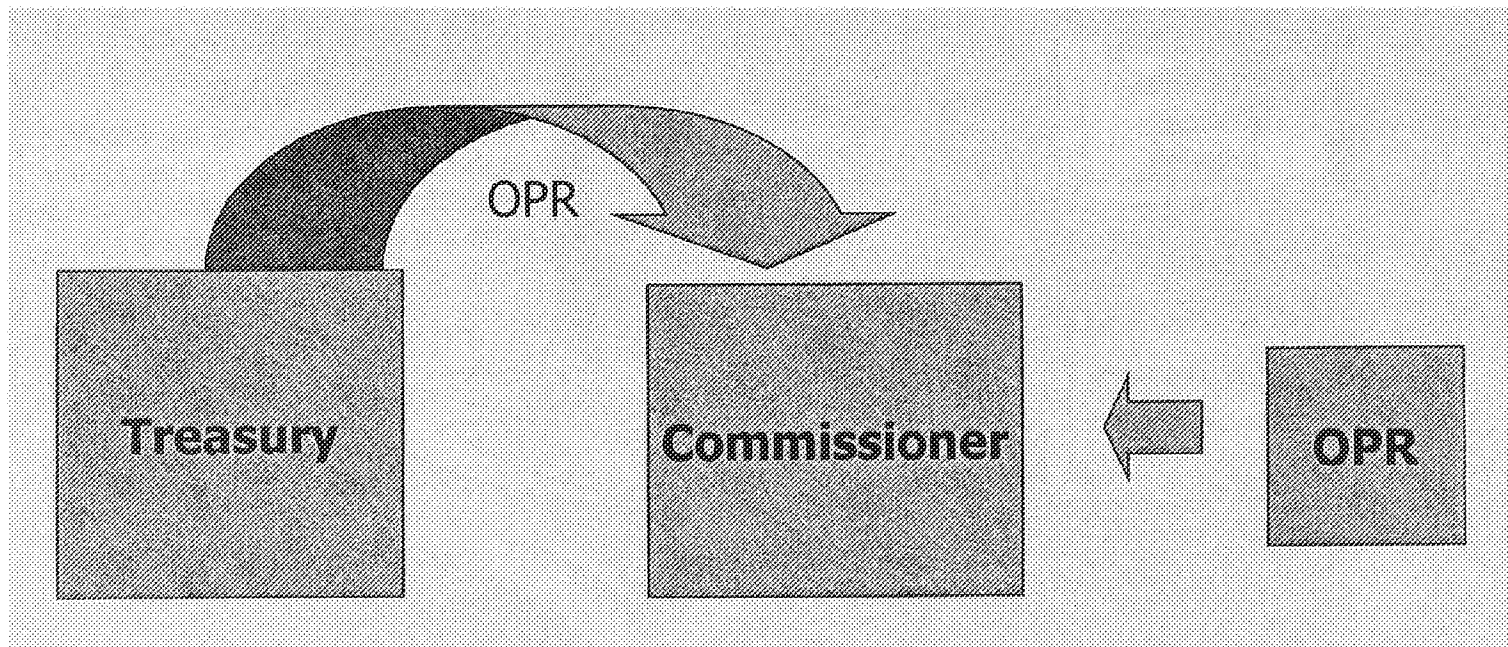
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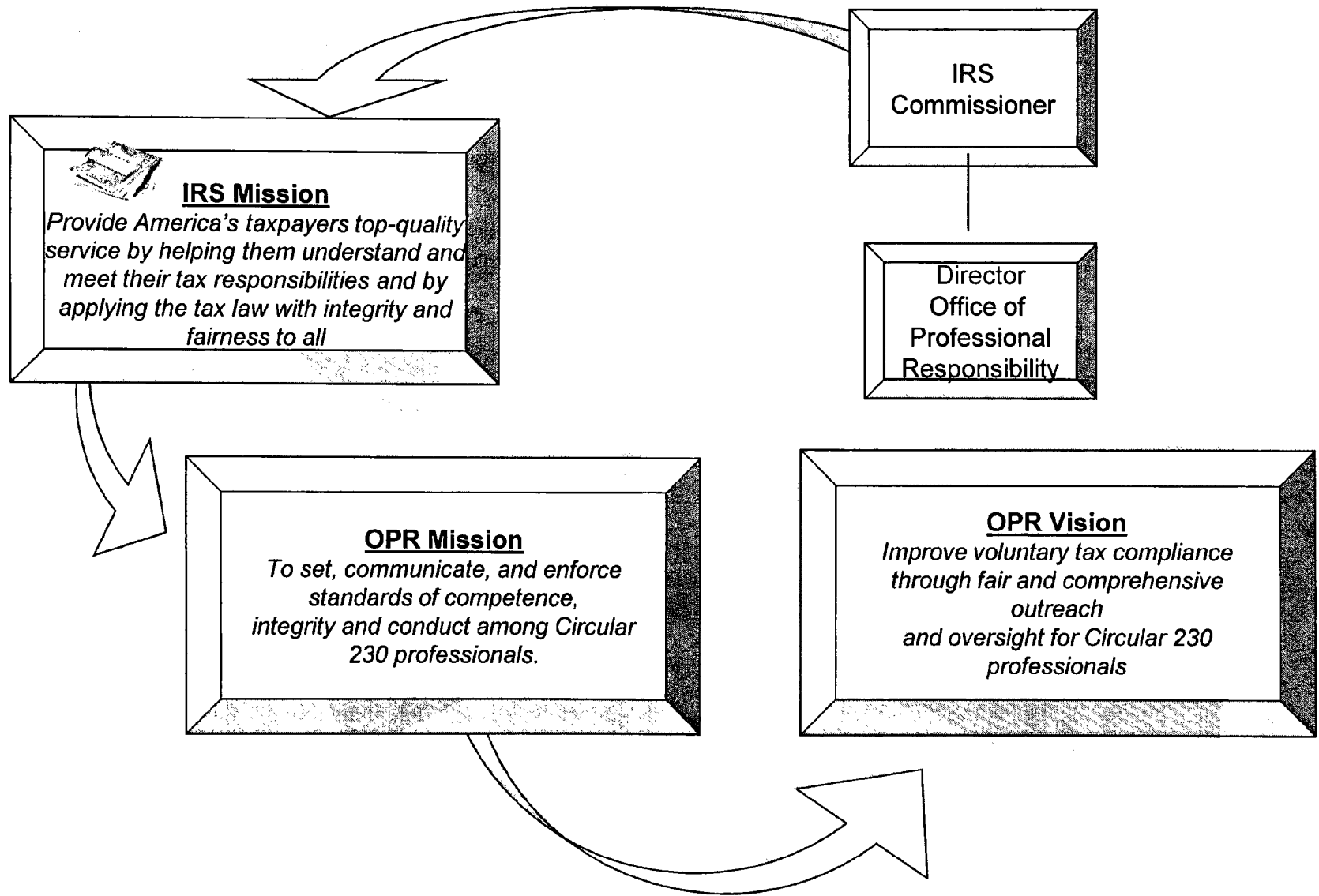
AUTHORITY AND DELEGATION

AUTHORIZED UNDER TITLE 31 **NOT** TITLE 26.

DELEGATED → TO THE COMMISSIONER, IRS.

DIRECT REPORT → TO THE COMMISSIONER.





**IRS
Commissioner**

**Director
Office of
Professional
Responsibility**

IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all

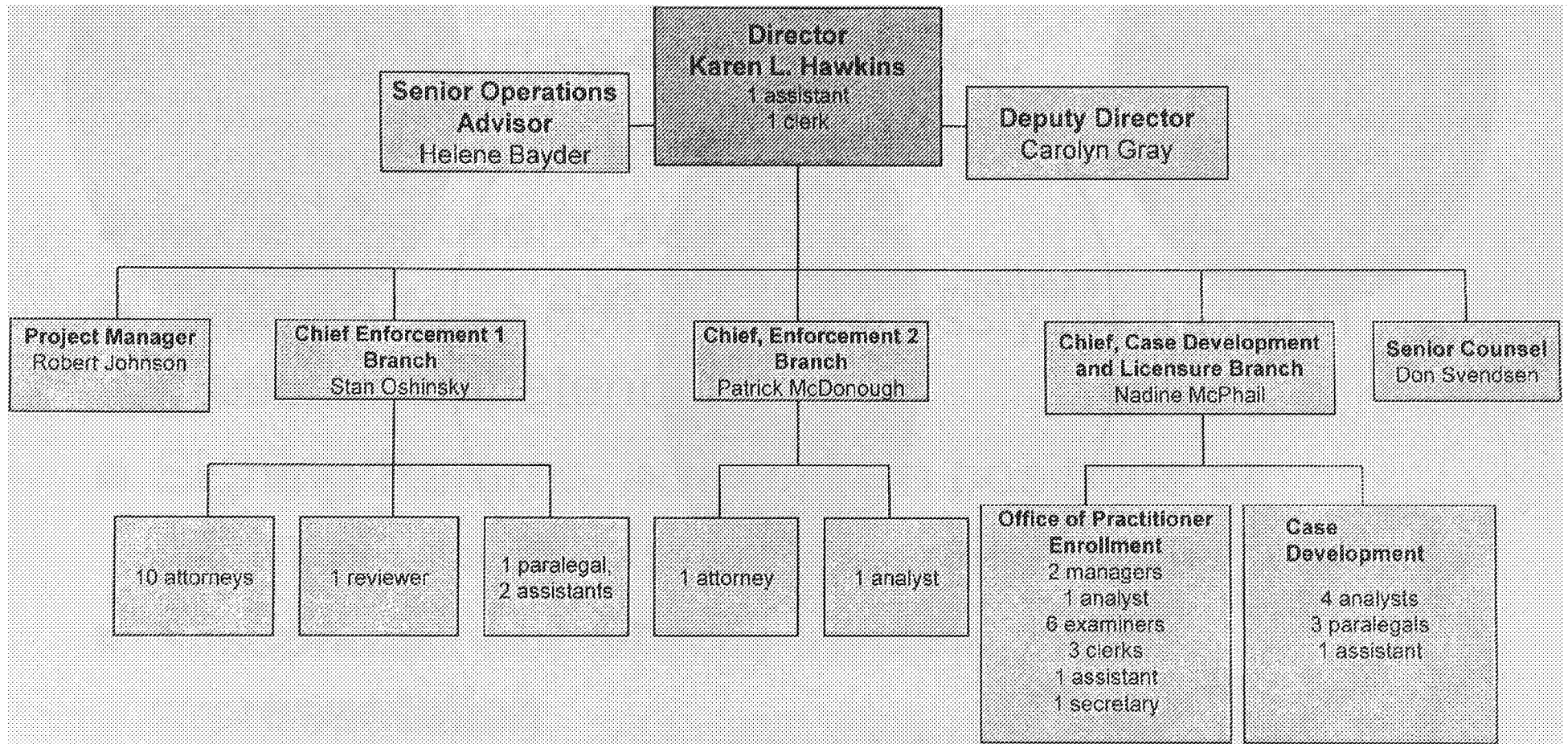
OPR Mission

To set, communicate, and enforce standards of competence, integrity and conduct among Circular 230 professionals.

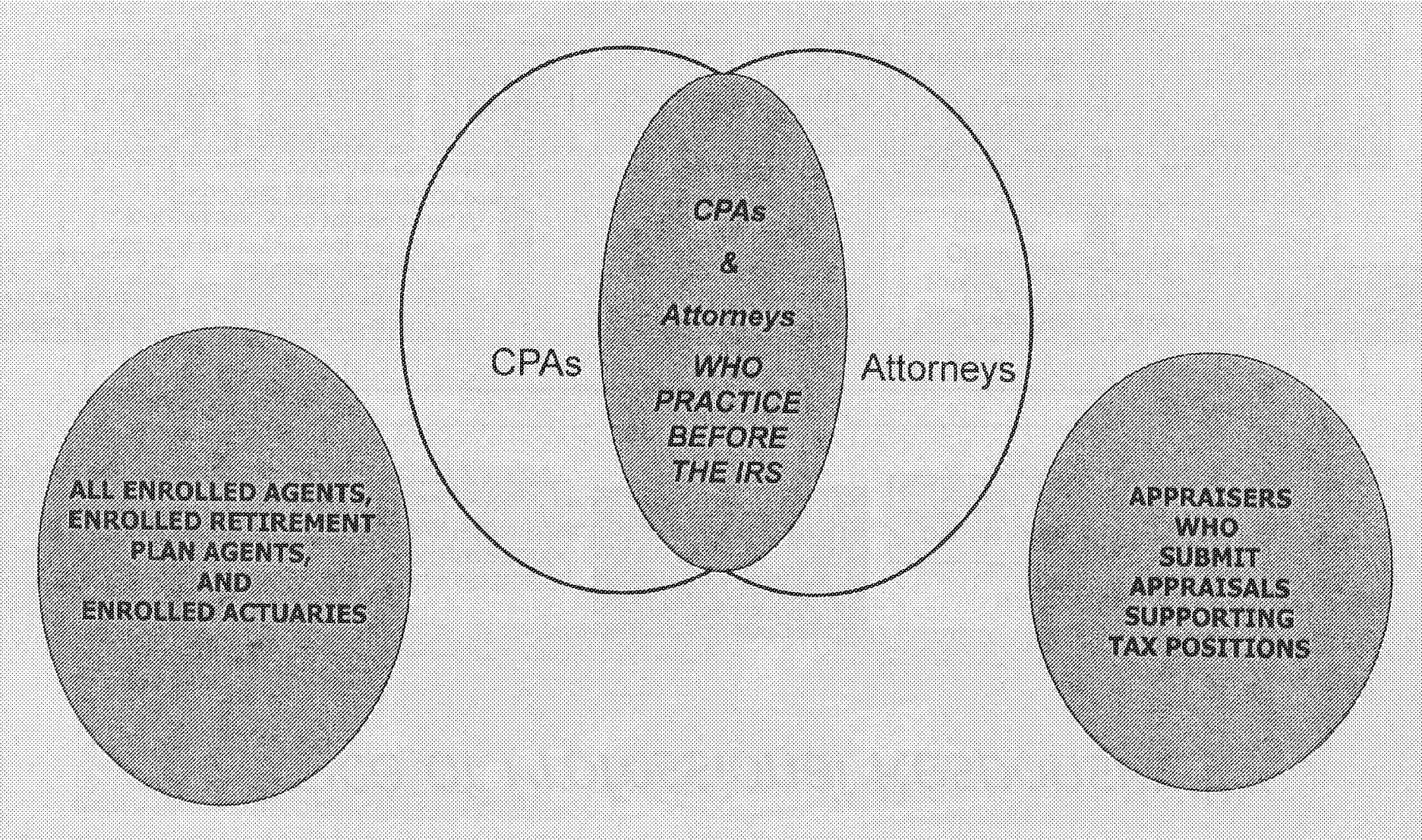
OPR Vision

Improve voluntary tax compliance through fair and comprehensive outreach and oversight for Circular 230 professionals

Office of Professional Responsibility



Jurisdiction



Misconduct Subject to Disciplinary Action

Five broad sources of misconduct:

- During taxpayer representation before IRS
- On practitioner's own return
- Giving a false opinion, recklessly, or through gross incompetence
- Signing Returns, advising on positions or submissions in a manner which violates §10.34
- Misconduct not directly involving IRS representation

Cases Involving Duties Owed To the Client

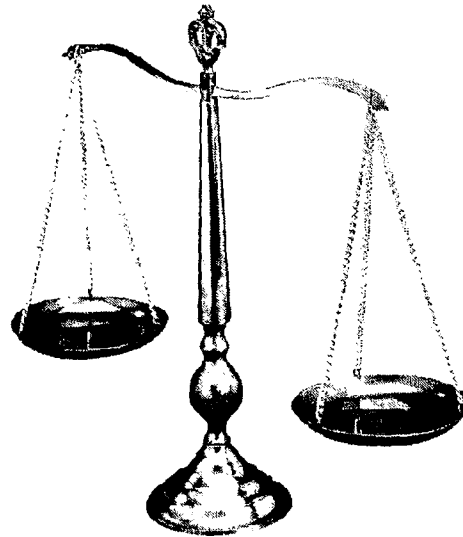
- Performing Services that lack Due Diligence (§10.22)
- Charging Contingent Fees & Negotiating Checks (§10.27; §10.31)
- Representing Conflicting Interests (§10.29)
- Failing to Return Records (§10.28)
- Advertising in a false or misleading manner (§10.30)
- Advising Client of Effect of Past Omission (§10.31)

Cases Involving Duties owed To the System

- Delaying Pending Matters before the IRS (§10.23)
- Assisting Suspended Practitioners in practice before the IRS (§10.24)
- Providing False or Misleading Information to the IRS (§10.51(a)(4))
- Signing Returns, Advising on Positions on Submissions in a manner which violates §10.34
- Engaging in Contemptuous Conduct (§10.51(a)(12))
- Failing to submit Records or Information to the IRS upon lawful request (§10.20)
- False or Misleading Opinions (§10.51(a)(13))

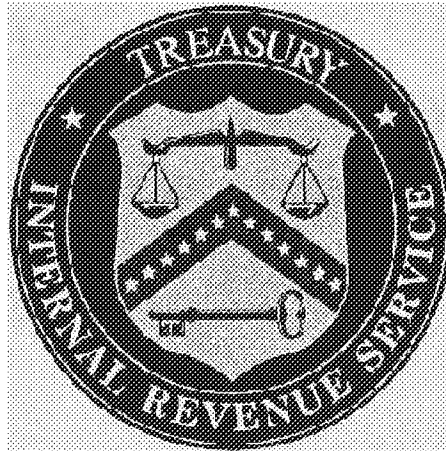
Expedited Suspension

- Loss of License
- Criminal Conviction
- Deferred Disciplinary Agreement



Practitioner Tax Non-Compliance

- Personal
- Business Entity
- Employment Taxes



OPR Complaint Process

- How complaints arise
 - *From IRS divisions and employees, other government agencies, tax practitioners and private citizens*
- Investigation and sanction process

Potential Sanctions

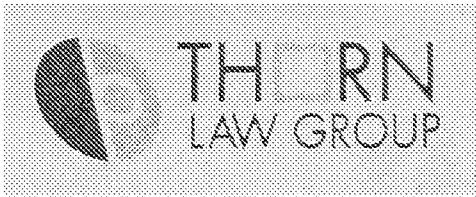
- Letter of Reprimand
- Censure
- Suspension
- Disbarment
- Monetary Sanction

Scenario 1

Q is a Circular 230 Practitioner. Q has a practice which includes preparation of returns and representation before the Service for individuals. Q filed his 2004 and 2005 form 1040's one year past the filing deadline and requested no extension.

Q made all payments on all taxes due.

Q came into compliance before OPR made contact and has never been sanctioned by OPR before.



HYPOTHETICAL #1

Billie Jean represents the Estate of Michael Johnston in a tax assessment before the IRS. Billie Jean has hired Liz Tyler, a certified real estate appraiser, to appraise the Neverland Patch, Michael Johnston's property. It is Liz's practice to retain the final report and all documentation. However, all drafts and notes are destroyed after Liz signs the final appraisal.

Billie Jean noticed that in a draft appraisal Liz relied on a comparable real estate transaction. However, this comparable real estate transaction was not included in the final report that was eventually submitted to the IRS. The Neverland Patch was valued considerably higher in the final report as compared to the draft as a result of the fact that the comparable real estate transactions were omitted from the final report.

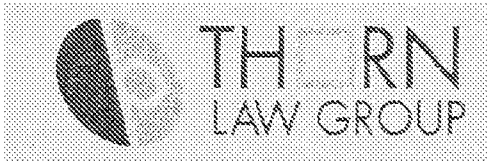
ANSWER #1

- A practitioner must advise clients of any noncompliance, error or omission in a submission to the IRS. § 10.21. Therefore, the practitioner must, at the very least, advise their client on the omissions and the effect of this on the valuation of the property.

Furthermore, a practitioner must exercise due diligence, which is presumed if a practitioner relies on the work product of another. However, a practitioner must use reasonable care in engaging and supervising the work of another—in this case Liz Tyler. § 10.22. In this case, the attorney was not relying on Liz Tyler because they had actual knowledge of misconduct. Therefore, the attorney should not be afforded the presumption.

- Due diligence is a broad term that has been open to interpretation. Administrative Law Judge's have shown a willingness to interpret "due diligence" broadly as seen in the *OPR v. John Sykes* decision.

If the attorney is found to have not exercised his or her due diligence, the attorney could be subject to § 10.51 sanctions. A practitioner may be sanctioned under § 10.51 if the practitioner *willfully* violates Circular 230.



HYPOTHETICAL #2

Howard Cheatem of the law firm Dewey, Cheatem & Howe also holds an accounting degree and is a licensed CPA in the Commonwealth of Virginia. Before working for the law firm, Mr. Cheatem was a principal at the now-defunct accounting firm Awful Anderson. While at the accounting firm, Cheatem issued several written legal opinions to clients on the tax-exempt status of their organizations—all under the Awful Anderson name.

Thurston Howe III, a partner at the law firm, represents Cheatem in an ethics matter before the IRS Office of Professional Responsibility (OPR) that concerns a written legal opinion Cheatem issued while he was at Awful Anderson.

Gill Bates of the Gill and Belinda Bates Foundation has also asked Howe to represent the foundation before the IRS on a matter regarding the tax-exempt status of the Foundation. Gill informs Howe that the foundation received a “more likely than not” written memorandum opinion on the tax-exempt status of the foundation that was issued by Awful Anderson. Cheatem’s name does not appear on the written memorandum issued by Awful Anderson but the opinion issued is very similar to the one at issue in the OPR matter.

ANSWER #2

A practitioner shall not represent a client before the IRS if the representation involves a conflict of interest. § 10.29. It may be a conflict of interest if representation of one client will be directly adverse to another client—if the representation of the Bates Foundation could be adverse to the representation of Cheatem.

In this case, Thurston Howe III representation of Cheatem may hinder the representation of the Bates Foundation and *vice versa*. While there may not be an actual conflict of interest because it is uncertain whether Cheatem authored the specific memorandum at issue, there is a potential conflict of interest because the representation of one client will be directly adverse to the other.

However, the representation of both clients may be appropriate if the practitioner satisfied three requirements—if the practitioner reasonably believes that they will be able to provide competent representation, the representation is not prohibited by law, and each client waives the conflict via informed written consent. § 10.29(c).

Scenario 2

Practitioner Q is preparing Bob's 2009 form 1040. Q learns from Bob that Bob's great aunt Sophia of Luxembourg recently passed away leaving Bob some assets.

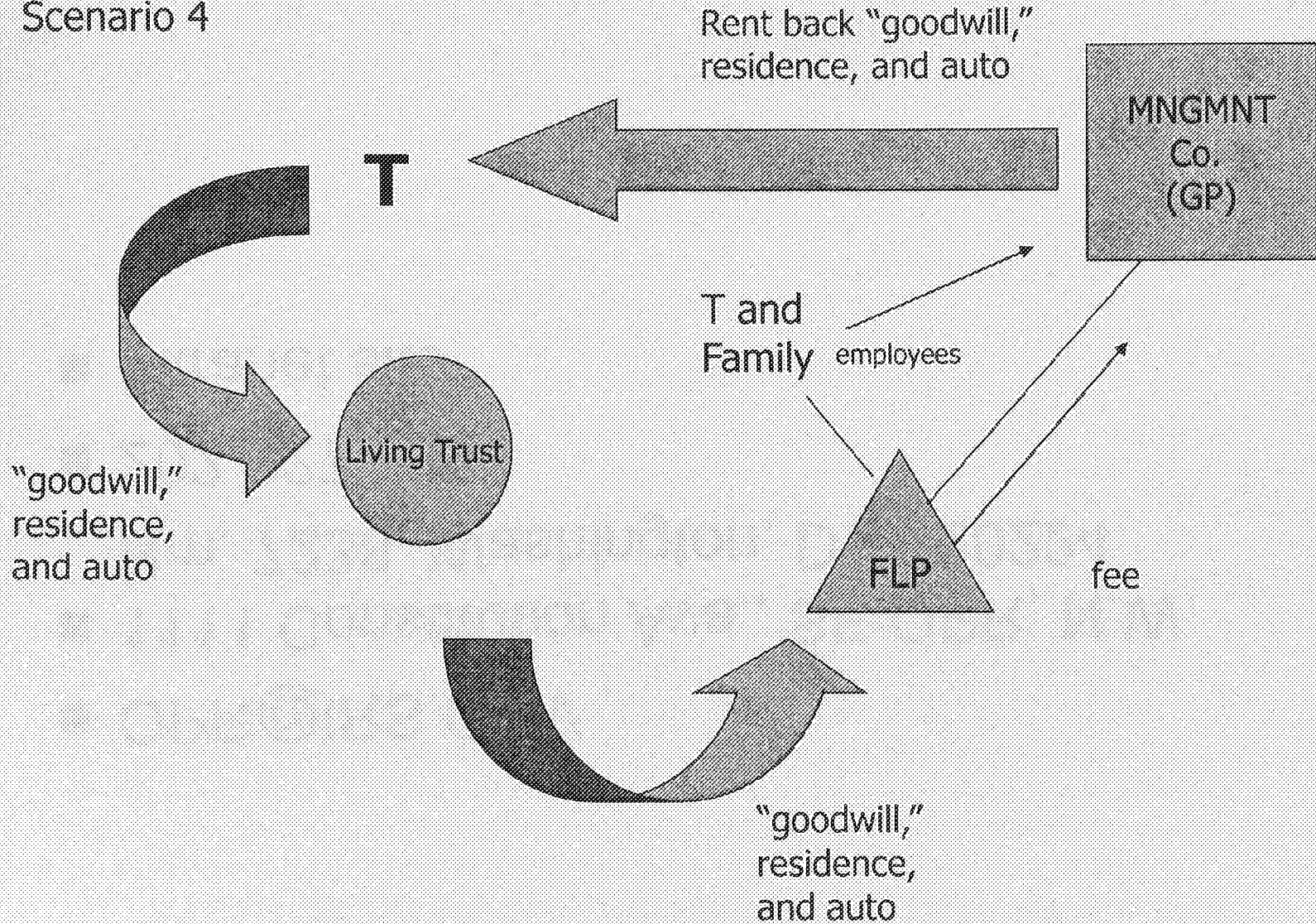
What is Q required to do in this situation?

What are Q's obligations under Cir. 230 if Q herself has \$50,000 in a Canadian account?

Scenario 3

Practitioner V is representing an attorney W who authored an opinion on a promotion that was a listed transaction. The clients who hired W to render the opinion have approached V to represent them in the examination of the promotion. Can V represent the clients?

Scenario 4



Contacting OPR

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