LIZ BIZ ACADEMY PRESENTS | **TAX PRO 360**

Chapter 3: Circular 230

Professional Ethics and Conduct

Dr. Geno Bradley





The Blueprint: What is Circular 230?

The Definition

Title 31 of the Code of Federal Regulations, Subtitle A, Part 10.

The Metaphor

Your Professional Compass & Ethical Fortress.

Scope of Practice

More than just arguing in tax court. It encompasses all matters relating to a taxpayer's rights, privileges, or liabilities, including:

- Preparing and filing documents with the IRS.
- Corresponding and communicating with the IRS.
- Representing clients at conferences, hearings, or meetings.
- Providing formal written advice on tax avoidance or evasion strategies.

The Gatekeepers: Covered Practitioners

Practitioner Type	Licensing	Representation Rights
Attorneys & CPAs	State-licensed.	✔ Full Rights
Enrolled Agents (EAs)	Federally licensed via comprehensive 3-part IRS exam or specific prior IRS employment.	✔ Full Rights
Registered Tax Return Preparers / AFSP	Specific continuing education and testing participants.	⚠ Limited Rights — Can only represent clients before revenue agents and exam officers during an audit of a return they actually prepared and signed.

§ 10.20 Core Duty 1: The Information Mandate



The Rule: The **absolute duty** to submit information or records requested by the IRS **promptly** and to **never interfere** with lawful IRS efforts to obtain information.

The Exceptions

1. **Privilege**: You believe in good faith and on reasonable grounds that the requested records are privileged (e.g., attorney-client privilege).

The Exceptions

2. **Lack of Control**: The records are not in your possession or control.

The Action Clause: If you do not have the records, but you know exactly who does, you are legally required to provide that information to the IRS.

§ 10.21

Core Duty 2: Knowledge of Omission or Error

Context: You discover a client has not complied with revenue laws or made an error/omission on a prior return.

Step 1: Advise Promptly

Inform the client immediately of the noncompliance, error, or omission.

Step 2: Explain Consequences

Detail the legal and financial fallout (interest, penalties) if left uncorrected under the law, and advise on how to fix it (e.g., filing an amended return).

Step 3: Maintain Confidentiality

You are NOT required—nor permitted—to call the IRS and rat out the client. Your duty is to educate and advise. If they refuse to correct it, evaluate if you can ethically continue representation.

§ 10.22

Core Duty 3: Diligence as to Accuracy



You are a professional advisor, not a data-entry clerk.

- Preparing, approving, and filing tax returns and documents.
- Making oral or written representations to the Department of the Treasury.
- Making oral or written representations to your clients.

The Golden Rule: You may rely on client information in good faith, but you CANNOT ignore facts that appear incorrect, incomplete, or inconsistent. **If the math or the story doesn't make sense**, you must dig deeper.

§ 10.27

Operational Rules: The Contingent Fee Matrix

Fee Structure	Permitted?	Permitted Situations
Flat / Hourly Fees	**PERMITTED**	Standard tax return preparation, consulting, and representation.
Contingent Fees (Original Return)	**STRICTLY PROHIBITED**	Never allowed for preparing an original tax return.
Contingent Fees (IRS Exam/Challenge)	**PERMITTED**	Allowed for representing a client during an IRS examination of an original return.
Contingent Fees (Amended Return)	**PERMITTED**	Allowed for filing an amended return if filed within 120 days of receiving a written notice of examination.

§ 10.28

Operational Rules: The Client Records Hostage Rule



The Situation: A client refuses to pay your invoice. Can you withhold their original W-2s or 1099s as leverage to force payment?

The Rule: A resounding NO.

The Mandate: Upon request, you must promptly return any and all original, client-provided records necessary for them to comply with federal tax obligations, regardless of an ongoing fee dispute.

The Nuance: You are generally NOT required to turn over your personal workpapers, tax software calculations, or unpaid draft returns (subject to state law). You may pursue payment through standard collections.

§ 10.29

Resolving Conflicts of Interest

Identify: Is representation of one client directly adverse to another? (e.g., divorcing spouses, or a significant risk that responsibilities to one client limit representation of another).

↓

Evaluate: Can you reasonably provide competent, diligent representation to both affected clients?

If **No** ➔ Decline Representation.

If **Yes** ➔ Proceed.

↓

Consent: Obtain informed consent, confirmed in writing, from each affected client at the time the conflict is identified.

↓

Retain: Keep the signed written waivers on file for at least 36 months from the date the representation concludes. Must be available to the IRS upon request.

§ 10.34

Legal Standards: The Return Positions Spectrum

~0%

Frivolous Position: Patently improper, advanced solely to delay, or lacking any basis in law or fact.

Action: Strictly prohibited. Never advise a client to take this position.

~20-33%

Reasonable Basis: A lower standard of success.



~40%+

Substantial Authority: High probability of being upheld if challenged in court based on tax law, regulations, and cases.

Action: The gold standard. Legally safe for signing a return without separate disclosure.

§ 10.37

Standards for Formal Written Advice

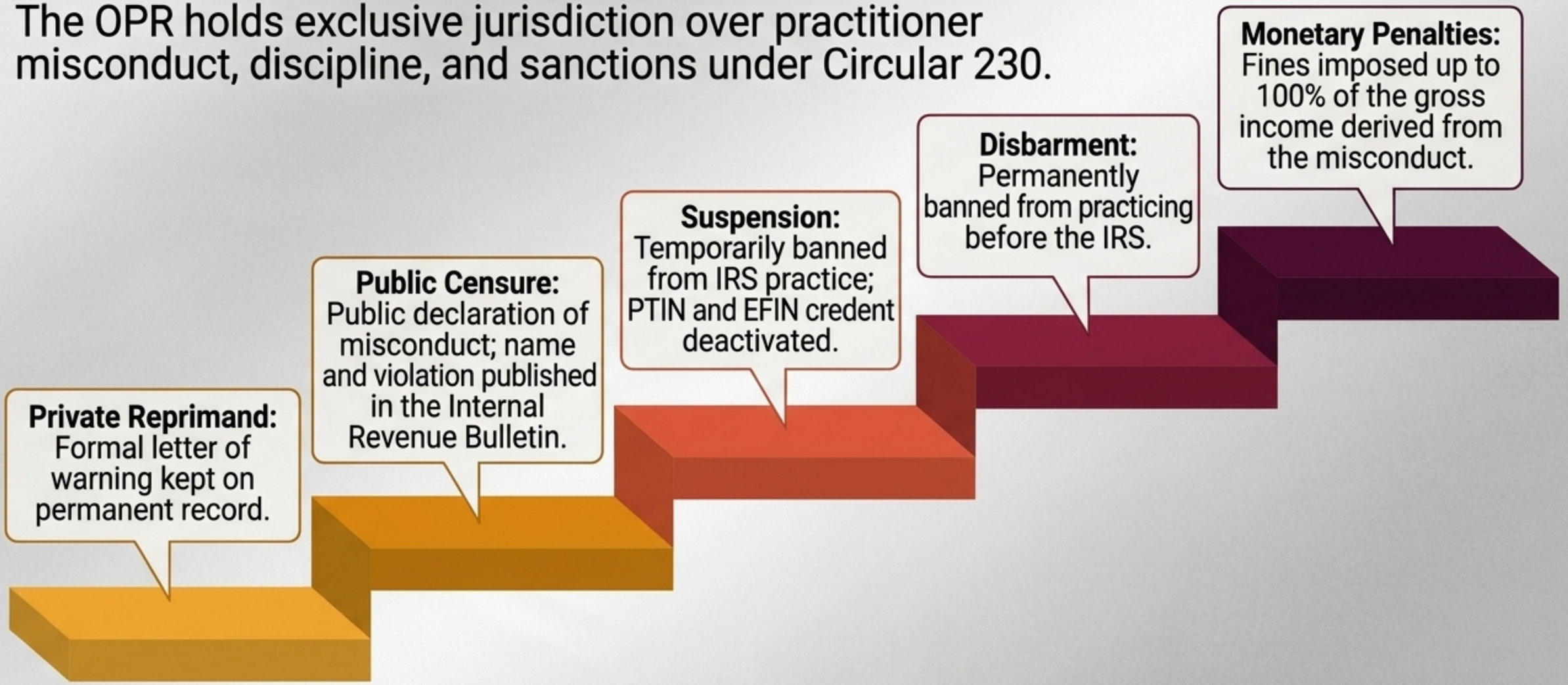
The Mandate: When providing written tax advice, practitioners must adhere to strict analytical standards:

- ✓ 1) Base all advice on reasonable factual and legal assumptions.
- ✓ 2) Consider all relevant facts that you know (or reasonably should know) and use reasonable efforts to identify them.
- ✓ 3) Do not rely upon unreasonable projections, valuations, or blind client representations.

✗ **The Crucial Constraint:** You must NEVER base written advice on the “hope” that a return will not be audited, or that a matter will not be resolved if it is audited (No “playing the tax lottery”).

The Watchdogs: Office of Professional Responsibility (OPR)

The OPR holds exclusive jurisdiction over practitioner misconduct, discipline, and sanctions under Circular 230.



Real-World Scenario A: The Fabricated Mileage Log

The Client (Marcus)

- Claims exactly 24,000 business miles for his landscaping company.
- When asked for a log, he admits: “I don’t keep one. I just write down 2,000 miles a month because it sounds reasonable and keeps my taxes low.”

The Ethical Conflict: Blindly accepting a fabricated, round-number estimate.

The Circular 230 Resolution (Diligence - § 10.22)

- **The Action:** You cannot accept this figure knowing it lacks a factual basis.
- You must advise Marcus on contemporaneous log requirements and audit penalties, and help him reconstruct actual records.
- If he insists on using the fabricated 24,000 miles, you must refuse to sign the return.

Real-World Scenario B: The Unpaid Fee vs. The W-2

The Client (Sarah)

- Sarah hired you to prepare her return, which you completed.
- She refuses to pay your preparation fee but demands you return her original W-2 forms immediately so she can apply for a bank loan.

The Ethical Conflict: Using original client documents as leverage for unpaid invoices.

The Circular 230 Resolution (Records - § 10.28)

- **The Action:** You must promptly return Sarah's original W-2 forms.
- You may pursue payment through standard collections and retain your own draft workpapers.
- Original records cannot legally be held hostage for payment under any circumstance.

Synthesis: Your Ethical Fortress

Protect the Client

Advise promptly on prior omissions (§ 10.21) and secure informed written consent for conflicts of interest (§ 10.29).

Protect the Process

Never withhold original client records over a fee dispute (§ 10.28).

Protect the Practice

Sign returns based only on substantial authority and documented, verified facts (§ 10.34 & § 10.37).

Protect Your License

Relentless Due Diligence (§ 10.22) is your ultimate shield against OPR sanctions.

Circular 230 is the foundation that ensures your practice survives and thrives.