

#### § 10.74

Judge, by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters.

(b) The party taking the deposition must provide the deponent and the other party with 10 days written notice of the deposition, unless the deponent and the parties agree otherwise. The notice must specify the name of the deponent, the time and place where the deposition is to be taken, and whether the deposition will be taken by oral or written interrogatories. When a deposition is taken by written interrogatories, any cross-examination also will be by written interrogatories. Copies of the written interrogatories must be served on the other party with the notice of deposition, and copies of any written cross-interrogation must be mailed or delivered to the opposing party at least 5 days before the date that the deposition will be taken, unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken must file the responses to the written interrogatories or a transcript of the oral deposition with the Administrative Law Judge and serve copies on the opposing party and the deponent. Expenses in the reporting of depositions will be borne by the party that requested the deposition.

#### § 10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a rea-

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sonable fee (Sec. 501, Public Law 82-137) (65 Stat. 290) (31 U.S.C. 483a).

#### § 10.75 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

#### § 10.76 Decision of Administrative Law Judge.

(a) As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge will enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, disqualification, or dismissal of the complaint. If the sanction is censure or a suspension of less than six months' duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of evidence in the record. In the event that the sanction is disbarment or a suspension of a duration of six months or longer, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record. The Administrative Law Judge will provide the decision to the Director of Practice and a copy of the decision to the respondent or the respondent's authorized representative.

(b) In the absence of an appeal to the Secretary of the Treasury or his or her designee, or review of the decision on motion of the Secretary or his or her designee, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of

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the Administrative Law Judge's decision.

### § 10.77 Appeal of decision of Administrative Law Judge.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary of the Treasury, or his or her delegate. The respondent must file his or her appeal with the Director of Practice in duplicate and a notice of appeal must include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If the Director of Practice files an appeal, he or she must provide a copy to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director of Practice, he or she must provide a copy of it to the respondent. The Director of Practice must provide the entire record to the Secretary of the Treasury, or his or her delegate, after the appeal and any reply brief has been filed.

### § 10.78 Decision on appeal.

On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or his or her delegate, will make the agency decision. The Secretary of the Treasury, or his or her delegate, will provide a copy of the agency decision to the Director of Practice and the respondent or the respondent's authorized representative. The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or his or her delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence. A copy of the agency decision or that of his or her delegate will be provided to the Director of Practice and the respondent contemporaneously.

### § 10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice pursuant to § 10.81.

(b) *Suspension.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure.* When the final decision in the case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(d) *Conditions.* After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to conditions prescribed by the Director of Practice designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because he or she failed to advise his or her clients about a potential conflict of interest or failed to obtain the clients' written consents, the Director of Practice may require the practitioner to provide the Director of Practice or another Internal Revenue Service official with a copy of all consents obtained by