

§ 10.77

Judge should use the code assigned to third party taxpayers (described in § 10.72(d)).

(b) *Standard of proof.* 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 the evidence in the record. If the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, 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.

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Director of the Office of Professional Responsibility, with a copy to the Director's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

(d) *When final.* In the absence of an appeal to the Secretary of the Treasury or delegate, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

(e) *Effective/applicability date.* This section is applicable to proceedings initiated on or after September 26, 2007.

[T.D. 9359, 72 FR 54554, Sept. 26, 2007]

§ 10.77 Appeal of decision of Administrative Law Judge.

(a) *Appeal.* Any party to the proceeding under this subpart D may file an appeal of the decision of the Administrative Law Judge with the Secretary of the Treasury, or delegate. The appeal must include a brief that states exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions.

(b) *Time and place for filing of appeal.* The appeal and brief must be filed, in duplicate, with the Director of the Office of Professional Responsibility within 30 days of the date that the de-

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cision of the Administrative Law Judge is served on the parties. The Director of the Office of Professional Responsibility will immediately furnish a copy of the appeal to the Secretary of the Treasury or delegate who decides appeals. A copy of the appeal for review must be sent to any non-appealing party. If the Director of the Office of Professional Responsibility files an appeal, he or she will provide a copy of the appeal and certify to the respondent that the appeal has been filed.

(c) *Effective/applicability date.* This section is applicable on September 26, 2007.

[T.D. 9359, 72 FR 54555, Sept. 26, 2007]

§ 10.78 Decision on review.

(a) *Decision on review.* On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal.

(b) *Standard of review.* 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 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.

(c) *Copy of decision on review.* The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the Director of the Office of Professional Responsibility and the respondent or the respondent's authorized representative.

(d) *Effective/applicability date.* This section is applicable on September 26, 2007.

[T.D. 9359, 72 FR 54555, Sept. 26, 2007]

§ 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