

13 MCAR 1

1-21-82

1 Department of Revenue

2 Income Tax Division

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4 Adopted Rule Governing Practice of Attorneys, Accountants,

5 Agents and Preparers before the Department of Revenue (13 MCAR S

6 1.6101); and Adopted Repeal of Income Tax Rule 2052(4)

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8 Rule as Adopted

9 13 MCAR S 1.6101 Practice of attorneys, accountants, agents, and
10 preparers before the Department of Revenue.

11 A. Practice defined. The term "practice" comprehends all
12 matters connected with the presentation by an attorney,
13 accountant, agent, or preparer to the Department of Revenue or
14 any of its employees, upon filing an executed power of attorney,
15 of a client's rights, privileges, or liabilities under Minn.
16 Stat. ch. 290 or 290A, and the rules thereunder. Practice
17 includes the preparation and filing of necessary documents,
18 correspondence with and communication to the Department of
19 Revenue, and the representation of a client at conferences,
20 hearings, and meetings. However, the preparation and signing of
21 a tax return, the appearance of an individual as a witness for a
22 taxpayer, and the furnishing of information at the request of
23 the Department of Revenue or any of its employees do not, of and
24 by themselves, constitute practice before the department, unless
25 these acts are coupled with the presentation of a client's case
26 at conferences, hearings, or meetings. For purposes of this
27 rule, the term "practice" is synonymous with "representation."

28 B. Scope of representation pursuant to power of attorney.

29 1. When authorized by the taxpayer through a written
30 power of attorney, an attorney, accountant, agent, or preparer
31 may appear as the taxpayer's representative, with or without the
32 taxpayer, before an employee of the Department of Revenue with
33 respect to the tax liability of the taxpayer for the type of tax
34 and taxable year or period authorized in the power of attorney.

35 2. For purposes of this rule, a power of attorney grants

1 authority to deal with any of the following: original or
2 amended individual income tax returns; property tax refund
3 returns; fiduciary income tax returns; partnership returns of
4 income; corporation income tax returns, including returns of
5 small business corporations, life insurance companies, banks,
6 and savings and loan associations; employer's income tax
7 withholding returns or deposits; claims for refund; and
8 estimated tax declarations.

9 3. A taxpayer representative may inspect only those state
10 records, files, or documents which are either specifically
11 listed, or directly or indirectly connected with matters
12 specifically listed, in a power of attorney.

13 4. If the taxpayer is not present, a person presenting a
14 power of attorney shall present identification satisfactory to
15 the department employee.

16 C. Persons ineligible to practice. Any person who is:

17 1. Under disbarment or suspension from practice before
18 the Department of Revenue;

19 2. An employee of the Department of Revenue;

20 3. Under disbarment or suspension from practice as an
21 attorney, certified public accountant, or licensed public
22 accountant in the State of Minnesota; or

23 4. Under disbarment or suspension from practice before
24 the Internal Revenue Service shall be ineligible to appear as a
25 taxpayer representative under this rule. However, with regard
26 to 3. and 4., a granting of reinstatement to practice as an
27 attorney, certified public accountant, or licensed public
28 accountant, or a granting of reinstatement to practice before
29 the Internal Revenue Service shall automatically reinstate a
30 person's eligibility to practice before the Department of
31 Revenue.

32 D. Standards of ethics and conduct.

33 1. No attorney, accountant, agent, or preparer acting as
34 a taxpayer representative shall neglect or refuse to submit
35 records or information in any matter before the Department of
36 Revenue, upon proper and lawful request by a duly authorized

1 employee of the Department of Revenue, unless the taxpayer
2 representative has a good faith belief that the information or
3 testimony is privileged. No taxpayer representative shall
4 interfere, or attempt to interfere, with any proper and lawful
5 efforts by the Department of Revenue or its employees to obtain
6 information relative to any matter before the Department of
7 Revenue. Insisting upon a subpoena shall not be a violation of
8 this paragraph.

9 2. Each taxpayer representative shall exercise due
10 diligence in regard to all of the following:

11 a. Preparing, assisting in the preparation of,
12 approving, and filing returns, documents, affidavits, and any
13 other papers relating to Department of Revenue matters to the
14 extent of participation;

15 b. Determining the correctness of representations made
16 by him to the Department of Revenue; and

17 c. Determining the correctness of representations made
18 by him to clients with reference to any matter administered by
19 the Department of Revenue.

20 3. Each taxpayer representative shall exercise good faith
21 in determining the correctness of representations made by
22 clients to him with reference to any matter administered by the
23 Department of Revenue when the preparer or agent has reasonable
24 grounds to believe the client's representations are false or
25 inaccurate.

26 4. No taxpayer representative shall unreasonably delay
27 the prompt disposition of any matter before the Department of
28 Revenue.

29 5. Where there is a conflict between this rule and a code
30 of conduct which is promulgated by another agency or branch of
31 government, that code of conduct shall control. The taxpayer
32 representative must disclose to the department that there is a
33 conflict.

34 E. Incompetent conduct. Incompetent conduct, for which any
35 attorney, accountant, agent, or preparer shall be subject to
36 disbarment or suspension from practice before the Department of

1 Revenue, means the failure by an attorney, accountant, agent, or
2 preparer, after due warning has been given by the Commissioner
3 of Revenue pursuant to G.3., to:

4 1. Demonstrate the familiarity with the income tax
5 statutes, rules, and forms necessary to enable the practitioner
6 to properly apply, discuss, or complete them, and thus to render
7 adequate services in connection with a taxpayer's case before
8 the Department of Revenue; or

9 2. Exercise due diligence as required in D.2. The
10 standard used for determining failure to exercise due diligence
11 shall be the common law standard of reasonableness used in
12 determining negligence.

13 F. Disreputable conduct. Disreputable conduct, for which
14 any attorney, accountant, agent, or preparer shall be subject to
15 disbarment or suspension from practice before the Department of
16 Revenue, includes any conduct violative of D. In addition, the
17 following acts or events constitute disreputable conduct:

18 1. Conviction of any criminal offense under a state or
19 federal tax statute, or conviction of any crime involving
20 dishonesty or breach of trust;

21 2. Preparing or filing for oneself or another a false or
22 fraudulent Minnesota income tax return or other statement on
23 which Minnesota income taxes or a refund thereof may be based,
24 knowing it is false or fraudulent;

25 3. Willful failure to prepare or file a Minnesota income
26 tax return for oneself or another in violation of the applicable
27 income tax statutes or rules;

28 4. Willful failure to prepare and file an amended
29 Minnesota income tax return for oneself, knowing that a material
30 error or omission was made on the original return;

31 5. Willful failure to recommend to a client that an
32 amended Minnesota income tax return be prepared and filed,
33 knowing that a material error or omission was made on the
34 original return;

35 6. Advising a client or a prospective client to adopt a
36 Minnesota income tax evasion plan which is not legal, knowing

1 that the plan is not legal;

2 7. Giving false testimony or information in any
3 proceeding before the Department of Revenue, or before any
4 tribunal authorized to pass upon Minnesota income tax matters,
5 knowing it is false;

6 8. Filing any false or fraudulently altered document,
7 affidavit, or power of attorney in any case or other proceeding
8 before the Department of Revenue, or procuring the filing
9 thereof, knowing it is false or fraudulently altered;

10 9. Using, with intent to deceive, false representations
11 to procure employment in any case or proceeding before the
12 Department of Revenue, including, but not limited to:

13 a. Misrepresentations regarding eligibility to practice
14 before the Department of Revenue;

15 b. Specific material misrepresentations regarding
16 experience or education, whether general or specialized, as an
17 income tax return preparer;

18 c. Guaranteeing the payment of any tax refund or the
19 allowance of any tax credit; or

20 d. Representing to a client that the attorney,
21 accountant, agent, or preparer can improperly obtain special
22 consideration or action from the Department of Revenue or an
23 employee thereof, or that he has improper access to sources of
24 information within the Department of Revenue which are otherwise
25 private, confidential, or nonpublic;

26 10. Approving for filing, or advising or aiding in the
27 preparation of, a false or fraudulent Minnesota income tax
28 return prepared by some other person, knowing the return is
29 false or fraudulent;

30 11. Misappropriation of, or failure to properly and
31 promptly remit, funds received from a client for the purpose of
32 paying taxes or other obligations due the State of Minnesota;

33 12. Endorsement or negotiation of a client's check in
34 payment of a refund of any tax, credit, penalty, or interest
35 administered by the Commissioner of Revenue, without the
36 client's prior endorsement. The preceding sentence shall not

1 apply when the full amount of the check is deposited in the
2 taxpayer's bank account for the benefit of the taxpayer;

3 13. Charging a client a fee based upon a percentage of
4 the refund that the client is eligible to receive from the State
5 of Minnesota, unless representation of the client reaches the
6 contested stage, either in a formal administrative hearing or a
7 court proceeding;

8 14. Attempting to influence, or offering or agreeing to
9 attempt to influence, the official action of any employee of the
10 Department of Revenue by the use of threats, false accusations,
11 duress, or coercion, by the offer of any special inducement or
12 promise of advantage, or by the bestowing of any gift, favor, or
13 thing of value;

14 15. In connection with practice before the Department of
15 Revenue, making false accusations or statements knowing them to
16 be false, or circulating or publishing slanderous or libelous
17 matter concerning the Department of Revenue or any of its
18 employees;

19 16. Knowingly aiding and abetting another person to
20 practice before the Department of Revenue during a period of
21 disbarment or suspension of the other person;

22 17. For purposes of 1. through 16., the phrases "income
23 tax" and "income tax return" include all matters referred to in
24 B.2.

25 G. Disbarment and suspension procedures.

26 1. Authority to disbar or suspend. Pursuant to Minn.
27 Stat. S 290.52, the Commissioner of Revenue, after due notice
28 and opportunity for hearing, may suspend or disbar from further
29 practice before the Department of Revenue any attorney,
30 accountant, agent, or preparer who: is shown to be incompetent
31 or disreputable; refuses to comply with the provisions of this
32 rule; or in any manner willfully and knowingly defrauds,
33 deceives, or misleads any taxpayer with respect to a claim or
34 prospective claim involving the Department of Revenue.

35 2. Violation of rule. Any attorney, accountant, agent,
36 or preparer shall be subject to disbarment or suspension from

1 practice before the Department of Revenue for violation of any
2 of the provisions contained in this rule.

3 3. Notification of violation of rule and issuance of
4 warning. Whenever the Commissioner of Revenue has sufficient
5 grounds to believe that any attorney, accountant, agent, or
6 preparer has violated a provision of this rule, he shall notify
7 the practitioner in writing of the specific violation which has
8 been committed. The notification shall contain a warning to the
9 practitioner that if the violation continues, or if any other
10 violations are committed, the commissioner shall commence a
11 proceeding for disbarment or suspension of the practitioner.

12 4. Commencement of disciplinary proceeding. Whenever the
13 Commissioner of Revenue has sufficient grounds to believe that
14 any attorney, accountant, agent, or preparer has failed to
15 comply with a warning by continuing to violate any provision of
16 this rule, he shall commence a proceeding for disbarment or
17 suspension of the attorney, accountant, agent, or preparer. The
18 commissioner's Notice of and Order for Hearing shall set forth
19 the specific violations which the practitioner has committed,
20 both prior and subsequent to the commissioner's warning, and
21 shall make a recommendation as to the specific disciplinary
22 action to be taken against the practitioner. The entire
23 proceeding shall be governed by the procedure for contested case
24 proceedings as provided in Minn. Stat. SS 15.0411-15.0426 and in
25 9 MCAR SS 2.201-2.299.

26 5. Voluntary suspension. An attorney, accountant, agent,
27 or preparer, in order to avoid the commencement or conclusion of
28 a disciplinary proceeding, may, by agreement with the
29 Commissioner of Revenue, consent to suspension from practice
30 before the Department of Revenue. The Commissioner of Revenue
31 shall then suspend the practitioner in accordance with the
32 disciplinary guideline set forth in 6.

33 6. Disciplinary guideline for violation of rule. Upon
34 completion of the hearing in a contested case proceeding for
35 disciplinary action brought by the Commissioner of Revenue
36 against an attorney, accountant, agent, or preparer, if the

1 hearing examiner finds that the practitioner has committed the
2 violations specified in the commissioner's Notice of and Order
3 for Hearing, and that disciplinary action is appropriate, the
4 commissioner shall:

5 a. Suspend the practitioner from practicing before the
6 Department of Revenue for a period of up to one year, if the
7 proceeding brought against the practitioner is the first
8 proceeding in which disciplinable misconduct has been found;

9 b. Suspend the practitioner for a period of up to five
10 years if the proceeding brought against the practitioner is the
11 second proceeding in which the disciplinable misconduct has been
12 found; or

13 c. Disbar the practitioner from practicing before the
14 Department of Revenue if the proceeding brought against the
15 practitioner is at least the third proceeding in which
16 disciplinable misconduct has been found.

17 For purposes of a., b., and c., a voluntary suspension
18 pursuant to 5. is a proceeding in which disciplinable misconduct
19 has been found. The commissioner shall base his decision as to
20 disciplinary action on all the facts before him, along with any
21 extenuating circumstances he deems relevant.

22 7. Effect of disbarment or suspension. If the
23 commissioner's order against an attorney, accountant, agent, or
24 preparer is for disbarment, the practitioner shall not
25 thereafter be permitted to practice before the Department of
26 Revenue, except to represent himself. Similarly, if the
27 commissioner's order against an attorney, accountant, agent, or
28 preparer is for suspension, the practitioner shall not
29 thereafter be permitted to practice before the Department of
30 Revenue during the period of suspension, except to represent
31 himself. The disbarment or suspension of an individual, where
32 the individual was employed by a firm or organization at the
33 time his violation of this rule occurred, shall not affect the
34 right of other members of the firm or organization to practice
35 before the department.

36 8. Petition for reinstatement. If there has been a

1 material change in circumstances after suspension or disbarment,
2 a suspended or disbarred attorney, accountant, agent, or
3 preparer may petition, in writing, the Commissioner of Revenue
4 for reinstatement to practice before the Department of Revenue.
5 The petition must be supported with documentation or testimony
6 from a responsible third party as to the fitness, character and
7 ability of the practitioner to resume practice. The
8 commissioner shall review the petition and make his
9 determination within 30 days as to whether the practitioner
10 shall be reinstated. If the petition is granted by the
11 commissioner, the practitioner may resume practice. If the
12 petition is denied by the commissioner, no further petitions may
13 be brought by the practitioner during the remainder of the
14 suspension period, or for a period of five years if the
15 practitioner has been disbarred.
16 Repealer. Income tax rule 2052(4) is repealed.