

UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
Complainant

Complaint Number: 2014-00004
Docket Number: 15-IRS-0001

v.

(b)(3)/26 USC 6103

HON. PARLEN L. McKENNA
Presiding

Respondent.

ORDER GRANTING COMPLAINANT'S MOTION FOR DEFAULT DECISION

On March 12, 2015, the Director, Office of Professional Responsibility (OPR or Complainant), Internal Revenue Service (IRS), Department of the Treasury, issued a Complaint pursuant to 31 C.F.R. Part 10¹ and 31 U.S.C. § 330 against Respondent (b)(3)/26 USC 6103 seeking to disbar Respondent from practice before the IRS, who has practiced before the IRS as a certified public accountant (CPA) and as an enrolled agent (EA).

The Complaint sought Respondent's disbarment from practice before the IRS based on eight separate counts: (1) (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

¹ The regulations governing practice before the IRS, found at 31 C.F.R. Part 10, were revised on June 12, 2014. The savings clause contained at 31 C.F.R. § 10.91 of the revised regulations provides that any proceeding under this part based on conduct engaged in prior to June 12, 2014, which is instituted after that date, shall apply the procedural rules of the revised regulations contained in Subparts D and E. Conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred. 31 C.F.R. § 10.91 (Rev. 6-2014).

(5) alleged failure to exercise due diligence in determining the correctness of representations made to the Department of Treasury; (6) an alleged use of false or misleading representations with intent to deceive a client or otherwise failing to exercise due diligence in determining the correctness of representations made to clients; (7) preparing tax returns without a current or otherwise valid Preparer Tax Identification Number (PTIN); and (8) charging an unconscionable fee in connection with a matter before the IRS.

The disbarment would prevent Respondent from practicing before the IRS without the explicit approval of OPR. In order to obtain reinstatement, the practitioner needs to demonstrate (at a minimum) that he is likely to conduct himself in accordance with the requirements of 31 C.F.R. Part 10 and that his reinstatement would not be contrary to the public interest. Any such reinstatement would be at the sole discretion of OPR.

On July 22, 2015, counsel for Complainant filed a Motion for a Decision by Default (Motion for Default). This Motion was served upon Respondent by regular mail addressed to Respondent at his last known mailing address on file with the IRS. To date, Respondent has not filed a response to Complainant's Motion or otherwise participated in these proceedings following my assignment to hear and decide his case. Specifically, as discussed below, Respondent has not filed a proper answer to the Complaint, nor responded in any fashion to my Order to Show Cause asking him to explain his failure to so file. Respondent simply cannot sit on his rights and avoid the consequences that naturally flow from such lack of participation. For the reasons provided below,

Complainant's Motion for Default is therefore **GRANTED** and Respondent is **DISBARRED** from practice before the IRS.

PRINCIPLES OF LAW

OPR's Ability to Discipline IRS Practitioners

Under 31 U.S.C. § 330(a), the Secretary of the Treasury holds authority to "regulate the practice of representatives of persons before the Department of the Treasury," including the power to suspend or disbar an individual from practice for a number of reasons as long as the individual is first provided with "notice and opportunity" for hearing before an administrative law judge. *Id.* at § 330(b).

Circular 230 and Delegation Order No. 25-16 (2012) delegates to the Director of OPR, the authority to bring proceedings to suspend or disbar practitioners before the IRS. See 31 C.F.R. § 10.50(a). Under 31 C.F.R. § 10.50(e), any sanctions imposed "shall take into account all relevant facts and circumstances."

Consequences for Respondent's Failure to Respond

The Complaint and the Motion for Default were both properly served in accordance with the service rules found at 31 C.F.R. § 10.63. Respondent has not filed an opposition or a proper answer to the Complaint; nor has he replied to the Motion for Default or an Order to Show Cause relative to his failure to file a proper answer. IRS regulations at 31 C.F.R. § 10.64(d) provide that:

Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76.

No extensions of time to file an Answer have been requested by Respondent and none have been granted. Thus, the provisions of Section 10.64(d) apply.

Respondent's failure to respond will therefore be deemed an admission of all the allegations in the Complaint by Default and a waiver of his right to a hearing.

Evidentiary Standard and Standard of Proof

The applicable evidentiary standard provides that the rules of evidence prevailing in a court of law and equity are not controlling, but the judge may exclude evidence that is irrelevant, immaterial, or unduly repetitious. See 31 C.F.R. § 10.73(a).

The standard of proof differs depending on the nature of the sanction. If the sanction is censure or a suspension of less than six months' duration, the judge applies the preponderance of the evidence standard. See 31 C.F.R. § 10.76(b). In contrast, for a monetary penalty, disbarment or suspension of six months' or longer, the judge applies the clear and convincing standard. Id. The clear and convincing standard has been defined "as evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established, and, as well, as evidence that proves the facts at issue to be highly probable." Jimenez v. Daimler Chrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001) (internal quotation marks, citations omitted); see also Addington v. Texas, 441 U.S. 418 (1979) (explaining that clear and convincing evidence is an intermediate standard somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt).

Given that Complainant seeks to disbar Respondent, the clear and convincing standard applies. If Respondent is disbarred, he will not be permitted to practice before the IRS until authorized to do so pursuant to 31 C.F.R. § 10.81.

PROCEDURAL HISTORY

On March 12, 2015, Complainant's counsel served a copy of Complaint No. 2014-00004 ("Complaint") and an attached cover letter on Respondent by United States Postal Service (USPS) Certified Mail, Return Receipt Requested and via regular first class mail with delivery confirmation. See Motion for Default Decision, Exhibit 1. The Complaint was sent to Respondent's last known address of record with the IRS: (b)(3)/26 USC 6103 / (b)(6) (b)(3) / 26 USC 6103 / (b)(6)

On March 31, 2015, the United States Department of the Interior, Office of Hearings and Appeals, Departmental Cases Hearings Division notified Complainant and Respondent that the Department of the Interior no longer adjudicates complaints issued by the OPR. See Motion for Default Decision, Exhibit 2. On April 14, 2015, Complainant served a revised copy of the Complaint and an attached cover letter on Respondent by USPS Certified Mail, Return Receipt Requested and via regular first class mail with delivery confirmation. The Complaint contained specific instructions for filing an Answer on the appropriate administrative law judge office. See Motion for Default Decision, Exhibit 3.

The revised Complaint was delivered to Respondent on April 15, 2015. See Motion for Default Decision, Exhibit 4. Service of the revised Complaint by regular mail is considered complete upon mailing, where, as here, the Complaint was sent to Respondent's last known address. See 31 C.F.R. § 10.63(a)(2)(ii).

Following this service of the revised Complaint, Respondent filed an Answer on April 20, 2015 with the Department of the Interior. This Answer, which was ultimately forwarded to me by OPR counsel was: (1) untimely based on the original Complaint, (2)

served on the wrong Administrative Law Judge; and (3) not filed in accordance with 31 C.F.R. § 10.64(e). See Motion for Default Decision, Exhibit 5. The Answer purports to have been mailed by Respondent from the last known address as defined by the IRS and used in the Complaint and revised Complaint (“(b)(3)/26 USC 6103/(b)(6)”). Id.

On April 22, 2015, the Honorable Walter J. Brudzinski, United States Coast Guard’s Chief Administrative Law Judge, notified Respondent that the case had been assigned to me and provided direction to the parties as to the correct process for filing all correspondence and pleadings. On June 3, 2015, Complainant filed a Notice of Failure to Properly File Answer on Respondent via USPS first class mail. Complainant specifically notified Respondent that failure to properly file an Answer by June 19, 2015 might result in a default under 31 C.F.R. § 10.64. See Motion for Default Decision, Exhibit 6. To date, the Notice of Failure to Properly File Answer has not been returned to OPR counsel as undelivered.

Pursuant to 31 C.F.R. § 10.62, Complaint advised Respondent of his obligation to file an Answer with the USCG Docketing Center at the following address (and also to serve a copy on Complainant, within 30 calendar days from date of service): United States Coast Guard, 40 South Gay Street, Room 12, Baltimore, MD 21202 . The Complaint also advised Respondent that a failure to file an Answer could result in a decision by default being rendered against him.

Complainant advised Respondent a second time via the Notice of Failure to Properly File Answer that Respondent was obligated to file an Answer not later than June 19, 2015 and that failure to file an Answer could result in a decision by default being

rendered against him. To date, the Court has not received a properly filed Answer in this matter, nor has Respondent contacted the Court or otherwise requested an extension of time to file a response to the Complaint.

On July 7, 2015, I issued an Order to Show Cause Regarding Filing of Answer, which ordered Respondent to show cause as to why he has not filed an Answer with the Court. The Order notified Respondent that he had “14 calendar days from the date of this Order to provide good reasons why an Answer has not been filed with this Court, per the instructions of OPR counsel’s June 3, 2015 letter.” This Order was sent to Respondent’s address of record via USPS first class mail. To date, the Court has received no response to the Order to Show Cause.

As discussed above, OPR counsel filed a Motion for Default and served it on Respondent’s last known address. To date, Respondent has not filed a response to that Motion.

FINDINGS OF FACT²

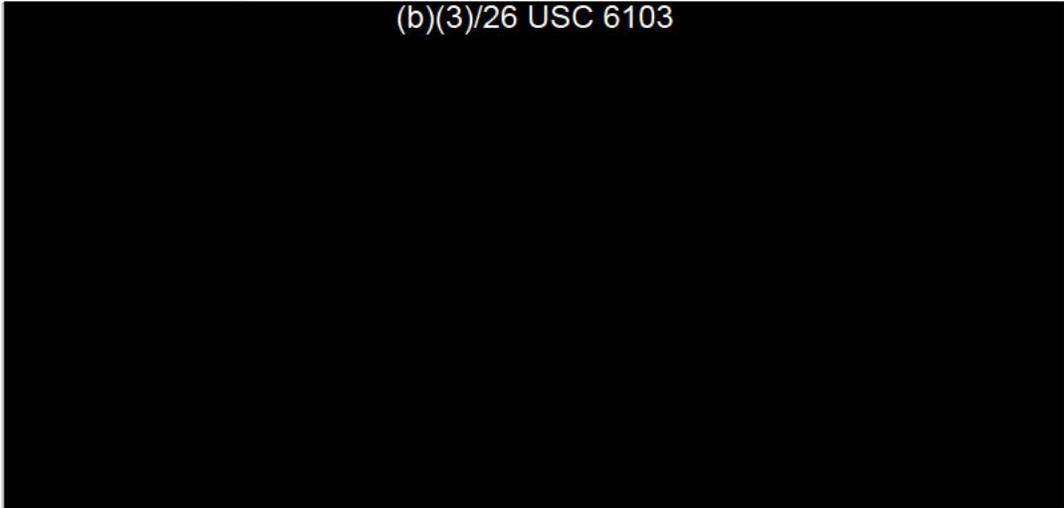
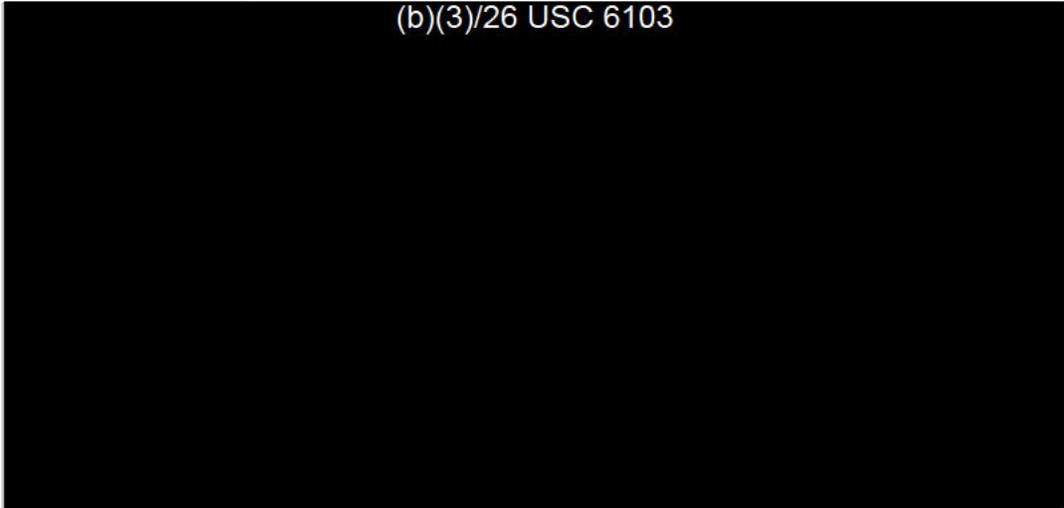
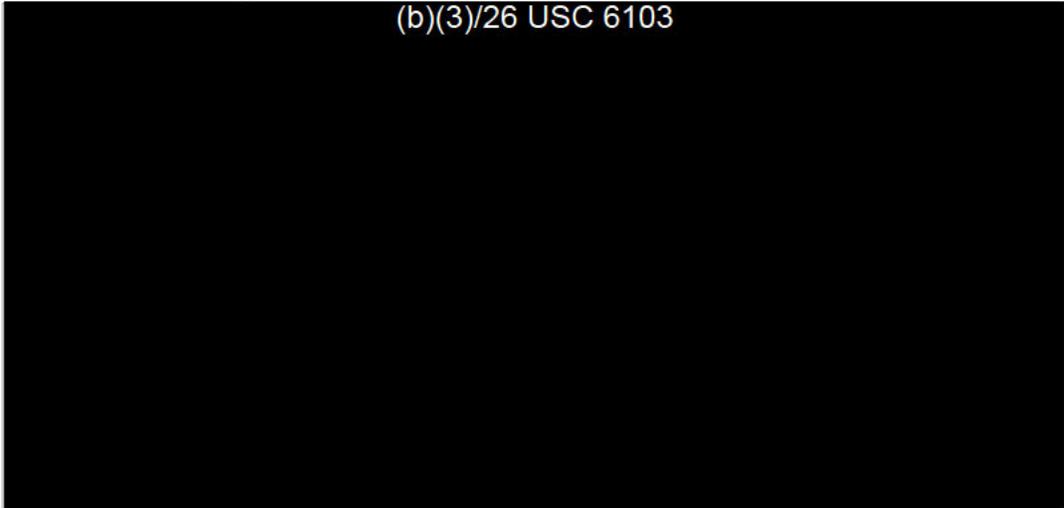
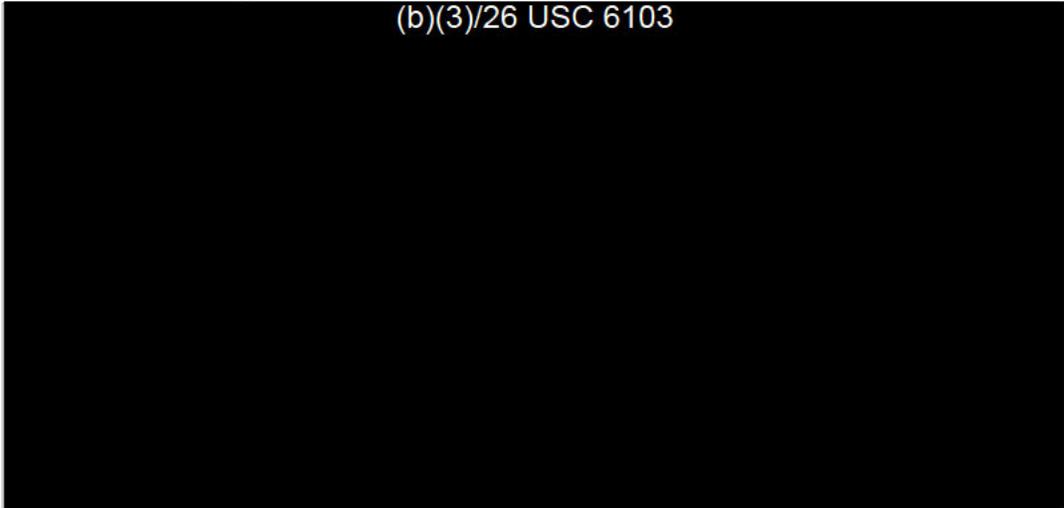
1. Respondent has engaged in practice before the IRS, as defined by 31 C.F.R. § 10.2(a)(4), as a certified public accountant (CPA) and as an enrolled agent (EA).
2. As such, Respondent is subject to the disciplinary authority of the Secretary of the Treasury and of the Office of Professional Responsibility.
3. Respondent’s last known address of record with the Internal Revenue Service is
(b)(3)/26 USC 6103/(b)(6)
4. In accordance with 31 C.F.R. § 10.60(c) (Rev. 8-2011), by letter dated March 27, 2013, Respondent was advised of the law and facts warranting the issuance of this Complaint, and was accorded an opportunity to dispute facts, assert additional facts, and make arguments to OPR regarding his conduct.

² The Findings of Fact that follow come from the allegations in the Complaint –deemed admitted by Respondent due to his failure to file an Answer properly and respond to the Order to Show Cause and the Motion for Decision by Default.

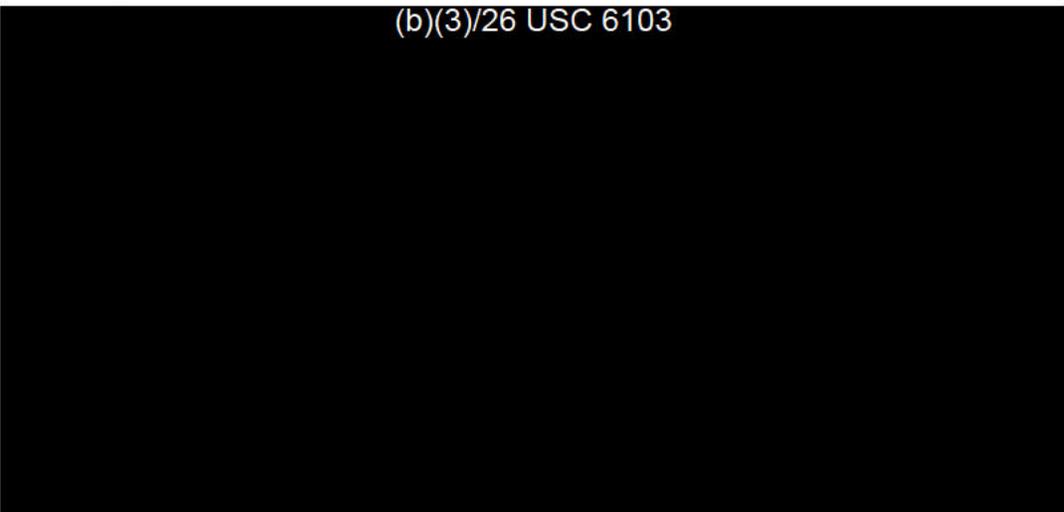
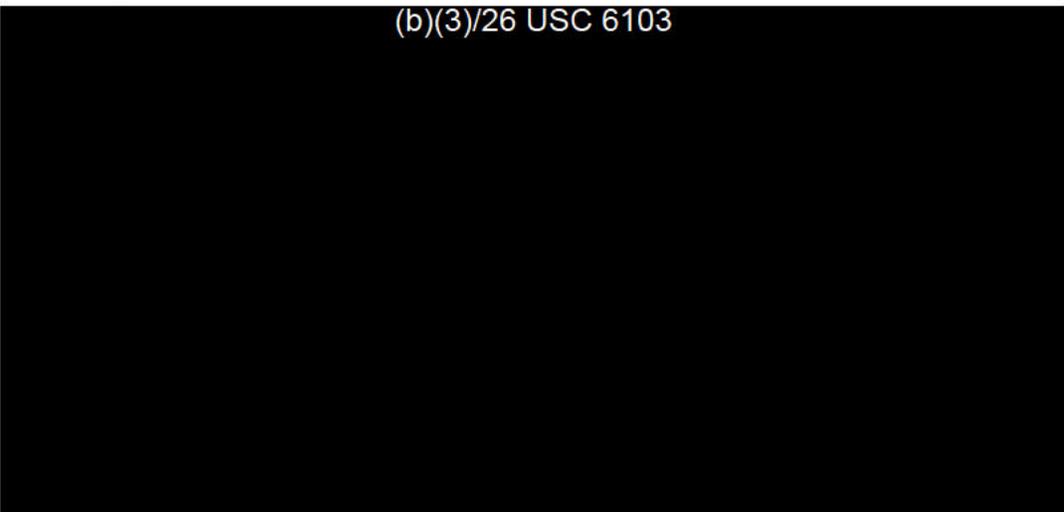
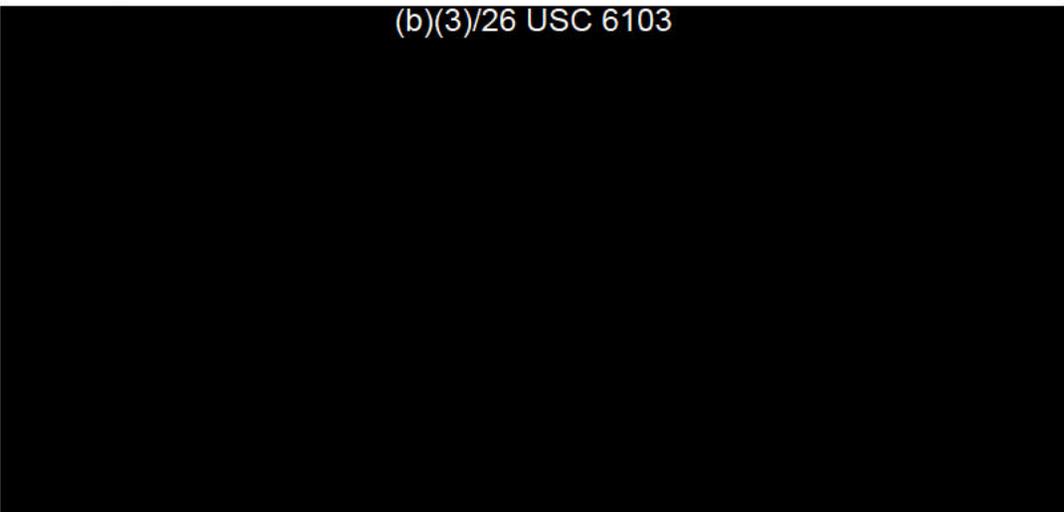
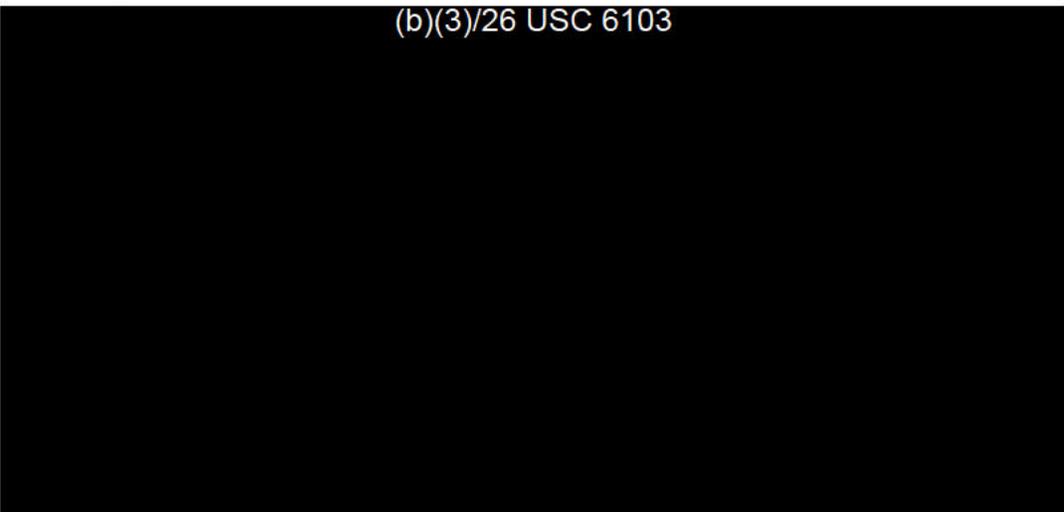
5. On July 25, 2013, a copy of the letter dated March 27, 2013 was forwarded to Respondent at the address on record with the California Board of Accountancy at (b)(3)/26 USC 6103
6. In accordance with 31 C.F.R. § 10.60(c) (Rev. Rev. 6-2014), by letter dated June 16, 2014, Respondent again was advised of the law and facts warranting the issuance of this Complaint, and was accorded an opportunity to dispute facts, assert additional facts, and/or make arguments to OPR regarding his conduct.
7. In accordance with 31 C.F.R. § 10.60(c) (Rev. Rev. 6-2014), by letter dated September 15, 2014, Respondent again was advised of the law and facts warranting the issuance of this Complaint, and was accorded an opportunity to dispute facts, assert additional facts, and make arguments to OPR regarding his conduct.
8. In accordance with 31 C.F.R. § 10.60(c) (Rev. Rev. 6-2014), by letter dated December 2, 2014, Respondent again was advised of the law and facts warranting the issuance of this Complaint, and was accorded an opportunity to dispute facts, assert additional facts, and make arguments to OPR regarding his conduct.
9. On January 28, 1994, the California Board of Accountancy issued Certified Public Accountant Certificate Number [REDACTED] to Respondent. The certificate was subject to renewal every two years. (b)(3) / 26 USC 6103
10. On January 1, 2009, Respondent's CPA certificate expired.
11. Respondent did not renew the CPA certificate until September 17, 2012.
12. On January 1, 2013, Respondent's CPA certificate again expired.
13. On March 4, 2013, Respondent submitted a renewal application seeking to renew his CPA certificate.
14. Respondent's certificate was placed in "hold" status. As of September 30, 2013, the Respondent's CPA certificate had not been renewed.
15. Respondent was not entitled to hold himself out as a CPA during the period from January 1, 2009 to September 17, 2012 when he did not maintain a valid certificate as a CPA.
16. Respondent was not entitled to hold himself out as a CPA during the period from January 1, 2013 to at least September 30, 2013, when he did not maintain a valid certificate as a CPA.
17. On October 11, 2006, the Office of Professional Responsibility issued Enrolled Agent number (b)(6) [REDACTED] for the cycle ending December 31, 2009.

18. Respondent failed to file a timely application for renewal of his enrolled agent status for the cycle for 2010 through 2013.
19. On January 22, 2013, Respondent submitted Form 8554, *Application for Renewal of Enrollment to Practice before the Internal Revenue Service*, for the cycle for 2010 through 2013.
20. Respondent was not entitled to hold himself out as an Enrolled Agent during the period from January 1, 2010 to January 22, 2013 when he did not possess an active Enrolled Agent status.

Count 1

21.  (b)(3)/26 USC 6103
22. 
23. 
24. 

Count 2

25.  (b)(3)/26 USC 6103
26. 
27. 
28. 

Count 3

29. (b)(3)/26 USC 6103
30.
31.
32.

Count 4

33. (b)(3)/26 USC 6103
34.
35.
36.

Count 5

37. On or about February 8, 2010, Respondent filed Form 2848, *Power of Attorney and Declaration of Representative*, on behalf of Taxpayer B³. On the Form 2848, Respondent represented that he was a Certified Public Accountant (“duly qualified to practice as a certified public accountant in the jurisdiction shown below”) in the state of California. Respondent also represented that he was an Enrolled Agent (“enrolled as an agent under the requirements of Circular 230”).
38. On or about June 15, 2010, Respondent filed Form 2848, *Power of Attorney and Declaration of Representative*, on behalf of Taxpayer A. On the Form 2848,

³ The taxpayers’ names were redacted from the Complaint, but those names are contained in the Taxpayer Identification Key attached thereto.

Respondent represented that he was a Certified Public Accountant (“duly qualified to practice as a certified public accountant in the jurisdiction shown below”) in the state of California. Respondent also represented that he was an Enrolled Agent (“enrolled as an agent under the requirements of Circular 230”).

39. On or about January 6, 2013, Respondent filed Form 2848, *Power of Attorney and Declaration of Representative*, on behalf of Taxpayer C. On the Form 2848, Respondent represented that he was a Certified Public Accountant (“duly qualified to practice as a certified public accountant in the jurisdiction shown below”) in the state of California.
40. Respondent failed to exercise due diligence in determining that he could hold himself out to the Internal Revenue Service as a Certified Public Accountant under the jurisdiction of the state of California.
41. Respondent failed to exercise due diligence in determining that he could hold himself out to the Internal Revenue Service as an Enrolled Agent.

Count 6

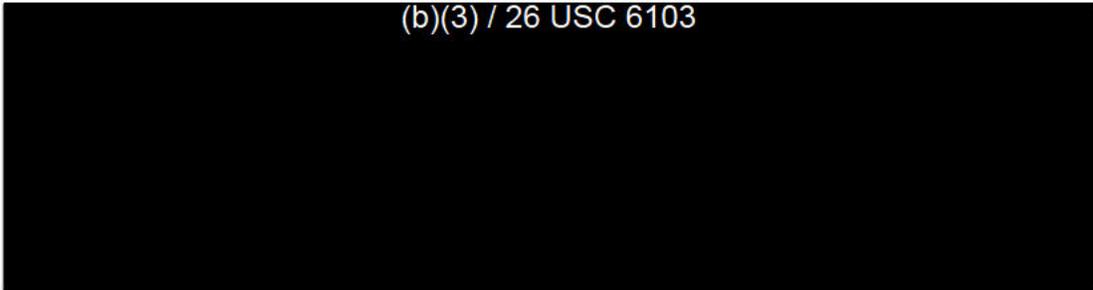
42. During 2012, Respondent used a form (hereafter “Fee Agreement form”) entitled “(b)(3) / 26 USC 6103”
43. The Fee Agreement form contained a header displaying the phrase “Client Information Sheet & Fee Agreement.”
44. Under the heading “**FEE AGREEMENT**” the Fee Agreement form contained text stating, “*I give my unequivocal and irrevocable assent/permission/authorization for (b)(3)/26 USC 6103 in advance: to receive his fees for business consulting, tax consulting, tax accounting, records reconstruction and tax preparation, directly from the Internal Revenue Service (IRS) and/or the California Franchise Tax Board (FTB).*”
45. Under the heading “**FEE AGREEMENT**” the Fee Agreement form contained text stating, “*I authorize my tax refund to be sent in care of (b)(3) / 26 USC 6103*”
46. Taxpayer D, who was one of Respondent’s clients, signed and dated a copy of the Fee Agreement form on or about January 24, 2012.
47. Taxpayer E, who was one of Respondent’s clients, signed and dated a copy of the Fee Agreement form on or about January 26, 2012.
48. Taxpayer F, who was one of Respondent’s clients, signed and dated a copy the Fee Agreement form on or about January 16, 2012.
49. Taxpayer G, who was one of Respondent’s clients, signed and dated the form on or about January 25, 2012.

50. In addition to the four taxpayers identified above, more than one hundred fifty (150) clients signed and dated copies of the Fee Agreement form during 2012.
51. Respondent maintained copies of the Fee Agreement forms that were signed and dated by his clients.
52. Respondent's representations to clients during 2012 on the Fee Agreement forms that he was a Certified Public Accountant were false or misleading with the intent to procure employment.
53. Respondent's representations to clients during 2012 on the Fee Agreement forms that he was an Enrolled Agent were false or misleading with the intent to procure employment.
54. Respondent failed to exercise due diligence in determining that he could hold himself out to clients as a Certified Public Accountant forms in 2012.
55. Respondent failed to exercise due diligence in determining that he could hold himself out as an Enrolled Agent on Fee Agreement forms in 2012.

Count 7

56. Respondent is required by 31 C.F.R. Part 10 § 10.51(a)(17) (Rev. 8-2011) to use a Preparer Tax Identification Number (PTIN) on the return or claim for refund when preparing substantially all of a tax return or claim for refund.⁴
57. Respondent did not have a valid, current PTIN for tax year 2013.
58. Between January 1, 2013 and December 31, 2013, Respondent prepared and signed at least fifty-six (56) Federal individual income tax returns (Forms 1040) without possessing a current or otherwise valid preparer tax identification number.

Count 8

59.  (b)(3) / 26 USC 6103
60.
61. On or about June 15, 2010, Respondent filed Form 2848, *Power of Attorney and Declaration of Representative*, on behalf of Taxpayer A. On the Form 2848,

⁴ See <https://www.irs.gov/pub/irs-utl/OPR%20statement%20052314.pdf>.

Respondent represented that he was a Certified Public Accountant (“duly qualified to practice as a certified public accountant in the jurisdiction shown below”) in the state of California. Respondent also represented that he was an Enrolled Agent (“enrolled as an agent under the requirements of Circular 230”).

62. Taxpayer A retained the Respondent to resolve Taxpayer A’s (b)(3) / 26 USC 6103 (b)(3) / 26 USC 6103

63. Respondent notified Taxpayer A that he would charge her \$6,500 for data entry work and records review, \$150,000 in forensic tax records reconstruction, and \$5,000 to amend Taxpayer A’s tax returns for tax years 2007 and 2008.

64. Taxpayer A agreed to Respondent’s fees, and Taxpayer A paid \$6,500 to Respondent up front.

65. (b)(3) / 26 USC 6103

66.

67. Respondent prepared a Form 1040X, *Amended U.S. Individual Income Tax Return*, on behalf of Taxpayer A for tax year 2007 that would have resulted in a refund in the amount of \$103,283.

68. On the Form 1040X for tax year 2007 prepared on behalf of Taxpayer A, Respondent identified himself as “(b)(3)/26 USC 6103” and the firm’s name as “(b)(3) / 26 USC 6103”

69. Respondent prepared a Form 1040X, *Amended U.S. Individual Income Tax Return*, on behalf of Taxpayer A for tax year 2008 that would have resulted in a refund in the amount of \$68,424.

70. On the Form 1040X prepared on behalf of Taxpayer A for tax year 2008, Respondent identified himself as “(b)(3)/26 USC 6103” and the firm’s name as “(b)(3) / 26 USC 6103”

Aggravating Factors

71. (b)(3)/26 USC 6103

72.

ANALYSIS

Respondent had the opportunity to contest the allegations in the Complaint but failed to do so properly. First, he untimely filed an improper answer to the original Complaint in the wrong forum, after being informed that the Department of the Interior was not hearing his case. Second, he failed to respond with a proper answer to this Court after being informed of the fact of his misfiling. Third, he did not respond to my Order to Show Cause. Finally, he did not respond to Complainant's Motion for Decision. Each of these notices and communications were properly served at Respondent's last known address.

It is well-settled that the formalities of court pleadings generally are not applicable in administrative proceedings, and this principle of administrative law applies to a variety of pleadings, including Answers. See, e.g., Wallace Corp. v. NLRB, 323 U.S. 248, 253 (1944); FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 142-44 (1940); NLRB v. Int'l Bros. of Elec. Workers, Local Union 112, 827 F.2d 530, 534 (9th Cir. 1987); Citizens State Bank of Marshfield v. FDIC, 751 F.2d 209, 213 (8th Cir. 1984); Consolidated Gas Supply Corp. v. FERC, 611 F.2d 951, 959 n.7 (4th Cir. 1979); Aloha Airlines, Inc. v. CAB, 598 F.2d 250, 262 (D.C. Cir. 1979); A.E. Staley Mfg. Co. v. FTC, 135 F.2d 453, 454 (7th Cir. 1943).

Nevertheless, a respondent cannot simply sit on his or her rights and expect to avoid consequences that naturally flow from such inaction. Indeed, the record clearly establishes that Respondent was provided with a multiple opportunities to contest the charges against him. He failed to do so.

The applicable regulations provide the consequences for such failure. Title 31 C.F.R. § 10.68(b) prescribes “if a non-moving party does not respond within 30 days to a filing of a motion for decision by default for failure to file a timely answer . . . the nonmoving party is deemed not to oppose the motion.” Respondent has not filed a response. Therefore, in accordance with 31 C.F.R. § 10.64(d) and § 10.76, the allegations in the Complaint are hereby deemed **ADMITTED** by default. See also 31 C.F.R. § 10.64(c) (“Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing”).

Respondent’s admitted actions as set forth in the Complaint unquestionably constitute disreputable conduct pursuant to 31 C.F.R. § 10.51, and reflect adversely on Respondent’s fitness to practice before the IRS and represent others before that agency.

Furthermore, upon review of the facts presented in the record as a whole, the undersigned finds Complainant’s proposed penalty of disbarment is appropriate given the egregiousness of Respondent’s overall conduct associated with the eight proven Counts against him and the aggravating factors Complainant articulated. Respondent: 1) has (b)(3)/26 USC 6103; 2) continued to hold himself out to taxpayers as a CPA and EA, when he was not; 3) has prepared many tax returns for compensation without having a PTIN, as required by the regulations;⁵ and 4)

⁵ OPR’s position that a practitioner’s failure to hold a PTIN can form a basis of disciplinary action against a practitioner when preparing tax returns for compensation is reasonable despite the cases invalidating OPR’s efforts to regulate non-practitioner tax preparers. See Loving v. I.R.S., 920 F. Supp. 2d 108, 109-10 (D.D.C. 2013); Ridgely v. Lew, 55 F. Supp. 3d 89 (D.D.C. 2014). For OPR’s position, see statement concerning suspended or disbarred tax practitioners permitted to obtain PTINS at <https://www.irs.gov/pub/irs-utl/OPR%20statement%20052314.pdf>.

charged an unconscionable fee in connection with representation of a taxpayer. Such actions render Respondent unfit for practice before the IRS, and disbarment is the only appropriate sanction under these circumstances. See (b)(3) / 26 USC 6103 Complaint No.

2007-12 (Decision on Appeal, April 21, 2009) ((b)(3)/26 USC 6103

(b)(3)/26 USC 6103), (b)(3) / 26 USC 6103 , Complaint No.

2006-24 (Decision on Appeal, February 21, 2008) (affirming disbarment of practitioner

(b)(3)/26 USC 6103).⁶

ULTIMATE FINDINGS OF FACT & CONCLUSIONS OF LAW

1. At all relevant times, Respondent engaged in practice before the IRS and is subject to the disciplinary authority of the OPR Director under the rules and regulations contained in 31 C.F.R. Part 10. .

2. (b)(3)/26 USC 6103

3.

4.

5.

⁶ (b)(3) / 26 USC 6103

6. Respondent: (1) failed to exercise due diligence in determining that he could hold himself out to the Internal Revenue Service as a Certified Public Accountant under the jurisdiction of the state of California on or about February 8, 2010, when he filed Form 2848, *Power of Attorney and Declaration of Representative*; (2) failed to exercise due diligence in determining that he could hold himself out to the Internal Revenue Service as an Enrolled Agent on or about June 15, 2010, when he filed Form 2848, *Power of Attorney and Declaration of Representative*; and (3) failed to exercise due diligence in determining the correctness of representations made to the Department of Treasury on or about January 6, 2013, when he filed Form 2848, *Power of Attorney and Declaration of Representative* including a representation that he was a Certified Public Accountant. Each of these representations constitute a willful violation of 31 C.F.R. § 10.22(a)(2) (Revs. 4-2008 and 8-2011), for which Respondent may be censured, suspended or disbarred from practice before the IRS.
7. Respondent's false or misleading representations to numerous clients on his Fee Agreement forms during 2012, as outlined in the Findings of Fact, were done with intent to deceive a client or prospective client in order to procure employment, and as such, were willful and constitutes a violation of 31 C.F.R. § 10.51 (Rev. 8-2011) generally and a willful violation of 31 C.F.R. § 10.51(a)(5) (Rev. 8-2011), for which Respondent may be censured, suspended or disbarred from practice before the IRS.
8. Alternatively, if Respondent's representations to clients were not willfully false or misleading with intent to deceive a client in order to procure employment, Respondent's failure to exercise due diligence in determining the correctness of representations made to his clients on the Fee Agreement forms in 2012 was willful and constitutes a willful violation of 31 C.F.R. § 10.22(a)(3) (Rev. 8-2011), for which Respondent may be censured, suspended or disbarred from practice before the IRS.
9. Respondent's preparation of all or substantially all or signing tax returns or claims for refund without possessing a current or otherwise valid preparer tax identification number during 2013 was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of 31 C.F.R. § 10.51(a)(17) (Rev. 8-2011) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.
10. Respondent's fees totaling \$161,500 in connection with Taxpayer A's tax liability for tax years 2007 and 2008 were unconscionable and constitutes a willful violation of 31 C.F.R. § 10.27(a) (Rev. 4-2008), for which Respondent may be censured, suspended or disbarred from practice before the IRS.

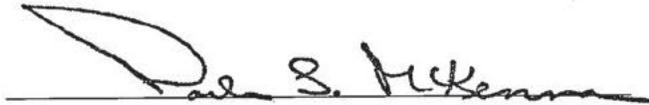
11. Each of the eight (8) Counts alleged in the Complaint are therefore found **PROVED**.
12. Complainant has proven by clear and convincing evidence Respondent's above-described conduct warrants Respondent's disbarment from practice before the IRS in light of all the relevant facts and circumstances.

WHEREFORE:

ORDER

IT IS HEREBY ORDERED that Complainant's Motion for a Decision by Default is **GRANTED** and that **(b)(3)/26 USC 6103** is **DISBARRED** from practice before the Internal Revenue Service from the date of this Decision and Order. Any Reinstatement of Respondent is subject to the provisions contained in 31 C.F.R. Part 10, section 10.81 and at minimum requires Respondent to demonstrate that he is likely to conduct himself in accordance with the requirements of 31 C.F.R. Part 10 and that his reinstatement would not be contrary to the public interest.

IT IS SO ORDERED.



Hon. Parlen L. McKenna
Administrative Law Judge

Dated: October 15, 2015 at Alameda, CA.

Pursuant to 31 C.F.R. § 10.77, this Decision may be appealed to the Secretary of the Treasury within thirty (30) days from the date of service of this Decision on the parties. The Notice of Appeal must be filed in duplicate with the Director, Office of Professional Responsibility, 1111 Constitution Ave. NW, SE:OPR 7238IR, Washington D.C. 20224, and shall include a brief that states the party's exceptions to this Decision and supporting reasons for any exceptions.

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing Order Granting Complaint's Motion for Default Decision (15-IRS-0001) upon the following parties and entities in this proceeding as indicated in the manner described below:

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(b)(3)/26 USC 6103/(b)(6)



(b)(3)/26 USC 6103/(b)(6)



Done and dated: October 15, 2015
Alameda, California.


Cindy June Melendres
Paralegal Specialist to the
Hon. Parlen L. McKenna