

**KAREN L. HAWKINS,
DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
INTERNAL REVENUE SERVICE**

V.

Respondent.

1

(b)(3)/26 USC 6103

; 31 C.F.R. §10.51(d).

Procedural History

On December 27, 2012, the OPR filed a Complaint alleging five counts of

(b)(3)/26 USC 6103

, et seq.

In Count 1, the OPR alleged that (b)(3)/26 USC 6103

In Count 2, the OPR alleged that (b)(3)/26 USC 6103

In Count 3, the OPR alleged that (b)(3)/26 USC 6103

In Count 4, the OPR alleged that (b)(3)/26 USC 6103

In Count 5, the OPR alleged that (b)(3)/26 USC 6103

Accordingly, the OPR seeks Respondent's disbarment practice from before the IRS, per the express provisions of 31 C.F.R. §10.50(a).

On December 28, 2012, this case was assigned to the undersigned for adjudication by the Acting Chief Administrative Law Judge for the United States Coast Guard, the Hon. Parlen L. McKenna.²

On or about March 21, 2013, Respondent filed her Answer (in the form of a letter)³ which denied the allegations of the Complaint and specifically pled that “
 (b)(3)/26 USC 6103 .”

During the course of this litigation, the court convened several telephonic pre-hearing conferences with the parties to establish discovery procedures and deadlines and to establish a time, date and location for a hearing.

On August 7, 2013, the undersigned convened the hearing of this matter at the Mecklenburg County Courthouse in Charlotte, North Carolina.

Both parties presented their respective cases: The OPR presented two witnesses and offered five items of documentary evidence, all of which were admitted; Respondent testified on her own behalf and offered fourteen items of documentary evidence, thirteen of which were admitted. Thereafter, the parties presented their respective closing arguments.⁴

²This decision is issued by an Administrative Law Judge of the United States Coast Guard, Department of Homeland Security. The Judges of the Coast Guard are authorized to hear cases pending before the United States Department of the Treasury, pursuant to Interagency Agreements Between Federal Agencies dated June 6, 2011 and January 15, 2013.

³The federal courts grant wide latitude in construing the pleadings and papers of *pro se* litigants. SEC v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992) (citing Maldonado v. Garza, 579 F.2d 338, 340 (5th Cir. 1978). See also Haines v. Kerner, 404 U.S. 519, 520 (1972) (Allegations set forth in a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers). More generally, “Implicit in the right of self-representation is an obligation on the part of the court to make reasonable allowances to protect *pro se* litigants from inadvertent forfeiture of important rights because of their lack of legal training.” Traguth v. Zuck, 710 F.2d 90, 105 (2d Cir. 1983).

⁴ Citations referencing the transcript are as follows: Transcript followed by the volume number and page number (Tr. at ____). In this case, citations referring to Agency Exhibits are as follows: “OPR” followed by the exhibit number (OPR Ex. 1, etc.); Respondent’s Exhibits are as follows: “Resp.” followed by the

On August 19, 2013, the undersigned directed the parties to file their proposed Findings of Fact and Conclusions of Law, if any, with one-another and the court by September 6, 2013.⁵

Following the hearing and a thorough review of the entire administrative record, I have determined that Respondent should be **DISBARRED** from practice before the IRS for the reasons provided in this Decision and Order.⁶

OPR's Authority to Discipline IRS Practitioners

An individual engaging in practice before the IRS, as defined in 31 C.F.R. §§10.2(a)(4) and 10.2(a)(5), is subject to the disciplinary authority of the Secretary of the

exhibit letter (Resp. Ex. A, etc.); ALJ Exhibits are as follows: "ALJ" followed by the exhibit Roman numeral (ALJ Ex. I, etc.). A list of Exhibits and Witnesses is attached hereto and incorporated herein as Attachment A.

⁵On August 19, 2013, this court entered an Order setting a deadline for the submission of post-hearing briefs. That deadline was 5:00 p.m. (EDT), September 6, 2013. On September 4, 2013, OPR timely filed its "Post-Hearing Brief." Respondent filed her post-hearing brief at/or near 4:50 p.m. (EDT) on September 6, 2013. Only a few hours before the deadline, however, the court, in an abundance of caution for the due process interests of the Respondent, instructed court staff to make inquiry whether Respondent would submit a post-hearing brief on time. At approximately 2:40 p.m. (EDT), the court's staff attorney contacted Respondent to inquire whether she intended to file her brief.

Respondent told the staff attorney that she was "working on her brief," and further told the court's staff attorney that she "did not receive a copy of the transcript." Respondent's brief likewise claims, "Respondent was unaware that transcripts of the hearing were available for reference or for her own records."

Intrigued by Respondent's assertions, the court instructed its staff paralegal to contact Executive Court Reporters, Inc., (Executive) the entity retained by the IRS to report and transcribe the instant proceedings. Executive told the court's staff paralegal that it had contacted Respondent and left a message informing her on how to obtain a copy of the transcript. Executive told this court's paralegal that Respondent never responded to that call or made any effort to obtain a copy of the transcript.

Likewise, Respondent never contacted court staff asking for either a copy of the transcript or for assistance in obtaining one. Nor did Respondent ever contact court staff seeking relief from any previous Order or with a question about court procedure.

Both parties submitted proposed Findings of Fact and Conclusions of Law, to which the court gave due consideration. However, the court elected to enter its own Findings of Fact and Conclusions of Law.

⁶The court acknowledges, with thanks, the research assistance provided by *Redacted*, legal intern, *Redacted*, *Redacted*, Raleigh, North Carolina.

Treasury and the OPR, in accordance with 31 U.S.C. §330, 31 C.F.R. §§10.1(b) and 10.50(a).

The OPR Director is authorized, per IRS Circular 230 (4-2008) and Delegation Order No. 25-16 (2012), to institute proceedings to suspend or disbar practitioners before the IRS. See 31 C.F.R. §10.50(a). Under 31 C.F.R. §10.50, any sanctions imposed “shall take into account all relevant facts and circumstances.” In addition, a monetary penalty may be imposed upon any practitioner who engages in disreputable conduct, but that penalty is not to exceed the gross income derived from the conduct that directly gave rise to the penalty. Id. at (c), (e).

In rendering a decision, the judge 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, monetary penalty, disqualification, or dismissal of the complaint. 31 C.F.R. §10.76(a).

Incompetence and Disreputable Conduct under Sections 10.51(a)(2) and (a)(10)

In the instant case, the OPR alleges that Respondent (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

and is actionable per the provisions of 31 C.F.R. §10.50(a), et seq.

(emphasis added).⁷

Willfulness (b)(3)/26 USC 6103 is a voluntary,

intentional violation of a known duty. Cheek v. United States, 498 U.S. 192, 201 (1991);

⁷For the rules applicable to violations occurring before July 26, 2002, see Circular No. 230 (7-94); for those occurring thereafter but before September 26, 2007, see Circular No. 230 (7-2002); and for those occurring thereafter, see Circular No. 230 (4-2008). See 31 C.F.R. §10.91 (2007) (practitioners “will be judged by the regulations in effect at the time the conduct occurred”).

United States v. Pompino, 429 U.S. 10, 12 (1976); United States v. Bishop, 412 U.S. 346 (1973). Accordingly, “if by congressional fiat it is bad to fail to file an income tax return, then willfulness may be found when the obligation to act is fully known and consciously disregarded.” Owrutsky v. Brady, No. 89-2402, 1991 U.S. App. LEXIS 2613 (4th Cir. 1991) at 2.

Evidentiary Standard of Proof

The standard of proof differs depending on the nature of the sanction sought. 31 C.F.R. §10.76(b). Because the OPR, here, seeks Respondent’s disbarment, the applicable standard is clear and convincing evidence. 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 the clear and convincing evidence is an intermediate standard somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt).

The Federal Rules of Evidence are not controlling in these proceedings, but the judge may exclude evidence that is irrelevant, immaterial, or unduly repetitious. See 31 C.F.R. §10.73(a). Hence, strict, formal rules of evidence do not apply.

Findings of Fact

The following findings of fact were established by clear and convincing evidence, after a thorough review of the pleadings, exhibits, the parties’ respective arguments and

briefs. Each exhibit admitted into evidence was considered in rendering this decision, even though every exhibit is not specifically discussed herein. The court finds that:

1. Respondent (b)(3)/26 USC 6103 was awarded a Bachelor's Degree in accounting by the Redacted, but is not a Certified Public Accountant. She has engaged in practice before the Internal Revenue Service for the past twenty years. (Tr. at 141 – 142; Resp. Ex. 1).
2. (b)(3)/26 USC 6103
[REDACTED]
[REDACTED] . (Tr. at 15 – 16, 18 – 19).
3. Ms. Karen L. Hawkins is the Director of the Internal Revenue Service's (IRS) Office of Professional Responsibility (OPR), an independent office administered by the IRS, and is responsible for oversight of practitioner education, outreach and enforcement of 31 C.F.R. §10.50, et seq. At the time of the hearing, Ms. Hawkins had been employed as Director of OPR for slightly more than four years. (Tr. at 77 – 82).
4. The Internal Revenue Service's Office of Professional Responsibility's mission is to ensure the integrity of the tax administration system and in protecting taxpayers from either unscrupulous or incompetent return preparers or practitioners. 31 U.S.C. §330. (Tr. at 82 – 83, 98).
5. Ms. Karen L. Hawkins issued a "soft" letter dated November 19, 2010, to Respondent (b)(3)/26 USC 6103. That letter specifically (b)(3)/26 USC 6103 Respondent of [REDACTED] (b)(3)/26 USC 6103 and provided guidance on how Respondent could maintain her good standing as a practitioner before the Internal Revenue Service. (Tr. at 90 – 92; OPR Ex. E).
6. Ms. Karen L. Hawkins' November 19, 2010, letter was designed to (b)(3)/26 USC 6103 Respondent [REDACTED] (b)(3)/26 USC 6103 The November 19, 2010, letter was calculated to create [REDACTED] (b)(3)/26 USC 6103 to Respondent [REDACTED] (b)(3)/26 USC 6103 [REDACTED]. (Tr. at 90 – 92).
7. Had Respondent (b)(3)/26 USC 6103 [REDACTED] (b)(3)/26 USC 6103 the November 19, 2010 letter, together with 31 C.F.R. Part 10 and IRS Circular 230, [REDACTED] (b)(3)/26 USC 6103, the Internal Revenue Service's Office of Professional Responsibility would have allowed her to maintain her status as a practitioner in good standing. (Tr. at 91 – 92, 108 – 109; OPR Ex. E).

8. On or about April 11, 2012, Ms. Karen L. Hawkins sent Respondent (b)(3)/26 USC 6103 an “allegation” letter, detailing (b)(3)/26 USC 6103. The April 11, 2012, letter strongly advised Respondent (b)(3)/26 USC 6103 and also provided clear guidance on (b)(3)/26 USC 6103 Respondent could undertake. The allegation letter provided Respondent with a notice and opportunity to confer with Office of Professional Responsibility attorney-advisors and for Respondent to “present any kind of mitigating evidence or explanations” concerning her conduct. (Tr. at 92 – 93; OPR Ex. F).
9. Respondent (b)(3)/26 USC 6103, almost a year after she had received the April 11, 2012 “allegation” letter from Ms. Karen L. Hawkins. (Tr. at 35 – 43, 46; OPR Ex. H).
10. Respondent (b)(3)/26 USC 6103, almost a year after she had received the April 11, 2012 “allegation” letter from Ms. Karen L. Hawkins. (Tr. at 48 – 50; OPR Ex. H).
11. Respondent (b)(3)/26 USC 6103, almost a year after she had received the April 11, 2012 “allegation” letter from Ms. Karen L. Hawkins. (Tr. at 51 – 55; OPR Ex. H).
12. Respondent (b)(3)/26 USC 6103, almost a year after she had received the April 11, 2012 “allegation” letter from Ms. Karen L. Hawkins. (Tr. at 56 – 58; OPR Ex. H).
13. Respondent (b)(3)/26 USC 6103, almost a year after she had received the April 11, 2012 “allegation” letter from Ms. Karen L. Hawkins. (Tr. at 58 – 59; OPR Ex. H).
14. (b)(3)/26 USC 6103, Respondent (b)(3)/26 USC 6103 (Tr. at 35 – 60; OPR Ex. H, I).

Analysis

The OPR’s case-in-chief was comprised of five items of documentary evidence and the testimony of two witnesses: (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

; and Ms. Karen L. Hawkins, Director of the Office of Professional Responsibility (OPR), IRS, in Washington, DC.⁸

Count 1: (b)(3)/26 USC 6103 9

Initially, (b)(3)/26 USC 6103

. (Tr. at 17 – 18).

(b)(3)/26 USC 6103

. (Tr. at 18 – 20; OPR Ex. H).

⁸The court notes with particularity that Respondent was not charged with (b)(3)/26 USC 6103. Neither was she charged with (b)(3)/26 USC 6103. Rather, the OPR's burden, here, was simply to prove that Respondent (b)(3)/26 USC 6103. It is no defense that (b)(3)/26 USC 6103. These events do not constitute a legal defense to the charge (b)(3)/26 USC 6103. (b)(3)/26 USC 6103 inferred from the facts and circumstances of the case. In *Gaunt v. U.S.*, 184 F.2d 284, 291 (1 Cir. 1951), the court said that in prosecution for willful evasion of federal income taxes, proof of "willfulness" was a question of fact. (b)(3)/26 USC 6103. Rather, (b)(3)/26 USC 6103.

⁹ The court incorporates by reference the following for (b)(3)/26 USC 6103 addressed herein: 1) That (b)(3)/26 USC 6103 referenced in the Complaint, and for the twenty years prior thereto, Respondent (b)(3)/26 USC 6103 was engaged in practice before the IRS, as defined by 31 C.F.R. §10.2(a)(4) as an enrolled agent. Respondent's Answer did not specifically deny paragraph 1 of the Complaint, which specifically alleges her status as an enrolled IRS agent. Hence, the court deems the contents of that paragraph admitted. 2) Respondent (b)(3)/26 USC 6103 was, (b)(3)/26 USC 6103 referenced in the Complaint, subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility. Respondent's Answer did not specifically deny paragraph 2 of the Complaint, which specifically alleges that she is subject to the disciplinary authority foresaid. Hence, the court deems the contents of that paragraph admitted. 3) That (b)(3)/26 USC 6103 referenced in the Complaint, Respondent (b)(3)/26 USC 6103

(b)(3)/26 USC
6103

testified that

(b)(3)/26 USC 6103

. (Tr. at 35 – 37).

On

(b)(3)/26 USC 6103

. (OPR Ex. H).

Because Respondent

(b)(3)/26 USC 6103

, (b)(3)/26 USC 6103

. (Tr. at 37 –

38; OPR Ex. H). Respondent's Exhibit 13 likewise reveals that

(b)(3)/26 USC 6103

.

(b)(3)/26 USC
6103

testified that

(b)(3)/26 USC 6103

, (b)(3)/26 USC 6103

. (Tr. at

40).

The (b)(3)/26
USC 6103

and Respondent's Exhibit 13

(b)(3)/26 USC 6103

, Respondent

(b)(3)/26 USC 6103

. (Tr. at 35 – 43; OPR

Ex. H; Resp. Ex. 13).

The IRS

(b)(3)/26 USC 6103

. (Tr. at 35 – 46).

The court regards

(b)(3)/26 USC 6103

, and (b)(3)/26 USC
6103

, as

evidence

(b)(3)/26 USC 6103

. (Tr. at 35 – 46).

Count 2: (b)(3)/26 USC 6103

(b)(3)/26 USC 6103 testified that (b)(3)/26 USC 6103

(Tr. at 48 – 49; OPR Ex. H).

(b)(3)/26 USC 6103 then explained that (b)(3)/26 USC 6103

(Tr. at 49 – 50). (b)(3)/26 USC 6103 noted that (b)(3)/26 USC 6103

(Tr. at 49).

Respondent's evidence reveals that (b)(3)/26 USC 6103

(Resp. Ex. 13). In fact, Respondent's own evidence indicates that (b)(3)/26 USC 6103 (Tr. at 50; OPR Ex. H; Resp. Ex. 13).

Count 3: (b)(3)/26 USC 6103

(b)(3)/26 USC 6103 testified that (b)(3)/26 USC 6103

(Tr. at 51). Respondent's evidence also supports the same finding. (Resp. Ex. 13).

The evidence also reveals that (b)(3)/26 USC 6103

(Tr. at 51 – 53).

The evidence further reveals that (b)(3)/26 USC 6103

(Tr. at 51 – 54). Specifically,

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103. (Tr. at 51 – 52). There is no evidence Respondent (b)(3)/26 USC 6103. (Resp. Ex. 13).

(b)(3)/26 USC 6103
(b)(3)/26 USC 6103. (Tr. at 52). Thereafter, (b)(3)/26 USC 6103
(b)(3)/26 USC 6103. (Tr. at 52). Thereafter, (b)(3)/26 USC 6103
(b)(3)/26 USC 6103. (Tr. at 53).

(b)(3)/26 USC 6103. (Tr. at 54).
The court regards (b)(3)/26 USC 6103
(b)(3)/26 USC 6103, as evidence of (b)(3)/26 USC 6103.
(Tr. at 51 – 54). The fact that Respondent's (b)(3)/26 USC 6103
(b)(3)/26 USC 6103 is inconsequential relative to (b)(3)/26 USC 6103
(b)(3)/26 USC 6103. (Tr. at 54 – 55).

Count 4: (b)(3)/26 USC 6103
(b)(3)/26 USC 6103 testified that (b)(3)/26 USC 6103
(b)(3)/26 USC 6103. (Tr. at 57). The evidence does not reveal whether Respondent (b)(3)/26 USC 6103. Nor is there any evidence that Respondent (b)(3)/26 USC 6103. (Tr. at 57).

What is certain, however, is the fact that Respondent (b)(3)/26 USC 6103
(b)(3)/26 USC 6103. (Tr. at 56 – 58). Nor (b)(3)/26 USC 6103

[REDACTED] (b)(3)/26 USC 6103. (Tr. at 57). Nevertheless, [REDACTED] (b)(3)/26 USC 6103. (Tr. at 56 – 57).

However, [REDACTED] (b)(3)/26 USC 6103 testified that [REDACTED] (b)(3)/26 USC 6103. (Tr. at 57 – 58; OPR Ex. H). Respondent’s own Exhibit 13 supports the same finding.

Count 5: [REDACTED] (b)(3)/26 USC 6103 testified that [REDACTED] (b)(3)/26 USC 6103. [REDACTED] (b)(3)/26 USC 6103. (Tr. at 58 – 59). The evidence reveals that Respondent [REDACTED] (b)(3)/26 USC 6103, however, [REDACTED] (b)(3)/26 USC 6103. (Tr. at 59; OPR Ex. H; Resp. Ex. 13).

Further Analysis of Testimonies and Evidence

[REDACTED] (b)(3)/26 USC 6103 explained his familiarity with, and use of, an [REDACTED] (b)(3)/26 USC 6103. [REDACTED] (Tr. at 20 - 26). A thorough [REDACTED] (b)(3)/26 USC 6103. [REDACTED] (OPR Ex. H, I). In their totality, those documents reveal Respondent’s [REDACTED] (b)(3)/26 USC 6103. [REDACTED] ¹⁰.

¹⁰ [REDACTED] (b)(3)/26 USC 6103 is particularly illustrative. That [REDACTED] (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (sic) [REDACTED] (b)(3)/26 USC 6103. Respondent [REDACTED] (b)(3)/26 USC 6103 (OPR Ex. H). Query, “Why would an experienced, professional tax representative, with a bachelor’s degree in accounting, wait until [REDACTED] (b)(3)/26 USC 6103”

Taken as a whole, the administrative record suggest *[sic]* Respondent made concerted efforts (b)(3)/26 USC 6103, which are probative of (b)(3)/26 USC 6103

The OPR's second witness was Ms. Karen L. Hawkins. Ms. Hawkins is the Director of the OPR, an independent office administered by the IRS. She, and her office, are responsible for oversight of practitioner education, outreach and enforcement of 31 C.F.R. §10.50, *et seq.* (Tr. at 77 - 79). *See also* 31 U.S.C. §330. Ms. Hawkins explained that her office is "essentially charged with ensuring the integrity of the tax administration system and in protecting taxpayers from either unscrupulous or incompetent return preparers or practitioners." (Tr. at 98).

Ms. Hawkins testified regarding her issuance of a November 19, 2010, letter to Respondent. (OPR Ex. E). That letter specifically (b)(3)/26 USC 6103 Respondent of (b)(3)/26 USC 6103 and to provide to Respondent how she could maintain her good standing as a practitioner before the IRS.

Interestingly, Ms. Hawkins called the November 19, 2010, letter a "soft letter. It's not anything more than (b)(3)/26 USC 6103." (Tr. at 90 - 92). Ms. Hawkins explained that the "soft letter" was an attempt "to create (b)(3)/26 USC 6103 (b)(3)/26 USC 6103." (Tr. at 91). More importantly, Ms. Hawkins explained that had Respondent simply reviewed the requirements of 31 C.F.R. Part 10 and IRS Circular 230 (b)(3)/26 USC 6103 "we'd be very happy with her." (Tr. at 91 - 92). Ms. Hawkins continued, explaining that had Respondent " (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

the “soft”

letter was sent “this is the kind of case we could have closed.” (Tr. at 108 – 109).

The evidence reveals that despite the “soft” letter, Respondent (b)(3)/26 USC 6103

. (OPR Ex. H, I).

Rather, the evidence suggests the IRS was extraordinarily patient; (b)(3)/26 USC 6103

send Respondent what Ms. Hawkins termed an

“allegation” letter. (Tr. at 92; OPR Ex. F). That letter more strongly advised Respondent

(b)(3)/26 USC 6103

and also provided clear guidance on what steps Respondent

could undertake. Ms. Hawkins testified that the “allegation” letter provided Respondent

with a notice and opportunity to confer with OPR attorney-advisors and for Respondent

to “present any kind of mitigating evidence or explanations” concerning her conduct. (Tr. at 92).

The court cites, with particularity, the care Ms. Hawkins, and her staff, took in creating the “allegation” letter. That document recites, in detail, (b)(3)/26 USC 6103

.

(Tr. at 92 – 93).

The evidence suggests that despite the April 11, 2012 letter, Respondent

(b)(3)/26 USC 6103

. In fact, the record reveals that Respondent (b)(3)/26 USC 6103

. (OPR Ex. H).

By contrast, Respondent’s defense case was comprised of thirteen items of documentary evidence and her own sworn testimony.

Respondent testified that she was awarded a Bachelor's Degree in accounting by the *Redacted*. She is not a Certified Public Accountant. (Tr. at 141 – 142). She has engaged in practice before the IRS for the past twenty years. (Resp. Ex. 1).

Respondent testified that she had, indeed, (b)(3)/26 USC 6103 (Tr. at 139). However, the documents she offered in support of her assertion (Resp. Ex. 1 – 13), do not support her contention.

For instance, Respondent's Exhibits 1, 2, 3, 4, 5 6 and 7 are all, ostensibly, photocopies of United States Postal Service (USPS) mailing envelopes (b)(3)/26 USC 6103 respectively. Although the court admitted these documents, the court assigns little probative weight to them, inasmuch as they are largely irrelevant to Counts I – V of the Complaint and because each is unverified.

Likewise, Respondent's Exhibits 8, 9, 10, 11, and 12 are also unverified photocopies of USPS mailing envelopes (b)(3)/26 USC 6103. The court admitted these documents because they ostensibly relate to the counts charged in the Complaint. However, the court assigns little probative weight to them, inasmuch as each putative copy of the USPS mailing envelope is unverified (b)(3)/26 USC 6103. The court notes with particularity that Respondent (b)(3)/26 USC 6103 (Tr. at 143).

Moreover, Respondent's credibility is undercut by the contents of OPR Exhibits H and I, which reveal Respondent's (b)(3)/26 USC 6103. If Respondent had, indeed, (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

?

Respondent's assertion that (b)(3)/26 USC 6103

is further undercut by her own suggestions that

(b)(3)/26 USC 6103

because – or that (b)(3)/26 USC 6103 were thwarted by –

computer issues (Tr. at 121); poor mail service (Tr. at 151); inaccessible documents in her attic (Tr. at 121, 151); her inefficient office staff (Tr. at 153, 163); and her divorce proceedings (Tr. at 167, 172 – 173).

The court recognizes the possibility that some of Respondent's (b)(3)/26 USC 6103

. Even Ms. Hawkins recognized that possibility. (Tr. at 99). However, the overwhelming, credible evidence of Respondent's

(b)(3)/26 USC 6103

renders that

possibility nearly a mathematical nullity.

Sanction

Of the two great certainties in life, only (b)(3)/26 USC 6103 is fixed on a calendar. Congress has affirmed this immutable truth in statute, if not stone.

(b)(3)/26 USC 6103

. Likewise, in United States v. Boyle, 469 U.S. 241 (1985), the

Supreme Court spoke

(b)(3)/26 USC 6103

:

Deadlines are inherently arbitrary; fixed dates, however, are often essential to accomplish necessary results. The Government has millions of taxpayers to monitor, and our system of self-assessment in the initial calculation of a tax simply cannot work on any basis other than one with strict filing standards. Any less rigid standard would risk a lax attitude toward filing dates. Prompt payment of taxes is imperative to the Government, which should not have to assume the burden of unnecessary ad hoc determinations.

Id. at 249. (emphasis added).

Here, the evidence is overwhelming that Respondent (b)(3)/26 USC 6103

There is no mitigating evidence, beyond conjecture, that extraneous events (i.e., divorce, lost files, bad support staff, computer issues, unreliable postal service) caused Respondent (b)(3)/26 USC 6103. Rather, Respondent's suggestion of these events – coupled with (b)(3)/26 USC 6103

(reflected in OPR Ex. H and I) – coupled with (b)(3)/26 USC 6103 in OPR Ex. E and F – lead this court to the inevitable conclusion that Respondent (b)(3)/26 USC 6103 as alleged.

At the same time, the court notes OPR's efforts to (b)(3)/26 USC 6103; particularly Ms. Hawkins' "soft" letter and the "allegation" letter. (OPR Ex. E, F).

Ms. Hawkins' [*sic*] and (b)(3)/26 USC 6103 both offered insight that the American tax system is essentially a "voluntary" system is highly reliant upon the "symbiotic" relationship between the IRS and those who prepare and represent taxpayers before the IRS. (Tr. at 47, 97). Inherent in that relationship is an element of professional trust between the parties; (b)(3)/26 USC 6103 being uppermost in that relationship.

There can be no doubt that Respondent, as an experienced IRS practitioner, (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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

The evidence suggests no alternative.

When determining an appropriate sanction for ██████████ (b)(3)/26 USC 6103 ██████████, the court is guided by the principle that “all relevant facts and circumstances” shall be taken into account. 31 C.F.R. §10.50(d), (e). The appropriate sanction ██████████ (b)(3)/26 USC 6103 ██████████, of course, varies depending upon the unique circumstances of each case. Yet, the weight of precedent seems to dictate that disbarment is the appropriate sanction in this case.

In Director, Office of Professional Responsibility v. ██████████ (b)(3)/26 USC 6103 ██████████, Decision on Appeal, Complaint No. 2008-03 (2009), the Secretary said: “I view ██████████ (b)(3)/26 USC 6103 ██████████. When confronted by ██████████ (b)(3)/26 USC 6103 ██████████, I have uniformly imposed a sanction of disbarment.” The same result, disbarment, obtained in Director, Office of Professional Responsibility v. ██████████ (b)(3)/26 USC 6103 ██████████, Decision on Appeal, Complaint No. 2007-08 (2008), where a practitioner ██████████ (b)(3)/26 USC 6103 ██████████.

In Director, Office of Professional Responsibility v. ██████████ (b)(3)/26 USC 6103 ██████████, Decision on Appeal, Complaint No. 2009-21 (2011), disbarment was deemed an appropriate sanction for a Respondent-attorney who ██████████ (b)(3)/26 USC 6103 ██████████. However, there, Respondent had been previously suspended from practice before the IRS for ██████████ (b)(3)/26 USC 6103 ██████████.

By contrast, in Director, Office of Professional Responsibility v. ██████████ (b)(3)/26 USC 6103 ██████████, Decision on Appeal, Complaint No. 2007-10 (2008), the Secretary imposed only a 48

month suspension [REDACTED] (b)(3)/26 USC 6103. Yet in Poole v. United States, No. 84-0300, 194 U.S. Dist. LEXIS 15351 (D.D.C. June 29, 1984), a Certified Public Accountant's failure to file federal individual income tax returns for three consecutive years was held to be sufficient grounds for disbarment.

Read together, the weight of precedential authority clearly suggests that in cases [REDACTED] (b)(3)/26 USC 6103 [REDACTED], disbarment is the appropriate sanction.¹¹ A monetary penalty is inappropriate in this case, inasmuch as there was no proof that Respondent derived any income from the conduct alleged in the Complaint. 31 C.F.R. §10.50(c)(2).

Conclusions of Law

The following conclusions of law are based upon proof established by clear and convincing evidence, made after a thorough review of the pleadings, exhibits, briefs and the parties' arguments. Each exhibit entered into evidence was considered in rendering this decision, even though every exhibit is not specifically discussed herein. The court concludes that:

1. At all material times referenced in the Complaint, and for the twenty years prior thereto, Respondent [REDACTED] (b)(3)/26 USC 6103 was engaged in practice before the IRS, as defined by 31 C.F.R. §10.2(a)(4) as an enrolled agent.¹²

¹¹OPR asks the court to consider Respondent's alleged [REDACTED] (b)(3)/26 USC 6103 as evidence of aggravation. The court declines the invitation to consider this uncharged misconduct for two reasons: First, evidence of uncharged misconduct (which occurred prior to the events alleged in the five counts of the Complaint) does not constitute appropriate matters in aggravation. Appropriate evidence of aggravation is that which flows from, or is a direct result of, the misconduct alleged. (In this case, appropriate evidence in aggravation might have been proof of the [REDACTED] (b)(3)/26 USC 6103.) Second, consideration of the uncharged misconduct is unnecessary in this case to support disbarment.

¹² Respondent's Answer did not specifically deny paragraph 1 of the Complaint, which specifically alleges her status as an enrolled IRS agent. Hence, the court deems the contents of that paragraph admitted.

2. Respondent (b)(3)/26 USC 6103 is subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility.¹³

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

4. Respondent (b)(3)/26 USC 6103
(b)(3)/26 USC 6103
(b)(3)/26 USC 6103.

5. As an experienced IRS practitioner, Respondent (b)(3)/26 USC 6103
(b)(3)/26 USC 6103
(b)(3)/26 USC 6103. Spies v. United States, 317 U.S. 492 (1943).

6. Respondent (b)(3)/26 USC 6103 engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. §§10.51(a)(2) and 10.51(a)(10) as evidenced by (b)(3)/26 USC 6103
(b)(3)/26 USC 6103.

7. Respondent (b)(3)/26 USC 6103
(b)(3)/26 USC 6103
(b)(3)/26 USC 6103. Hence, (b)(3)/26 USC 6103
(b)(3)/26 USC 6103. Owrutsky v. Brady, No. 89-2402, 1991 U.S. App. LEXIS 2613 (4th Cir. 1991).

¹³Respondent's Answer did not specifically deny paragraph 2 of the Complaint, which specifically alleges that she is subject to the disciplinary authority foresaid. Hence, the court deems the contents of that paragraph admitted.

8. The proper sanction for Respondent (b)(3)/26 USC 6103's disreputable conduct is disbarment, because the clear and convincing evidence reveals not only

(b)(3)/26 USC 6103

, but that she also engaged in (b)(3)/26 USC 6103

WHEREFORE,

Order

IT IS HEREBY ORDERED, that Respondent (b)(3)/26 USC 6103 is **DISBARRED** from practice before the IRS.

IT IS SO ORDERED.

Done and dated this 9th day of September, 2013
at New Orleans, Louisiana

/s/

HON. BRUCE TUCKER SMITH
Administrative Law Judge

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.

ATTACHMENT A: LIST OF WITNESSES AND EXHIBITS

OPR Witness

- 1) (b)(3)/26 USC 6103
- 2) Ms. Karen L. Hawkins

Respondent's Witness

- 1) Respondent

OPR Exhibits

- E) November 19, 2010 letter
- F) April 11, 2012 letter
- G) Treasury Department Circular No. 230
- H) (b)(3)/26 USC 6103
- I) [REDACTED]

Respondent's Exhibits

- 1) May 2, letter, (b)(3)/26 USC 6103
- 2) (b)(3)/26 USC 6103
- 3) [REDACTED]
- 4) [REDACTED]
- 5) [REDACTED]
- 6) [REDACTED]
- 7) (b)(3)/26 USC 6103
- 8) [REDACTED]
- 9) [REDACTED]
- 10) [REDACTED]
- 11) [REDACTED]
- 12) (b)(3)/26 USC 6103
- 13) June 7, 2013 letter and (b)(3)/26 USC 6103
- 14) NOT ADMITTED USPS envelope and February 28, 2013 letter

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing **DECISION AND ORDER** (12-IRS-0004) upon the following parties and entities in this proceeding as indicated in the manner described below:

Andrew M. Greene, Senior Counsel
Office of Chief Counsel (IRS)
[Redacted]
[Redacted]
Atlanta, Georgia *Redacted*
Sent via FedEx & Electronically
[Redacted]

Ms. Diana Gertscher
Internal Revenue Service
[Redacted]
Washington, DC *Redacted*
Sent FedEx & Electronically
[Redacted]

(b)(3)/26 USC 6103
[Redacted]
(b)(3)/26 USC 6103 *Redacted*
Sent via FedEx & Electronically
[Redacted]

ALJ Docketing Center
U. S. Coast Guard
U. S. Custom House, [Redacted]
Redacted
Baltimore, MD [Redacted]
Sent via FedEx & Electronically
[Redacted]

Done and dated on this 9th day of September, 2013 at
New Orleans, Louisiana.

_____/s/
Nicole E. Simmons
Paralegal Specialist to the
Hon. Bruce Tucker Smith