

**THE DEPARTMENT OF THE TREASURY
OFFICE OF PROFESSIONAL RESPONSIBILITY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C.**

DIRECTOR, OFFICE OF	)	
PROFESSIONAL RESPONSIBILITY	)	
	)	
Complainant	)	Complaint No. 2009-11
	)	
V.	)	
	)	
Michael F. Rafferty	)	
	)	
Respondent	)	

Decision by Default

In this proceeding brought by the Acting Director, Office of Professional Responsibility (OPR), United States Department of the Treasury, Internal Revenue Service (IRS), on February 27, 2009, OPR filed a Complaint against the Respondent, Michael F. Rafferty, seeking his disbarment from practice before the IRS. Respondent is a practitioner as an attorney before the Internal Revenue Service. Subsequent to the filing of the Complaint, on May 21, 2009, OPR filed a Motion for a Decision by Default. For reasons which follow, the Court, finding the Respondent to be in default, grants OPR's Motion and issues this Decision by Default.

The Complainant, in Eight Counts, alleged that the Respondent engaged in disreputable conduct. Count 1 alleges that the Respondent did not file his 2001 tax year individual federal income tax return until November 4, 2002. Respondent had been granted an extension of time, until October 15, 2002 to make that year's filing. Count 2 alleges the same failing, but it pertains to the 2002 tax return and is more flagrant because it alleges that no tax return was ever filed by the Respondent for that tax year. Count 3, involving tax year 2003, likewise involves a failure to file. In that instance the Respondent was granted an extension until August 15, 2004 to make his filing but he never did so. Count 4 pertains to the 2004 tax return. Though Respondent was granted an extension to file for that year's return, until August 15, 2005, he did not file that year's return until February 15, 2006. Count 5 deals with a problem ensuing from Respondent's failure to timely file his 2004 tax return. His individual tax liability for that year, and penalties associated with that failure, totaled \$65,916.40. Yet, the Complaint alleges this tax liability was never paid. Count 6 represents a return to the Respondent's failure to file his federal individual tax return, this time for the 2005 tax year. As with other years listed in the Complaint, the Respondent sought and received an extension to make that

year's filing, until October 15, 2006. However, the Complaint relates that no return has ever been filed by the Respondent for that year. Count 7 pertains to the 2006 tax year. Again, Respondent sought and received an extension, until October 15, 2007 but he never filed his individual tax return for that year. Count 8 involves the 2007 individual tax return obligation and again the Respondent sought, and received, an extension of time to make that year's filing, until October 15, 2008. The Complaint alleges that the Respondent has never filed his return for the 2007 tax year.

In each of the Counts, except Count 5, the Complainant alleges that the Respondent had sufficient gross income for the year associated with each count to require that he file a Federal individual income tax return. Count 5, as set forth above, is different from the other counts in that it pertains to an unpaid tax liability for the 2004 tax year. For each of the Counts in the Complaint, an attachment is included to document the charge made. For example, for Count 1, Attachment 1 was included and shows, through the Respondent's Account Transcript for 2001, that he had income sufficient to obligate a timely filing for that year. In each instance, the attachments represent an official records document maintained by the IRS.

The Complaint asserts that, individually and collectively, the Respondent's enumerated failures to file his returns constitutes willful and disreputable conduct and willful violations pursuant to 31 C.F.R. § 10.51. The Complaint concludes that such conduct "reflect[s] adversely on [Respondent's] current fitness to practice [and] warrant[s] his disbarment from practice before the Internal Revenue Service." Complaint at 9.

OPR's Motion for Default relates that the Respondent was served a copy of the Complaint via Certified Mail to the Respondent's last known address.¹ The return receipt for that certified mail shows that it was signed with the name Michael F. Rafferty at that address on March 3, 2009. OPR Exhibits 1 and 2. The Complaint advised that the Respondent was required to file his Answer within thirty (30) days and that a failure to do so could result in a default decision. Confirming that the Respondent received the Complaint, the Respondent contacted OPR and sought an extension of time to file his Answer. The request was granted by OPR, allowing the Respondent until May 4, 2009 to file his Answer. A second extension was then granted by OPR, this time allowing the Respondent until May 15, 2009 to file his Answer. However, as of the May 21, 2009 filing of OPR's Motion for Default, the Respondent had not filed his Answer. The Court notes that the Respondent's actions are consistent with the allegations in the Complaint. That is, the Respondent would habitually ignore the due date for an obligation, in those instances by failing to file a timely individual tax return, then seek an extension of time to comply with that obligation, and then ignore the extended date for compliance. Like the Complaint itself, OPR sent a copy of its Motion for Default to the Respondent's Memphis, Tennessee address via certified and by regular mail.

OPR correctly notes that the failure to file an answer "constitutes an admission of the allegations of the complaint and a waiver of [the right to a] hearing, and the

¹ Respondent's address is Address 1.

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.” 31 C.F.R. § 10.64(d).

Accordingly, with the foregoing history of this matter in mind, OPR seeks to have the Respondent’s failure to file an answer to the allegations in the Complaint deemed as admissions of all of the allegations in it and that the Respondent has, by the same failure, waived his right to a hearing. On the basis of the allegations in the Complaint, now considered by the Respondent’s failures to have been admitted, OPR seeks a Decision by Default for disbarment of the Respondent and also seeking that any future reinstatement be at the sole discretion of OPR, which, at a minimum, would include rectifying each of the deficiencies as listed in the eight Counts to the satisfaction of OPR.

Certainly each of the eight Counts constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51(6). That section provides that “[w]illfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax” is disreputable conduct for which a practitioner may be sanctioned. As described above, the Respondent has engaged in repeated instances of failing to file his federal tax returns, either by not filing his returns on time, even as such times were extended, or by not filing any return at all for the years 2002, 2003, 2005, 2006 and 2007. For 2001, Respondent’s failure was a failure to file his return for that year until after the extended due date. In 2004, a similar failure occurred. That is, Respondent failed to submit his tax return even by the extended due date. The 2004 incident was more serious than the 2001 failure. While the 2001 failure was about 3 weeks tardy beyond the extended due date, Respondent was six months late from the extended due date for 2004. Further, he has never paid the taxes due for that year, 2004, which amount represent a sizeable tax obligation, as Respondent owes nearly \$67,000 dollars in taxes.

Respondent’s continual practice of ignoring his tax obligations over a long number of years represents a trait that has carried over in this Complaint, as Respondent has behaved in a similar fashion. As with his tax obligations, recounted in Counts 1 through 8, Respondent when faced with this Complaint sought an extension of the time allowed for an Answer to be filed and then sought still another extension. Having received two extensions, Respondent acted as he has too many times in the past by ignoring the grace period afforded by the extension and continuing to not fulfill his obligation. In the instance of this Complaint, as with the Counts themselves, this failure to meet his obligations has consequences. Regarding the failure to file an Answer to the Complaint, the consequence is that the Respondent has waived his right to a hearing and the charges, documented as they are in the attachments to the Complaint, are all deemed to be admitted. With regard to the failure to file an Answer, and Respondent’s failure to respond to the Motion for a decision by default, the consequence is that the Respondent is found to be in DEFAULT per 31 C.F.R. § 10.64.

Having closely considered the evidence in this case and upon finding the Respondent in Default for failing to file an Answer in this proceeding, the Court

concludes that OPR has established by clear and convincing evidence in the record the facts alleged in Counts 1 through 8, that each of such Counts constitute disreputable conduct on the part of the Respondent and that, except for Count 1, each of the other Counts individually justify the sanction of disbarment. Collectively, Counts 2 thorough 8 serve to highlight the long term behavior of the Respondent in ignoring his tax filing obligations as well as his tax obligation for 2004.

Accordingly, the Court issues this **Decision by Default for DISBARMENT**, with any future reinstatement possibility being at the sole discretion of OPR, with whatever requirements and terms that Office may insist upon.

SO ORDERED.

William B. Moran

June 17, 2009

Washington, D.C.