

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

**ELIZABETH C. KASTENBERG,  
ACTING DIRECTOR,  
OFFICE OF PROFESSIONAL  
RESPONSIBILITY,**

Complainant

v.

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

Respondent

**COMPLAINT NO. 2019-00002**

**DOCKET NUMBER:**

**19-IRS-0002**

**HON. MICHAEL J. DEVINE  
Administrative Law Judge**

**DEFAULT DECISION AND ORDER**

**I. PROCEDURAL HISTORY**

On October 10, 2019, Complainant Elizabeth C. Kastenberg, in her official capacity as Acting Director Office of Professional Responsibility of the Internal Revenue Service (IRS), filed a Complaint against Respondent **(b)(3)/26 USC 6103** seeking Respondent's disbarment from practice before the IRS. Complainant sent a copy of the Complaint and a "Notice of Institution of Proceedings" letter to Respondent informing him disbarment proceedings had been initiated against him.<sup>1</sup> The Complaint advised Respondent of the 30-day timeframe to file an Answer, providing addresses for the Administrative Law Judge (ALJ) and IRS counsel, and notifying Respondent that failure to file an Answer may result in a default decision.

---

<sup>1</sup> The Complaint was sent by regular and certified mail.

On December 4, 2019, the ALJ issued an Order to Show Cause, as Respondent had failed to file an Answer, but Complainant had failed to file proof of service of the Complaint. Then, Complainant filed a First Amended Complaint on December 11, 2019, and attached a Certificate of Service indicating it was sent to Respondent by regular and certified mail. On March 16, 2020, Complainant sent the First Amended Complaint to Respondent again, this time by UPS second-day delivery, along with a cover letter stating “[w]e are re-serving this via commercial delivery...” Complainant filed a Notice of Return of Service on April 7, 2020, demonstrating the re-served First Amended Complaint had been delivered to Respondent at his home and business addresses on March 17, 2020.

## **II. STANDARD OF PROOF**

The standard of proof differs depending on the nature of the proposed sanction. 31 C.F.R. § 10.76(b). Because Complainant seeks disbarment of Respondent, the applicable standard of proof is clear and convincing evidence. *Id.* The clear and convincing evidence standard has been defined “as evidence of such weight that it produced 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 (4<sup>th</sup> Cir. 2001) (internal quotation marks, citations omitted).

## **III. FINDINGS OF FACT**

1. At all relevant times, Respondent practiced before the IRS as a Certified Public Accountant (CPA) in the State of Ohio. (Compl. at Paragraph 1).

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

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

**IV. DISCUSSION**

**A. Decision by Default**

The regulations require an Answer to the Complaint to be filed with the ALJ, with a copy served on the IRS, within 30 days of service. 31 C.F.R. § 10.62(c); 31 C.F.R. § 10.64(a). Complainants may serve a Complaint by certified mail; first class mail, subject to certain limitations; private delivery service, such as UPS or FedEx; personal delivery; or other means agreed to by a respondent. 31 C.F.R. § 10.63(a)(1)-(3). Unless the ALJ grants an extension of time, failure to file an Answer within the prescribed time constitutes an admission of the allegations contained in the Complaint and a waiver of the right to a hearing. 31 C.F.R. § 10.64(d). The ALJ may issue a decision by default without a hearing or further procedure. Id.

Here, Complainant filed proof it served Respondent with the First Amended Complaint on March 17, 2020 by UPS second-day delivery. The First Amended Complaint contained the advisements required by 31 C.F.R. § 10.62(c), specifically

informing Respondent the Answer was due within 30 days, provided the name and address of the Administrative Law Judge with whom the Answer must be filed, provided the name and address of the IRS representative to whom a copy of the Answer must be served, and stated a decision by default may be rendered against Respondent in the event he failed to file an Answer.

Respondent's Answer was due April 16, 2020. To date, Respondent has not filed an Answer to the original Complaint or the First Amended Complaint. Therefore, the allegations of the First Amended Complaint are deemed admitted, and the undersigned ALJ may issue a decision by default.

**B. Incompetence and Disreputable Conduct**

An ALJ, by delegation from the Secretary of the Treasury, may censure, suspend, or disbar a practitioner if he or she is shown to be incompetent or disreputable within the meaning of 31 C.F.R. § 10.51. See 31 C.F.R. §§ 10.50(a), 10.70, and 10.76.

Incompetent and disreputable conduct includes

Willfully 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.

31 C.F.R. § 10.51(a)(6).

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

I find Respondent's (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103 (Compl. at Paragraphs 12, 13, 24, 25, 34, and 35). These actions constitute disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(6).

Likewise, I find Respondent's (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

willful failure and constitutes disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(6).

Complainant also alleges Respondent committed other acts that serve as aggravating factors, particularly (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

Complainant explains these allegations are presented as aggravating factors, and not as additional counts alleging violations of the rules of practice before the IRS, because the statute of limitations for bringing disbarment proceedings against an IRS practitioner is

five years from the date of the alleged conduct. See 28 U.S.C. § 2462. Though these actions cannot alone form the basis for disbarment, they show a pattern of conduct by the Respondent wherein (b)(3)/26 USC 6103

**V. SANCTION**

If the complainant seeks a sanction of a monetary penalty, disbarment, or a suspension of six or more months, the complainant must prove the allegations of fact that support such a sanction by clear and convincing evidence. 31 C.F.R. § 10.76(b). Here, Complainant seeks disbarment of Respondent. The allegations of the Complaint have been deemed admitted, as Respondent failed to file an Answer. As discussed above,

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103 These facts demonstrate by clear and convincing evidence that Respondent engaged in incompetent and disreputable conduct. 31 C.F.R. § 10.51(a)(6). A practitioner may be disbarred for engaging in incompetent and disreputable conduct. 31 C.F.R. § 10.50(a). Considering Respondent's actions in this case, I find that **DISBARMENT** is the appropriate sanction.

**WHEREFORE,**

**ORDER**

**IT IS HERBY ORDERED**, Respondent, (b)(3)/26 USC 6103 is **DISBARRED** from practice before the IRS effective as of the date of issuance of this Default Decision and Order.

**IT IS FURTHER ORDERED**, pursuant to 31 C.F.R. § 10.81(a), Respondent may petition for reinstatement after five (5) years from the date of disbarment.

*/s/*  
\_\_\_\_\_  
**MICHAEL J. DEVINE**  
Administrative Law Judge  
U.S. Coast Guard

Done and dated July 6, 2020  
Baltimore, Maryland

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing Default Decision and Order upon the following parties as indicated below:

Jennifer E. Bugaj, Esq.  
Department of the Treasury  
Internal Revenue Service  
Office of Chief Counsel  
Area Counsel, General Legal Services  
200 W. Adams St., Ste. 2400  
Chicago, IL 60606  
Phone: (312) 368-8843  
Email: [jennifer.e.bugaj@irsounsel.treas.gov](mailto:jennifer.e.bugaj@irsounsel.treas.gov)  
Fax: (312) 368-8882  
*Sent by Email*

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



*Sent by U.S. Mail*

ALJ Docketing Center  
United States Coast Guard  
U.S. Custom House, Rm. 412  
40 South Gay Street  
Baltimore, MD 21202  
Email: [aljdocketcenter@uscg.mil](mailto:aljdocketcenter@uscg.mil)  
Fax: (410) 962-1746  
*Sent by Email*

\_\_\_\_\_  
/s/  
Sarah M. Grabenstein  
Attorney-Advisor to the  
Hon. Michael J. Devine  
40 S. Gay Street, Room 412  
Baltimore, MD 21202  
Phone: 202-676-7474  
Fax: 410-962-1742  
[sarah.m.grabenstein@uscg.mil](mailto:sarah.m.grabenstein@uscg.mil)

Done and dated July 6, 2020  
Baltimore, Maryland