THE DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY, Complainant, v. (b)(3)/26 USC 6103 Respondent.	Docket No. 19-AF-0163-OD-001 (Complaint No. 2019-00001) June 18, 2020

ORDER GRANTING SUMMARY JUDGMENT

This matter is before the Court upon a disciplinary complaint ("*Complaint*") issued by the Director of the Office of Professional Responsibility ("Complainant") for the Internal Revenue Service ("IRS") against (b)(3)/26 USC 6103 CPA ("Respondent") pursuant to 31 U.S.C. § 330 as implemented by 31 C.F.R. part 10. The *Complaint* charges Respondent with four counts of violating the rules of conduct for IRS practitioners at 31 C.F.R. § 10.51(a)(6) and asks the Court to disbar Respondent from practice before the IRS pursuant to 31 C.F.R. § 10.50 and § 10.52.

Currently before the Court are Complainant's *Motion for Summary Judgment* and Respondent's *Motion to Dismiss*, as well as Complainant's outstanding motion to strike portions of Respondent's *Answer*. For the reasons that follow, the Court will deny Respondent's motion, grant Complainant's motions, and render summary judgment in Complainant's favor.

PROCEDURAL HISTORY

The *Complaint* in this matter was issued on July 24, 2019, and assigned to the undersigned for hearing.[1] On August 26, 2019, Respondent filed an *Answer* to the *Complaint* in which he raised two affirmative defenses and a counterclaim. Complainant subsequently filed a *Motion to Strike Affirmative Defenses and Counterclaim* on November 7, 2019, asking the Court to strike Respondent's proffered defenses and counterclaim. Respondent opposed the motion.

On December 4, 2019, before the Court had ruled on the outstanding motion to strike, Complainant filed a *Motion for Summary Judgment*, supported by 17 documentary exhibits, asking the Court to render summary judgment against Respondent and to issue an order

[1] Pursuant to an Interagency Agreement in effect beginning June 10, 2015, Administrative Law Judges of the U.S. Department of Housing and Urban Development have been appointed by the Treasury Secretary and are authorized to hear cases brought by the Internal Revenue Service.

disbarring him from practice before the IRS. Thereafter, the Court issued several orders that established a deadline in January 2020 for Respondent to respond to the *Motion for Summary Judgment* and canceled the hearing that had previously been scheduled to take place that month.

On December 27, 2019, Respondent submitted a *Motion to Dismiss*, supported by one documentary exhibit, asking the Court to dismiss the *Complaint* and Complainant's "subsequent motions" with prejudice. Respondent has not submitted any further response to the *Motion for Summary Judgment*. Complainant has filed an opposition to the *Motion to Dismiss* supported by seven additional documentary exhibits.

APPLICABLE LEGAL PRINCIPLES

IRS Disciplinary Proceedings. The Secretary of the Treasury is authorized by statute to "regulate the practice of representatives of persons before the Department of the Treasury," including those who represent taxpayers before the IRS. 31 U.S.C. § 330(a). The standards of conduct for such practitioners are set forth in 31 C.F.R. part 10, commonly known as Circular 230.[2] Complainant, as Director of the Office of Professional Responsibility ("OPR"), is charged with enforcing these standards. See 31 C.F.R. § 10.1(a).

Complainant may suspend, disbar, censure, or impose a monetary penalty on any IRS practitioner who is incompetent or disreputable or who violates the Secretary's standards of conduct for IRS practitioners. 31 U.S.C. § 330(c); 31 C.F.R. § 10.50(a), (c). Specific examples of sanctionable "[i]ncompetence and disreputable conduct," as defined by the Secretary, are listed in 31 C.F.R. § 10.51(a). For example, pertinent to this case, 31 C.F.R. § 10.51(a)(6) provides that incompetence and disreputable conduct for which an IRS practitioner may be sanctioned includes "[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."

When Complainant determines that a practitioner has violated the Secretary's rules of conduct, including by engaging in any of the conduct listed under § 10.51(a), she may initiate a proceeding for sanctions after giving the practitioner notice and an opportunity to respond to the allegations against him. 31 C.F.R. § 10.60(a), (c). Such proceedings are conducted before an administrative law judge in accordance with the Administrative Procedure Act and the procedural rules set forth in 31 C.F.R. part 10, subpart D. Id. § 10.0, § 10.70, § 10.72(a)(1), (a)(3)(ii). The judge must enter a decision that includes a statement of his findings and conclusions, as well as the reasons and basis therefor, and an order of censure, suspension, disbarment, monetary penalty, or dismissal of the complaint. Id. § 10.76(a).

Standard of Proof. If the sanction is censure or a suspension of less than six months' duration, necessary facts need only be proven by a preponderance of the evidence. 31 C.F.R.

[2] See Treasury Department Circular No. 230 (Rev. 6-2014), *available at* https://www.irs.gov/pub/irs-pdf/pcir230.pdf. The Department of the Treasury initially published these standards of conduct in department circulars, and later promulgated them in the Code of Federal Regulations as well.

§ 10.76(b). However, if the sanction is a monetary penalty, disbarment, or a suspension of six months or longer, "an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record." Id.

Summary Adjudication. In IRS disciplinary proceedings, "[e]ither party may move for a summary adjudication upon all or any part of the legal issues in controversy." 31 C.F.R. § 10.68(a)(2). The Court may render summary adjudication if "the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law." Id. § 10.76(a)(2).

Thus, a motion for summary adjudication under § 10.68(a)(2) is analogous to a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. See OPR v. Everett, Complaint No. 2009-27, slip op. at 3 (ALJ Decision, July 22, 2010).[3] Rule 56 permits summary judgment where the moving party demonstrates "lack of a genuine, triable issue of material fact" and where, "under the governing law, there can be but one reasonable conclusion as to the outcome." Fed. R. Civ. Pro. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). An issue is "genuine" only if the evidence is such that a reasonable fact finder could rule in favor of either party. Anderson, 477 U.S. at 248. A fact is "material" only if it is capable of affecting the outcome of the case under governing law. Id.

In considering a summary judgment motion, the court must view the evidence in the light most favorable to the nonmoving party. Tolan v. Cotton, 134 S. Ct. 1861, 1866 (2014). Summary judgment is not available where "material facts are at issue, or, though undisputed, are susceptible to divergent inferences." Tao v. Freeh, 27 F.3d 635, 637 (D.C. Cir. 1994); see Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970) (requiring consideration of "reasonable inferences" that can be drawn from the facts). However, summary judgment against a party is appropriate where he has failed to make a sufficient showing on an essential element as to which he has the burden of proof. Celotex, 477 U.S. at 322-23.

FACTUAL BACKGROUND

The following facts are not subject to reasonable dispute.

Respondent is licensed as a certified public accountant ("CPA") in Florida. In this capacity, he has prepared and filed documents and has corresponded and communicated with the IRS within the meaning of 31 C.F.R. § 10.2(a)(4).

The *Complaint* alleges that Respondent committed four acts constituting disreputable conduct under the IRS's rules of conduct for practitioners set forth in 31 C.F.R. § 10.51(a)(6). Specifically, Counts I, II, and III of the *Complaint* allege that Respondent committed disreputable conduct under § 10.51(a)(6) (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Count IV alleges that Respondent further committed disreputable conduct under § 10.51(a)(6) (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

[3] Copies of all IRS disciplinary opinions cited herein are appended to Complainant's *Motion for Summary Judgment*.

[redacted]

Id. Complainant alleges that these facts constitute aggravating factors in this matter.

FINDINGS AND CONCLUSIONS

The *Complaint* and *Motion for Summary Judgment* allege that Respondent violated 31 C.F.R. § 10.51(a)(6) [redacted] constitute aggravating factors in this matter. Complainant asserts that Respondent should be disbarred from practice before the IRS on account of his misconduct.

Respondent denies some of the allegations raised in the *Complaint* and asserts two affirmative defenses and a counterclaim. Respondent first disputes that he is subject to Complainant's disciplinary authority and argues, as his first affirmative defense, that

Complainant lacks subject matter jurisdiction over him. With respect to Count IV of the *Complaint*, Respondent (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 As to Counts I, II, and III, Respondent (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 claiming that these allegations are mere legal conclusions. He also asserts estoppel as his second affirmative defense, suggesting that Complainant should be estopped from taking disciplinary action against him because he has been in communication with the IRS for over a decade regarding (b)(3)/26 USC 6103 (b)(3)/26 USC 6103. Respondent further disputes that he has acted willfully.

After reviewing the entire record and considering the parties' pleadings and motions, the Court finds that Complainant has established she is entitled to summary judgment against Respondent, for the reasons discussed below.

I. Respondent is subject to Complainant's disciplinary authority and to this Court's subject matter jurisdiction.

As noted above, Respondent disputes that he is subject to Complainant's disciplinary authority. In support, he cites Loving v. IRS, 742 F.3d 1013 (D.C. Cir. 2014). Respondent further asserts, as his first affirmative defense, that subject matter jurisdiction in this matter is lacking, again citing Loving.

31 U.S.C. § 330 authorizes the Secretary of the Treasury to "regulate the practice of representatives of persons before the Department of the Treasury," including tax professionals such as CPAs who represent taxpayers before the IRS. 31 U.S.C. § 330(a). In Loving, the D.C. Circuit considered a challenge to new regulations promulgated by the IRS which purported to govern independent tax-return preparers. 742 F.3d at 1015. The Circuit Court affirmed the lower court's decision that the IRS lacked authority to regulate such tax-return preparers, "a group that had not previously been regulated pursuant to Section 330." Id. However, as explained by the District Court in its underlying decision: "Preparers who are attorneys, *CPAs*, enrolled agents, or enrolled actuaries *are otherwise regulated by the IRS* and thus have no bone to pick with the new regulations." Loving v. IRS, 917 F. Supp. 2d 67, 69 (D.D.C. 2013) (emphasis added) (citing 31 C.F.R. § 10.3), aff'd, 742 F.3d 1013 (D.C. Cir. 2014). Thus, as recognized by the courts, CPAs have long been subject to the IRS's disciplinary authority under 31 U.S.C. § 330, and Loving did not disturb this authority.

In this case, Respondent is a licensed CPA, not an independent tax-return preparer of the sort referenced in Loving. He admits that, as a CPA, he has prepared and filed documents with the IRS and communicated and corresponded with the IRS within the meaning of 31 C.F.R. § 10.2(a)(4), which constitutes practice before the IRS under § 10.2(a)(4) and subjects him to the IRS's longstanding exercise of disciplinary authority over CPAs pursuant to 31 U.S.C. § 330. The Secretary of the Treasury has delegated this disciplinary authority to Complainant, the OPR Director, who is empowered to initiate disciplinary proceedings against errant practitioners, such as the instant disciplinary proceeding, under 31 U.S.C. § 330(c). See 31 C.F.R. §§ 10.1(a), 10.50(a), 10.60. And the undersigned Administrative Law Judge holds subject matter

jurisdiction over this proceeding pursuant to 31 C.F.R. § 10.70(a) and the Secretary of the Treasury's valid appointment made thereunder.

For these reasons, Respondent is subject to Complainant's disciplinary authority and this Court's subject matter jurisdiction. Accordingly, Respondent's arguments to the contrary are rejected and his first affirmative defense is hereby **STRICKEN**.

II. Respondent's counterclaim must be stricken.

In his *Answer*, Respondent attempts to assert a counterclaim against Complainant under 26 U.S.C. § 7214, which proscribes as unlawful certain acts committed by federal revenue officers or agents, such as extortion and acts involving attempts to defraud the United States. Respondent asserts that five named IRS employees and "others as may be discovered" who have communicated with him over the years regarding (b)(3)/26 USC 6103 are now "cherry-picking limited facts and twisting them into misstated allegations" in the *Complaint* and are "attempting to … harass and willfully oppress under the color of law the Respondent's rights." Respondent asks that the named individuals be fined and dismissed from office.

However, as Complainant points out in her *Motion to Strike Affirmative Defenses and Counterclaim*, the procedural rules governing this matter, which are set forth in 31 C.F.R. part 10, do not permit the filing of counterclaims. The rules do not authorize a respondent to raise, or a presiding Administrative Law Judge to decide, a counterclaim. The Federal Rules of Civil Procedure, which are not binding here but may serve as persuasive authority, generally permit defendants to raise counterclaims. See Fed. R. Civ. Pro. 13. But Rule 13 expressly states that "[t]hese rules do not expand the right to assert a counterclaim—or to claim a credit—against the United States or a United States officer or agency." Fed. R. Civ. Pro. 13(d). Further, this Court is an administrative tribunal whose powers are strictly confined to those authorized by statute.

Because this Court has no jurisdiction to consider a counterclaim in an IRS disciplinary proceeding or to grant the relief sought by Respondent, his asserted counterclaim is hereby **STRICKEN**.

III. Respondent engaged in sanctionable misconduct under 31 C.F.R. § 10.51(a)(6).

A. Counts I, II, and III

Counts I, II, and III of the *Complaint* allege that Respondent (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Under 31 C.F.R. § 10.51(a)(6), "willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax" constitutes "[i]ncompetence and disreputable conduct" for which an IRS practitioner may be sanctioned. Thus, to establish sanctionable misconduct under this clause, Complainant must show that (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

Under the federal tax code, (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 26 U.S.C. § 6151 provides that a tax is due to the IRS at the time fixed for filing the return, determined without regard to any extension of time for filing. See OPR v. Gee, Complaint No. 2009-31, slip op. at 3 (Decision on Appeal, Aug. 8, 2011). (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 See 26 U.S.C. §§ 6151, 6072, 6081.[4]

Despite these statutory deadlines and requirements, (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Respondent denies Complainant's allegations (b)(3)/26 USC 6103 on the basis that these are "legal conclusion[s]" to which he is "unable to make an adequate response." (b)(3)/26 USC 6103

The remaining question is a question of law, namely, whether Respondent's conduct was willful. Willfulness is generally understood to refer to wrongful conduct that goes beyond mere negligence, meaning that the wrongdoer, at minimum, "either knew or showed reckless disregard for the matter of whether [his] conduct was prohibited." McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133 (1988). Thus, where willfulness is a condition of civil liability, the Supreme Court has held that it encompasses both knowing and reckless violations of a given standard. See Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007); see also Cheek v. United States, 498 U.S. 192, 200 (1991) (holding that, where willfulness is a condition of criminal liability for violating a tax law, the term connotes "a voluntary, intentional violation of a known legal duty"); OPR v. Kilduff, Complaint No. 2008-12, slip op. at 5 (Decision on Appeal, Jan. 20, 2010) (applying standard set forth in Cheek, but questioning whether criminal standard is appropriate in civil disciplinary proceedings); OPR v. Gee, supra, slip op. at 4 n.1 (also applying criminal standard, but noting that civil standard would yield same results in IRS disciplinary cases).

As an experienced CPA, Respondent was surely aware of his legal duty (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

(b)(3)/26 USC 6103 (b)(3)/26 USC 6103 In other words, the statutes speak for themselves.

(b)(3)/26 USC 6103

This finding is further supported by caselaw from past IRS disciplinary proceedings holding that a tax professional's (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 See OPR v. Gee, supra, slip op. at 4 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 ; OPR v. Craft, Complaint No. 2010-12, slip op. at 12 (ALJ Decision, Jan. 13, 2011) (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 , aff'd (Decision on Appeal, Oct. 12, 2011). (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

Respondent argues that his conduct has not been willful because (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Relatedly, he claims estoppel as an affirmative defense in this matter, suggesting that Complainant cannot pursue disciplinary action against him for (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 And as grounds for his *Motion to Dismiss*, Respondent reiterates that he (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Respondent suggests that, under the circumstances, Complainant's attempt to take disciplinary action against him is retaliatory and intended to disparage and harass him, and he asks the Court to "see through the guise of the allegations and attacks to recognize that the left and right hands are double dealing speaking through both sides of the mouth while the truth is reveal[ed] by" the IRS's (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

Respondent's arguments regarding his (b)(3)/26 USC 6103 and willfulness fail, for several reasons. First, absent exceptional circumstances, (b)(3)/26 USC 6103 does not negate the wrongful nature of a person's (b)(3)/26 USC 6103 , particularly when that person is a tax professional. See OPR v. Gee, Complaint No. 2009-31, slip op. at 18-27 (ALJ Decision, Mar. 28, 2011) (thoroughly rejecting argument that (b)(3)/26 USC 6103 negated willfulness under § 10.51(a)), aff'd (Decision on Appeal, Aug. 8, 2011). In general, every taxpayer "is obligated to conduct his financial affairs in such a way that he has cash available to satisfy his tax obligations on time." United States v. Tucker, 686 F.2d 230, 233 (5th Cir. 1982), cert. denied, 459 U.S. 1071(1982); see also United States v. Easterday, 564 F.3d 1004, 1010-11 (9th Cir. 2009); United States v. Williams, 121 F.3d 615, 621 (11th Cir. 1997); United States v. Ausmus, 774 F.2d 722, 725 (6th Cir. 1985). Otherwise, a taxpayer could simply dissipate his liquid assets just before his taxes come due and thereby avoid any liability. Tucker, 686 F.2d at 233.

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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

For the foregoing reasons, the Court finds that Respondent's conduct was willful and rejects his arguments to the contrary, including his unsupported argument that he was (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Respondent's estoppel defense, which is grounded in his (b)(3)/26 USC 6103 argument, is hereby **STRICKEN** as meritless.[5] Respondent's *Motion to Dismiss* similarly lacks merit and will be denied.

[5] Aside from the fact that the underlying (b)(3)/26 USC 6103 argument lacks merit, Respondent's estoppel defense is also defective in that he has not properly pled any of the legal elements of estoppel. In general, a party claiming estoppel must show that his opponent engaged in conduct or made a representation upon which he reasonably relied, in good faith, in such a manner as to change his position for the worse—i.e., he must show that the opposing party engaged in conduct that induced his detrimental reliance. Heckler v. Cmty. Health Servs., Inc., 467 U.S. 51, 59 (1984). When a party claims estoppel against the government, he also must show, at a minimum, that a government

After review of the entire record, no material facts remain in dispute. Clear and convincing evidence shows that Respondent (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 as alleged in Counts I, II, and III of the *Complaint*, which constitutes disreputable and sanctionable conduct under 31 C.F.R. § 10.51(a)(6). Accordingly, Complainant has established that she is entitled to summary judgment against Respondent on Counts I, II, and III pursuant to 31 C.F.R. § 10.76(a)(2).

B. Count IV

In addition to willful evasion of payment of taxes, sanctionable misconduct under 31 C.F.R. § 10.51(a)(6) also includes "[w]illfully failing to make a Federal tax return in violation of the Federal tax laws." Count IV of the *Complaint* alleges that Respondent committed misconduct (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

Complainant, however, disputes these assertions, alleging that Respondent made contradictory statements to an (b)(3)/26 USC 6103 According to Complainant, when the

(b)(3)/26 USC 6103

Resolving the parties' competing factual allegations would require the Court to credit Respondent's assertions over the (b)(3)/26 USC 6103 or vice versa, which would be inappropriate on summary disposition. Accordingly, the Court will not grant Complainant's *Motion for Summary Judgment* with respect to Count IV. However, as discussed in greater detail below, the Court finds Respondent's misconduct under Counts I, II, and III to be sufficient to warrant the sanction proposed by Complainant. Because the Court will grant the relief ultimately requested by Complainant by issuing an order of disbarment, Count IV is moot.

IV. The appropriate sanction for Respondent's misconduct is disbarment.

As a sanction for Respondent's misconduct, Complainant asks the Court to disbar him from practice before the IRS pursuant to 31 C.F.R. § 11.50 and § 11.52, with reinstatement conditioned upon the provisions of 31 C.F.R. § 10.79 and § 10.81. Complainant notes that, in

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actor engaged in affirmative misconduct. See OPM v. Richmond, 496 U.S. 414, 419-24 (1990) (explaining that Supreme Court has never allowed a claim of equitable estoppel to lie against the federal government, but leaving open the possibility that "some type of 'affirmative misconduct'" might support such a claim); Heckler, 467 U.S. at 60 (noting that, for public policy reasons, "it is well settled that the Government may not be estopped on the same terms as any other litigant"). In this case, Respondent has not pled facts to support any of the elements required to make out an estoppel claim, such as a misrepresentation by the opposing party or detrimental reliance, much less affirmative misconduct on the part of the government.

her role as OPR Director, she is the official within the Department of the Treasury with the primary day-to-day responsibility of investigating allegations of misconduct by practitioners and enforcing the regulations governing practice before the IRS. Therefore, she argues that she possesses substantial expertise in weighing the seriousness of a practitioner's misconduct and her proposed sanction is entitled to deference. See OPR v. Kilduff, Complaint No. 2008-12, slip op. at 6 (Decision on Appeal, Jan. 20, 2010). Thus, Complainant asks the Court to sustain the proposed sanction of disbarment in light of her strong interest in protecting the public and given that other IRS practitioners have been disbarred for conduct akin to Respondent's in past disciplinary cases.

The ultimate question in an IRS disciplinary case is fitness to practice. Harary v. Blumenthal, 555 F.2d 1113, 1116 (2d Cir. 1977). Practice before the IRS is a privilege, not a right, and a practitioner cannot partake of that privilege without also assuming the responsibilities of complying with the regulations that govern it. OPR v. Everett, Complaint No. 2009-27, slip op. at 7 (ALJ Decision, July 22, 2010). A practitioner whose conduct is incompetent, disreputable, or fails to comport with the IRS's regulations may be suspended or disbarred "in furtherance of the IRS's regulatory duty to protect the public interest and the Department by conducting business with responsible persons only." Id.

Any sanction imposed on an IRS practitioner must "take into account all relevant facts and circumstances." 31 C.F.R. § 10.50(e). Other courts imposing sanctions on IRS practitioners have considered factors such as the nature and seriousness of the practitioner's misconduct, the harm it caused, the practitioner's degree of experience and history of compliance, and any other aggravating or mitigating factors cited by the parties. See, e.g., OPR v. Gee, Complaint No. 2009-31, slip op. at 33-42 (ALJ Decision, Mar. 28, 2011); OPR v. Craft, Complaint No. 2010-12, slip op. at 13-14 (ALJ Decision, Jan. 13, 2011); Kilduff, supra, slip op. at 6-7; OPR v. Davis, Complaint No. 2007-35, slip op. at 7 (Decision on Appeal, Mar. 13, 2009).

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103 For example, in Davis, the Secretary of the Treasury upheld and Administrative Law Judge's disbarment of a CPA who (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Davis, supra, slip op. at 7. However, the Secretary went on to state that the CPA's pattern of (b)(3)/26 USC 6103 would have been serious enough, by itself, to merit disbarment because such conduct imposed unjustified administrative burdens on the IRS and failed to meet "basic obligations of citizenship." Id. Likewise, in Kilduff, the Secretary affirmed a 48-month suspension where a practitioner had (b)(3)/26 USC 6103 but found that the record would have supported disbarment if the OPR Director had requested it. Kilduff, supra, slip op. at 6.

Where a tax professional has willfully (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 it is even clearer that disbarment is an appropriate sanction. For example, in Gee, the Administrative Law Judge disbarred a CPA who had willfully (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Gee, supra, slip op. at 42. The judge observed that, as a CPA authorized to practice before the IRS, the respondent "occupie[d] a special position of public trust," yet he had failed for many years (b)(3)/26 USC 6103 as a citizen,

leaving other taxpayers to foot the bill. Id., slip op. at 39-40. Concluding that the CPA's actions showed "a high disregard [for] the standards established for the benefit of the Internal Revenue Service and the public," the judge held that disbarment was commensurate with the seriousness of the CPA's misconduct. Id., slip op. at 42. On appeal, the Secretary of the Treasury agreed, finding the sanction of disbarment appropriate because the record reflected that the CPA was a (b)(3)/26 USC 6103 OPR v. Gee, Complaint No. 2009-31, slip op. at 5 (Decision on Appeal, Aug. 8, 2011).

Similarly, in Craft, where a CPA had failed to (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 the Administrative Law Judge issued an order of indefinite suspension on summary judgment after finding that the CPA's actions showed a disregard for the IRS's standards of conduct. Craft, supra, slip op. at 13-14. However, on appeal, the Secretary of the Treasury elevated the sanction to disbarment. OPR v. Craft, Complaint No. 2010-12, slip op. at 6-9 (Decision on Appeal, Oct. 12, 2011). The Secretary found that, ordinarily, the "baseline sanction" for the misconduct at issue would be a four-year suspension or disbarment, but two aggravating factors clearly warranted disbarment under the circumstances, namely: (1) the (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Id., slip op. at 9.

This case is comparable to Craft. Although Respondent is not accused of harming any clients, he engaged in a pattern of conduct that showed a complete disregard for the IRS's standards of conduct for tax professionals (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103(b)(3)/26 USC 6103 (b)(3)/26 USC 6103

The Court considers (b)(3)/26 USC 6103 to be a baseline requirement and the lowest threshold for reputable conduct by an IRS practitioner, as an IRS practitioner's noncompliance with these laws undermines public trust in the integrity of both the tax system and the IRS bar. Respondent's failure to meet this minimal threshold renders him unfit to practice before the IRS. Accordingly, the Court finds that the appropriate sanction in this matter is disbarment.

ORDER

The Court has stricken Respondent's first and second affirmative defenses and his asserted counterclaim. Accordingly, Complainant's *Motion to Strike Affirmative Defenses and Counterclaim* is hereby **GRANTED**.

Respondent's *Motion to Dismiss* is **DENIED** for the reasons discussed in the body of the Decision above.

For the reasons discussed above, Complainant's *Motion for Summary Judgment* is **GRANTED** as to Counts I, II, and III and as to Complainant's request for sanctions. Respondent (b)(3)/26 USC 6103 shall be **DISBARRED** from practice before the IRS, with reinstatement conditioned upon compliance with the requirements of 31 C.F.R. § 10.81.

Complainant's *Motion for Summary Judgment* is **DENIED** as to Count IV, which is hereby **DISMISSED** as moot.

So **ORDERED**,

ALEXANDER FERNANDEZ

Digitally signed by: ALEXANDER FERNANDEZ
DN: CN = ALEXANDER FERNANDEZ C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of the Secretary
Date: 2020.06.17 15:26:58 -04'00'

ALEXANDER FERNÁNDEZ
United States Administrative Law Judge

Notice of Appeal Rights. Pursuant to 31 C.F.R. § 10.77, this decision may be appealed by any party by filing a Notice of Appeal within thirty (30) days of the date this decision is served on the party. The Notice of Appeal must be filed with the Secretary of the Treasury, or delegate deciding appeals, and must include a brief that states exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. The Notice of Appeal must be filed in duplicate with the OPR Director, and a copy of the Notice of Appeal and supporting brief must be served on any non-appealing party's representative.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER GRANTING SUMMARY JUDGMENT,** issued by Alexander Fernández, Administrative Law Judge, in 19-AF-0163-OD-001, were sent to the following parties on this 17th day of June 2020, in the manner indicated:

Iamanadette Jones, Staff Assistant
HUD Office of Hearings and Appeals

VIA MAIL:

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