

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

STEPHEN A. WHITLOCK,  
DIRECTOR,  
OFFICE OF PROFESSIONAL  
RESPONSIBILITY,  
Complainant,

v.

(b)(3)/26 USC 6103

Respondent

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

**INITIAL DECISION and ORDER**

**HON. CURTIS E. RENOE,**  
Presiding

**SUMMARY**

The Office of Professional Responsibility (OPR) initiated this action to disbar (b)(3)/26 USC 6103 (Respondent) from practice before the Internal Revenue Service (IRS) alleging eight counts of incompetence and disreputable conduct. Prior to the hearing, I granted, in-part, OPR's Motion for Adjudication for six of the eight Counts. On March 13, 2018, I convened an in-person hearing on the remaining two Counts of incompetence and disreputable conduct as well as to determine the appropriate sanction. For the reasons set forth below, I find the remaining two Counts **PROVED** by clear and convincing evidence and that the appropriate sanction in this case is **DISBARMENT** from practice before the IRS.

**PROCEDURAL HISTORY**

**Pleadings**

On March 12, 2015, OPR filed a Complaint against Respondent seeking his disbarment from practice before the IRS and alleging eight counts of incompetent and

disreputable conduct.

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC  
6103

See Complaint at ¶¶ 21-44. In Count 5 OPR alleged that Respondent misrepresented himself to the Department of Treasury as a Certified Public Accountant and Enrolled Agent when those statuses were not valid. Id. at ¶¶ 45-51. In Count 6 OPR alleged that Respondent made false or misleading statements to clients with the intent to deceive or, alternatively, Respondent failed to exercise due diligence in the correctness of his representations to clients. Id. at ¶¶ 52-68. Count 7 alleges that Respondent improperly prepared tax returns without a valid Preparer Tax Identification Number (PTIN). Id. at ¶¶ 69-73. Finally, Count 8 alleged that Respondent charged an unconscionable fee in connection with a matter before the IRS. Id. at ¶¶ 74-88.

OPR initially filed the Complaint with the incorrect Administrative Law Judge (ALJ). On April 15, 2015, OPR filed the Complaint with the correct ALJ and again served Respondent. On April 17, 2015, Respondent submitted his timely Answer to the Complaint filed on March 12, 2015; however, Respondent also sent his Answer to the incorrect ALJ. Respondent did not refile his Answer with the correct ALJ. OPR then moved for default decision against Respondent, which the previously-assigned ALJ granted on October 15, 2015. Respondent appealed the default decision to the Department of the Treasury. The appellate authority reversed and remanded the default decision back to the ALJ on June 6, 2017.

On June 16, 2017, the Chief Administrative Law Judge reassigned this case to the previous ALJ, the Honorable Parlen L. McKenna. Judge McKenna held a prehearing teleconference on October 3, 2017 and established a schedule for the disposition of this

case including time for the parties to file motions for summary adjudication and set the in-person hearing for March 8, 2018. Judge McKenna retired as of December 31, 2017. The Chief Administrative Law Judge reassigned this case to me on February 5, 2018 following Judge McKenna's retirement. On February 15, 2018, I convened a prehearing teleconference wherein all parties agreed to reschedule the in-person hearing to March 13, 2018 in Pasadena, CA.

### **Summary Adjudication**

OPR filed a timely Motion for Summary Adjudication on December 21, 2017. OPR argued that there were no genuine issues of material fact on any of the eight counts in the Complaint and that OPR was entitled to judgment as a matter of law on all counts and the proposed disbarment sanction. Respondent filed a timely opposition to OPR's Motion for Summary Adjudication on February 12, 2018. OPR further filed a reply on February 16, 2018.

By Order dated February 28, 2018, I found that clear and convincing evidence demonstrated that no genuine issues of material fact existed as to Counts 1 through 5 and Count 8. Accordingly, OPR was entitled to a decision as a matter of law for those Counts of the Complaint. *See Order Granting, in-part, Complainant's Motion for Summary Adjudication* dated February 28, 2018. I also found that genuine issues of material fact existed concerning Counts 6 and 7, as well as the proposed sanction, so a hearing was held on those remaining issues. *Id.*

### **In-Person Hearing**

On March 13, 2018, I convened an in-person hearing in Pasadena, CA to adjudicate the remaining two counts of the Complaint (Counts 6 and 7), as well as to



determine the appropriate sanction. Timothy Heinlein, Esq. appeared on behalf of OPR. He presented the testimony of two witnesses and submitted fifteen exhibits, all of which were admitted into the record.<sup>1</sup> Respondent did not appear at the hearing.<sup>2</sup>

Following the in-person hearing, the parties were both provided a copy of the hearing transcript and an opportunity to submit a post-hearing brief containing proposed findings of fact and conclusions of law pursuant to 31 C.F.R. § 10.75. See also *Order and Notice of Briefing Schedule* dated April 25, 2018. Both parties filed timely post-hearing submissions.<sup>3</sup> Neither party submitted a reply to the post-hearing briefs. Having received and reviewed all pleadings and submissions by the parties, this case is ready for disposition.

#### **STANDARD OF PROOF**

The standard of proof differs depending on the nature of the proposed sanction. *See* 31 C.F.R. § 10.76(b). Because OPR sought Respondent's disbarment, the applicable standard is clear and convincing evidence. Id. The clear and convincing evidence 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

---

<sup>1</sup> A list of all exhibits is attached to this Initial Decision as **Attachment A**.

<sup>2</sup> On March 5, 2018, my attorney-advisor reached out to both parties to inquire on the status of prehearing submissions. In response, Respondent stated that he did not think the hearing was necessary after my decision on Summary Adjudication. My attorney-advisor immediately responded, informing Respondent that two substantive issues and the appropriate sanction had not been resolved and that a hearing on those issues was necessary. My attorney-advisor expressly stated that the hearing will proceed as scheduled on March 13, 2018. See ALJ Exhibit 1 attached to this Initial Decision.

<sup>3</sup> Rulings on OPR's proposed findings of fact and conclusions of law are contained in **Attachment B** to this Initial Decision. Respondent's post-hearing brief contained mostly argument. To the extent Respondent's submission contained proposed findings of fact intertwined with his arguments, those proposed findings are not separately ruled upon; however, I have taken all of Respondent's arguments and statements into account while making this Initial Decision.



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).

### **FINDINGS OF FACT**

The following findings of fact are based upon a thorough review and consideration of the entire record and all submissions and argument provided by both parties.

1. At all relevant times herein, Respondent was engaged in practice before the IRS as both a CPA and as an enrolled agent. See Ex. 6 at 4.
2. Respondent is subject to the disciplinary authority of the Secretary of the Treasury and of OPR. See Ex. 6 at 4.
3. On February 28, 2018, I issued an Order finding Counts 1, 2, 3, 4, 5, and 8 of the Complaint proved by clear and convincing evidence via summary adjudication. See Ex. 6 (*Order Granting, in-part, Complainant’s Motion for Summary Adjudication*).
4. On March 13, 2018, I convened an in-person hearing on the remaining issues (Counts 6 and 7), as well as to determine the appropriate sanction in this case.
5. Respondent did not appear at the in-person hearing.
6. Respondent did not have a valid CPA certificate between January 1, 2009 and September 17, 2012 and between January 1, 2013 and at least September 30, 2013. See Ex. 6 at 8-9.
7. Respondent was not entitled to hold himself out as a CPA during these time periods. See Ex. 6 at 10.
8. Respondent failed to timely renew his enrolled agent status for the 2010 through 2013 cycle. See Ex. 6 at 9.

9. Respondent was not entitled to hold himself out as a CPA when he did not possess an active enrolled agent status, from January 1, 2010 to January 22, 2013. See Ex. 6 at 10.
10. During tax year 2012, Respondent used a “fee agreement” form for over 150 clients in which he held himself out as both a CPA and an enrolled agent. See Ex. 6 at 11; Ex. 7; and, Ex. 9 at 96:16-97:5.
11. Respondent did not have a valid Preparer Tax Identification Number (PTIN) for tax year 2013. See Ex. 6 at 12; Tr. at 35:17-20.
12. IRS’s records show that 56 tax returns were filed under Respondent’s expired PTIN during tax year 2013. See Ex. 6 at 12; Tr. at 37-8.
13. These records indicate that the 56 filed tax returns at issue reflect only actual returns made on Form 1040 and not requests for an automatic extension. Id.
14. On or about May 6, 2013, Taxpayer A wrote Respondent a check in the amount of \$2,623 which was endorsed by Respondent. See Ex. 12; Tr. at 49.
15. On May 8, 2013, Respondent filed a tax return on behalf of Taxpayer A in which listed Respondent as the third-party designee and used his expired PTIN as the paid preparer. See Ex. 11 at 4; Tr. at 43-4.
16. On or about December 6, 2013, Taxpayer B wrote Respondent a check in the amount of \$4,000 which was endorsed by Respondent. See Ex. 14; Tr. at 51.
17. On December 12, 2013, Respondent filed a tax return on behalf of Taxpayer B in which Respondent listed himself as the third-party designee and used a PTIN that is one digit different from his expired PTIN. See Ex. 13, Tr. at 52.
18. The PTIN used on Taxpayer B’s 2013 tax return does not correspond to any PTIN issued by the IRS. See Ex. 15; Tr. at 55.

### ANALYSIS

#### Count 6

As stated above, OPR proved six of the eight charges against Respondent through summary adjudication. Thus, the only remaining issues at the in-person hearing concerned Counts 6 and 7 and the appropriate sanction. Count 6 alleges that Respondent

violated 31 C.F.R. § 10.51(a)(5) by misrepresenting himself as a valid CPA and enrolled agent to clients or prospective clients. See Complaint at ¶¶ 52-66. OPR claims that these representations were willfully false or misleading and done with intent to deceive in order to procure employment. See Complaint at ¶¶ 67. Alternatively, OPR alleges that Respondent's failure to exercise due diligence in determining the correctness his representations concerning his CPA and enrolled agent status was willful and constitutes a violation of 31 C.F.R. § 10.22(a)(3).

Title 31 C.F.R. § 10.51(a)(5) provides in pertinent part that, “. . . the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment . . .” constitutes incompetence and disreputable conduct for which a practitioner may be sanctioned. Title 31 C.F.R. § 10.22(a)(3) provides that “A practitioner must exercise due diligence – [i]n determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.” Pursuant to 31 C.F.R. § 10.52(a)(1), “a practitioner may be sanctioned under § 10.50 if the practitioner – willfully violates any of the regulations contained in this part.” (Parenthetical removed).

OPR has already proved by summary adjudication that Respondent did not have a valid CPA license or enrolled agent status as alleged in the Complaint and that he was ineligible to hold himself out as such during the relevant time periods. See Ex. 6 at p. 10 (*Order Granting, in-part, Complainant's Motion for Summary Adjudication*). At hearing OPR provided evidence that Respondent entered into written fee agreements with clients or prospective clients during 2012. See Ex. at 10-11; see also Ex. 7, pp. 10-2 to 10-175. On these fee agreement forms, Respondent holds himself out as a CPA and enrolled



agent. Id. As previously stated, Respondent was not entitled to hold himself out as a CPA or enrolled agent when he did not possess valid CPA or enrolled agent credentials. OPR alleges that by stating that he is a CPA and enrolled agent on the fee agreement forms, Respondent is either violating 31 C.F.R. § 10.51(a)(5) or 31 C.F.R. § 10.22(a)(3).

In his post-hearing submission, Respondent seems to renew his arguments that his enrolled agent status was “active” during the times in question. Respondent’s arguments concerning whether his CPA license and enrolled agent status were valid is an issue that I have already decided in summary adjudication. To the extent that Respondent’s arguments reiterate what he has argued before (e.g. that he was permitted to hold himself out as a CPA and an enrolled agent until he was told that he could not) those arguments have been rejected. See Ex. 6 at 9-10. To the extent that Respondent is making a new argument that his enrolled agent status was active, I find his unsupported argument insufficient.<sup>4</sup>

Nevertheless, the record fails to demonstrate by clear and convincing evidence that Respondent’s conduct and misrepresentations on the fee agreement forms were done “with intent to deceive” clients or prospective clients “in order to procure employment.” Therefore, I do not find that Respondent’s conduct violated 31 C.F.R. §10.51(a)(5). However, Respondent clearly did not exercise due diligence in his representations to clients by continuing to hold himself out as a CPA and enrolled agent when he was not entitled to do so. Further, Respondent exercised no due diligence to determine whether

---

<sup>4</sup> Respondent alludes to “Complainant’s Redacted Evidentiary file dated March 16, 2011” in his argument that his enrolled agent status was active during the relevant times. Respondent has not offered any documents into evidence and these documents do not appear to be part of the administrative record. In his opposition to OPR’s Motion for Summary Adjudication, Respondent did not raise this argument, nor did he provide any documentary evidence to support his arguments.

his belief that he could continue to hold himself out as a CPA or enrolled agent without renewing those statuses. Accordingly, I find that Count 6 is **PROVED** by clear and convincing evidence. Respondent violated 31 C.F.R. § 10.22(a)(3) by failing to exercise due diligence in his representations to clients. Pursuant to 31 C.F.R. § 10.52(a)(1), Respondent is subject to discipline for this violation.

### **Count 7**

Count 7 alleges that Respondent prepared tax returns for compensation without a current or otherwise valid Preparer Tax Identification Number (PTIN) for tax year 2013. Title 31 C.F.R. § 10.51(a)(17) provides that “willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number” constitutes incompetence or disreputable conduct for which the practitioner may be sanctioned. While the regulation does not specifically provide that the tax returns must have been made “for compensation”, at hearing OPR stipulated that to sustain a charge of filing a return without a PTIN it must “demonstrate that [Respondent] was compensated for preparing or filing that return.” See Tr. at 45:3-19; see also *Complainant’s Proposed Findings and Conclusions*, fn. 12. .

Here, the evidence demonstrates that Respondent’s PTIN expired on December 31, 2012 and that he last successfully renewed his PTIN with the IRS on January 30, 2012. See Tr. at 35. Thus, Respondent did not have a valid PTIN for tax year 2013.

OPR alleges that Respondent filed 56 tax returns for compensation during tax year 2013. See Tr. 37:3-5; Ex. 3 at Declaration Exhibit 6-B). On January 9, 2015, OPR performed a search for the number and types of returns Respondent prepared for Tax

Year 2013 yielding the result that 56 returns or claims for refund were prepared either under Respondent's expired PTIN or his SSN. See Tr. at 36-7. Of those 56 tax returns, OPR provided evidence of compensation for two individuals. See Exs. 11, 12, 13, and 14. OPR argues that based on Respondent's income for 2013 and the fact that he testified at the deposition that he does not do any other work other than tax work, I should infer from these circumstances that Respondent received compensation for all 56 tax returns.

During his deposition, Respondent denied filing 56 tax returns for compensation. Rather, he claimed that he submitted filing extensions in most cases and only prepared five (5) tax returns. See Ex. 4 at 17; see also Ex. 9 at 101:6-8. In his post-hearing submission, Respondent argues that the compensation he received from the two taxpayers identified in Exhibits 11 through 14 was not for tax return preparation but for other services. See Respondent's Summary of Law and Facts at p. 15.

There is no support or corroboration for Respondent's claims. Regarding his argument that most of these filings were extensions, the record shows that all of the 56 returns at issue were prepared for individual taxpayers using Form 1040. See Tr. at 37-8. The form that IRS uses to allow taxpayers to file for an extension, Form 4868, does not contain any block that would be filled out by a tax return preparer or by an individual indicating that they prepared the form on behalf of someone else. See Tr. at 39-40; see also Ex. 10. Therefore, IRS's search related to Respondent's PTIN for tax year 2013 would not yield extensions filed within the results. See Tr. at 37.

Moreover, Respondent did not appear at hearing either to testify on his own behalf or to present evidence refuting any of OPR's claims and records. Respondent's arguments that the checks were for services other than tax return preparation is self-



11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

serving and not corroborated by the evidence. The record demonstrates that Respondent submitted tax returns on behalf of the two taxpayers identified and was provided contemporaneous compensation.<sup>5</sup> The only reasonable inference from the evidence is that these two taxpayers compensated Respondent for filing tax returns on behalf at a time when he did not have a current or valid PTIN. However, I am not able to extend this inference to the other 54 tax returns Respondent allegedly filed for compensation during tax year 2013. As stipulated to by OPR, Respondent must have been compensated for filing tax returns when he was without a valid PTIN. The record does not support this allegation as to the other 54 tax returns by clear and convincing evidence.

Accordingly, I find Count 7 **PROVED** by clear and convincing evidence, but only as to the two taxpayers as set forth in OPR Exhibits 11 through 14.

#### SANCTION

“Practice before the IRS is a privilege, and one cannot partake of that privilege without also taking on the responsibilities of complying with the regulations that govern such practice.” Dir., Office of Prof'l Responsibility v. Everett, Complaint No. 2009-27 at 7 (Order on Complainant’s Renewed Motion for Summary Adjudication regarding Sanctions, July 22, 2010). Pursuant to 31 C.F.R. § 10.50(a), “[t]he Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if

---

<sup>5</sup> In Exhibit 13, the PTIN number is one digit off from Respondent’s expired PTIN number. The PTIN number provided does not correlate to any valid PTIN issued by the IRS. See Ex. 15; Tr. at 52-55. Further, Respondent does not deny providing services to Taxpayer B and Exhibit 13 contains other indicators that Respondent filed the tax return. Accordingly, I reasonably infer that Respondent filed the tax return on behalf of Taxpayer B as set forth in Ex. 13.

the practitioner is shown to be incompetent or disreputable (within the meaning of § 10.51) . . . .” OPR argues the appropriate sanction in this case is disbarment. I agree.

The record establishes a pattern of conduct and occurrences demonstrating that Respondent is not fit to practice before the IRS. As the charges found proved have shown: (b)(3)/26 USC 6103 he has made multiple misrepresentations to both the IRS and to his clients regarding his status as a CPA and Enrolled Agent; he has filed tax returns on behalf of clients for refunds without a valid PTIN; and, he has charged a client an unconscionable fee in connection with a matter before the IRS. Respondent’s proven misconduct manifested in many different forms and over several years.

At the hearing, Mr. Stephen A. Whitlock, Director of OPR, testified concerning his decision to propose disbarment as the requested sanction. Importantly, Mr. Whitlock testified concerning the seriousness of the various charges against Respondent. (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103 See Tr. at 66-7. Similarly concerning was Respondent’s position that he could practice as a CPA or Enrolled Agent (even after those credentials were not valid) until he was told not to. Mr. Whitlock found this position to be contrary to law and “unfathomable to me that someone could assert in good faith that practicing with an expired license is not a problem . . . .” Tr. at 71.

As set forth in OPR's post-hearing brief, the Treasury Appellate Authority has "consistently imposed a sanction of disbarment on practitioners who have, without excuse, (b)(3) / 26 USC 6103 and such conduct is "a failure to meet a basic obligation of citizenship and inconsistent with a right to practice before the Internal Revenue Service." See (b)(3) / 26 USC 6103 (b)(3) / 26 USC 6103 Complaint No. 2007-12 at 3 (Decision on Appeal, April 21, 2009); (b)(3) / 26 USC 6103 (b)(3) / 26 USC 6103 Complaint No. 2006-24 (Decision on Appeal, February 21, 2008). (b)(3)/26 USC 6103

(b)(3)/26 USC 6103 In addition to this serious misconduct, Respondent has engaged in other egregious behavior including making false representations to both the IRS and to his clients, and charging an unconscionable fee. Accordingly, Respondent's proven misconduct weighs heavily in favor of disbarment.

Respondent's pattern of behavior is troubling and bears directly on his fitness to represent taxpayers before the IRS. Furthermore, Respondent's lack of contrition is alarming. Indeed, the lack of remorse by Respondent is a significant aggravating factor that weighs heavily in favor of disbarment. See (b)(3) / 26 USC 6103

(b)(3) / 26 USC 6103 Complaint No. 2006-23 at 6 (Decision on Appeal, April 2008); see also (b)(3) / 26 USC 6103 (b)(3) / 26 USC 6103 Complaint No. 2009-16 at 4 (Decision on Appeal, May 1, 2011). Throughout the course of this proceeding, Respondent has taken no responsibility for his own actions. Indeed, even in his post-hearing brief Respondent demonstrates no remorse or recognition that he has done anything wrong. Like Mr. Whitlock, I also find Respondent's inability or unwillingness to accept responsibility particularly concerning.



I have taken into consideration several mitigating factors Respondent claims.

Specifically, Respondent states that he had (b)(6)

(b)(6)

(b)(6)

See Respondent's

*Summary of Law and Facts* at pp. 12-14. While I am sympathetic to these hardships Respondent has endured, I do not find that these occurrences explain or justify the proven misconduct in this case.

For example, the record is replete with citations to Respondent's deposition testimony in which (b)(3) / 26 USC 6103

(b)(3)/26 USC 6103

Thus, according to his own statement, these acts of misconduct had nothing to do with Respondent's health, or tragic deaths. Rather, they were deliberate and calculated actions. As another example, when confronted with his failure to timely renew his CPA license and enrolled agent statuses, Respondent argued that he was authorized to hold himself out until he was instructed not to by the IRS. This position again demonstrates deliberate, intentional actions which are unrelated to Respondent's proposed mitigating factors.

In view of the foregoing, Respondent's conduct demonstrates he should not be trusted with the privilege of representing taxpayers before the IRS. Based upon the charges against Respondent that are found proved, the testimony of Mr. Whitlock at the in-person hearing, and a review of the entire administrative record, I find that the only appropriate sanction is **DISBARMENT**.

## CONCLUSIONS OF LAW

1. Respondent was engaged in practice before the IRS as defined in 31 C.F.R. § 10.2(a)(4) and is therefore subject to the disciplinary authority of the Secretary of the Treasury.
2. (b)(3)/26 USC 6103
3. (b)(3)/26 USC 6103
4. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.22(a)(2) by failing to exercise due diligence by representing on Form 2848 *Power of Attorney and Declaration of Representative* forms that he was an enrolled agent and a CPA to the IRS.
5. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.22(a)(3) by failing to exercise due diligence by representing on fee agreement forms with clients or prospective clients that he was a duly authorized enrolled agent and CPA when he was not entitled to hold himself out as such.
6. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(17) by preparing tax returns for compensation without a current or otherwise valid Preparer Tax Identification Number.
7. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.17(a) by charging an unconscionable fee in connection with a matter before the IRS.
8. The proper sanction for Respondent's incompetent and disreputable conduct is disbarment.

## ORDER

**IT IS HEREBY ORDERED** that Respondent, (b)(3)/26 USC 6103 is **DISBARRED** from practice before the IRS effective June 15, 2018.

**IT IS HEREBY FURTHER ORDERED** that pursuant to 31 C.F.R. § 10.81(a), Respondent may petition for reinstatement after 5 years following disbarment.



Hon. Curtis E. Renoe  
Administrative Law Judge

Dated: June 15, 2018 at Alameda CA

**Pursuant to 31 C.F.R. § 10.77, either party may appeal this Decision to the Secretary of the Treasury within thirty (30) days from the date of service. 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.**



**ALJ EXHIBIT 1**

**O'Connell, Timothy A CIV**

---

**From:** O'Connell, Timothy A CIV  
**Sent:** Monday, March 5, 2018 10:38 AM  
**To:** (b)(3)/26 USC 6103; Heinlein Timothy E  
**Cc:** Melendres, Cindy  
**Subject:** RE: [Non-DoD Source] Re: Witness and Exhibit Lists  
**Signed By:** TIMOTHY.A.O'CONNELL@USCG.MIL

(b)(3) / 26 USC 6103

Mr. [REDACTED]

The Judge granted partial Summary Adjudication; however, the appropriate sanction has not been established and two outstanding substantive issues remain. As such, a hearing on these issues is necessary and will proceed as scheduled on March 13, 2018.

Very respectfully,

Tim O'Connell

Timothy A. O'Connell  
Attorney-advisor to the  
Hon. Curtis E. Renoe  
U.S. Coast Guard  
Office of the Administrative Law Judge  
1 Eagle Road, Bldg. 54-A  
Alameda, CA 94501-5100  
Comm: 510-437-3361 - Fax: 510-437-2717  
Email: timothy.a.o'connell@uscg.mil

**From:** (b)(3)/26 USC 6103/(b)(6)  
**Sent:** Monday, March 5, 2018 10:11 AM  
**To:** O'Connell, Timothy A CIV <Timothy.A.O'Connell@uscg.mil>  
**Subject:** [Non-DoD Source] Re: Witness and Exhibit Lists

It was my understanding that with the granting of the Order of Summary Adjudication for the plaintiff a trial would not be necessary. If I am mistaken please advise.

On Mar 5, 2018 09:50, "O'Connell, Timothy A CIV" <Timothy.A.O'Connell@uscg.mil> wrote:

Good morning,

Pursuant to the Memorandum of Prehearing Conference and Revised Hearing Scheduling Order (attached for ease of reference), in accordance with 31 C.F.R. 10.72(c), the parties were supposed to submit Exhibit and Witness Lists containing a brief summary of the anticipated testimony of each witness on or before March 2, 2018. As of this morning (3/5/18), we have not received such a list from either party. Please advise us on the status of your submissions, if any. Thank you very much for your attention to this matter.

Very respectfully,

Timothy A. O'Connell  
Attorney-advisor to the  
Hon. Curtis E. Renoe  
U.S. Coast Guard  
Office of the Administrative Law Judge  
1 Eagle Road, Bldg. 54-A  
Alameda, CA 94501-5100  
Comm: 510-437-3361 - Fax: 510-437-2717  
Email: [timothy.a.o'connell@uscg.mil](mailto:timothy.a.o'connell@uscg.mil)



## ATTACHMENT A

List of Witnesses and Exhibits. Respondent did not appear at hearing. Therefore, he did not present any witnesses to testify or offer any exhibits into evidence.

### **Witnesses:**

1. Kevin Carle – Attorney advisor, Office of Professional Responsibility
2. Stephen Whitlock – Director, Office of Professional Responsibility

### **Exhibits:**

- Exhibit 1: Complaint
- Exhibit 2: Respondent's Answer to Complaint
- Exhibit 3: OPR's Motion for Summary Adjudication, including attachments
- Exhibit 4: Respondent's Opposition to OPR's Motion for Summary Adjudication
- Exhibit 5: OPR's Reply to Respondent's Opposition to OPR's Motion for Summary Adjudication
- Exhibit 6: Order Granting, in-part, OPR's Motion for Summary Adjudication
- Exhibit 7: Sanitized copies of Fee Agreements Respondent submitted to OPR
- Exhibit 8: Printout from search of the Integrated Data Retrieval System (IDRS) related to Respondent
- Exhibit 9: Deposition of Respondent, transcript excerpts
- Exhibit 10: Sample Form 4868
- Exhibit 11: Printout of records related to Taxpayer A's 2013 tax return
- Exhibit 12: Copy of check from Taxpayer A to Respondent, endorsed by Respondent
- Exhibit 13: Printout of records related to Taxpayer B's 2013 tax return
- Exhibit 14: Copy of check from Taxpayer B to Respondent, endorsed by Respondent
- Exhibit 15: Record of search related to PTIN contained in Exhibit 13.

**ATTACHMENT B**

The following are rulings on Complainant's Proposed Findings and Conclusions. Respondent's post-hearing brief did not contain enumerated proposed findings of fact and conclusions of law. Respondent did not submit clearly articulated proposed findings of fact and conclusions of law and so I am unable to individually rule upon them below. However, I have taken all of Respondents submissions and arguments into account in formulating the Initial Decision.

**Complainant's Proposed Findings and Conclusions:**

1. Respondent was engaged in practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) both as a CPA and as an enrolled agency. (Ex. 6 at 4).  
**ACCEPTED AND INCORPORATED.**

2. Respondent is subject to the disciplinary authority of the Secretary of the Treasury and of OPR. (Ex. 6 at 4).  
**ACCEPTED AND INCORPORATED.**

3. (b)(3)/26 USC 6103  
**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

4. (b)(3)/26 USC 6103  
**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

5. (b)(3)/26 USC 6103  
**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

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

**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

7. Respondent falsely represented to the IRS that he was an enrolled agent and a CPA on at least three occasions on Forms 2848, *Powers of Attorney and Declarations of Representative*. He willfully failed to exercise due diligence in misrepresenting that he was an enrolled agent and CPA. (Ex. 6 at 9-10).  
**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**
8. Respondent's failure to exercise due diligence in determining the correctness of representations made to the IRS about his status as an enrolled agent and CPA was willful and constitutes a willful violation of 31 C.F.R. § 10.22(a)(2) for which Respondent may be censured, suspended or disbarred from practice before the IRS. (Ex. 6 at 10).  
**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**
9. The entity named "(b)(3) / 26 USC 6103" is a fictitious business entity that represents the Respondent. (Ex. 9 at 41:2-7).  
**ACCEPTED for purposes of the Initial Decision but NOT INCORPORATED as a separate finding of fact.**
10. The entity named "(b)(3) / 26 USC 6103" was a service of "(b)(3) / 26 USC 6103" and not a separate business. (Ex. 9 at 41:2-7).  
**ACCEPTED for purposes of the Initial Decision but NOT INCORPORATED as a separate finding of fact.**
11. Respondent allowed his CPA certificate to expire between January 1, 2009 and September 17, 2012 and between January 1, 2013 to at least September 30, 2013. (Ex. 6 at 8-9).  
**ACCEPTED AND INCORPORATED.**
12. Respondent was not entitled to hold himself out as a CPA during these time periods. (Ex. 6 at 10).  
**ACCEPTED AND INCORPORATED.**
13. Respondent failed to timely renew his enrolled agent number for the 2010 through 2013 cycle (Ex. 6 at 8-9).  
**ACCEPTED AND INCORPORATED.**



14. Respondent was not entitled to hold himself out as an enrolled agent from January 1, 2010 to January 22, 2013 when he did not possess an active enrolled agent status. (Ex. 6 at 10).

**ACCEPTED AND INCORPORATED.**

15. During 2012, Respondent used a "Fee Agreement" form for clients that indicated he was a CPA and an enrolled agent. (Ex. 6 at 10-11).

**ACCEPTED AND INCORPORATED.**

16. Respondent's CPA license and enrolled agent number were not valid during 2012. (Ex. 6 at 11).

**ACCEPTED AND INCORPORATED.**

17. Respondent used the "Fee Agreement" form for over 150 clients during 2012. (Ex. 6 at 11).

**ACCEPTED AND INCORPORATED.**

18. Agency Exhibit 7 (stamped as pages 10-2 to 10-175) consists of sanitized copies of client information sheets and fee agreements for clients or prospective clients of Respondent. (Ex. 9 at 96:16-97:5).

**ACCEPTED as an accurate description of Agency Exhibit 7. The Exhibit itself was accepted into evidence and made part of the record. The Exhibit speaks for itself and is NOT INCORPORATED as a separate finding of fact.**

19. The Fee Agreement form was entitled "**(b)(3) / 26 USC 6103**  
**(b)(3)/26 USC 6103**" (Complaint ¶ 53; Ex. 9 at 10-2).

**ACCEPTED because the documents speak for themselves; NOT INCORPORATED as a separate finding of fact.**

20. 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)." (Complaint § 55; Ex. 9 at 10-2).

**ACCEPTED because the documents speak for themselves; NOT INCORPORATED as a separate finding of fact.**

21. 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**" (Complaint § 56; Ex. 9 at 10-2).

**ACCEPTED because the documents speak for themselves; NOT INCORPORATED as a separate finding of fact.**

22. The Fee Agreement form appears to indicate that it is valid “(Until 4/15/2012).” (Ex. 9 at 10-2).  
**ACCEPTED because the documents speak for themselves; NOT INCORPORATED as a separate finding of fact.**
23. Because Respondent was not a CPA or an enrolled agent at the time that he used the Fee Agreement form, he did not have unlimited practice rights before the IRS on behalf [of] his clients. (Tr. 77:10-17).  
**ACCEPTED AND INCORPORATED.**
24. Respondent asserted that he was permitted to hold himself out as an enrolled agent until the IRS told him that he could not, regardless of his failure to renew his enrollment status. (Ex. 9 at 86:18-25 (“Q: So it’s your position that you were entitled to hold yourself out as an enrolled agent regardless of whether you renewed or not until somebody told you that you couldn’t? A: That is correct.”)).  
**ACCEPTED to the extent that this accurately reflects Respondent’s deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**
25. Respondent did not recall taking any steps to determine that he could hold himself out as an enrolled agent after the end of his enrollment cycle without renewing his license. (Ex. 9 at 85:9-86:1).  
**ACCEPTED to the extent that this accurately reflects Respondent’s deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**
26. Respondent had no idea what the status of his CPA certificate was as of January 1, 2009. (Ex. 9 at 75:12-14).  
**ACCEPTED to the extent that this accurately reflects Respondent’s deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**
27. Respondent did not recall looking at anything to find out what the status of his license was as of January 1, 2009. (Ex. 9 at 76:15-17).  
**ACCEPTED to the extent that this accurately reflects Respondent’s deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**
28. Respondent claims that he could hold himself out as a CPA unless his license status on the CPA website stated the license was “revoked, canceled or



suspended.” (Ex. 9 at 81:5-14).

**ACCEPTED to the extent that this accurately reflects Respondent’s deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**

29. Respondent had no idea how long he could hold himself out as a California CPA without paying the renewal fees, and he did not conduct any research on the issue. (Ex. 9 at 82:2-9 (“Q: And how long could you have continued to hold yourself out as a California CPA without paying the renewal fees? A: I have no idea. I have no idea.”)).

**ACCEPTED to the extent that this accurately reflects Respondent’s deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**

30. Respondent did not conduct any research to determine how long he could hold himself out as a California CPA without completing the renewal process. (Ex. 9 at 82:2-9 (“Q: Did you conduct any research to find out the answer to that? A: No. But, again, my license was not canceled, my license wasn’t revoked and I wasn’t on suspension.”)).

**ACCEPTED to the extent that this accurately reflects Respondent’s deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**

31. Respondent knew that his CPA license and enrolled agent certificate each had been expired for more than two years when he used the forms.  
**NOT ACCEPTED OR INCORPORATED as a finding of fact. However, I do ACCEPT this proposed finding as a reasonably inferred ultimate finding of fact that is INCORPORATED for purposes of determining the appropriate sanction.**

32. Despite knowing that his CPA license and enrolled agent certificates had expired, Respondent represented that he was a CPA and an enrolled agent on over 150 Fee Agreement forms that he used with clients or prospective clients between January 1, 2012 and April 14, 2012. (Ex. 8).

**ACCEPTED AND INCORPORATED to the extent that the Fee Agreements at issue indicate that Respondent is a CPA and an enrolled agent and that he used these forms with clients or prospective clients.**

33. Respondent’s representation on over 150 Fee Agreement forms that he was a CPA and an enrolled agent when he did not have valid credentials was a material misrepresentation.



**ACCEPTED as an ultimate finding and conclusion. NOT INCORPORATED as a finding of fact.**

34. Respondent failed to exercise due diligence in determining the correctness of his representations that he was a CPA and an enrolled agent on over 150 Fee Agreement forms.

**ACCEPTED AND INCORPORATED as a conclusion of law.**

35. Respondent's representations concerning his CPA certificate and enrolled agent status to clients or prospective clients were willfully false or misleading representations with intent to deceive in order to procure employment. Such conduct constitutes a violation of 31 C.F.R. § 10.51 generally and a willful violation of 31 C.F.R. § 10.51(a)(5) for which Respondent may be censured, suspended or disbarred from practice before the IRS.

**NOT ACCEPTED OR INCORPORATED.**

36. Alternatively, 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) for which Respondent may be censured, suspended or disbarred from practice before the IRS.

**ACCEPTED AND INCORPORATED as a conclusion of law.**

37. Respondent did not have a valid Preparer Tax Identification Number (PTIN) for tax year 2013. (Ex. 6 at 12, Tr. 35:17-20).

**ACCEPTED AND INCORPORATED.**

38. Fifty-six (56) tax returns were filed under Respondent's expired PTIN during tax year 2013. (Ex. 6 at 12; Tr. at 37:3-5).

**ACCEPTED AND INCORPORATED.**

39. Respondent asserted in his Opposition that he filed extensions and no more than 5 tax returns. (Ex. 4 at 17).

**ACCEPTED AND INCORPORATED as part of Respondents submissions.**

**NOT INCORPORATED as a separate finding of fact.**

40. In his deposition, Respondent testified that in either 2013 or 2014 he filed "about 52 tax returns and about 48 of them were just extensions." (Ex. 9 at 101:6-8 ("One of these years, it's either 2013 or '14, I don't recall, where all I filed was, it was about 52 tax returns and about 48 of them were just extensions.")).

**ACCEPTED to the extent that this accurately reflects Respondent's deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**

41. Respondent testified that he had no reason to disbelieve the Agency's record showing that he filed 56 tax returns in 2013. (Ex. 9 at 101:24-102:5).  
**ACCEPTED to the extent that this accurately reflects Respondent's deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**
42. Respondent's inconsistent statements as between his deposition and his Opposition are not credible.  
**NOT ACCEPTED OR INCORPORATED as a finding of fact. This is argument.**
43. Respondent chose not to appear at the hearing to clarify or address his inconsistent and not credible prior statements.  
**ACCEPTED AND INCORPORATED.**
44. In his Opposition, he stated that he "prepared and filed the tax return extensions without compensation." (Ex. 4 at 18).  
**ACCEPTED AND INCORPORATED as part of Respondents submissions. NOT INCORPORATED as a separate finding of fact.**
45. However, Respondent has never denied receiving compensation for preparing and filing actual tax returns in 2013.  
**NOT ACCEPTED OR INCORPORATED as a finding of fact. This is argument.**
46. The IRS's records showing that Respondent filed 56 tax returns do not include any requests for an automatic extension. (Tr. at 37:9-19). These IRS records that show 56 tax returns on which Respondent's PTIN was entered reflect only actual returns made on Form 1040. (Tr. 37:25-38:6).  
**ACCEPTED AND INCORPORATED.**
47. Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*, does not contain any information block where a preparer would record or report a PTIN. (Ex. 9 at 35:2-3).  
**ACCEPTED AND INCORPORATED.**
48. Respondent has always been self-employed. (Ex. 9 at 35:2-3).  
**ACCEPTED but NOT INCORPORATED as a separate finding of fact.**
49. From 2009 through 2013, Respondent was in a partnership with another individual, (b)(6) (Ex. 9 at 28:13-16).  
**ACCEPTED but NOT INCORPORATED as a separate finding of fact.**



50. The name of the partnership entity was (b)(3)/26 USC 6103 (Ex. 9 at 33:5-10).  
**ACCEPTED but NOT INCORPORATED as a separate finding of fact.**
51. Aside from (b)(3)/26 USC 6103 there is no other business entity that Respondent has owned, operated, or worked for in the last 10 years. (Ex. 9 at 48:2-13).  
**ACCEPTED but NOT INCORPORATED as a separate finding of fact.**
52. Respondent was the only CPA in (b)(3)/26 USC 6103 partnership. (Ex. 9 at 46:5-7).  
**ACCEPTED but NOT INCORPORATED as a separate finding of fact.**
53. Marshall Campbell Company CPA's provided (b)(3)/26 USC 6103 service to the public. (Ex. 9 at 48:2-13).  
**ACCEPTED but NOT INCORPORATED as a separate finding of fact.**
54. (b)(3)/26 USC 6103 (Ex. 6 at 6).  
**ACCEPTED but NOT INCORPORATED as a separate finding of fact.**
55. Respondent has not articulated any explanation as to (b)(3)/26 USC 6103  
**ACCEPTED but NOT INCORPORATED as a separate finding of fact.**
56. On or about May 6, 2013, taxpayer (b)(3)/26 USC 6103, (b)(6) wrote Respondent a check in the amount of \$2,623. (Ex. 12; Tr. at 49:17-25).  
**ACCEPTED AND INCORPORATED.**
57. Respondent endorsed the check. (Ex. 12).  
**ACCEPTED AND INCORPORATED.**
58. On May 8, 2013, Respondent filed a tax return on behalf of taxpayer (b)(3)/26 USC 6103 (b)(6) (Ex. 11 at 4; Tr. at 43:10-44:3).  
**ACCEPTED AND INCORPORATED.**
59. On the return, Respondent listed himself as the third-party designee and used his PTIN as the paid preparer. (Ex. 11 at 4; Tr. at 43:17-44:3).  
**ACCEPTED AND INCORPORATED.**
60. On or about December 6, 2013, taxpayer (b)(3)/26 USC 6103, (b)(6) wrote Respondent a check in the amount of \$4,000. (Ex. 14; Tr. 53:11-17).  
**ACCEPTED AND INCORPORATED.**
61. Respondent endorsed the check. (Ex. 14).  
**ACCEPTED AND INCORPORATED.**



62. On December 12, 2013, Respondent filed a tax return on behalf of taxpayer (b)(3) / 26 USC 6103, (b)(6) (Ex. 13 at 3; Tr. at 51:21-24).

**ACCEPTED AND INCORPORATED.**

63. On the return, Respondent listed himself as the third-party designee and used a PTIN that is one digit different than his own expired PTIN. (Ex. 13 at 4; Tr. at 52:9-13).

**ACCEPTED AND INCORPORATED.**

64. The PTIN that Respondent used on the return does not correspond to any PTIN issued by the IRS. (Ex. 15; Tr. at 55:7-9).

**ACCEPTED AND INCORPORATED.**

65. Respondent prepared all or substantially all of, or signed, tax returns or claims for refund for compensation in tax year 2013 without a valid PTIN. His actions were willful and constitute disreputable conduct pursuant to 31 C.F.R. § 10.51 generally, and a willful violation of 31 C.F.R. § 10.51(a)(17) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

**ACCEPTED AND INCORPORATED as an ultimate finding and conclusion of law.**

66. Respondent willfully charged an unconscionable fee in connection with a matter before the IRS. His conduct 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. (Order at 16-17).

**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction. This was previously established via Summary Adjudication.**

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

(Answer at ¶ 127; Answer Exhibit M at 1).

**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

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

**ACCEPTED AND INCORPORATED** for the purposes of determining the appropriate sanction.

69. [REDACTED] (b)(3)/26 USC 6103

(Ex. 8; Tr. at 28L15-29:17).

**ACCEPTED AND INCORPORATED** for the purposes of determining the appropriate sanction.

70. [REDACTED] (b)(3)/26 USC 6103

**ACCEPTED AND INCORPORATED** for the purposes of determining the appropriate sanction.

71. [REDACTED] (b)(3)/26 USC 6103

**ACCEPTED** as the testimony of Director Whitlock; **NOT INCORPORATED** as a separate finding of fact. **ACCEPTED AND INCORPORATED** for the purposes of determining the appropriate sanction.

72. [REDACTED] (b)(3)/26 USC 6103

**ACCEPTED** as the testimony of Director Whitlock; **NOT INCORPORATED** as a separate finding of fact. **ACCEPTED AND INCORPORATED** for the purposes of determining the appropriate sanction.

73. [REDACTED] (b)(3)/26 USC 6103

**ACCEPTED** to the extent that this accurately reflects Respondent's deposition testimony. **INCORPORATED** for the purpose of this Initial Decision and to determine the appropriate sanction; **NOT INCORPORATED** as a separate finding of fact.

74. [REDACTED] (b)(3)/26 USC 6103

**ACCEPTED** as the testimony of Director Whitlock; **NOT INCORPORATED**

as a separate finding of fact. **ACCEPTED AND INCORPORATED** for the purposes of determining the appropriate sanction.

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

**ACCEPTED** to the extent that this accurately reflects Respondent's deposition testimony. **INCORPORATED** for the purpose of this Initial Decision and to determine the appropriate sanction; **NOT INCORPORATED** as a separate finding of fact.

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

**ACCEPTED AND INCORPORATED** for the purposes of determining the appropriate sanction.

77. With respect to count 5, on the Forms 2848 *Powers of Attorney and Declarations of Representative*, the Respondent represented that he was a CPA ("duly qualified to practice as a certified public accountant in the jurisdiction shown below") in the State of California under the penalty of perjury. (Ex. 3, Motion Exhibit 2 at 9-2; Tr. 70:3-4).

**ACCEPTED** because the documents speak for themselves; **NOT INCORPORATED** as a separate finding of fact.

78. On the Forms 2848, Respondent also represented that he was an enrolled agent ("enrolled as an agent under the requirements of Circular 230") under the penalty of perjury. (Ex. 3, Motion Exhibit 2 at 9-4; Tr. 70:3-4).

**ACCEPTED** because the documents speak for themselves; **NOT INCORPORATED** as a separate finding of fact.

79. Respondent's false representation that he was a CPA and an enrolled agent had the effect of asserting that he had unlimited practice privileges before the IRS and could represent his clients in examinations or collection matters, when he was not so authorized. (Tr. 70:13-17).

**ACCEPTED AND INCORPORATED.**

80. To date, Respondent has not asserted any other basis that would have permitted him to represent the taxpayers identified on the false Forms 2848. (Tr. 71:1-5). **ACCEPTED** as the testimony of Director Whitlock; **NOT INCORPORATED** as a separate finding of fact. **ACCEPTED AND INCORPORATED** for the purposes of determining the appropriate sanction.

81. With respect to count 8, Respondent charging a client an unconscionable fee was very serious misconduct. (Tr. 72:8-9).



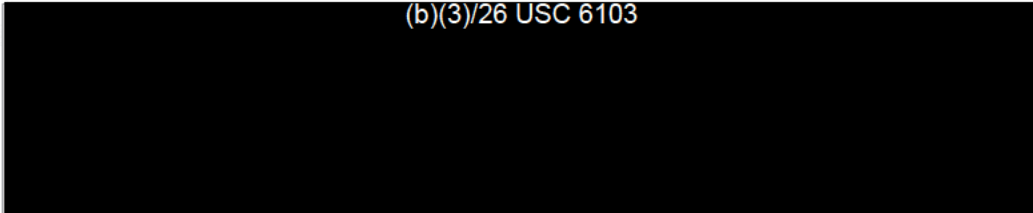
**ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

82. When the taxpayer refused to pay the unconscionable fee, two or three weeks later the taxpayer asked Respondent to call her via text message. (Ex. 9 at 119:5-7).  
**ACCEPTED to the extent that this accurately reflects Respondent's deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**

83. Respondent answered the taxpayer by text message stating that "the IRS told me that they would give me \$100,000 if I would turn you in, if I would work with them and turn you in. When can I come pick you up and take you to jail." (Ex. 9 at 119:10-13).  
**ACCEPTED to the extent that this accurately reflects Respondent's deposition testimony. INCORPORATED for the purpose of this Initial Decision and to determine the appropriate sanction; NOT INCORPORATED as a separate finding of fact.**

84. Respondent's behavior in trying to get the taxpayer to pay the unconscionable fee was shocking. (Tr. at 72:20-22).  
**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

85. Based on the six counts sustained in the Order, the Complainant recommends disbarment as the appropriate sanction. (Tr. at 72:2-14).  
**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

86. (b)(3)/26 USC 6103  
  
**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

87. With respect to count 6 (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), Respondent's behavior differed from other cases involving license issues because his behavior was not the result

of a mistake or clerical error. Based on Respondent's attitude that he would hold himself out as a CPA and enrolled agent until his license was suspended or revoked, his lack of contrition, and the repeated nature of his conduct, a long suspension would be appropriate for this charge standing alone. (Tr. at 78:20-79:10).

**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

88. With respect to count 7 (preparing returns for compensation without a valid PTIN), Respondent's behavior undermines the IRS's ability to identify potential problems using enforcement analyses. (Tr. 80:2-22).  
**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

89. While this conduct is the least serious of the charges, it still reflects [REDACTED] (b)(3) / 26 USC 6103 (Tr. 81:1-10).  
**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

90. [REDACTED] (b)(3)/26 USC 6103  
**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

91. [REDACTED] (b)(3)/26 USC 6103  
**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

92. [REDACTED] (b)(3)/26 USC 6103  
**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

93. Respondent's behavior is remarkable for the lack of remorse that he has displayed. (Tr. at 83:10-18).



**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

94. Complainant considered the potentially mitigating factors identified by Respondent in determining the appropriate sanction. However, Respondent's misconduct began well before and continued long after the identified mitigating circumstances. Those circumstances did not influence (b)(3) / 26 USC 6103  
(b)(3)/26 USC 6103

**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

95. The Complainant's recommended sanction is entitled to deference. See (b)(3) / 26 USC 6103 Complaint No. 2008-12 (Decision on Appeal, January 20, 2010) (deferring to the sanction request by OPR even though the Appellate Authority believed a more serious sanction was warranted); See also (b)(3) / 26 USC 6103 Complaint No. 2008-19 (Decision on Appeal, May 26, 2010).

**ACCEPTED as the testimony of Director Whitlock; NOT INCORPORATED as a separate finding of fact. ACCEPTED AND INCORPORATED for the purposes of determining the appropriate sanction.**

96. Based on the foregoing, Respondent is disbarred from practice before the IRS pursuant to the provisions of 31 C.F.R. §§ 10.50 and 10.52 issued under the authority of 31 U.S.C. § 330. Respondent will not be permitted to practice before the IRS unless and until authorized to do so by the IRS pursuant to 31 C.F.R. § 10.81, which permits a disbarred practitioner to petition for reinstatement after the expiration of five (5) years following disbarment.

**ACCEPTED AND INCORPORATED as an ultimate finding and conclusion of law.**



**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing *Initial Decision and Order* upon the following parties and entities in this proceeding as indicated in the manner described below:

ALJ Docketing Center  
United States Coast Guard  
40 South Gay Street, Suite 412  
Baltimore, Maryland 21202-4022  
Telephone: (410) 962-5100  
Fax: (410) 962-1746  
Email: aljdocketcenter@uscg.mil  
*(Via Facsimile and Electronic Mail)*

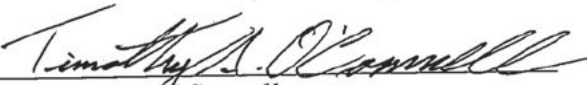
(b)(3) / 26 USC 6103

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

*(Via Electronic Mail and USPS First Class Mail (Postage paid))*

Timothy Heinlein, Esq.  
Senior Counsel  
Office of Chief Counsel (IRS)  
100 First Street, Suite 1800  
San Francisco, CA 94105  
Telephone: (213) 372-4036  
Facsimile: (213) 372-4775  
Email: Timothy.E.Heinlein@irsounsel.treas.gov  
*(Via Facsimile and Electronic Mail)*

Done and dated: June 15, 2018 at  
Alameda, California.

  
Timothy A. O'Connell  
Attorney Advisor to the  
Hon. Curtis E. Renoe