

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

DIRECTOR,  
OFFICE OF PROFESSIONAL  
RESPONSIBILITY,  
Complainant  
v.  
(b)(3)/26 USC 6103,  
Respondent

Complaint Number: 201 0-13  
Docket Number: 10-IRS-0001

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

**ORDER GRANTING MOTION FOR A DECISION BY DEFAULT**

**I. BACKGROUND**

On June 29, 2010, the Department of the Treasury, Office of Professional Responsibility of the Internal Revenue Service (Complainant or IRS) filed its Complaint and served it on (b)(3)/26 USC 6103 (Respondent). The Complaint alleges Respondent committed ten (10) violations of disreputable conduct under the regulations by (b)(3)/26 USC 6103

The Complaint alleges Respondent (b)(3)/26 USC 6103

(b)(3)/26 USC 6103. The Complaint further alleges that (b)(3)/26 USC 6103 and constitutes disreputable conduct pursuant to 31 C. F. R. § 10.51. The Complaint also asserts Respondent (b)(3)/26 USC 6103

(b)(3)/26 USC 6103 and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51.

On September 1, 2010, Complainant filed a Motion for Decision by Default (Motion), seeking a ruling to deem the allegations of the Complaint admitted because of Respondent's failure to answer and to render a Decision by Default for disbarment of the Respondent. The second paragraph of the Complaint provides that:

Pursuant to 31 C.F.R. § 10.62, Respondent's Answer to this Complaint must be filed with the United States Coast Guard Administrative Law Judge Docketing Center, United States Custom House, Room 412, 40 South Gay Street, Baltimore, Maryland 21202-4022 and a copy served on Sharon Gipson Allen, Senior Attorney, Office of Chief Counsel, as designated representative of the Director, Office of Professional Responsibility, within thirty (30) calendar days from date of service.

IRS asserts that Respondent neither filed an answer to the Complaint nor has he shown good cause as to why no answer has been filed, as required within the thirty (30) day period pursuant to 31 C.F.R. § 10.64. These regulations provide in pertinent part, "[t]he respondent's answer must be filed with the Administrative Law Judge, and served on the Director of the Office of Professional Responsibility, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge."<sup>1</sup> 31 C.F.R. § 10.64(a). More importantly, the regulations also provide that "[e]very allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing." 31 C.F.R. § 10.64(c).

To date, Respondent has failed to respond to IRS's pleadings. First, on June 29, 2010, the IRS sent its Complaint with instructions on how to file an answer to Respondent via certified mail. (Motion). The IRS sent these documents to Respondent's address of record listed in Respondent's Request for Hearing. (Motion -Ex. 1, 2). The Complaint specifically provides that pursuant to 31 C.F.R. § 10.62, Respondent's Answer to the Complaint must be filed at the ALJ Docketing Center, Room 412, 40 S. Gay Street, Baltimore Maryland 21202-4022 with a copy served on the IRS Attorney within thirty (30) calendar days of service. See Complaint page 1. To date, Respondent has not filed an Answer to the Complaint nor has he provided any response to the IRS's Motion for a Default Decision. In accordance with 31 C.F.R. § 10.68(b), "if a non-moving party does not respond within 30 days to a filing of a motion for decision by default for failure to file a timely answer ... the nonmoving party is deemed not to oppose the motion."

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<sup>1</sup> As noted above, the complaint demanded an answer not later than 30 days after service of the complaint.

Given the above, and in accordance with 31 C.F.R. § 10.64(d) and § 10.76, I find the allegations of the Complaint are hereby deemed ADMITTED. The IRS has met its burden to demonstrate that no genuine issue of material fact is present and is entitled to a decision as a matter of law. See 31 C.F.R. § 10.64(d) and §10.76; see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

## II, FINDINGS OF FACT

Based on the record with the allegations in the Complaint deemed admitted I find the following facts:

1. Respondent, (b)(3)/26 USC 6103, has engaged in practice as an attorney before the IRS as defined by 31 C.F.R. § 10.2(a).
2. Respondent's last known address of record with the IRS is Address 1.
3. Respondent (b)(3)/26 USC 6103
4. (b)(3)/26 USC 6103
5. (b)(3)/26 USC 6103
6. The records submitted by the IRS shows that Respondent (b)(3)/26 USC 6103.

## III. CONCLUSIONS OF LAW

1. In view of Respondent's (b)(3)/26 USC 6103 and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51.
2. (b)(3)/26 USC 6103 and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51.

#### IV. SANCTION

Respondent's actions as set forth above constitute disreputable conduct pursuant to 31 C.F.R. § 10.51, and reflect adversely on his fitness to practice. Upon review of the facts presented in the record as a whole, I find IRS's proposed penalty of disbarment is fair and appropriate where (b)(3)/26 USC 6103 [REDACTED] impacts directly on whether he has the qualifications required under the regulations for representing people in practicing on tax matters before the IRS.

WHEREFORE,

#### V. ORDER

**IT IS HEREBY ORDERED** that there being no genuine issue of material fact, Respondent has failed to answer the Complaint, therefore the Allegations of the Complaint are Deemed Admitted and Complainant's Motion for Default Decision is **GRANTED**.

**IT IS FURTHER ORDERED** that Respondent, (b)(3)/26 USC 6103 [REDACTED], is **DISBARRED** from practice before the Internal Revenue Service.

**PLEASE TAKE NOTICE** that Attachment provides your appeal rights.

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**MICHAEL J. DEVINE**  
**Administrative Law Judge**  
**U.S. Coast Guard**

Done and dated October 4, 2010  
Baltimore, MD

## Attachment A

### 31 C.F.R. PART 10 SUBPART D, APPEALS

#### **§ 10.77 Appeal of decision of Administrative Law Judge.**

(a) Appeal. Any party to the proceeding under this subpart D may file an appeal of the decision of the Administrative Law Judge with the Secretary of the Treasury, or delegate. The appeal must include a brief that states exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions.

(b) Time and place for filing of appeal. The appeal and brief must be filed, in duplicate, with the Director of the Office of Professional Responsibility within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The Director of the Office of Professional Responsibility will immediately furnish a copy of the appeal to the Secretary of the Treasury or delegate who decides appeals. A copy of the appeal for review must be sent to any non-appealing party. If the Director of the Office of Professional Responsibility files an appeal, he or she will provide a copy of the appeal and certify to the respondent that the appeal has been filed.

(c) Effective/applicability date. This section is applicable on September 26, 2007.

#### **§ 10.78 Decision on review.**

(a) Decision on review. On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal.

(b) Standard of review. The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence.

(c) Copy of decision on review. The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the Director of the Office of Professional Responsibility and the respondent or the respondent's authorized representative.

(d) Effective/applicability date. This section is applicable on September 26, 2007.