UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, DC

DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY,
Complainant,

v. Complaint No. 2006-25

PHILIP G. PANITZ,
Respondent.

Timothy Heinlein and Richard Ahnstruther, Attys.,
IRS, Office of Chief Counsel General Legal Services
Los Angeles, CA, for the Complainant.
Joseph Mudd, Atty., Irvine, CA, for the Respondent.

DECISION

Lana H. Parke, Administrative Law Judge. This matter arises from a complaint issued June 30, 2006, by the Acting Director, Office of Professional Responsibility, Department of the Treasury, Internal Revenue Service (OPR or Complainant), pursuant to 31 C.F.R. 10.60 and 10.82, issued under the authority of 31 U.S.C. 330, seeking to have Respondent, Philip G. Panitz (Mr. Panitz or Respondent), an attorney engaged in practice before the Internal Revenue Service (IRS), suspended from such practice for a period of one year for having engaged in disreputable conduct in violation of the provisions of 31 C.F.R. Part 10 (Treasury Department's written regulations governing the practice of attorneys and other professionals before the IRS), commonly known, and referred to herein, as Circular 230.[1]

On February 17 and 18, 2009, a hearing was held in City 1, State 1 at which the parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument.[2] Proposed findings of fact, conclusions of law, and supporting reasons submitted by the parties after the hearing have been given due consideration. Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following

[1] Circular 230 having undergone four revisions in the last decade, citations in documentary evidence herein to sections of those regulations may not parallel current subpart citations. The regulation Respondent is charged with violating is currently identified as Section 10.51(a)(4) of Circular 230 (revised in 2008), which is essentially unchanged from like provisions of Circular 230 in effect at times relevant to this matter: "(4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

[2] At the hearing, Respondent tendered an offer of proof as to the testimony of Expert A, proffered by Respondent as an expert witness in professional ethics, which offer of proof was rejected.

Findings of Fact

A. Background

Respondent, Mr. Panitz, is licensed in State 1 as an attorney and has engaged in the practice of tax law since 1989. At all times relevant hereto, Mr. Panitz has engaged in practice before the IRS within the purview of 31 C.F.R. 10.2(d) and 10.3(a). As such, Mr. Panitz is bound by the rules and regulations contained in Circular 230. During the relevant period, Attorney 1 was Mr. Panitz' junior law partner.[3]

At all relevant times, the IRS has administered an Offer and Compromise Program which makes available to taxpayers who are financially unable to meet tax liability an opportunity to compromise and resolve the debt at an amount less than the assessed tax. To avail oneself of the Program, a taxpayer must file a Form 656 to one of two program centers: Memphis or New York. Form 656 is an "Offer in Compromise" document that requires detailed information, including, in pertinent part, the following sections (designated "Items"): (1) Item 6 in which the taxpayer selects one of three reasons for the offer in compromise. The pertinent sub-choice of Item 6 is "Doubt as to Collectibility," in which the taxpayer claims insufficient assets and income to pay the full amount of assessed tax. Selection of this subsection requires the applicant to include a complete Collection Information Statement, as well as Form 433-A and/or Form 433-B. (2) Item 7 in which the taxpayer states the amount offered to pay the assessed tax liability. Item 7 refers the taxpayer to Item 10 to explain "where [the taxpayer] will obtain the funds to make this offer." (3) Item 10 provides space for the taxpayer to state the sources from which the taxpayer "shall obtain the funds to make this offer." Form 433-A, at Section 7, requires the taxpayer to list all assets and liabilities, including those which may be unavailable to the IRS for collection purposes.

The disreputable conduct alleged herein involves tax services [redacted] (b)(3)/26 USC 6103 that Mr. Panitz' law firm provided to two taxpayer couples: (1) Taxpayer 1 and Taxpayer 2 and (2) Taxpayer 3 and Taxpayer 4.

B. Taxpayers 1 and 2

(b)(3)/26 USC 6103 [redacted]

[3] Although Mr. Panitz acknowledged that, as senior partner, he had responsibility for documents issued by his office, he denied that he or anyone else in his office reviewed Attorney 1's work. Claimant's counsel argues that Mr. Panitz' testimony in this regard conflicts with his admission to Complaint paragraph II.C--"During times relevant to this complaint, Respondent supervised Attorney 1"--and evidences his lack of credibility. I do not find Mr. Panitz' testimony to be incredible in this or any other instance. Rather, I found Mr. Panitz testified forthrightly and candidly within recollection limits consequent to a Years A to Years B lapse between events and testimony. In the instant Complaint/Answer context, I take the unqualified term "supervised" to be descriptive of general oversight without other legal or factual significance.

[4] (b)(3)/26 USC 6103 [redacted].

(b)(3)/26 USC 6103

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(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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[5] Complainant asks the court to infer that Mr. Panitz actively participated in preparing (b)(3)/26 USC 6103. There is no basis for drawing such an inference. (b)(3)/26 USC 6103 Carolyn Hinchman Gray (Ms. Gray), Acting Director of OPR, described (b)(3)/26 USC 6103 as "not forthcoming" (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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(b)(3)/26 USC 6103

(b)(3)/26 USC 6103 . I take her testimony to mean that she did not believe (b)(3)/26 USC 6103 were open and/or frank.

[8] was unaware of any manual, regulation, or code provision that required .

(b)(3)/26 USC 6103 .[10]

Attorney 1, who at the time of the hearing was no longer with the Panitz firm, did not testify. Mr. Panitz testified that (b)(3)/26 USC 6103 . When (b)(3)/26 USC 6103 , Mr. Panitz' practice is to get (b)(3)/26 USC 6103 In such cases, Mr. Panitz' practice is to (b)(3)/26 USC 6103 Although Mr. Panitz had informed Attorney 1 of the firm's practice in this regard, the cover letter to (b)(3)/26 USC 6103 , drafted by Attorney 1 and not reviewed by Mr. Panitz, (b)(3)/26 USC 6103 .

Of the remaining $ Amount 9, as Mr. Panitz also testified, $ Amount 10 was a deposit toward attorney fees for five separate legal matters Taxpayers 1 and 2 had retained Mr. Panitz to handle, which amount Mr. Panitz thereafter transferred into his firm's general account.[11] The other (b)(3)/26 USC 6103 , with which entity Attorney 1 was authorized to negotiate on Taxpayer 1 and 2's behalf. Mr. Panitz retained in the firm's client trust fund both the (b)(3)/26 USC 6103 and the (b)(3)/26 USC 6103 .

On Date 14, shortly after Attorney 1 provided (b)(3)/26 USC 6103 referred Mr. Panitz and Attorney 1 to OPR as apparent violators of Sections 10.20(a) and 10.51(b) of Circular 230, based on his belief that "one or both of [Mr. Panitz and Attorney 1] acting as the Power of Attorneys for Taxpayers 1 and 2 have failed to provide (b)(3)/26 USC 6103 and have been parties to supplying false and/or misleading information…[and] have failed to provide (b)(3)/26 USC 6103 Specifically, (b)(3)/26 USC 6103

[10] (b)(3)/26 USC 6103 .

Mr. Panitz' practice was to obtain the entirety of anticipated fees before commencing work for a client. Mr. Panitz characterized the fees as "earned upon receipt" but for which he had to perform the agreed-upon work.

[12] At some point, Attorney 1 reached agreement with the Tax Board for an unspecified amount in satisfaction of Taxpayer 1 and 2's state tax liability and paid the agreed-upon amount to the state. Eventually, the (b)(3)/26 USC 6103 .

(b)(3)/26 USC 6103

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(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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C. Taxpayers 3 and 4

On Date 17, Taxpayers 3 and 4 met with Mr. Panitz for an initial consultation regarding a (b)(3)/26 USC 6103

. Although Mr. Panitz had no specific recollection of the meeting, his normal course in such consultations was to discuss various approaches for

. In the course of the discussion, Mr. Panitz told Taxpayer 3 that (b)(3)/26 USC 6103

. Mr. Panitz did not recall whether Taxpayer 3 informed Mr. Panitz that

(b)(3)/26 USC 6103

; Mr. Panitz made no such notation to his notes of the conversation. After his consultation with Taxpayers 3 and 4, Mr. Panitz made a file note that his secretary should follow up with the couple to see if they wished to retain Mr. Panitz from which Mr. Panitz inferred that Taxpayers 3 and 4 did not retain him at that time.

Shortly after their initial consultation with Mr. Panitz, Taxpayers 3 and 4 retained the Panitz firm, and at some point between Date 18 and Date 19, Taxpayers 3 and 4 (b)(3)/26 USC 6103

Thereafter a Panitz firm paralegal assembled Taxpayer 3 and 4's

[13] The Complainant does not, in these proceedings, allege any violation in the Panitz firm's (b)(3)/26 USC 6103

The IRS ultimately determined that (b)(3)/26 USC 6103

. According to Ms. Gray, Acting Director of OPR, the appropriateness of did not alter OPR's position that (b)(3)/26 USC 6103

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[15] The documentary evidence of record does not clearly reflect (b)(3)/26 USC 6103

and the Respondent admitted the Complaint allegation that (b)(3)/26 USC 6103

I find it

(b)(3)/26 USC 6103

The paralegal turned the paperwork over to Attorney 1 for review.

(b)(3)/26 USC 6103

Mr. Panitz did not review (b)(3)/26 USC 6103.

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

Realizing Taxpayer 3 had not been truthful with his attorneys (b)(3)/26 USC 6103, Mr. Panitz and Attorney 1 told Taxpayer 3 they would have to report their findings to the IRS.

(b)(3)/26 USC 6103

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reasonable, therefore, to infer that (b)(3)/26 USC 6103

By similar inference, I find that (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

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On Date 22, (b)(3)/26 USC 6103 referred Mr. Panitz and Attorney 1 to OPR as ostensible violators of Section 10.51(b) of Circular 230, based on his belief that “one of both of [Mr. Panitz and Attorney 1] acting as the Power of Attorneys for the [Taxpayers 3 and 4] have failed to provide (b)(3)/26 USC 6103 and have been parties to supplying false and/or misleading information.” Specifically, asserted that (b)(3)/26 USC 6103 stated he “suspected that all or most of the (b)(3)/26 USC 6103 ,” further asserting that Taxpayers 3 and 4’s attorneys were fully knowledgeable of the (b)(3)/26 USC 6103 but failed to disclose (b)(3)/26 USC 6103 . USC 6103

Mr. Panitz testified at the hearing that (b)(3)/26 USC 6103

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(b)(3)/26 USC 6103

[16] See footnote 15 for discussion of the evidence establishing (b)(3)/26 USC 6103 and Mr. Panitz’ Date 24 documentation of them.

[17] (b)(3)/26 USC 6103

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(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

Analysis and Conclusions

A. Legal Principles

Section 10.52(a) of 31 CFR provides that a practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service for "willfully violating any of the provisions contained in [Circular 230]." Section 10.51 provides that those sanctions may be imposed on a practitioner who engages in disreputable conduct, including the following:

> Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information.

Section 10.76 of Circular 230 sets the standard of proof for the level of sanction sought herein:

> If the sanction is…a suspension of six months or longer duration, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record.[19]

[18] (b)(3)/26 USC 6103 .

[19] The Supreme Court has defined the "clear and convincing" standard as evidence that "produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990). Another definition of "clear and convincing evidence" is evidence that creates an abiding conviction that the truth of [the plaintiff's] factual contentions are "highly probable." See McCormick, *Law of Evidence* § 320,

The complaint herein alleges that Mr. Panitz violated Circular 230 by engaging in the disreputable conduct of giving or participating in the giving of false or misleading information to an employee of the Department of Treasury when he failed properly to disclose (b)(3)/26 USC 6103, knowing the information that was provided was false or misleading. As remedy for the alleged violations, OPR seeks the suspension of Respondent from practice before the IRS for one year. Inasmuch as OPR seeks a suspension of longer than six months, OPR must prove the charges by clear and convincing evidence.

While the term "willful" is not defined in Circular 230, its use in the Treasury laws has consistently been held to mean, in both criminal and civil contexts, the "voluntary, intentional violation of a known legal duty." E.g., *United States v. Pomponio*, 429 U.S. 10, 12 (1976); *Thibodeau v. United States*, 828 F.2d 1499, 1505 (11th Cir. 1987). Willful "requires more than a showing of careless disregard for the truth." *United States v. Pomponio* at 12, noting the Court's holding in *United States v. Bishop*, 412 U.S. 346, 359-360 (1973).[20] The Director does not, however, have to show that Respondent acted with malicious intent or bad purpose, only that he voluntarily, and intentionally disregarded or was indifferent to his obligations.

B. Alleged False Information Provided to the IRS in (b)(3)/26 USC 6103

Complainant contends that Respondent engaged in disreputable conduct by knowingly giving false or misleading information to the IRS in connection with [redacted] (b)(3)/26 USC 6103. Specifically, Complainant charges Respondent with failing to disclose to the IRS (b)(3)/26 USC 6103 [redacted] Complainant argues that (b)(3)/26 USC 6103 should have been disclosed.

1. (b)(3)/26 USC 6103 [redacted]

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at 679 (1954)); *Lisenbee v. Henry*, 166 F.3d 997, 1000 (9th Cir.), *cert. denied*, 120 S. Ct. 82 (1999).

[20] OPR argues that the *Pomponio* standard, arising as it did from a criminal provision in the IRS Code, is higher than that required under Circular 230. Complainant analogizes OPR proceedings to other professional disciplinary actions such as state bar proceedings, which in State 1 have held that "willful" requires a showing only of "a general purpose or willingness to commit the act or permit the omission." See *Edwards v. State Bar,* 52 Cal. 3d 28, 37 (1990); *Durbin v. State Bar,* 23 Cal. 3d 461, 467 (1979). As did the *Pomponio* Court, the State 1 State Bar looked to a relevant penal code in forming its definition. See *Durbin v. State Bar* 23 Cal.3d 461, 467 (1979); (Pen. Code, § 7, subd. 1.) The State 1 State Bar standard, like that of *Pomponio*, requires intentional conduct.

(b)(3)/26 USC 6103

Mr. Panitz acknowledged at the hearing that the firm was obligated to notify the IRS (b)(3)/26 USC 6103. When Attorney 1 (b)(3)/26 USC 6103, he failed to follow the firm's practice of notifying the IRS by cover letter that (b)(3)/26 USC 6103. Attorney 1 further failed to include (b)(3)/26 USC 6103. However, (b)(3)/26 USC 6103.

(b)(3)/26 USC 6103.

The Complainant has shown that an (b)(3)/26 USC 6103 has an obligation to notify the IRS about (b)(3)/26 USC 6103. The Complainant has also shown that Attorney 1 did not, initially, clearly and specifically disclose to the IRS that (b)(3)/26 USC 6103. It does not follow that Attorney 1's dereliction of duty in this regard brings Mr. Panitz within the prohibitions of Circular 230, §10.51 against "[g]iving false or misleading information…knowing the information to be false or misleading." First, the information Attorney 1 initially provided to the IRS on behalf of Taxpayers 1 and 2 in (b)(3)/26 USC 6103, while deficient, was neither false nor misleading as regards (b)(3)/26 USC 6103. While Attorney 1's (b)(3)/26 USC 6103 may not have been entirely "forthcoming," as the Acting Director of OPR puts it, the evidence fails to show any attempt to falsify information regarding the (b)(3)/26 USC 6103 or to mislead the IRS about (b)(3)/26 USC 6103. Second, Complainant has failed to show that Mr. Panitz knew of, authorized, or otherwise bore responsibility for Attorney 1's filing deficiencies.[21] Accordingly, I find the facts herein do not show that Mr. Panitz falsely and/or misleadingly failed to disclose (b)(3)/26 USC 6103.

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

[21] In its post-hearing brief, Complainant asserts that Mr. Panitz "stated he supervised the final work completed by his secretary, and that he took responsibility for the work completed by Attorney 1 and his secretary." The portions of the transcript Complainant cites in support of that proposition show that Mr. Panitz, in the scope of his position as senior partner, exercised only general, not specific, oversight of documents Attorney 1 prepared.

Complainant contends that Mr. Panitz bears responsibility for his law partner's failure to disclose (b)(3)/26 USC 6103 . Complainant argues that (b)(3)/26 USC 6103 that should have been disclosed, and the firm's failure to do so was false and/or misleading.

(b)(3)/26 USC 6103 .

(b)(3)/26 USC 6103 Mr. Panitz does not dispute that (b)(3)/26 USC 6103 and agreed at the hearing that (b)(3)/26 USC 6103 .

Mr. Panitz denies any intention of hiding (b)(3)/26 USC 6103 from the IRS or misleading the IRS regarding (b)(3)/26 USC 6103, maintaining that the following facts are inconsistent with a voluntary or intentional violation of the provisions of Circular 230: (1) (b)(3)/26 USC 6103 ; (2) Attorney 1 readily and fully disclosed (b)(3)/26 USC 6103 (3) no evidence was adduced to show that Mr. Panitz knew of, authorized, or participated in any way in Attorney 1's failure to (b)(3)/26 USC 6103 . Mr. Panitz' arguments are persuasive.

Acceptance of Complainant's position with regard to (b)(3)/26 USC 6103 would require me to find that omission of material information (b)(3)/26 USC 6103 is, *per se,* evidence of disreputable conduct within the meaning of Circular 230. Complainant provides no authority to support such a finding. Rather, the plain language of Circular 230 requires, at Section 10.52(a), a showing of a "[willful violation of] any of the provisions contained in [Circular 230]" to justify suspending a practitioner from practice before the IRS. Further, under Section 10.76, if a suspension of six months or longer is sought, Complainant must prove such a willful violation by clear and convincing evidence. Complainant has proved that Attorney 1 initially failed to disclose relevant information (b)(3)/26 USC 6103 . However, the evidence further shows that (b)(3)/26 USC 6103 , from which it is reasonable to infer that it is not uncommon for taxpayers (b)(3)/26 USC 6103 without, presumably, incurring the penalties described in Circular 230. It follows, and I find, that willfulness cannot be established by mere omission or failure to disclose information but must be evidenced by conduct from which an intent to deceive or mislead may be inferred. Thus, nondisclosure alone cannot prove a "knowing" submission of false or misleading information. (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

There is no evidence of resistance, equivocation, or distortion in Attorney 1's divulgence of information about (b)(3)/26 USC 6103. The lack of any such evidence negates an intent to deceive or mislead.

Even assuming Attorney 1 knowingly submitted false or misleading information to the IRS in this regard, the Complaint does not name Attorney 1, who has left both the firm and the practice of law; it only names Mr. Panitz. In order to prove that Mr. Panitz willfully violated the provisions of Circular 230, Complainant must present clear and convincing evidence that Mr. Panitz knew of and participated in or approved Attorney 1's submissions. Complainant has not done so.[22] Evidence that Mr. Panitz assumed general responsibility for his firm's actions and for documents issued by the firm doesn't answer the evidentiary requirements of Circular 230. Accordingly, I find Complainant has not shown by clear and convincing evidence that Mr. Panitz falsely and/or misleadingly failed to disclose (b)(3)/26 USC 6103.

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

Complainant contends that Attorney 1's failure to disclose (b)(3)/26 USC 6103 was false and/or misleading. Mr. Panitz maintains that the money deposited (b)(3)/26 USC 6103. In support of its position, Complainant draws on language from the State Bar of State 1 Handbook on Client Trust Accounting to distinguish between advance fees (money paid upfront for the cost of legal representation) and retainers (money paid to ensure attorney availability to a client, which are earned in full at the time received). Arguing that the (b)(3)/26 USC 6103 was an advance fee rather than a retainer and was thus subject to refund in circumstances where the legal work was not performed, Complainant insists Attorney 1 should have disclosed (b)(3)/26 USC 6103.

No evidence was adduced that the Panitz firm sought to conceal (b)(3)/26 USC 6103 as opposed to mere nondisclosure of it. It is reasonable to infer from Ms. Gray's testimony that the IRS did not quarrel with the appropriateness of the (b)(3)/26 USC 6103, taking the position only that (b)(3)/26 USC 6103 should have disclosed (b)(3)/26 USC 6103. As discussed above, nondisclosure alone cannot provide the clear and convincing evidence necessary to establish a willful violation of the provisions of Circular 230. Further, it appears the IRS has no clear-cut policy about the attorney-fee issue. Complainant points to no IRS manual, regulation, or code provision requiring (b)(3)/26 USC 6103

[22] Complainant argues that even if Mr. Panitz did not participate in , he thereafter adopted and/or did not correct the representations made by Attorney 1. Complainant also assails Mr. Panitz' credibility by pointing out inaccuracies and inconsistencies in Mr. Panitz' communications with OPR during that office's Date 16 inquiry into Mr. Panitz and Attorney 1's eligibility to practice before the IRS. After reviewing the communications, I conclude that any inaccuracies and inconsistencies reflect Mr. Panitz' cursory and perhaps even careless review of facts upon which he based his responses rather than a deliberate attempt to mislead OPR. Even if the inaccuracies and inconsistencies significantly impacted Mr. Panitz' general credibility, which I do not find, it does not follow that lack of credibility can substitute for factual proof of Mr. Panitz' knowledge and participation in giving false or misleading information to the IRS.

(b)(3)/26 USC 6103

In circumstances where no clear IRS policy or guideline exists regarding whether (b)(3)/26 USC 6103, Attorney 1's failure to specify (b)(3)/26 USC 6103, cannot constitute the knowing communication of false or misleading information.

I find the facts herein do not prove that Mr. Panitz voluntarily or intentionally violated a known legal duty[23] or demonstrated a general purpose or willingness[24] to violate any provision of Circular 230 by his law firm's handling of (b)(3)/26 USC 6103.

[23] *United States v. Pomponio* at 12.
[24] *Durbin v. State Bar*, at 467.

C. Alleged False Information Provided to the IRS in (b)(3)/26 USC 6103

Complainant contends that Respondent engaged in false and/or misleading conduct (1) by failing to disclose to the IRS in (b)(3)/26 USC 6103 and (2) by failing to disclose (b)(3)/26 USC 6103.

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

(b)(3)/26 USC 6103

As stated earlier, Complainant has shown that (b)(3)/26 USC 6103. Complainant has shown that Attorney 1 did not initially disclose to the IRS that (b)(3)/26 USC 6103. Complainant has further shown that the Panitz firm did not remedy the omissions for a period of months A until, (b)(3)/26 USC 6103. The Complainant has not, however, shown that Mr. Panitz' delay in informing the IRS of (b)(3)/26 USC 6103 constituted an attempt to falsify information regarding (b)(3)/26 USC 6103 or to mislead the IRS about (b)(3)/26 USC 6103.[25]

As discussed earlier, omission of material information (b)(3)/26 USC 6103 is not, *per se,* evidence of disreputable conduct within the meaning of Circular 230. Rather, the Complainant must show by clear and convincing evidence a "[willful violation of] any of the provisions contained in [Circular 230]" to justify the one-year suspension it seeks. Here, the evidence shows that although (b)(3)/26 USC 6103 omitted information about (b)(3)/26 USC 6103, Mr. Panitz provided the information within 15 days of (b)(3)/26 USC 6103. Complainant has not shown deceit, evasiveness, or even recalcitrance on the part of Mr. Panitz in providing (b)(3)/26 USC 6103. Once requested, the evidence shows Mr. Panitz readily provided the information. Accordingly, I find the facts herein do not show that Mr. Panitz falsely and/or misleadingly failed to disclose (b)(3)/26 USC 6103

[25] Complainant also argues that by asserting in his (b)(3)/26 USC 6103, Mr. Panitz submitted false and misleading information. While a meticulous response should probably have (b)(3)/26 USC 6103, it cannot reasonably be argued that Mr. Panitz' failure to do so was false and misleading inasmuch as Mr. Panitz contemporaneously provided the documented information from which the relevant facts could be ascertained.

(b)(3)/26 USC 6103

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

No party disputes that (b)(3)/26 USC 6103 contained false and misleading information, as contemplated by the provisions of Circular 230. The misrepresentations were to the effect that (b)(3)/26 USC 6103 The true facts were that in Date 46, before the Taxpayers 3 and 4 met with Mr. Panitz and before their (b)(3)/26 USC 6103 . The unsettled question is whether Mr. Panitz knew the information to be false and misleading when his firm (b)(3)/26 USC 6103 .

Complainant has presented no direct evidence that Mr. Panitz knew the (b)(3)/26 USC 6103 was false at the time the Panitz firm (b)(3)/26 USC 6103 . Rather, Complainant asks that such an inference be drawn from the following facts: (1) when Taxpayers 3 and 4 met with Mr. Panitz in Date 45, Taxpayer 3 asked (b)(3)/26 USC 6103 ; (2) Mr. Panitz could not recall whether Taxpayer 3 told him at that time that (b)(3)/26 USC 6103 ;[26] (3) Attorney 1 did not (b)(3)/26 USC 6103 ; (4) Mr. Panitz believed Attorney 1 did not ask [Taxpayers 3 and 4] for (b)(3)/26 USC 6103 ;[27] (5) Attorney 1 did not (b)(3)/26 USC 6103 ; and (6) in Mr. Panitz' (b)(3)/26 USC 6103

I cannot draw the inference Complainant seeks. (b)(3)/26 USC 6103 there is no evidence Mr. Panitz in any way abetted or countenanced (b)(3)/26 USC 6103 . Rather, the evidence suggests that as soon as the Panitz firm learned of the misrepresentations, Mr. Panitz and Attorney 1 took steps to submit documentation of the true facts. As discussed above, nondisclosure alone cannot prove, by clear and convincing evidence, the knowing communication of false or misleading information that is necessary to establish a willful violation of the provisions of Circular 230.

[26] Specifically, Mr. Panitz testified: I do not recall if he had informed me that (b)(3)/26 USC 6103 . He was merely talking in generalities about whether or not a (b)(3)/26 USC 6103 .

Although Mr. Panitz so testified, there is no evidence as to when he formed that belief.

[28] A more complete rendition of Mr. Panitz' (b)(3)/26 USC 6103 is set forth in the facts section of this decision.

As to Mr. Panitz' [redacted], Complainant argues that Mr. Panitz' statements therein are so inconsistent with his testimonial admission of [redacted] that they prove Respondent's culpability. I cannot draw that inference, either. While Mr. Panitz' could perhaps have communicated his position regarding [redacted] more clearly, a full reading of his [redacted] cannot justify an inference that he was asserting false information. Mr. Panitz clearly acknowledged that [redacted] The essential thrust of Mr. Panitz' [redacted]. Mr. Panitz' argument may or may not be legally sound, but his assertion of it is not so unreasonable as to constitute disreputable conduct. Considering all the evidence regarding the Panitz firm's failure to disclose [redacted], I find the facts herein do not demonstrate Respondent's purposeful disregard and/or indifference to his obligations as an IRS practitioner.

Conclusions of Law

1. The Respondent, Philip G. Panitz, is an attorney eligible to practice before the Internal Revenue Service and is subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility.

2. The Office of Professional Responsibility failed to prove by clear and convincing evidence that Respondent engaged in disreputable conduct within the meaning of 31 C.F.R. 10.51 by willfully submitting or participating in the submission of false and/or misleading information to the Internal Revenue Service in connection with [redacted].

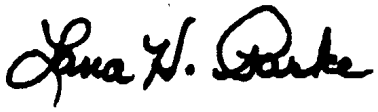
3. The Office of Professional Responsibility failed to prove by clear and convincing evidence that Respondent engaged in disreputable conduct within the meaning of 31 C.F.R. 10.51 by willfully submitting or participating in the submission of false and/or misleading information to the Internal Revenue Service in connection with [redacted].

Upon the foregoing findings of fact and conclusions of law, and the entire record, pursuant to 31 C.F.R. 10.76, I issue the following:

ORDER[29]

The Complaint is dismissed in its entirety.

Dated at City 1, State 1, June 15, 2009



Lana H. Parke
Administrative Law Judge

[29] 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 date of issuance.