



UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

August 6, 2015

PRESS RELEASE

The Chief Judge of the United States Tax Court announced today that the following practitioners have been disciplined by the United States Tax Court for reasons explained in an order issued in the case of each practitioner, and a memorandum sur order issued in the case of Wilfred I Aka.

Copies of the orders and the memorandum sur order are attached.

1. Wilfred I. Aka
2. Michael D. Weisman

Attachments

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Wilfred I. Aka

ORDER OF DISBARMENT

The records of this Court in the cases of Brown v. Commissioner, T.C. Memo. 2014-167; Adiele P. Ohiaeri v. Commissioner, Docket No. 28882-09; Andrew O. Onaghise v. Commissioner, Docket No. 3631-10; Ugwuala v. Commissioner, T.C. Memo. 2013-105; Maria G. Odum v. Commissioner, Docket No. 29591-11; Eunice Bisong Nkongho v. Commissioner, Docket No. 18002-12; and Emmanuel C. Acholonu & Shawn Y. Acholonu, Docket No. 17237-13, reflect that Mr. Aka egregiously and willfully disregarded the Rules and Orders of this Court. Mr. Aka failed to appear when four of the cases were called for trial or for hearing. See Ohiaeri, Onaghise, Odum, and Acholonu. Mr. Aka ignored requests of opposing counsel for a Branerton conference (See Branerton Corp. v. Commissioner, 61 T.C. 691 (1974)), ignored the requests and motions of opposing counsel for production of documents and answers to interrogatories and even disregarded the Court's Order to Show Cause why matters covered in discovery motions should not be deemed admitted. See Ugwuala, Odum, and Nkongho. Mr. Aka disregarded and failed to respond to a variety of Orders of this Court, including Orders to Show Cause why the case should not be dismissed for failure to prosecute, an order to file a status report, and orders to file a post-trial brief by a due date and by an extended due date. See Brown, Onaghise, Odum, Nkongho, and Acholonu.

The Court issued an Order to Show Cause (OSC) to Mr. Aka on November 5, 2014, affording Mr. Aka the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court or otherwise disciplined as a result of his conduct in the above-mentioned cases. The Court afforded Mr. Aka the opportunity to respond to the OSC on or before November 25, 2014. On November 24, 2014, the Court received Mr. Aka's letter requesting a thirty-day extension of the time to respond to the OSC on the ground that he needed additional time to gather records, and to travel outside the United States to attend to family legal matters on a previously scheduled trip. By Order dated November 25, 2014, the Court enlarged the time for Mr. Aka to respond to the OSC to March 2, 2015, and it scheduled a disciplinary hearing for March 31, 2015.

SERVED AUG - 6 2015

Mr. Aka submitted the following three documents in response to the OSC: (1) Response to Order to Show Cause, received on December 1, 2014; (2) revised Response to Order to Show Cause, received on March 10, 2015, which was accepted as Mr. Aka's testimony at his disciplinary hearing; and (3) Respondent's Hearing Brief, Date: March 31, 2015, to which there was attached Declaration of Wilfred I. Aka, and various declarations and letters from clients and acquaintances attesting to his competence and fitness.

Mr. Aka and his attorney, Chijioke Ikonte, appeared at the disciplinary hearing held on March 31, 2015, and Mr. Aka provided further testimony in response to the OSC.

Upon due consideration of Mr. Aka's submissions, his testimony provided at the hearing on March 31, 2015, and for reasons set forth in the attached Memorandum Sur Order, it is

ORDERED that the Court's Order to Show Cause, issued November 5, 2014, is hereby made absolute in that under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Aka is forthwith disbarred from further practice before the United States Tax Court. It is further

ORDERED that Mr. Aka's name is hereby stricken from the list of practitioners who are admitted to practice before the United States Tax Court, and his practitioner access to case files maintained by the Court in electronic form is hereby revoked. It is further

ORDERED that the Court will file orders to withdraw Mr. Aka as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Aka is hereby prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Aka shall, within 20 days of service of this order upon him, surrender to this Court his certificate of admission to practice before this Court.

By the Court:

(Signed) Michael B. Thornton

Michael B. Thornton
Chief Judge

Dated: Washington, D.C.
August 6, 2015

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In re Wilfred I. Aka

MEMORANDUM SUR ORDER

On November 5, 2014, pursuant to Rule 202(a)(3), Tax Court Rules of Practice and Procedure, the Court issued an Order to Show Cause (OSC) to Mr. Wilfred I. Aka, a member of the Court's Bar, directing him to show cause why he should not be suspended or disbarred from practice before this Court or otherwise disciplined. The OSC is based upon Mr. Aka's behavior as counsel in seven docketed cases before this Court (the seven cases).

The OSC summarizes Mr. Aka's conduct in the seven cases as follows:

Your conduct in * * * the [seven] cases is characterized by your failure to follow the rules and orders of the Court and it appears that your conduct caused damage to your clients. It also appears that your conduct in the * * * summarized cases violated Rule 1.1 (competence), Rule 1.3 (diligence), Rule 1.4 (communication), Rule 3.2 (expediting litigation), Rule 3.4 (fairness to opposing party and counsel), Rule 8.4(a) (conduct that violates the Rules of Professional Conduct), and Rule 8.4(d) (conduct that is prejudicial to the administration of justice) of the ABA Model Rules of Professional Conduct, and Rules 202(a)(3) (conduct which violates the letter and spirit of the ABA Model Rules of Professional Conduct, the Rules of the Court, or orders or other instructions of the Court) and 202(a)(4) (any other conduct unbecoming a member of the Bar of the Court) of the Tax Court Rules of Practice and Procedure.

The OSC describes Mr. Aka's conduct in each of the seven cases as follows:

1. Brown v. Commissioner, T.C. Memo. 2014-167: You filed your entry of appearance in this case on the same day the petition was filed. The Court's opinion, at *11 through 13, describes your failure to cooperate in the preparation of the case for trial, by not responding to the government's motion to compel stipulation under Rule 91(f), by failing to respond to the Court's order to show cause why matters

should not be deemed stipulated, and by not responding to the government's informal request for production of documents. The Court's opinion also points out that you did not comply with the Court's order to file a post-trial brief, and you did not comply with the Court's order to file a post-trial brief by an extended due date. Furthermore, you did not comply with the Court's order directing you to supplement petitioners' October 17, 2013, motion [to extend the due date of petitioners' opening brief] with additional information and answers to specific questions concerning the circumstances of petitioners' failures to timely file a brief. As a result, the Court denied petitioners' October 17, 2013, motion and did not accept petitioners' opening brief.

2. Adiele P. Ohiaeri, docket no. 28882-09: You signed the petition in this case. When the case was called from the calendar of the trial session that began in Los Angeles, CA, on November 30, 2010, neither you nor petitioner appeared. On November 30, 2010, you e-filed, to Washington, D.C., Petitioners' [sic] Motion to Continue For Calendar Call As To 2006 Taxable Year. In that motion, you stated that you were involved in a prolonged trial through October 5, 2010, and you were unsuccessful in meeting with, or conferring with the government's attorney after that date. On November 30, 2010, the government's attorney filed Motion to Dismiss for Lack of Prosecution detailing her unsuccessful attempts to meet with you from and after November 1, 2010. On December 8, 2010, the Court entered Order of Dismissal and Decision in which it denied petitioner's motion to continue, granted the government's motion to dismiss for lack of prosecution, and entered decision against petitioner for the deficiency in income tax determined in the notice of deficiency.
3. Andrew O. Onaghise, docket no. 3631-10: You signed the petition in this case. When the case was called from the calendar of the trial session that began in Los Angeles, CA, on March 7, 2011, neither you nor petitioner appeared. You also failed to appear when the case was recalled on March 10, 2011. Petitioner failed to appear when the case was recalled, but he contacted the Court's trial clerk and advised her

that he did not know that the case had been set for trial and he thought that you were handling the case. Petitioner said that he wanted to proceed with the case. On March 10, 2011, the Court issued an Order to Show Cause why respondent's motion to dismiss for lack of prosecution should not be granted. Neither you nor petitioner responded to the Order to Show Cause. Accordingly, on June 14, 2011, the Court issued Order of Dismissal and Decision in which the Court granted respondent's motion to dismiss for lack of prosecution and entered decision against petitioner for the deficiency in income tax determined in the notice of deficiency.

4. Ugwuala v. Commissioner, T.C. Memo. 2013-105: You signed the petition in this case. The Court's opinion describes your conduct during these proceedings, as follows (at *4-5):

Wilfred I. Aka represented petitioners in this matter. Mr. Aka ignored respondent's request to conduct a Branerton conference. See Branerton Corp. v. Commissioner, 61 T.C. 691 (1974). Respondent filed motions to compel production of documents and responses to interrogatories. Again Mr. Aka failed to respond on petitioners' behalf. We then granted respondent's motion to impose sanctions under Rule 104(c). Petitioners moved for us to reconsider the sanctions. Mr. Aka indicated he was abroad and had not taken appropriate steps to act on behalf of his clients. We granted the motion.

* * * * *

We note that petitioners' counsel has delayed and impeded this matter by being generally unresponsive and unprofessional. Petitioners' counsel has consistently ignored our Rules. This caused respondent to file, and the Court to decide, motions that should have been unnecessary. We determined that petitioners' counsel had failed to respond on their behalf and vacated sanctions imposed against them. FN3

This is not the first time that Mr. Aka has violated our Rules. See Akanno v. Commissioner, T.C. Summary Opinion 2009-168.

5. Maria G. Odim, docket no. 29591-11: You signed the petition in this case. When the case was called from the calendar of the trial session that began in Los Angeles, CA, on December 17, 2012, neither you nor petitioner appeared. Both you and petitioner failed to appear when the case was recalled on December 19, 2012. Government counsel appeared and filed Motion to Dismiss for Failure to Properly Prosecute. In response, the Court issued an Order to Show Cause why the case should not be dismissed for failure to properly prosecute. You failed to respond to the Order to Show Cause. As a result, the Court granted the government's motion to dismiss and entered decision against petitioner for the deficiency in income tax determined in the notice of deficiency.
6. Eunice Bisong Nkongho, docket no. 18002-12: You signed the petition in this case. Prior to trial, the Court issued an Order to Show Cause granting the government's Motion for Order to Show Cause Why Proposed Facts and Evidence Should Not Be Accepted As Established. The government's motion was based upon allegations that you had failed or refused to confer with respect to entering into a stipulation in accordance with Rule 91. You did not respond to the Court's Order to Show Cause. When the case was called and recalled from the calendar of the trial session that began in Los Angeles, CA, on June 24, 2013, neither you nor petitioner appeared, and the government's counsel made an oral motion to dismiss for failure to prosecute. By Order and Order of Dismissal and Decision entered on July 5, 2013, the Court made its Order to Show Cause under Rule 91(f) absolute, granted the government's motion to dismiss, and entered decision against petitioner for the deficiency in income tax in the amount determined in the notice of deficiency.
7. Emmanuel C. Acholonu & Shawn Y. Acholonu, docket no. 17237-13: You signed the petition in this case. You failed to file a status report, as ordered by the Court, in which you were to describe the status of the case in advance of a hearing on the government's motion to

dismiss for lack of jurisdiction as supplemented. Neither you nor petitioners appeared for the hearing. After considering your response to an order to show cause, the Court issued an order on July 17, 2014, by which you were withdrawn as counsel for petitioners.

Notwithstanding the fact that the Court withdrew you as counsel for petitioners, you electronically filed an entry of appearance as petitioners' counsel without first seeking leave of the Court. As a result, by Order dated September 5, 2014, the Court ordered that your entry of appearance was stricken from the record, and the Court again withdrew you as counsel of record for petitioners.

Mr. Aka's Submissions and Response to OSC

The Court afforded Mr. Aka the opportunity to respond to the OSC on or before November 25, 2014. On November 24, 2014, the Court received Mr. Aka's letter requesting a thirty-day extension of the time to respond to the OSC on the ground that he needed additional time to gather records, and to travel outside the United States to attend to family legal matters on a previously scheduled trip. By Order dated November 25, 2014, the Court enlarged the time for Mr. Aka to respond to the OSC to March 2, 2015, and it scheduled a disciplinary hearing for March 31, 2015.

Mr. Aka submitted the following three documents in response to the OSC: (1) Response to Order to Show Cause, received on December 1, 2014; (2) revised Response to Order to Show Cause, received on March 10, 2015, which was accepted as Mr. Aka's testimony at his disciplinary hearing; and (3) Respondent's Hearing Brief, Date: March 31, 2015, to which there was attached Declaration of Wilfred I. Aka, and various declarations and letters from clients and acquaintances attesting to his competence and fitness.

Mr. Aka and his attorney, Chijioke Ikonte, appeared at the disciplinary hearing held on March 31, 2015, and Mr. Aka provided further testimony in response to the OSC.

An overriding theme of Mr. Aka's defense is that his conduct in the seven cases was substantially justified, and that his actions caused no damage or harm to

his clients. In effect, he asserted that his failure to respond to opposing counsel and to the Court was caused by the failure of his clients to produce needed records. He also maintains that his lack of experience and trips to Nigeria excuse his failures. At the disciplinary hearing, Mr. Aka testified he had taken remedial steps, such as having his spouse open his mail in his absence. He also urged us to consider his performance in his other cases to establish that the seven cases are not the norm of his behavior as counsel.

Mr. Aka's revised Response to the Order to Show Cause sets forth Mr. Aka's response to the OSC summary of his conduct in each of the seven cases. The following are statements relating to each of the seven cases that were extracted from Mr. Aka's revised Response:

1. Brown v. Commissioner, T.C. Memo. 2014-167:

The electronic calendar record of my contacts in their case, * * * showed that I cooperated with the opposing counsel, Ms. Kim Santos to the extent feasible between the needs of the clients and the opposing counsel.

Contrary to the Court's allegation, one of the records filed with the Court on March 2, 2012 showed that there were [sic] joint stipulation filed on [sic] the case * * *. As the client demanded, the stipulation was signed in presence of Ms. Santos in downtown Los Angeles office of the Chief Counsel by Dr. Brown and myself as he demanded.

* * * * *

Pursuant to the clients' mandate of involvement in every aspect of the case, I never received a [sic] approval of response to Court's order to show cause why matters should not be deemed stipulated for filing with the Court. However, meeting with opposing Counsel on March 1, 2012 and signing the "Stipulation of Settled Issues", the client indicated that that event over took the Court's OSC dealing with stipulation of facts.

* * * * *

I had difficulties in getting documents because the documents were coming from different sources * * *.

* * * * *

There was further instruction not do anything further until further instructions from him [Dr. Brown]. Consequently, my hands were tied. * * *

2. Adiele P. Ohiaeri, docket no. 28882-09:

The client was not able to obtain the necessary records, substantiation to support any claimed Schedule A deduction. Consequently, at the last minute, he instructed me to request for [sic] extension of time to get the documents. In addition I was involved in a prolonged trial resulting in last minute request for extension. Till this day, my client was not able to obtain any substantiation to make change to the amount in the notice of deficiency. To date, this taxpayer is still my client.

Note: Paragraph 14 of the Declaration of Wilfred I. Aka (attached to Mr. Aka's Hearing Brief) states that Mr. Aka scheduled a meeting with government counsel on November 29, 2010, to discuss this case, and paragraph 15 describes Mr. Aka's discussion with the government counsel at that meeting. However, according to the Motion to Dismiss for Lack of Prosecution filed by the government on November 30, 2010, no such meeting took place because Mr. Aka failed to appear. Furthermore, at the disciplinary hearing on March 31, 2015, Mr. Aka and his counsel promised to submit, within a week of the hearing, the name and docket number of the superior court case in which a prolonged trial allegedly gave rise to Mr. Aka's request for an extension of time. To date, the Court has not received the promised information.

3. Andrew O. Onaghise, docket no. 3631-10:

I requested for [sic] all documentation that will support the client's claim. Unfortunately none was produced despite numerous requests. Although an order to show cause was issued by the Court, I had no information to oppose the OSC. I was ready to vigorously represent my client but he failed to bring the documentation needed to substantiate his claim.

4. Ugwuala v. Commissioner, T.C. Memo. 2013-105:

Obtaining record [sic] to properly represent them [clients] was very difficult. * * * They [clients] had to rely on third party for the supply of records [sic]. The tax preparer was uncooperative.

* * * * *

Again the litany of the above contacts, depicts how I worked with the client, opposing counsel and the court which showed cooperation with the aforementioned. I worked very diligently with taxpayer to properly represent them [sic].

As to mention of Akanno v. Commissioner Case [T.C. Summary Opinion 2009-168] was unfounded [sic]. It was a 2007 case that continued until 2009. In that case, I started as a CPA expert witness. The client was in pro per. When I became eligible to practice before the court, I substituted in at the end of the case. It was never a case I handled as an attorney. Therefore insinuation that I mishandled the case was unfounded. This is a case of calling a dog a bad name in order to kill it.

5. Maria G. Odim, docket no. 29591-11:

Ms. Odim had two Tax Court cases going on concurrently. * * * It was agreed that the two cases [sic] should be merged. * * *

Ms. Odum was continually updated on every aspect of her case. Failure to attend calendar call of December 2012 was as [sic] a result of misunderstanding that since the cases would merge and the merging did not require appearance of the Petitioner. Right after that date, I travelled out of the country and did not return until late January 2013. [sic]

* * * * *

The above showed that there was no loss as a result of representation in this case. Rather, aggressive representation helped the client on the adjustment made in the process. I worked with the Government and I worked with the client and client is very very appreciative. Therefore, there was no harm to the Court, opposing Counsel or to my client.

Note: At his March 31, 2015, disciplinary hearing, Mr. Aka testified that, contrary to the OSC, the above case was not dismissed for failure to properly prosecute, but was disposed of by stipulated decision. Mr. Aka's testimony is wrong. We take judicial notice that the subject case at docket no. 29591-11, was dismissed by the Court, as stated in the OSC, for failure to properly prosecute, after petitioner and Mr. Aka had failed to appear when the case was called and recalled from the trial calendar, and after petitioner had failed to respond to the order to show cause by the Court.

Mr. Aka may be confusing the subject case with a second case at docket no. 30158-12. The petition in that second case was filed December 17, 2012, the same day as the calendar call in the subject case, and the second case terminated in March of 2014, when the Court entered a stipulated decision.

In his revised response, Mr. Aka claims that he had agreed with respondent's counsel that the two cases would be merged and "that there would be no appearance on behalf of petitioner [in the subject case] for the calendar call in December 2012." Mr. Aka does not explain how respondent's counsel knew about the second case which, as mentioned above, was not filed until December

17, 2012, the date of the calendar call of the first case. Furthermore, Petitioners' [sic] Motion to Continue was based upon petitioner's "travel out of the country" and said nothing about merging petitioner's second case with the first.

6. Eunice Bisong Nkongho, docket no. 18002-12:

This client was never cooperative in her representation. Made [sic] less than half of requested down payment for her representation and never give [sic] the requested documentation to support any claimed deduction for Schedule E. Even the records later presented to her was [sic] the one I obtained under freedom of information act from the IRS Appeal which I tried through phone call, e-mail etc without success to discuss with client.

The same lack of communication and cooperation was communicated to IRS Counsel whereupon we agreed that she should move to dismiss for lack of prosecution and I was not going to oppose it. I sent the motion to dismiss to my client. My client did nothingNo [sic] damages were sustain [sic] by client as a result of representation, since she lacked substantiation document [sic] to disprove the amount on the NOD.

7. Emmanuel C. Acholonu & Shawn Y. Acholonu, docket no. 17237-13:

As far as missing a court hearing date, Mr. Ellenson [respondent's attorney] was aware that I was going to be out of the country through the date of the hearing and we discussed it, jokingly telling me that his son like [sic] soccer when he noted that I was going to a country where soccer was a major game the public watched with passion. In addition, I informed my client of my unavailability and had informed him to attend and bring it to the attention of the Court that I was out of the country to [sic] Africa as I had informed the opposing counsel. Even during the December 2013 meeting with the IRS counsel, I had my client spoke [sic] to IRS Counsel on among other subject, [sic] including [sic] the fact that he may see him in court instead of me since I was going to be out of the country at the time.

Public Reprimand

By Order of the Court dated September 27, 2011, Mr. Aka was publicly reprimanded for his conduct in Kyere v. Commissioner, Docket No. 27398-09. Mr. Aka's conduct in that case, which is similar to his conduct in the seven cases identified in the OSC, is described in the Memorandum Sur Order dated September 19, 2011, which accompanied Mr. Aka's reprimand. The Memorandum Sur Order dated September 19, 2011, is reproduced in Appendix I. In that case, after entering his appearance, Mr. Aka failed to respond to the attempts of opposing counsel to contact him, Mr. Aka failed to appear when the case was called for trial from the calendar of the trial session, and he failed to respond to the Court's order to show cause why the case should not be dismissed.

Discussion

Mr. Aka offers no reasonable explanation for his consistent disregard of this Court's orders. He appears to understand the need to respond to Court orders and has the ability to do so, as shown by his responses in this disciplinary matter (although, as noted above, he promised at his disciplinary hearing to provide additional information, he has not done so). Nevertheless, in response to orders of this Court, he has repeatedly done nothing or has responded only in a half measure when pressed. In this proceeding, he has offered no facts inconsistent with the detailed allegations in the OSC. He has offered only excuses (including blaming clients or travel schedule) to deflect responsibility for his failures.

The opening statement of Mr. Aka's attorney at the disciplinary hearing, and Mr. Aka's testimony during that hearing, make it clear that Mr. Aka accepts no responsibility for any of the problems in the seven cases. To the contrary, Mr. Aka and his attorney suggest that the clients are to blame. According to Mr. Aka and his attorney, the clients were "very difficult and were very uncooperative," and they failed to provide the documents necessary to substantiate the deductions involved, despite Mr. Aka's warnings that the cases might be dismissed. While the failure of his clients to provide documents might have a bearing on Mr. Aka's obligation to his clients, it does not absolve Mr. Aka of his obligations to opposing counsel to cooperate in the preparation of the cases for trial, or his obligation to

respond to Court orders, and to appear when the case is called for trial or hearing. As we explained in the Memorandum Sur Order issued to Mr. Aka in connection with his 2011 public reprimand, see Appendix I:

Even if, as Mr. Aka's response suggests, he owed no obligation to Mr. Kyere [the client], Mr. Aka undertook obligations to the Court and to the opposing party in the case by reason of the fact that he entered his appearance in Kyere v. Commissioner. By neglecting those obligations, he failed to take reasonable steps to expedite litigation, as required by Model Rule 3.2, he failed to treat the opposing party and counsel with fairness, as required by Model Rule 3.4, he engaged in conduct prejudicial to the administration of justice, in violation of Model Rule 8.4(d), and he engaged in conduct unbecoming a member of the Bar of the Court, in violation of Rule 202(a)(4) of the Tax Court Rules of Practice and Procedure.

In addition, the statements of Mr. Aka and his attorney raise other issues regarding Mr. Aka's conduct in the seven cases. We note that Mr. Aka signed the petitions in the cases identified in the OSC, except for the petition in the Brown case. Each petition is similar. It states that the sole reason why petitioner(s) disagrees with the adjustment(s) in the notice of deficiency, is the fact that petitioner(s) "have evidence to support the claimed itemized deductions," or similar language. If Mr. Aka's clients did not have the documents and information necessary to substantiate the claimed deductions, as Mr. Aka now asserts, the question is why did he draft and sign six petitions saying that they did? See Rule 33, Tax Court Rules of Practice and Procedure.

During the disciplinary hearing, Mr. Aka and his attorney also vaguely suggested, as justification for Mr. Aka's failure to respond to the orders of the Court, the fact that attorneys are sometimes limited by the attorney-client privilege as to what they can disclose about a client. In effect, Mr. Aka appears to raise as a defense Model Rule 1.6(a), which prohibits a lawyer from revealing information relating to the representation of a client, unless the client gives informed consent. This defense is at odds with Mr. Aka's statement that he kept opposing counsel fully advised as to what was happening with respect to each of the seven cases. Mr. Aka does not explain how he was able to divulge information about his clients

to opposing counsel, but not to the Court. Furthermore, Mr. Aka fails to explain the effect of Model Rule 1.6(b)(6), which permits a lawyer to reveal client information “to comply with other law or a Court order.”

Regarding Mr. Aka’s assertion that his work in other cases is beyond criticism, and that his behavior improved after his public reprimand in 2011, we reviewed Mr. Aka’s activities in all of the cases in which Mr. Aka entered an appearance after his public reprimand. Set out in Appendix II is a summary of each of those post-reprimand cases.

Contrary to Mr. Aka’s claim in this disciplinary proceeding, our review of the post-reprimand cases in Appendix II shows that Mr. Aka’s misconduct in the seven cases forming the basis of the OSC is not an aberration. While Mr. Aka appeared to handle some post-reprimand cases without incident, other cases that were not included in the OSC suffered from Mr. Aka’s failure to comply with Rules and orders of the Court. Almost all of the post-reprimand cases (with the exception of cases closed quickly by stipulated decision) illustrate one or more of the following problems endemic to Mr. Aka’s practice before this Court: (1) failure to communicate with opposing counsel; (2) failure to appear; and (3) failure to respond to Court orders. In drawing this conclusion, we have ignored minor irregularities and deviations from the Rules, such as repeated failure to sign petitions, followed by entry of appearance, filing documents after the due date ordered by the Court, or filing documents in the nature of evidence. Most remarkable is Mr. Aka’s failure to communicate with opposing counsel in Olanipekun v. Commissioner, docket no. 9287-14S, which coincided with the disciplinary hearing at which this very behavior was at issue. The post-reprimand cases summarized in Appendix II amply illustrate that Mr. Aka’s failure to follow Court Rules and to comply with Court orders is chronic and appears to be incurable.

Findings of Misconduct

Mr. Aka’s conduct in each of the seven cases identified in the OSC is categorized by the egregious and willful disregard of the Rules and Orders of this Court. Without excuse or reasonable explanation, Mr. Aka failed to appear when four of the cases were called for trial or for hearing. See Ohiaeri, Onaghise, Odim, and Acholonu. Without excuse or reasonable explanation, Mr. Aka ignored the

requests of opposing counsel for a Branerton conference (See Branerton Corp. v. Commissioner, 61 T. C. 691 (1974)), ignored the requests and motions of opposing counsel for production of documents and answers to interrogatories, and even disregarded the Court's Order to Show Cause why matters covered in discovery motions should not be deemed admitted. See Ugwuala, Odim, and Nkongho. Without excuse or reasonable explanation, Mr. Aka disregarded and failed to respond to a variety of Orders of this Court, including Orders to Show Cause why the case should not be dismissed for failure to prosecute, an order to file a status report, and orders to file a post-trial brief by a due date or by an extended due date. See Brown, Onaghise, Odim, Nkongho, and Acholonu.

We find clear and convincing evidence that Mr. Aka engaged in misconduct warranting the imposition of discipline. We find that Mr. Aka failed to provide competent representation to the clients in the subject seven cases, contrary to the requirements of Rule 1.1 of the Model Rules. We find that Mr. Aka did not act with reasonable diligence and competence in representing those clients contrary to the requirements of Rule 1.3 of the Model Rules of Professional Conduct. Furthermore, we find that Mr. Aka failed to take reasonable steps to expedite litigation, as required by Model Rule 3.2, he failed to treat opposing party and counsel with fairness, as required by Model Rule 3.4, he engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d), and he engaged in conduct unbecoming of member of the Bar of this Court, in violation of Rule 202(a)(4) of Tax Court Rule of Practice and Procedure. Based upon the record in this disciplinary case, we do not find that Mr. Aka's conduct violated Model Rule 1.4 (Communication).

Appropriate Sanction

The American Bar Association (ABA) has published a theoretical framework to guide courts in imposing sanctions for ethical violations in order to make sanctions more consistent within a jurisdiction and among jurisdictions. ABA, Standards for Lawyers Sanctions, 2005. Under that framework, in order to determine the sanction to be imposed, the court should generally consider: (a) the duty violated (i.e. did the lawyer violate a duty to a client, the public, the legal system, or the profession?); (b) the lawyer's mental state (i.e., did the lawyer act

intentionally, knowingly, or negligently?); (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. See ABA Standards for Imposing Lawyer Sanctions, Standard 3.0.

Our Rules of Practice and Procedure require practitioners to carry on their practices in accordance with the letter and spirit of the ABA Model Rules of Professional Conduct, Rule 201(a). We consider the ABA Standards for Imposing Lawyer Sanctions in choosing a sanction for Mr. Aka's violations of the Model Rules and the Rules of this Court.

Mr. Aka has a long history of being unresponsive to Court orders and attempts by opposing counsel to contact him. Neither the public reprimand in 2011 nor the issuance of the November 5, 2014, OSC has significantly changed Mr. Aka's approach to the practice of law before this Court. Often, but not always, he acts after significant delay and prodding. His behavior disrupts the timely disposition of cases in which he has entered an appearance. His unresponsiveness on behalf of clients stands in sharp contrast to his promptness and diligence in protecting his own interest in this proceeding (even here he failed to follow through with his promise to provide additional information).

Mr. Aka has not acknowledged that his actions as counsel are in any way deficient nor has he expressed any contrition. Indeed, Mr. Aka describes his clients in the seven cases identified in the OSC as "very difficult and very uncooperative," and he blames them for the problems in those cases. He has not demonstrated to the Court that he understands and accepts his duty as a member of the Bar of this Court. His written responses to the November 5, 2014, OSC, and his testimony at the March 31, 2015, disciplinary hearing focused on his communications with his clients and with opposing counsel. He failed to acknowledge his duty to the Court. This is inexcusable after his public reprimand in 2011. His continued disruptive behavior after his reprimand in 2011 is a significant aggravating factor regarding possible discipline. Furthermore, his statements at the hearing that his performance in the post-reprimand cases was not deficient further aggravates his situation. At best, his statements show that he still does not understand what is required of him as a member of this Bar, even after two orders to show cause and a public reprimand. At worst, they show that he is attempting to mislead the Court.

Mr. Aka's extended pattern of neglect and disregard for Court rules and orders is similar to the facts in In re Riggs, 240 F.3d 668 (7th Cir. 2001). In that disciplinary case, the U.S. Court of Appeals for the Seventh Circuit highlighted Mr. Riggs' extended pattern of neglect and disregard for court orders (but responding with alacrity when his own interests were at stake), his failure to correct behavior even after warnings, and his failure to take responsibility (making excuses and citing extraordinary circumstances). The Court of Appeals considered the fact that the matters in Riggs were criminal to be an aggravating factor. While the matters in Mr. Aka's case are not criminal, this Court is no less entitled to competence and diligence in those admitted to practice before it, and opposing counsel and taxpayers likewise are entitled to competence and diligence by members of this Bar. In addition, as noted above, the Court finds Mr. Aka's continued misconduct over a number of years, including after a public reprimand, together with his failure to take responsibility for his behavior or to acknowledge his shortcomings to be significant aggravating factors that warrant more severe discipline.

The Memorandum Sur Order dated September 19, 2010, that accompanied Mr. Aka's public reprimand found that he had violated his duty to the legal system and the Court reviewed the sanctions under Standard 6.2, Abuse of the Legal Process. The Memorandum Sur Order stated as follows:

The Duty Violated: Under the facts of this case, the principle duty violated by Mr. Aka is his duty to the legal system. After entering his appearance in the Kyere case, Mr. Aka failed to follow the Rules and Orders of the Court and to expedite the litigation, and he failed to treat opposing party and counsel with fairness.

As discussed above, our review of Mr. Aka's conduct, since his reprimand, not only in the seven cases identified in the OSC, but also in the post-reprimand cases, shows that his conduct remains the same. His conduct is characterized by his failure to follow the Rules and Orders of the Court, and the failure to treat opposing party and counsel with fairness. Accordingly, we will review the sanctions under Standard 6.2, Abuse of the Legal Process.

Standard 6.2 describes the sanctions that may be appropriate. Standard 6.21 reserves disbarment for circumstances when “a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.” Under Standard 6.22, “[s]uspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or party, or causes interference or potential interference with a legal proceeding.” Reprimand by contrast is appropriate where violations are negligent rather than knowing. Standard 6.23.

It is unlikely that another public reprimand would have any effect on Mr. Aka’s behavior as counsel and his lack of respect for his obligations to the legal system and this tribunal. If Mr. Aka’s transgressions after the 2011 reprimand were isolated as he testified, we would consider a suspension, but unfortunately, his failure to timely respond to this Court’s orders is chronic. He shows an arrogant disregard for his basic obligations as counsel. He cannot dispute that he knows his obligation to this tribunal and to his opposing counsel, after his explicit public reprimand for similar failures. The summaries set forth in Appendix II of cases in which Mr. Aka appeared before this Court since his reprimand chronicle how his failure to communicate with opposing counsel and his failure to comply with Court orders have interfered with this Court’s proceedings and have imposed additional burdens on opposing counsel. The fact that Mr. Aka’s failures are chronic and extend over the entire period that he has been admitted to this Bar, continuing even after his most recent disciplinary hearing, compel us to conclude that they are done knowingly. Mr. Aka’s conduct has also caused serious or potentially serious interference with many proceedings before this Court. In the absence of any plausible explanation, we conclude that his violations of our Rules and orders were intended for his benefit. Accordingly, taking into account the aggravating factors discussed above, we recommend that Mr. Aka be disbarred.

The Committee on Admissions,
Ethics, and Discipline

Dated: July 23, 2015

APPENDIX I

The Memorandum Sur Order dated September 19, 2011, that accompanied the public reprimand of Wilfred I. Aka is reproduced below:

MEMORANDUM SUR ORDER

On May 13, 2010, pursuant to Rule 202(a)(3) of the Tax Court Rules of Practice and Procedure, the Court issued an Order to Show Cause to Mr. Wilfred I. Aka, a member of the Bar of the Court, in which the Court ordered Mr. Aka to show cause why he should not be suspended or disbarred from practice or otherwise disciplined by reason of the following conduct, described in the Order, to wit:

This court's record in the case of Kyere v. Commissioner, Docket No. 27398-09, reflects that you failed to appear and to represent and communicate with your client, the petitioner in that case. * * *. Your conduct in the case of Kyere v. Commissioner, Docket No. 27398-09, appears to have violated Rules 1.1, 1.3, 1.4, 3.2, 3.4, 8.4(a), and 8.4(d) of the American Bar Association's Model Rules of Professional Conduct, as well as Rules 202(a)(3) and 202(a)(4), Tax Court Rules of Practice and Procedure. * * *

Background

The events leading to the issuance of the Order to Show Cause are these. On November 18, 2009, Mr. Aka filed a petition for redetermination on behalf of the petitioner in Martin K. Kyere, Docket No. 27398-09. The petition was signed by petitioner, but it was accompanied by Mr. Aka's Entry of Appearance, as petitioner's attorney. See Rule 24(a) of the Tax Court Rules of Practice and Procedure.

When the case was called for trial, approximately one year later, on December 13, 2010, there was no appearance by Mr. Aka or petitioner. The case was recalled on December 16, 2010, but again, there was no appearance by Mr. Aka. At the recall, petitioner's tax return preparer approached the bench and

informally advised the Court that petitioner had been unable to appear, and he had been unable to contact his attorney, Mr. Aka, who was believed to be out of the country.

The Commissioner's attorney appeared at the recall and filed Motion to Dismiss for Lack of Prosecution which represented that Mr. Aka had not returned voice messages left on his telephone by the Commissioner's attorney on July 27, 2010, August 19, 2010, September 27, 2010, November 2, 2010, and December 2, 2010. The motion further represented that Mr. Aka had failed to reply to a letter of August 23, 2010, scheduling a Branerton conference, and requesting substantiation of the tax deduction at issue in the case, and that Mr. Aka had failed to appear for the Branerton conference on the scheduled date. Furthermore, the Commissioner's motion described an "impromptu" meeting that had been held with Mr. Aka on October 13, 2010, when he was in the Commissioner's office on another case. During that meeting, Mr. Aka discussed the Kyere case with the Commissioner's attorney, and Mr. Aka "promised to submit substantiation to support the claims raised in the Petition", but he never did so.

The Commissioner's attorney orally represented to the Court that, after the calendar call on December 13, 2010, she had again attempted to reach Mr. Aka by telephone. She said that she had been unable to do so, and she had been unable to leave a voice message for Mr. Aka because his voice mail mailbox was full. On the other hand, the Commissioner's attorney said that she was able to contact petitioner, whom she informed about the recall of his case and her intention to file a Motion to Dismiss for Lack of Prosecution. Apparently, that contact prompted petitioner to ask his tax return preparer to appear at the recall.

Subsequently, on January 7, 2011, the presiding Judge issued an Order to Show Cause in Kyere v. Commissioner directing petitioner to show cause why the Court should not grant respondent's Motion to Dismiss for Lack of Prosecution, and further ordering that, in addition to regular service, a copy of the Order should be served directly on petitioner. In due course, petitioner responded to the Order to Show Cause and stated that he had hired Mr. Aka to represent him in the matter, that he was unaware that Mr. Aka would not appear on December 13 and December 16, 2010, and that, henceforth, he would represent himself in the case.

In light of that response, the Court discharged the Order to Show Cause, denied respondent's Motion to Dismiss for Lack of Prosecution, withdrew Mr. Aka as attorney of record, and continued the case.

Response to Order to Show Cause

Based upon the above facts, the Court issued the subject Order to Show Cause to Mr. Aka. Mr. Aka submitted his Response to Order to Show Cause (Mr. Aka's response) on June 3, 2011. Approximately, two weeks later, on June 16, 2011, he informed the Court that he would not appear at the hearing scheduled for June 21, 2011, and, thus, he waived his right to a hearing on the Order to Show Cause.

In his response, Mr. Aka does not raise an issue with any of the facts set forth in respondent's Motion to Dismiss for Lack of Prosecution. Mr. Aka's response states that he first met with Mr. Kyere on November 9, 2009, and he prepared a petition for redetermination of the deficiency that had been determined in Mr. Kyere's income tax for 2007. Mr. Aka mailed the petition to the Court on Mr. Kyere's behalf on the following day, and included Mr. Aka's Entry of Appearance to represent Mr. Kyere in the case.

Those facts notwithstanding, Mr. Aka asserts that he did not represent Mr. Kyere, that he was not required to appear on Mr. Kyere's behalf when the case was called for trial and, presumably, that he was not required to provide any other representation to Mr. Kyere. According to Mr. Aka, this is true because Mr. Kyere had failed to make a deposit of \$1,000 of the total fees of \$1,500 on or before November 30, 2009, as they had agreed. Mr. Aka says that he had mailed a reminder invoice to Mr. Kyere on November 25, 2009, and when he failed to receive any payment from Mr. Kyere, he "assumed" that Mr. Kyere did not wish to retain him.

Subsequently, when Mr. Aka received the Notice Setting Case for Trial and the Standing Pre-Trial Order that were served by the Court on July 9, 2010, he wrote a letter to Mr. Kyere dated July 18, 2010, forwarding the Standing Pre-Trial Order to Mr. Kyere and stating as follows:

It is necessary that you inform the Court that you have not retained [sic] such that I may be not served with any more papers in your case. Or should I inform them? Since you failed to make the required retainer per my November 25, 2009 invoice, I have not been retained. If you still make the deposit, I may still be able to mount an effective defense on your behalf.

Mr. Aka acknowledges that he had an impromptu meeting with the Commissioner's attorney on October 13, 2010, and that he discussed the Kyere case with her, including her request for documents to substantiate the tax deduction at issue in the case. Mr. Aka also acknowledges that, during that meeting, he did not tell the Commissioner's attorney that he did not consider himself to have been retained by Mr. Kyere. According to Mr. Aka, he did not want to divulge the fact that he had not been paid, and had not been retained "in fear of violating other professional ethics rule of confidentiality." Rather, he claims to have telephoned Mr. Kyere after the meeting with the Commissioner's attorney, and to have left a voice message for Mr. Kyere regarding the substance of his conversation with the Commissioner's attorney.

Mr. Aka's response explains that he

was under the impression, that Respondent [Mr. Aka] would be subjected to violating attorney-client privilege by revealing the fact and circumstances that Respondent [Mr. Aka] was not actually retained because of non-payment of any fees, even retainer deposit. Instead, Respondent [Mr. Aka] had encouraged KYERE to inform the Court of that fact.

Mr. Aka's response does not mention the August 23, 2010, letter from the Commissioner's attorney scheduling a Branerton conference and requesting substantiation for the disallowed home mortgage interest deduction. Mr. Aka's response also does not mention the Pre-Trial Memorandum for Respondent that was served on him by mailing on November 24, 2010, and that contains the following warning: "If petitioner or his counsel failed to appear at the calendar call, respondent will file a Motion to Dismiss for Lack of Prosecution."

Mr. Aka claims that he received respondent's Motion to Dismiss for Lack of Prosecution filed December 16, 2010, while he was traveling out of the country. After he returned, he sent the motion to Mr. Kyere with a letter that stated as follows:

I received the attached "motion [sic] to Dismiss for Lack of Prosecution" while I was out of the country. It was my understanding that you had informed them all along that you did not retain me in the case. Again, please, if you have not done so, please do so as soon as possible.

If you have any questions, please feel free to contact me.

During the time that he was out of the country, the Court served on Mr. Aka the Order to Show Cause that was issued by the presiding Judge in the Kyere case on January 7, 2011. There is nothing in the record to suggest that Mr. Aka took any action in response to that Order.

Discussion

In effect, Mr. Aka claims that he had no lawyer-client relationship with Mr. Kyere and, thus, he cannot be held to account for the fact that he failed to appear when the case was called for trial, pursuant to the Notice Setting Case for Trial served by the Court on Mr. Aka, or for his failure to provide competent and diligent representation to Mr. Kyere. The premise of Mr. Aka's position, that he had no lawyer-client relationship with Mr. Kyere, is not established by the facts. First, the client, Mr. Kyere, stated his belief that he had hired Mr. Aka to represent him before the Court in Petitioner's Response to Order to Show Cause filed January 25, 2010. Second, while the letter that Mr. Aka sent to Mr. Kyere on July 18, 2010, states, "I have not been retained," it also offers to "mount an effective defense", if the fee deposit were paid. Thus, the letter seems to leave open the time for the payment of his fee. Third, during the entire time the Kyere case was pending, Mr. Aka never advised the Court, or the opposing party, of his position that he had not been retained by Mr. Kyere. In fact, to the contrary, as described above, Mr. Aka met with the Commissioner's attorney on October 13, 2010, and, during that meeting, he gave the Commissioner's attorney every impression that he

represented Mr. Kyere. He not only undertook to discuss Mr. Kyere's case with the Commissioner's attorney, but he also agreed to provide the substantiation for the tax deduction at issue in the case.

Findings

In summary, Mr. Aka prepared a Petition for Redetermination on behalf of Martin K. Kyere, he filed the petition in this Court, and he entered his appearance in the case on November 18, 2009. The case was called for trial approximately one year later on December 13, 2010. During that time period, Mr. Aka felt that he had no obligation to perform legal services on behalf of Mr. Kyere, other than leaving several voice mail messages and sending him a letter with a copy of the Notice Setting Case for Trial and Standing Pre-Trial Order. The Court finds that Mr. Aka's conduct violated the Model Rules of Professional Conduct in that he failed to provide competent representation to his client, as required by Model Rule 1.1, he failed to act with reasonable diligence and promptness in representing his client, as required by Model Rule 1.3, and he failed to adequately communicate with his client, as required by Model Rule 1.4. In making these findings, the Committee notes the fact that Mr. Aka had put his client on notice that he did not consider himself to have been retained because Mr. Kyere had not paid the agreed retainer. There is no evidence that Mr. Kyere sought an explanation from Mr. Aka about his letter of July 18, 2010, or sought to confirm that Mr. Aka was representing him.

Even if, as Mr. Aka's response suggests, he owed no obligation to Mr. Kyere, Mr. Aka undertook obligations to the Court and to the opposing party in the case by reason of the fact that he entered his appearance in Kyere v. Commissioner. By neglecting those obligations, he failed to take reasonable steps to expedite litigation, as required by Model Rule 3.2, he failed to treat the opposing party and counsel with fairness, as required by Model Rule 3.4, he engaged in conduct prejudicial to the administration of justice, in violation of Model Rule 8.4(d), and he engaged in conduct unbecoming a member of the Bar of the Court, in violation of Rule 202(a)(4) of the Tax Court Rules of Practice and Procedure.

As to Mr. Aka's assertion that he was forced to stand mute about the fact that he did not believe he had been retained to represent Mr. Kyere because Mr. Kyere had not paid the agreed retainer, he is clearly wrong. Model Rule 1.16(b)(5) expressly provides that a lawyer may withdraw from representing a client if "the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled". The comment to that rule states as follows:

A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or Court costs or an agreement limiting the objectives of the representation.

Consideration of the Appropriate Sanction

The American Bar Association has published a theoretical framework to guide courts in imposing sanctions for ethical violations in order to make sanctions more consistent within a jurisdiction and among jurisdictions. ABA, Standards for Lawyer Sanctions, 2005. Under that framework, in order to determine the sanction to be imposed, the court should generally consider: (a) the duty violated (i.e. did the lawyer violate a duty to a client, the public, the legal system, or the profession?); (b) the lawyer's mental state (i.e., did the lawyer act intentionally, knowingly, or negligently?); (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. See ABA Standards for Imposing Lawyer Sanctions, Standard 3.0.

Strictly speaking, this Court is not bound to follow the ABA Standards for Imposing Lawyer Sanctions. Nevertheless, our Rules of Practice and Procedure require practitioners to carry on their practices in accordance with the letter and spirit of the ABA Model Rules of Professional Conduct, Rule 201(a), and we believe it is appropriate for the Court to look to the ABA Standards for Imposing Lawyer Sanctions to assign sanctions for violations of the Model Rules.

The Duty Violated: Under the facts of this case, the principle duty violated by Mr. Aka is his duty to the legal system. After entering his appearance in the Kyere case, Mr. Aka failed to follow the Rules and Orders of the Court and to expedite the litigation, and he failed to treat opposing party and counsel with fairness. Under Standard 6.2, the appropriate sanction could be suspension or reprimand. That Standard states as follows:

6.2 ABUSE OF THE LEGAL PROCESS

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
- 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
- 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

- 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

The Lawyer's Mental State: We do not believe that Mr. Aka maliciously or intentionally failed the legal system. Rather, after Mr. Kyere failed to honor the fee agreement between them, Mr. Aka believed that he had no further obligation to Mr. Kyere. However, he failed to take into account his obligations to the Court and to the opposing party and counsel for the opposing party.

The Actual or Potential Injury: Mr. Aka's failure to appear when his client's case was called for trial led to no actual injury because the Court continued the case and gave Mr. Kyere an opportunity to present his case at a subsequent trial. The potential injury from Mr. Aka's misconduct could have been the dismissal of Mr. Kyere's case. Even then, however, the injury would have consisted of the assessment of a tax deficiency in the amount of \$3,300 in his income tax for 2007, together with the interest that had accrued on such deficiency.

The Existence of Aggravating and Mitigating Factors: We are not aware of any aggravating circumstances but there are several mitigating circumstances. These include the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, and a cooperative attitude toward these proceedings.

Recommendation

Based upon the above, it is the recommendation of the Committee on Admissions, Ethics, and Discipline that Mr. Wilfred I. Aka be publicly reprimanded for his conduct in Kyere v. Commissioner, Docket No. 27398-09.

The Committee on Admissions,
Ethics, and Discipline

Dated: September 19, 2011

APPENDIX II

The following are summaries of the cases in which Mr. Aka entered his appearance after his public reprimand by Order dated September 27, 2011:

1. Brown v. Commissioner, docket no. 28934-10 (T.C. Memo. 2014-167): This case is included in the November 5, 2014, OSC.
2. Okpala v. Commissioner, docket no. 2285-11S: The petition was filed January 27, 2011. Mr. Aka submitted an Entry of Appearance on the same date. On March 21, 2011, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition had been filed in violation of the automatic stay provisions of 11 U.S.C. section 362(a)(8). On March 22, 2011, the Court issued an Order directing petitioners to file an objection to respondent's motion by April 12, 2011. Petitioners failed to file an objection. Accordingly, the Court entered an Order of Dismissal for Lack of Jurisdiction on May 13, 2011.
3. Kantiok v. Commissioner, docket no. 5286-11S: The petition was filed March 4, 2011. On April 8, 2011, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition was not timely filed. Petitioner filed an Objection on April 25, 2011, and a Supplement to the Objection on June 8, 2011. Respondent filed a response on June 29, 2011. On June 30, 2011, the Court ordered petitioner to file a response to respondent's response by August 15, 2011. On July 18, 2011, Mr. Aka submitted an Entry of Appearance. On August 16, 2011 (one day after the deadline), Mr. Aka submitted a response on behalf of petitioner. The Court entered an Order of Dismissal for Lack of Jurisdiction on September 1, 2011.
4. Henriquez v. Commissioner, docket no. 5386-11: The petition was filed March 7, 2011. Mr. Aka did not sign the petition, but his Tax Court bar number and office address were included on the petition. Mr. Aka submitted an Entry of Appearance on the same date. On April 28, 2011, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground the petition was not timely filed. The Court ordered petitioners to file an Objection on or before May 19, 2011. Petitioners did not file an objection. The Court entered an Order of Dismissal for Lack of Jurisdiction on June 15, 2011.

5. Ugwula v. Commissioner, docket no. 5405-11 (T.C. Memo 2013-105): This case is included in the November 5, 2014, OSC.

6. Chukwueke & Anyanwu v. Commissioner, docket no. 7543-11: The petition was filed on March 31, 2011. Mr. Aka signed the petition. Respondent filed a pretrial memorandum on March 2, 2012. Mr. Aka filed a pretrial memorandum on behalf of petitioners on March 7, 2012. In the "Status of Stipulation of Facts" section, Mr. Aka wrote that he had been unavailable from early December 12, 2011, through January 30, 2012, due to a long-scheduled absence from the United States. Mr. Aka did not appear on behalf of petitioners when the case was called from the calendar of the trial session. Respondent's attorney appeared and asked the Court to give the parties until May 3, 2012, in which to file a stipulated decision based upon a faxed copy of a stipulation of settled issues. On July 20, 2012, the Court ordered the parties to submit fully executed settlement documents or a status report by August 15, 2012. On August 16, 2012, the Court issued an Order, premised on the fact that respondent had received a signed stipulation and decision containing a clerical error from Mr. Aka on May 7, 2012, and respondent had sent a package of revised documents that was delivered to Mr. Aka on July 27, 2012, but it was never returned to respondent. The Court ordered the parties to submit fully executed settlement documents, or respondent to file a motion for entry of decision by September 28, 2012. The parties submitted a stipulation of settlement on September 4, 2012, and an amended stipulation on October 1, 2012. A stipulated decision was finally entered by the Court on October 4, 2012.

7. Odim v. Commissioner, docket no. 29591-11: This case is included in the November 5, 2014, OSC.

8. Chukwueke v. Commissioner, docket no. 1260-12: The petition was filed on January 13, 2012. Mr. Aka signed the petition. Respondent filed a pretrial memorandum on January 25, 2013, in which respondent stated that Mr. Aka had "failed to communicate with respondent regarding this case." Mr. Aka did not file a pretrial memorandum. On February 11, 2013, the parties appeared before the Court. The transcript reflects that respondent originally had prepared a Motion to Dismiss for Lack of Prosecution because he did not expect Mr. Aka to attend. Respondent orally made a motion to Motion to Dismiss for Lack of Proper Prosecution. Mr. Aka made an oral motion to continue because (1) petitioner lost

his home and was unable to supply Mr. Aka with documents, and (2) Mr. Aka had been out of the country from December through the end of January. The Court denied Mr. Aka's motion to continue and set respondent's motion to dismiss for lack of proper prosecution for hearing. In the transcript of that hearing, respondent's attorney detailed respondent's numerous attempts to contact Mr. Aka regarding this case and another case in which Mr. Aka represented a different petitioner (see Anyanwu, below). The Court criticized Mr. Aka's conduct, and stated that the only reason it was denying respondent's Motion to Dismiss for Failure to Properly Prosecute was to avoid penalizing petitioner for Mr. Aka's actions. On February 11, 2013, the Court issued an Order (1) denying Mr. Aka's motion to continue; (2) denying respondent's Motion to Dismiss for Failure to Properly Prosecute; and (3) denying Mr. Aka's oral motion to withdraw as counsel. On February 14, 2013, the parties filed a Stipulation of Settled Issues. On February 28, 2013, the Court ordered the parties to submit a stipulated decision by March 18, 2013. On March 14, 2013, respondent's attorney filed a status report that detailed his unsuccessful attempts to contact Mr. Aka. On March 18, 2013, the Court issued an Order directing respondent to file a Motion for Entry of Decision by April 1, 2013. On March 26, 2013, Mr. Aka filed a status report claiming that he had attempted to contact respondent. On March 29, 2013, respondent submitted a Motion for Entry of Decision. On April 3, 2013, the Court issued an Order directing petitioner to file a response to respondent's motion by April 12, 2013. Petitioner failed to file a response. The Court granted respondent's Motion for Entry of Decision and entered a decision in the case on April 23, 2013.

9. Osagie v. Commissioner, docket no. 2294-12: The petition was filed on January 25, 2012. Mr. Aka did not sign the petition, but his Tax Court bar number and address appeared on the petition. Mr. Aka submitted an Entry of Appearance on the same date. On March 22, 2012, respondent issued a Notice Regarding Small Case Elections. A stipulated decision was entered on September 19, 2012.

10. Anyanwu v. Commissioner, docket no. 3835-12S: The petition was filed on February 10, 2012. Mr. Aka signed the petition. On December 27, 2012, respondent filed a pretrial memorandum in which he stated that Mr. Aka had failed to communicate with respondent, except for one voicemail from Nigeria. On January 7, 2013, respondent filed a Motion to Dismiss for Lack of Prosecution because Mr. Aka had failed to appear when the case was called and recalled from

the calendar of the trial session on January 7, 2013. The Court denied respondent's motion. On January 25, 2013, the Court issued an Order to Show Cause directing Mr. Aka to show cause on or before February 7, 2013, why he failed to appear at the calendar call. On February 19, 2013, the Court served a second Order to Show Cause directing Mr. Aka to show cause on or before February 28, 2013, why he should not be deemed removed as counsel. On February 19, 2013, the parties filed a Stipulation of Settled Issues. On February 27, 2013, the Court extended to March 29, 2013, the deadline for Mr. Aka's response to the Order to Show Cause why Mr. Aka should not be deemed removed as counsel. Mr. Aka filed a response on March 28, 2013. In his response, Mr. Aka stated that he was out of town from December 14, 2012, through December 17, 2012, and he was out of the country from December 20, 2012, through January 30, 2013. On April 1, 2013, the Court discharged the Order to Show Cause. On June 10, 2013, respondent filed a Motion for Entry of Decision because Mr. Aka was not communicating with respondent. The motion also referred to Mr. Aka's failure to communicate in Chukwueke v. Commissioner (above). On June 13, 2013, the Court granted respondent's Motion for Entry of Decision and entered decision in the case.

11. Nkongho v. Commissioner, docket no. 18002-12: This case is included in the November 5, 2014, OSC.

12. Ezenwa v. Commissioner, docket no. 24762-12: The petition was filed on October 9, 2012. Mr. Aka signed the petition. On November 22, 2013, respondent filed a pretrial memorandum, in which respondent stated that he expected to make a Motion to Dismiss for Lack of Prosecution because petitioner's counsel had not contacted respondent or provided any information about the case despite multiple requests. On November 25, 2013, Mr. Aka filed a pretrial memorandum. On December 9, 2013, neither petitioner nor Mr. Aka appeared when the case was called from the calendar of the trial session, although petitioners had previously faxed a copy of a stipulation of settled issues to respondent's counsel. The Court lodged the faxed copy of the stipulation of settled issues and granted respondent's request to file a stipulated decision by January 23, 2014. Subsequently, on January 23, 2014, respondent submitted a status report in which respondent stated that Mr. Aka had not returned a signed

copy of the stipulated decision. On January 30, 2014, the Court ordered the parties to submit a stipulated decision by February 24, 2014. The stipulated decision was finally entered by the Court on March 5, 2014.

13. Odim v. Commissioner, docket no. 30158-12 [see Note supra page 9]: The petition was filed on December 17, 2012. Mr. Aka signed the petition. The case was calendared for trial on February 3, 2014. Respondent's pretrial memorandum, filed on January 21, 2014, stated that respondent expected to move to dismiss the case for lack of prosecution. On February 3, 2014, the parties filed a Stipulation of Settled Issues. The stipulated decision was entered on March 20, 2014.

14. Acholonu v. Commissioner, docket no. 428-13: The petition was filed on January 3, 2013. Mr. Aka did not sign the petition, which included his Tax Court bar number and address. He submitted an Entry of Appearance on the same date. The case was calendared for trial on February 3, 2014. Respondent filed a pretrial memorandum on January 21, 2014, in which respondent stated that he expected to make a Motion to Dismiss for Lack of Prosecution. On February 3, 2014, the parties filed a Stipulation of Settled Issues. The stipulated decision was entered on March 31, 2014.

15. Emeruwa v. Commissioner, docket no. 4549-13: The petition was filed on February 25, 2013. Mr. Aka signed the petition. The case was calendared for trial on March 3, 2014. A stipulated decision was entered by the Court on March 10, 2014.

16. Ezeobah v. Commissioner, docket no. 5630-13: The petition was filed on March 11, 2013. Mr. Aka signed the petition. The case was calendared for trial on March 3, 2014. Respondent's pretrial memorandum filed on February 14, 2014, stated that respondent expected to move to dismiss the case for lack of prosecution. On March 3, 2014, the parties submitted a stipulation of settled issues. The stipulated decision was entered on April 4, 2014.

17. Smith v. Commissioner, docket no. 6856-13S: The petition was filed on March 25, 2013. Mr. Aka signed the petition. The case was calendared for trial on March 17, 2014. On March 17, 2014, neither Mr. Aka nor petitioner appeared when the case was called from the calendar. Respondent's attorney appeared and

submitted a Stipulation of Settled Issues. On May 1, 2014, respondent submitted a Motion for Entry of Decision in which respondent's attorney stated that on March 31, 2014, he had mailed a decision document to Mr. Aka, but Mr. Aka had not returned the decision document. Respondent's attorney also stated that he had made several attempts in April 2014 to contact Mr. Aka via phone. On May 6, 2014, the Court issued an Order directing petitioner, on or before May 13, 2014, to file an Objection to respondent's Motion for Entry of Decision. Petitioner did not file an Objection. On May 21, 2014, the Court granted respondent's Motion for Entry of Decision and entered decision in the case.

18. Ugbo v. Commissioner, docket no. 15080-13: The petition was filed on July 1, 2013. Mr. Aka signed the petition. On September 13, 2013, respondent moved to remove the small case designation. On September 20, 2013, the Court issued an Order to Show Cause directing the parties to show cause why the case should not be dismissed for lack of jurisdiction on the ground that the petition was not timely filed. On October 23, 2013, respondent filed a response to the Order stating that the case should be dismissed for lack of jurisdiction. Neither petitioners nor Mr. Aka filed a response. On November 12, 2013, the Court issued an Order granting respondent's motion to remove small case designation. On November 12, 2013, the Court issued a second order making the order to show cause absolute and dismissing the case for lack of jurisdiction.

19. Acholonu v. Commissioner, docket no. 17237-13: This case is included in the November 5, 2014, OSC.

20. Agu v. Commissioner, docket no. 20950-13: The petition was filed on September 9, 2013. Mr. Aka signed the petition. The case was calendared for trial on December 15, 2014. On December 1, 2014, respondent and Mr. Aka each filed a pretrial memorandum. Respondent's pretrial memorandum reserved the right to file a Motion to Dismiss for Lack of Prosecution if petitioner failed to appear for trial. On December 15, 2014, another attorney, Mr. Charles Ukwu, appeared on behalf of petitioner to request a continuance. Mr. Ukwu was not admitted to practice before the Tax Court, but he was specially recognized by the Court. According to Mr. Ukwu, on the Friday before trial, Mr. Aka had an emergency, and he asked Mr. Ukwu to appear and to make an oral motion to continue. It appears that after Mr. Aka had signed the stipulation of facts he went to New York, and he sent Mr. Ukwu to move for continuance based on Mr. Aka's absence.

The Court stated that Mr. Aka was not handling the case properly and denied the Motion to Continue. Subsequently, the parties appeared before the Court and stated that they had reached a basis for settlement. The Court gave the parties until February 13, 2015, in which to submit a stipulated settlement. On February 13, 2015, respondent submitted a Motion for Entry of Decision in which respondent stated that he had attempted to contact Mr. Aka regarding the decision document, but had not received a response. On February 19, 2015, the Court ordered petitioner to file a response to the Motion for Entry of Decision by March 2, 2015. Neither petitioner nor Mr. Aka filed a response. On March 12, 2015, the Court granted respondent's Motion for Entry of Decision and entered decision in the case.

21. Olanipekun v. Commissioner, docket no. 9287-14S: The petition was filed on April 28, 2014. Mr. Aka signed the petition. The case was calendared for trial on April 13, 2015. On April 6, 2015, after Mr. Aka's disciplinary hearing on March 31, 2015, respondent's attorney filed a pretrial memorandum in which he stated that respondent anticipating filing a motion to dismiss for lack of prosecution for the following reasons:

A letter was sent to Mr. Aka's address as listed on the petition. Phone calls were made to Mr. Aka's number as listed on the petition on March 4, 9, and 18. IRS Counsel left multiple voicemails to call back regarding the case. No response from Mr. Aka to any of these attempts to communicate.

Neither petitioner nor Mr. Aka appeared at the calendar call, but respondent's attorney appeared and lodged a faxed copy of a stipulated decision. The stipulated decision was entered on May 22, 2015.

22. New Age Cosmetics, Inc. v. Commissioner, docket no. 12597-14S: The petition was filed on June 2, 2014. Mr. Aka signed the petition. The case was calendared for trial on June 8, 2015. On March 18, 2015, respondent filed a Request for Admissions. Petitioner's response was filed on April 26, 2015, after the thirty-day deadline, but the Court accepted petitioner's response by order dated April 27, 2015. Mr. Aka also filed a response to respondent's interrogatories which was stricken from the docket as improper. Respondent filed a pretrial memorandum on May 26, 2015, which noted the unsuccessful attempts by

respondent's attorney to contact petitioner and petitioner's counsel. Respondent's pretrial memorandum stated that respondent would file a motion to dismiss for lack of prosecution if petitioner did not appear at the calendar call. Mr. Aka filed a pretrial memorandum on June 3, 2015, after the deadline for pretrial memoranda (which was May 26, 2015), to which were attached documents in the nature of evidence. At the calendar call on June 8, 2015, Mr. Aka did not appear but another attorney, Mr. Moses Q. Onyejekwe, appeared and was specially recognized. He filed a motion for continuance on behalf of Mr. Aka detailing various circumstances giving rise to the motion. The Court granted the motion for continuance. The case is still pending.

23. Agu v. Commissioner, docket no. 9227-15: The petition was filed on April 7, 2015, and the answer was filed on May 29, 2015. Mr. Aka signed the petition. The case is still pending.

This Page Intentionally Left Blank

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Michael D. Weisman

ORDER OF REPRIMAND

By order of term suspension entered February 27, 2014, the Supreme Judicial Court for Suffolk County, Massachusetts, suspended Mr. Weisman from the practice of law in the Commonwealth of Massachusetts, for a period of one year, effective 30 days after the entry of the order. The Massachusetts order of suspension ordered Mr. Weisman to, *inter alia*, file a notice of withdrawal as of the effective date of the suspension with every court, agency, or tribunal before which a matter was pending. As of the date of the Massachusetts order of suspension, Mr. Weisman had no cases pending in this Court. Mr. Weisman failed to inform the Chair of this Court's Committee on Admission, Ethics, and Discipline of the order of term suspension of the Supreme Judicial Court for Suffolk County, Massachusetts, entered February 27, 2014, within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Court issued an Order to Show Cause on May 6, 2015, affording Mr. Weisman the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined. The Order to Show Cause instructed Mr. Weisman to (1) submit a written response to the order on or before May 27, 2015, and (2) notify the Court in writing on or before May 27, 2015, of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, on June 3, 2015.

On May 22, 2015, in response to the Order to Show Cause issued to Mr. Weisman on May 6, 2015, Mr. Weisman submitted a Response to Order to Show Cause and a Supplemental Response to Order to Show Cause. On June 3, 2015, Mr. Weisman appeared and was heard before a panel of Judges of this Court concerning his proposed discipline. During the hearing, Mr. Weisman acknowledged his conduct giving rise to the Massachusetts suspension, accepted the decision, and offered no challenge to the due process of the Massachusetts disciplinary procedures or result. Mr. Weisman also took responsibility for not complying with Rule 202(b), Tax Court Rules of Practice and Procedure.

SERVED AUG - 6 2015

In compliance with the Massachusetts order, Mr. Weisman had previously withdrawn from two cases pending before the Superior Court of the Virgin Islands for which he had been admitted to appear *pro hac vice*. At the hearing, Mr. Weisman stated that he had filed a Petition for Reinstatement to appear *pro hac vice* in these two Virgin Islands cases and that he was awaiting action of the Supreme Court of the Virgin Islands on that petition.

By status report received June 22, 2015, Mr. Weisman submitted a copy of an order issued by the Supreme Court of the Virgin Islands dated June 15, 2015, admitting Mr. Weisman to appear *pro hac vice* in the Virgin Island cases.

Upon careful consideration of the foregoing, it is

ORDERED that the Court's Order to Show Cause issued May 6, 2015, is made absolute and Michael D. Weisman shall be reprimanded for the conduct giving rise to the discipline imposed upon him by the Supreme Judicial Court of Massachusetts. This Order, a copy of which will be placed in Mr. Weisman's file at the Court and will be available to the public, shall serve as that reprimand.

(Signed) Michael B. Thornton

Michael B. Thornton
Chief Judge

Dated: Washington, D.C.
August 6, 2015