UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

February 19, 2016

PRESS RELEASE

The Chief Judge of the United States Tax Court announced today that the following practitioners have been disciplined or reinstated by the United States Tax Court for reasons explained in an order issued in the case of each practitioner, and memoranda sur order issued with respect to Carl D. Gensib, Wayne Richard Hartke, James H. Schultz, and James A. Widtfeldt.

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

1. Steven M. Cyr
2. Carl D. Gensib
3. Wayne Richard Hartke
4. Robert J. Howell
5. James H. Schultz
6. John S. Shaffer
7. James A. Widtfeldt

Attachments

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Steven M. Cyr

ORDER OF DISBARMENT

The Court issued an Order of Interim Suspension and Order to Show Cause on November 9, 2015, affording Mr. Cyr the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined based upon: (1) his felony conviction in the United States District Court for the District of Oregon on one count of wilfully making and subscribing a false tax return in violation of section 7206(1) of the Internal Revenue Code, (2) his suspension from the practice of law in the State of Oregon by Order Suspending Accused Pursuant to BR 3.4, issued by the Supreme Court of Oregon on or about December 3, 2014, (3) his indefinite suspension from the practice of law before the Internal Revenue Service, effective April 30, 2015, and (4) his disbarment from the practice of law in the State of Washington, by Order of the Supreme Court of Washington, filed on August 12, 2015.

The Order of Interim Suspension and Order to Show Cause instructed Mr. Cyr to (1) submit a written response to the order on or before December 18, 2015, and (2) notify the Court in writing on or before December 18, 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, at 10:00 a.m. on January 5, 2016.

The Order of Interim Suspension and Order to Show Cause was mailed by both certified and regular mail, to Mr. Cyr's address of record in Portland, Oregon and to a second address in Beaverton, Oregon. The copies of the Order mailed by certified mail and regular mail to the Portland address were returned to the Court by the United States Postal Service (USPS), both envelopes marked "Return to Sender - Not Deliverable as Addressed - Unable to Forward." The copy of the Order mailed by certified mail to the Beaverton address was returned to the Court by the USPS, the envelope marked "Return to Sender - Unclaimed - Unable to Forward." The copy of the Order mailed by regular mail to the Beaverton address has not been returned to the Court by the USPS. The Court has received no response from Mr. Cyr to the Order of Interim Suspension and Order to Show Cause, nor did the Court receive by December 18, 2015, notice of Mr. Cyr's intention to appear at the scheduled hearing.

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Upon due consideration and for cause, it is hereby

ORDERED that the Court's Order of Interim Suspension and Order to Show Cause, issued November 9, 2015, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Cyr is forthwith disbarred from further practice before the United States Tax Court. It is further

ORDERED that Mr. Cyr's name is hereby stricken from the list of practitioners who are admitted to practice before the United States Tax Court, and Mr. Cyr is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Cyr's practitioner access to case files maintained by the Court in electronic form, if any such access was given to him, is hereby revoked. It is further

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

ORDERED that Mr. Cyr 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.
February 19, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Carl D. Gensib

ORDER OF SUSPENSION

The Court issued an Order to Show Cause to Mr. Carl D. Gensib on November 24, 2015, affording him 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 was predicated on discipline imposed on him by the Supreme Court of New Jersey which included a six-month suspension, In re Gensib, 209 N.J. 421, 37 A.3d 1136 (2012), three censures, In re Gensib, 220 N.J. 109, 103 A.3d 1215 (2014), In re Gensib, 212 N.J. 465, 56 A.3d 859 (2012), In re Gensib, 206 N.J. 140, 19 A.3d 984 (2011), and a reprimand In re Gensib, 185 N.J. 344, 886 A.2d 632 (2005). See Rule 202(c), Tax Court Rules of Practice and Procedure. The Order to Show Cause was also based upon Mr. Gensib's conduct, as petitioner's counsel, in Hill v. Commissioner, Docket Number 29213-13, a matter that is unrelated to the discipline imposed on Mr. Gensib by the Supreme Court of New Jersey.

The Order to Show Cause instructed Mr. Gensib to submit a written response to the Order on or before December 18, 2015, and notify the Court in writing on or before December 18, 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, at 10:00 a.m. on January 5, 2016.

In response to the Order to Show Cause, Mr. Gensib submitted a letter, timely received by the Court on December 14, 2015, notifying the Court of his intention to appear at a hearing on January 5, 2016. Mr. Gensib also submitted a letter, received by the Court on December 18, 2015, setting forth his written response to the Court's Order to Show Cause. Additionally, Mr. Gensib appeared before a panel of three Judges of the Court at the hearing on January 5, 2016.

Upon due consideration of Mr. Gensib's written response to the Court, his testimony before the panel at the January 5, 2016, hearing, and for reasons set forth more fully in the attached Memorandum Sur Order, it is

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ORDERED that the Court's Order to Show Cause, issued November 24, 2015, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Gensib is forthwith suspended from practice before the United States Tax Court, until further order of the Court. See Rule 202(f), Tax Court Rules of Practice and Procedure, for reinstatement requirements and procedures. It is further

ORDERED that, until reinstated, Mr. Gensib is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Gensib's practitioner access to case files maintained by the Court in electronic form, if any such access was given to him, is hereby revoked. It is further

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

ORDERED that Mr. Gensib 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.
February 19, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re Carl D. Gensib

MEMORANDUM SUR ORDER

This disciplinary proceeding involves the Order to Show Cause issued to Mr. Gensib on November 24, 2015, directing him to show cause, if any, why he should not be suspended or disbarred from practice before the Court, or otherwise disciplined by this Court, based upon the discipline imposed on him by the Supreme Court of New Jersey. Mr. Gensib's discipline by the Supreme Court of New Jersey included a six-month suspension, In re Gensib, 209 N.J. 421, 37 A.3d 1136 (2012), three censures, In re Gensib, 220 N.J. 109, 103 A.3d 1215 (2014), In re Gensib, 212 N.J. 465, 56 A.3d 859 (2012), In re Gensib, 206 N.J. 140, 19 A.3d 984 (2011), and a reprimand In re Gensib, 185 N.J. 344, 886 A.2d 632 (2005). See Rule 202(c), Tax Court Rules of Practice and Procedure. The Order to Show Cause was also based upon Mr. Gensib's conduct as petitioner's counsel in Hill v. Commissioner, Docket Number 29213-13, a matter that is unrelated to the discipline imposed on Mr. Gensib by the Supreme Court of New Jersey.

In response to the Order to Show Cause, Mr. Gensib submitted a letter, timely received by the Court on December 14, 2015, notifying the Court of his intention to appear at a hearing on January 5, 2016. Mr. Gensib also submitted a letter, received by the Court on December 17, 2015, setting forth his written

response to the Court's Order to Show Cause (hereinafter Response). Additionally, Mr. Gensib appeared before a panel of three Judges of the Court at the hearing on January 5, 2016.

BACKGROUND

Discipline by Supreme Court of New Jersey: As mentioned, Mr. Gensib was disciplined by the Supreme Court of New Jersey on at least five different occasions. By order dated December 12, 2014, he was censured for misconduct in three cases, one in which he violated New Jersey Rules of Professional Conduct (RPC) 1.1(a) (gross negligence) for notarizing a deed bearing the signature of a person whom he did not know without first asking for identification, a second case in which he violated RPC 7.1(a) for using a misleading letterhead, and a third case in which he violated RPC 1.3 (lack of diligence) and RPC 1.4(b) (failure to communicate with the client) for his role in a real estate closing from which his client did not receive certain escrow funds until approximately two years after the funds were released from the escrow. See In re Gensib, 220 N.J. 109, 103 A.3d 1215 (2014).

By order dated November 29, 2012, Mr. Gensib was censured for misconduct in a real estate transaction in which he failed to explain a matter to his client to the extend necessary for the client to make informed decisions about the

representation, in violation of RPC 1.4(c), and he failed to communicate to his client, in writing, the basis or rate of his fee, in violation of RPC 1.5(b). See In re Gensib, 212 N.J. 465, 56 A.3d 859 (2012).

By order dated March 9, 2012, Mr. Gensib was suspended from the practice of law for six months for unethical conduct, including violations of RPC 1.2(d) (counseling a client in conduct the attorney knows is illegal, criminal or fraudulent), RPC 1.7(a)(1) (concurrent conflict of interest where the representation of one client is adverse to another client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), in five real estate closings in which he falsely certified that HUD-1 statements that he had prepared were an accurate accounting of the funds deposited and disbursed in connection with each closing, and in which he failed to communicate to his client, in writing, the basis or rate of his fee in violation of RPC 1.5(b). See In re Gensib, 209 N.J. 421, 37 A.3d 1136 (2012).

By order dated June 7, 2011, Mr. Gensib was censured for failing to advise his real estate clients that he was inflating the cost of their title insurance to cover possible later charges from the title insurance company, in violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, and misrepresentation), and for failing to memorialize the basis or rate of his fee in violation of RPC 1.5(b) (failure

to provide a written fee agreement). See In re Gensib, 206 N.J. 140, 19 A.3d 984 (2011).

By order dated December 7, 2005, Mr. Gensib was reprimanded for improperly acknowledging the signatures of his clients on several documents in connection with a real estate closing, when they had not appeared before Mr. Gensib and, he knew, one client had signed the name of another client. See In re Gensib, 185 N.J. 344, 886 A.2d 632 (2005).

Furthermore, Mr. Gensib failed to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of the Supreme Court of New Jersey orders filed on June 7, 2011, March 9, 2012, November 29, 2012, and December 12, 2014, within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure, in violation of Rule 3.4(c), Model Rules of Professional Conduct of the American Bar Association (knowingly disobey an obligation under the rules of a tribunal).

Conduct in Tax Court Case, Hill v. Commissioner: On December 16, 2013, pursuant to Rule 24(a)(2) of the Tax Court Rules of Practice and Procedure, Mr. Gensib entered his appearance as petitioners' counsel on behalf of Mr. Donald Hill and Ms. Judith Hill in the case at Docket Number 29213-13, by subscribing the petition filed on such date containing his mailing address and Tax Court bar

number. He also signed the Request for Place of Trial in which he requested New York City (Newark) as the place of trial.

The Court's record of the case at Docket Number 29213-13 shows that Mr. Gensib failed to respond to respondent's Motion to Compel Production of Documents, filed January 8, 2015, and he failed to respond to the Court's Order of January 14, 2015, granting respondent's motion and directing petitioners to produce certain documents sought by respondent. (In this Memorandum Sur Order, the term "respondent" refers to the Commissioner of Internal Revenue.) Furthermore, neither Mr. Gensib nor petitioners appeared when the case was called for trial from the calendar of the trial session of the Court that began in New York City on February 23, 2015, in disregard of the Notice of Trial and the Standing Pretrial Order issued on September 23, 2014. Mr. Gensib also failed to respond to the Court's Order and Order to Show Cause issued on February 23, 2015, by which he was directed to show cause in writing why respondent's Motion for Default should not be granted, the case dismissed, and decision entered for respondent.

Respondent's Motion to Compel Production of Documents and respondent's Pretrial Memorandum allege that Mr. Gensib failed to respond to respondent's informal and formal requests for discovery, or to respondent's attempt to discuss a draft stipulation of facts and the preparation of the case for trial. Specifically,

according to respondent, Mr. Gensib failed to answer a letter from respondent's counsel dated October 22, 2014, informally asking petitioners to produce certain documents, and inviting Mr. Gensib to a conference on November 18, 2014. Respondent's submissions to the Court allege that Mr. Gensib failed to produce the documents requested, did not attend the conference with respondent's counsel, and did not otherwise communicate with respondent's counsel. Respondent's submissions also allege that he did not respond to respondent's Request for Admissions or Request for Production of Documents served on December 8, 2014. These failures are in violation of various rules of the Court, including Rules 72 and 91 of the Tax Court Rules of Practice and Procedure, as well as the Standing Pretrial Order.

The Memorandum Opinion issued by the Court in the above case, Hill v. Commissioner, T.C. Memo 2015-172, describes petitioners' failure to plead or otherwise proceed as follows:

> On the record before us, it is clear that petitioners have "failed to plead or otherwise proceed" within the meaning of Rule 123(a). They failed to cooperate with respondent in stipulating facts or preparing for trial and repeatedly refused to provide discovery. They have ignored multiple Court orders, including an order to show cause why we should not grant the default motion currently before us. And they failed to appear for trial, of which they were given more than sufficient advance notice.

Id. at *12. Indeed, the Court found that, after the case was docketed, Mr. Gensib did not communicate with respondent's counsel or with the Court. Id. at *7.

According to the Order to Show Cause, Mr. Gensib's conduct in Hill v. Commissioner appeared to violate 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.

RESPONSE TO ORDER TO SHOW CAUSE

Mr. Gensib's Response asserts, with respect to the New Jersey disciplinary matters, that he was unaware of his obligation to report his suspension and censures. He argues that his conduct in those matters took place prior to 2010. He asserts that his conduct since that time, with the exception of his representation of petitioners in Hill v. Commissioner, has been "in the most ethical manner possible."

Mr. Gensib did not recall the specifics about the various disciplinary proceedings, but he attached to his Response the first two pages of his Petition for Reinstatement before the Disciplinary Review Board of the Supreme Court of New Jersey (no date is shown on his petition). In that document, he stated that he had complied with all court rules in connection with his suspension, had paid all disciplinary costs, and had met his continuing legal education requirements. He acknowledged his past bad judgment and mistakes, and he declared that he had undergone a moral change, after much introspection and reflection, and he promised never again to commit such acts that would jeopardize his privilege to practice law or embarrass the legal profession.

As to his conduct in Hill v. Commissioner, Mr. Gensib stated that the petitioners were friends whom he represented pro bono. When petitioners advised him that they intended to file for bankruptcy, he thought the case was moot and would be dismissed. He did not open envelopes from the Court about the case. In addition, at the time the case was pending, Mr. Gensib said that he was going through a contentious divorce case, was overwhelmed and was not thinking straight. For those reasons, Mr. Gensib claimed not to have received the Court's February 23, 2015, Order to Show Cause in Hill v. Commissioner, and he stated

that he would not intentionally ignore a court's order. Attached to his Response was a copy of his Dual Judgment of Divorce, filed May 14, 2015.

During Mr. Gensib's testimony before this Court on January 5, 2016, he said that he was unaware that the Hills intended to file a bankruptcy petition. He explained that he did not ignore the Court's orders but, rather he ignored the entire case. He acknowledged that he represented other clients before the Court during this same period without incident.

As regards his discipline by the New Jersey Supreme Court, Mr. Gensib asked that the Court take into account the fact that he has already been disciplined by that court. He argued that further discipline would be duplicative and inconsistent with the purpose for discipline. He acknowledged that he failed to advise this Court of his discipline by the Supreme Court of New Jersey, but, he said, it was not a knowing failure. He acknowledged that ignorance of the Court's rules requiring notification was no defense, but he argued that his lack of familiarity with this Court's rules was excusable because he did not regularly practice before this Court, and the Court does not require continuing education. When asked whether this would reward attorneys who fail to follow the rules of the Court, he seemed to argue that, because the failure was not knowing, it was not a reward in his case.

DISCUSSION

The Court has decided to dispose of the discipline that was imposed on Mr. Gensib by the Supreme Court of New Jersey, principally his suspension from practice for six months, by considering whether the Court should impose reciprocal discipline on Mr. Gensib. Mr. Gensib's conduct in representing the taxpayers in Hill v. Commissioner is unrelated to his discipline by the Supreme Court of New Jersey. The Court need not, and will not reach or consider that matter, except to the extent that it has a bearing on Gensib's argument with respect to his New Jersey discipline.

Discipline by Supreme Court of New Jersey: As described above, Mr. Gensib was suspended from the practice of law in the State of New Jersey for six months by order of the Supreme Court of New Jersey dated March 9, 2012. In re Gensib, 209 N.J. 421, 37 A.3d 1136 (2012). He was also censured three times and reprimanded. See In re Gensib, 220 N.J. 109, 103 A.3d 1215 (2014) (censured), In re Gensib, 212 N.J. 465, 56 A.3d 859 (2012) (censured), In re Gensib, 206 N.J. 140, 19 A.3d 984 (2011) (censured), and In re Gensib, 185 N.J. 344, 886 A.2d 632 (2005) (reprimanded). While the orders of the Supreme Court of New Jersey disciplining Mr. Gensib and suspending him from the practice of law are entitled to respect in this Court and will normally be followed, they are not conclusively

binding on us. E.g., In re Ruffalo, 390 U.S. 544, 547(1968); Theard v. United States, 354 U.S. 278, 282 (1957); Selling v. Radford, 243 U.S. 46, 50 (1917).

As true in the case of every reciprocal discipline case, the order of the Supreme Court of New Jersey suspending Mr. Gensib from the practice of law in New Jersey, along with the other orders imposing lesser discipline, raise a serious question about Mr. Gensib's character and fitness to practice law in this Court. The landmark opinion of the United States Supreme Court in Selling v. Radford, supra, in effect, directs that we recognize the absence of "fair private and professional character" inherently arising as the result of the action of the Supreme Court of New Jersey, and that we follow the disciplinary action of that court, unless we determine, from an intrinsic consideration of the record of the New Jersey disciplinary matters, that one or more of the following factors should appear: (1) that Mr. Gensib was denied due process in the form of notice and an opportunity to be heard with respect to the New Jersey proceedings; (2) that there was such an infirmity of proof in the facts found to have been established in the proceedings as to give rise to a clear conviction that we cannot accept the conclusions of the New Jersey proceedings; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed by the Supreme Court of New Jersey. See, e.g., Selling v. Radford, 243 U.S. at 50-51; In

re Squire, 617 F.3d 461, 466 (6th Cir. 2010); In re Edelstein, 214 F.3d 127, 131 (2d Cir. 2000).

Mr. Gensib bears the burden of showing why, notwithstanding the discipline imposed by the Supreme Court of New Jersey, this Court should impose no reciprocal discipline, or should impose a lesser or different discipline. See, e.g., In re Roman, 601 F.3d 189, 193 (2d Cir. 2010); In re Sibley, 564 F.3d 1335, 1340 (D.C. Cir. 2009); In re Surrick, 338 F.3d 224, 232 (3d Cir. 2003); In re Calvo, 88 F.3d 962, 967 (11th Cir. 1996); In re Thies, 662 F.2d 771, 772 (D.C. Cir. 1980). We have given Mr. Gensib an opportunity to present, for our review, the record of the disciplinary proceedings in New Jersey, and to point out any grounds to conclude that we should not give effect to the action of the Supreme Court of New Jersey. See Selling v. Radford, 243 U.S. at 51-52 ("an opportunity should be afforded the respondent * * * to file the record or records of the state court * * * [and] to point out any ground within the limitations stated which should prevent us from giving effect to the conclusions established by the action of the supreme court of Michigan which is now before us").

In this proceeding, Mr. Gensib has not shown any of the three factors identified by the Supreme Court in Selling v. Radford. He argues, however, that he has already been punished for his misconduct by the State of New Jersey, and he

sustained substantial professional and financial losses as a result of the sanctions that were imposed by the New Jersey Supreme Court. He asserts that the imposition of reciprocal discipline by this Court would be duplicative and would serve no purpose after his punishment by the New Jersey Supreme Court. He also asserts that reciprocal discipline by this Court would be unjust because of the time-lapse between the New Jersey sanctions and the initiation of disciplinary proceedings in this Court. For those reasons, Mr. Gensib claims that the imposition of reciprocal discipline would constitute a "grave injustice."

We disagree. The purpose of imposing discipline on members of the bar is to deter other attorneys from engaging in similar conduct and to publicize attorney misconduct to protect the public. See In re Chang, 83 A.3d 763, 767 (D.C. 2014); In re Davy, 25 A.3d 70, 73 (D.C. 2011). Therefore, the imposition of reciprocal discipline in this case would not be duplicative or serve no purpose. Furthermore, the imposition of reciprocal discipline would not be a "grave injustice" because the delay in initiating these reciprocal disciplinary proceedings was caused by Mr. Gensib's own failure to self-disclose the New Jersey discipline as required by Rule 202(b). In these circumstances, there is no injustice in imposing reciprocal discipline. See In re Chang, 83 A.3d 763, 767 (D.C. 2014); In re Davy, 25 A.3d 70, 73 (D.C. 2011).

Furthermore, we find that Mr. Gensib's conduct in Hill v. Commissioner undercuts his claim that since 2010 he has, and will, conduct himself "in the most ethical manner possible." Mr. Gensib's failure to attend to that case stands in stark contrast to his attention to other pending cases in this Court.[1] He also admitted that

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[1]During the period of time that Hill v. Commissioner was an active case, that is, from December 16, 2013, when the petition was filed, until September 15, 2015, when the Order and Decision was entered, Mr. Gensib handled at least eight other cases in this Court. Those cases are as follows:

> Aronovic v. Commissioner, Docket No. 29986-12S: Stipulated Decision executed by Mr. Gensib, entered on March 27, 2014.
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> Petrozzini v. Commissioner, Docket No. 19712-13S: Stipulated of Settled Issues executed by Mr. Gensib, lodged on January 5, 2015, and Stipulated Decision executed by Mr. Gensib, entered on February 9, 2015.
>
> Petrozzini v. Commissioner, Docket No. 20416-13S: Respondent's Oral Motion for Continuance based upon petitioner's revised joint return for 2011; Stipulated Decision executed by Mr. Gensib, entered on September 14, 2015.
>
> Schrager v. Commissioner, Docket No. 18459-14S: Petition and Request for Place of Trial filed by Mr. Gensib on August 6, 2014; Settlement Stipulation executed by Mr. Gensib, filed August 17, 2015, and Stipulated Decision executed by Mr. Gensib, entered on August 19, 2015.

(continued...)

he did not receive electronic service from the Court leaving a puzzle as to how he knew to open mail in the other cases but not in Hill v. Commissioner. Mr. Gensib's disregard of this Court's Rules and orders in Hill v. Commissioner causes the Court to question his repeated disregard of the requirement imposed by Rule 202(b), Tax Court Rules of Practice and Procedure, to notify the Court of the New Jersey disciplinary matters. Mr. Gensib has not shown any "other grave reason" not to give effect to the action of the Supreme Court of New Jersey. See Selling v. Radford, 243 U.S. at 51. Accordingly, we will give full effect to Mr. Gensib's suspension by the Supreme Court of the State of New Jersey.

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[1](...continued)

Hernandez v. Commissioner, Docket No. 164-15S: Petition and Request for Place of Trial filed by Mr. Gensib on January 5, 2015; Settlement Stipulation executed by Mr. Gensib, filed May 28, 2015, and Stipulated Decision executed by Mr. Gensib, entered on May 28, 2015.

Fomin v. Commissioner, Docket No. 5992-15S: Petition and Request for Place of Trial filed by Mr. Gensib on March 3, 2015.

Sowell v. Commissioner, Docket No. 19264-15: Petition and Request for Place of Trial filed by Mr. Gensib on July 29, 2015.

Roczey v. Commissioner, Docket No. 19668-15: Petition and Request for Place of Trial filed by Mr. Gensib on August 3, 2015.

Considering the entire record in this matter, we conclude that Mr. Gensib has not shown good cause why he should not be suspended, disbarred or otherwise disciplined, and we further conclude that, under Rule 202, the appropriate discipline in this case is suspension.

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
February 19, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Wayne Richard Hartke

ORDER OF SUSPENSION

The Court issued an Order to Show Cause on September 9, 2015, affording Mr. Hartke the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined based upon the Order of the Virginia State Bar Disciplinary Board, entered April 17, 2015, suspending Mr. Hartke from the practice of law in the Commonwealth of Virginia for a period of six months, effective March 27, 2015. Mr. Hartke failed to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of the entry of the April 17, 2015, order of the Virginia State Bar Disciplinary Board within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Order to Show Cause instructed Mr. Hartke to (1) submit a written response to the order on or before October 1, 2015, and (2) notify the Court in writing on or before October 1, 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, at 10:00 a.m. on October 16, 2015. The Court received Mr. Hartke's written response on September 30, 2015, in which he submitted a statement, and requested a continuance of the October 16, 2015, hearing date set forth in the Order to Show Cause.

By Order dated October 7, 2015, the Court granted Mr. Hartke's request for continuance, and directed him, among other matters to respond on or before December 18, 2015, as to his intention to appear at the hearing, rescheduled for January 5, 2016. The Order was mailed to Mr. Hartke by both certified and regular mail, and neither copy thereof has been returned to the Court by the United States Postal Service. The tracking information on the USPS website for the copy mailed by certified mail is: "Your item was delivered at 11:58 am on October 9, 2015 in RESTON, VA 20191." The Court has received no response from Mr. Hartke to the Order, nor had the Court received by December 18, 2015, notice of Mr. Hartke's intention to appear at the scheduled hearing.

SERVED FEB 19 2016

Upon due consideration and for the reasons set forth in the attached Memorandum Sur Order, is hereby

ORDERED that the Court's Order to Show Cause, issued September 9, 2015, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Hartke is forthwith suspended from practice before the United States Tax Court, until further order of the Court. See Rule 202(f), Tax Court Rules of Practice and Procedure, for reinstatement requirements and procedures. It is further

ORDERED that, until reinstated, Mr. Hartke is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Hartke's practitioner access to case files maintained by the Court in electronic form, if any such access was given to him, is hereby revoked. It is further

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

ORDERED that Mr. Hartke 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.
February 19, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re Wayne Richard Hartke

MEMORANDUM SUR ORDER

The Court issued an Order to Show Cause to Mr. Wayne Richard Hartke on September 9, 2015, affording him 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 was predicated on the Order of Suspension entered on April 17, 2015, by the Virginia State Bar Disciplinary Board, wherein the Board suspended Mr. Hartke from the practice of law under the terms discussed below. See In re Hartke, VSB Docket No. 14-051-098765, 2015 WL 3551179 (herein "Order of Suspension"). The Order to Show Cause was also predicated on Mr. Hartke's failure to inform the Chair of the Committee on Admissions, Ethics, and Discipline of the action of the Virginia State Bar Disciplinary Board no later than 30 days after such action, as required by Rule 202(b) of the Tax Court Rules of Practice and Procedure.

After the Court issued the subject Order to Show Cause, the Court of Appeals for the District of Columbia issued an order, filed September 21, 2015, suspending Mr. Hartke from the practice of law in the District of Columbia, pending final disposition of disciplinary proceedings before that court.

The Order to Show Cause issued by this Court instructed Mr. Hartke to submit a written response to the order on or before October 1, 2015, and notify the Court in writing on or before October 1, 2015, of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the Court on October 16, 2015. On September 30, 2015, the Court received Response to Order to Show Cause from Mr. Hartke (hereinafter Response) in which he both responded to the Order to Show Cause, and he requested a continuance of the October 16, 2015, hearing date.

By Order dated October 7, 2015, the Court granted Mr. Hartke's request for continuance, it extended the time for his response to the Order to Show Cause to December 18, 2015, it rescheduled his hearing to January 5, 2016, at 10:00 a.m., and it directed him to state his intention to appear at the hearing on or before December 18, 2015. The Court did not receive a response from Mr. Hartke to the Order dated October 7, 2015, nor did the Court receive by December 18, 2015, notice of Mr. Hartke's intention to appear at the scheduled hearing. Accordingly, by letter dated December 23, 2015, the Court notified Mr. Hartke that his right to appear at a hearing before the Court concerning the Order to Show Cause was deemed waived.

BACKGROUND

Mr. Hartke's suspension from the practice of law in Virginia was based upon his conduct during a Virginia CLE program held on January 8, 2014. Mr. Hartke entered into "stipulations of fact and misconduct" with the Virginia State Bar regarding his conduct on January 8, 2014. Order of Suspension, at 1. According to those stipulations, Mr. Hartke disrupted the morning session of the CLE program by falling asleep and snoring, and he disrupted the afternoon session of the program by talking loudly at the video screen. Id. at 2. Initially, Mr. Hartke denied that he had consumed alcohol and was intoxicated during the program, and he denied sleeping and snoring during the morning session. Id. at 2-3. Later, he stipulated that those representations were not accurate, and he should have corrected them during the investigation. Id. at 3.

Mr. Hartke also stipulated that he had violated Rule 8.1(b) (failing to disclose a fact necessary to correct a misapprehension) and Rule 8.4 (violate or attempt to violate the Rules of Professional Conduct). Id. at 3-4. Based upon the stipulations of fact and misconduct entered into by Mr. Hartke and the Bar, and after considering Mr. Hartke's disciplinary record, the Board imposed the following discipline on Mr. Hartke:

1. It is ORDERED that the license of Respondent, Wayne Richard Hartke, to practice law in the Commonwealth of Virginia is SUSPENDED, with terms, for a period of six (6) months effective March 27, 2015; and

2. The Respondent is to enter into an agreement with Lawyers Helping Lawyers and comply with and complete any and all recommendations made by Lawyers Helping Lawyers for a period of two (2) years.

3. The alternative sanction should the Respondent fail to do so will be a suspension of his license to practice law in the Commonwealth of Virginia for a period of three (3) years.

Id. at 4. Thus, the Board imposed a six-month suspension to Mr. Hartke, together with the requirement that he enter an agreement with Lawyers Helping Lawyers and comply with the recommendations of that organization for a two-year period. Alternatively, if Mr. Hartke failed to satisfy that requirement, the Board imposed a suspension of three years.

The Order to Show Cause and the Order dated October 7, 2015, directed Mr. Hartke to disclose his entire disciplinary record. In response, Mr. Hartke disclosed that he had been publicly reprimanded for misconduct during the early 2000's with respect to his representation of a corporation, Life Energy & Technology Holdings, Inc. See In re Hartke, VSB Docket No. 05-053-3993, Memorandum Order entered March 11, 2010, 2010 WL 1259336 (Va. St. Disp.). Mr. Hartke did not disclose a second public reprimand. See In re Hartke, VSB Docket Nos. 08-053-070206, 09-

053-078491, 09-053-079792, and 10-053-081287 Order of Public Reprimand with Terms entered October 7, 2011, 2011 WL 6019004 (Va. St. Disp.). We note that one of the four cases included in that second public reprimand involved Mr. Hartke's appearance with a client before the Fairfax County General District Court on June 16, 2009, while intoxicated.

DISCUSSION

As is true in the case of every reciprocal discipline case, the order of the Virginia State Bar Disciplinary Board imposing discipline on Mr. Hartke raises a serious question about his character and fitness to practice law in this Court. The landmark opinion of the United States Supreme Court in Selling v. Radford, 243 U.S. 46 (1917), in effect, directs that we recognize the absence of "fair private and professional character" inherently arising as the result of the action of the Virginia State Bar Disciplinary Board, and that we follow the disciplinary action of that board, unless we determine, from an intrinsic consideration of the record of the Virginia proceeding that one or more of the following factors should appear: (1) that Mr. Hartke was denied due process in the form of notice and an opportunity to be heard with respect to the Virginia proceedings; (2) that there was such an infirmity of proof in the facts found to have been established in the proceedings as to give rise to a clear conviction that we cannot accept the conclusions of the

Virginia proceedings; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed by the Commonwealth of Virginia. See, e.g., Selling v. Radford, 243 U.S. at 50-51; In re Squire, 617 F.3d 461, 466 (6th Cir. 2010); In re Edelstein, 214 F.3d 127, 131 (2d Cir. 2000).

Mr. Hartke bears the burden of showing why, notwithstanding the discipline imposed by the Virginia State Bar Disciplinary Board, this Court should impose no reciprocal discipline, or should impose a lesser or different discipline. See, e.g., In re Roman, 601 F.3d 189, 193 (2d Cir. 2010); In re Sibley, 564 F.3d 1335, 1340 (D.C. Cir. 2009); In re Surrick, 338 F.3d 224, 232 (3d Cir. 2003); In re Calvo, 88 F.3d 962, 967 (11th Cir. 1996); In re Thies, 662 F.2d 771, 772 (D.C. Cir. 1980).

We have given Mr. Hartke an opportunity to present, for our review, the record of the disciplinary proceeding in Virginia, and to point out any grounds to conclude that we should not give effect to the action of the Virginia State Bar Disciplinary Board. See Selling v. Radford, 243 U.S. at 51-52 ("an opportunity should be afforded the respondent * * * to file the record or records of the state court * * * [and] to point out any ground within the limitations stated which should prevent us from giving effect to the conclusions established by the action of the supreme court of Michigan which is now before us * * *").

Mr. Hartke has not shown any of the three factors identified by the Supreme Court in Selling v. Radford. First, Mr. Hartke has neither alleged nor shown a "want of notice or opportunity to be heard" with respect to the Virginia proceeding. To the contrary, Mr. Hartke fully participated in the disciplinary proceeding before the Virginia State Bar Disciplinary Board, and entered into "Stipulations of Fact and Misconduct" that were the basis for the discipline imposed by the Virginia State Bar Disciplinary Board. Second, Mr. Hartke has neither alleged nor shown any infirmity of proof as to the facts in his disciplinary proceeding before the Virginia State Bar Disciplinary Board. Indeed, the facts on which Mr. Hartke's discipline was based were the facts stipulated by Mr. Hartke. Finally, Mr. Hartke has not shown any "other grave reason" not to give effect to the action of the Virginia State Bar Disciplinary Board. See Selling v. Radford, 243 U.S. at 51.

One point made by Mr. Hartke in his response should be addressed. He argues that his misconduct, which took place during a single continuing legal education course and did not involve a client or a court proceeding, was much less serious than the case of Wilfred I. Aka (July 23, 2015), a recent disciplinary case in this Court. Mr. Hartke incorrectly states that Mr. Aka "was publicly reprimanded for his conduct in seven (7), all active, pending cases in which he had entered his

appearance." To the contrary, in the case described by Mr. Hartke, Mr. Aka was disbarred for his misconduct; he was not publicly reprimanded.

Considering the entire record in this matter, including Mr. Hartke's written Response, we conclude that Mr. Hartke has not shown good cause why he should not be suspended, disbarred or otherwise disciplined. We also conclude that we should give full effect to the discipline imposed by the Virginia State Bar Disciplinary Board, supra. We further conclude that, under Rule 202 of the Tax Court Rules of Practice and Procedure, the appropriate discipline in this case is suspension.

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
February 19, 2016

UNITED STATES TAX COURT
WASHINGTON, DC 20217

In re: Robert J. Howell

ORDER OF SUSPENSION

The Court issued an Order to Show Cause on November 24, 2015, affording Mr. Howell the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined based upon the Order of the General Court of Justice, Superior Court Division, 10th Judicial District of North Carolina, filed June 22, 2015, suspending Mr. Howell from the practice of law in the State of North Carolina. Additionally, Mr. Howell failed to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of the entry of the June 22, 2015, Order of the General Court of Justice, Superior Court Division, 10th Judicial District of North Carolina within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Order to Show Cause instructed Mr. Howell to (1) submit a written response to the order on or before December 18, 2015, and (2) notify the Court in writing on or before December 18, 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, at 10:00 a.m. on January 5, 2016.

The Order to Show Cause was mailed to Mr. Howell by both certified and regular mail. Neither copy of the Order to Show Cause was returned to the Court by the United States Postal Service. The tracking information on the website of the United States Postal Service shows that the certified mailing of the Order to Show Cause was delivered on December 1, 2015. The Court has received no response from Mr. Howell to the Order to Show Cause, nor did the Court receive by December 18, 2015, notice of Mr. Howell's intention to appear at the scheduled hearing.

Upon due consideration and for cause, it is hereby

SERVED FEB 19 2016

ORDERED that the Court's Order to Show Cause, issued November 24, 2015, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Howell is forthwith suspended from practice before the United States Tax Court, until further order of the Court. See Rule 202(f), Tax Court Rules of Practice and Procedure, for reinstatement requirements and procedures. It is further

ORDERED that, until reinstated, Mr. Howell is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Howell's practitioner access to case files maintained by the Court in electronic form, if any such access was given to him, is hereby revoked. It is further

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

ORDERED that Mr. Howell 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.
February 19, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: James H. Schultz

ORDER OF REPRIMAND

For the reasons set forth in the Memorandum Sur Order attached hereto, it is

ORDERED: That the Court's Order to Show Cause dated November 24, 2015, is made absolute, in that James H. Schultz shall be, and he is, hereby publically reprimanded for his conduct in Jose M. Cerda v. Commissioner, Docket No. 1576-14SL.

By the Court:

(Signed) Michael B. Thornton

Michael B. Thornton
Chief Judge

Dated: Washington, D.C.
February 19, 2016

SERVED FEB 19 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re James H. Schultz

MEMORANDUM SUR ORDER

On November 24, 2015, 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. James H. Schultz, a member of the Bar of the Court, in which the Court ordered Mr. Schultz to show cause why he should not be suspended or disbarred from practice or otherwise disciplined by reason of his conduct in Cerda v. Commissioner, Docket No. 1576-14SL. The Order to Show Cause describes Mr. Schultz' conduct as follows:

> Notwithstanding your entry of appearance as petitioner's counsel [in Cerda v. Commissioner, Docket No. 1576-14SL], you failed to appear on September 14, 2015, when the case was called from the calendar of the trial session of the Court that began in Peoria, Illinois, and you have done nothing to prosecute petitioner's case. Petitioner appeared * * * and * * * stated that he had retained you approximately two years before then and, after making payments to you, he had been unable to contact you. * * * [R]espondent's attorney filed a motion for continuance based upon the fact that you had not responded to [the attempts of respondent's counsel] to contact you by telephone and by letter. * * *
>
> It appears that your conduct in the above case violated Rule 1.1 (competence), Rule 1.3 (diligence), Rule 1.4 (communication), Rule 1.5 (fees), 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 Rule 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 Rule 202(a)(4) (any other conduct unbecoming a member of the Bar of the Court) of the Tax Court Rules of Practice and Procedure. * * *

Background

Mr. Cerda first contacted Mr. Schultz shortly after receiving a letter from the Internal Revenue Service dated July 12, 2012, proposing to assess trust fund recovery penalties of approximately $24,840 against Mr. Cerda for wilfully failing to collect and pay over the employment taxes of his employer. See section 6672 of the Internal Revenue Code. Mr. Cerda retained Mr. Schultz on July 17, 2012, by executing a "New Client Information Sheet" agreeing to give Mr. Schultz a retainer of $500 and to pay $200 per hour for legal services, and to pay a monthly finance charge of 1.5% on overdue charges.

On September 10, 2012, Mr. Schultz prepared and filed a protest with the Office of Appeals of the Internal Revenue Service disputing the determination that Mr. Cerda was a responsible person for purposes of section 6672(a). See Cerda v. Commissioner, Docket No. 1576-14SL, Pretrial Memorandum filed September 4, 2015, at 2. The Appeals Office rejected Mr. Cerda's protest, and, in due course thereafter, the Internal Revenue Service assessed the trust fund recovery penalties against Mr. Cerda. Later, on June 19, 2013, the Internal Revenue Service issued to Mr. Cerda a Final Notice of Intent to Levy in order to collect the amount that

had been assessed. After a collection due process hearing, the Appeals Office sustained the proposed levy, and on December 24, 2013, it issued a notice of determination to Mr. Cerda.

Mr. Schultz filed a petition in this Court to challenge the notice of determination, Cerda v. Commissioner, Docket No. 1576-14SL, on January 28, 2014. This is the case discussed in the Order to Show Cause. Mr. Schultz entered his appearance in the case by subscribing and filing the petition which contained his mailing address and Tax Court bar number. See Rule 24(a) of the Tax Court Rules of Practice and Procedure. Mr. Schultz spoke to Mr. Cerda about the petition on February 12, 2014.

On September 14, 2015, approximately twenty-one months after he filed the petition, Mr. Schultz failed to appear when the case was called for trial in Peoria, Illinois. Mr. Cerda appeared with his certified public accountant and the following exchange took place with the Court:

> THE COURT: All right, now, Mr. Cerda, on our records we see that you have an attorney in the Quad Cities. Is he not here today?
>
> MR. CERDA: He's not here. We don't know where he went.
>
> THE COURT: Okay, has he been in contact with you at all?
>
> MR. CERDA: No.

THE COURT: No?

MR. CERDA: No.

THE COURT: Okay, have you been trying to reach him?

MR. CERDA: Yes, I've sent him several texts, e-mails, never --

THE COURT: All right, and he has not been responsive to you?

MR. CERDA: No, sir.

THE COURT: Okay, all right, well, that's unfortunate. Has this been going on for a period of time?

MR. CERDA: Two years now.

THE COURT: Two years? Good grief. You retained him a couple of years ago?

MR. CERDA: I retained him, yeah, almost two years ago.

THE COURT: All right, and did you give him --

MR. CERDA: I was making payments.

THE COURT: All right, all right, and after he took the payments he's not been responsive to your --

MR. CERDA: No, sir.

The Court inquired whether petitioner and respondent had been in contact.

Respondent's counsel stated as follows:

> MS. MCBREARTY: We haven't your Honor. Since Mr. Cerda has been represented by counsel we've been unable to speak with him directly, and so this is the first time that we've been able to speak face to face.

Upon consideration of the foregoing, the Court granted Mr. Cerda's oral motion to withdraw Mr. Schultz as counsel, and suggested that Mr. Cerda speak to respondent's counsel, and to pro bono counsel who was available at the calendar call.

When Mr. Cerda's case was recalled, an attorney, Mr. Andrew Van Singel, entered his appearance on Mr. Cerda's behalf, and he moved to continue the case. With no objection by respondent, the Court granted petitioner's motion, retained jurisdiction, and directed the parties to file a status report or stipulated decision by November 13, 2015. Later, Mr. Cerda's new counsel informed respondent that Mr. Cerda intended to settle the case and pursue collection alternatives outside of the case. As a result, the Court entered a stipulated decision on December 23, 2015, sustaining the notice of determination that had been issued to Mr. Cerda on December 24, 2013.

On August 31, 2015, before the calendar call and Mr. Schultz' removal as Mr. Cerda's attorney, as described above, respondent's attorney filed a motion for continuance in which he recited his unsuccessful attempts to contact Mr. Schultz.

Respondent's[1] motion states that respondent's counsel sent a Branerton letter to Mr. Schultz's record address on June 5, 2015, discussing the case and requesting informal discovery. See Branerton Corp. v. Commissioner, 61 T.C. 691 (1974). The motion states that respondent's counsel also telephoned Mr. Schultz on June 5, 2012, and left a message, but he received no return call from Mr. Schultz. According to respondent's motion, the U.S. Postal Service returned the Branerton letter to respondent's counsel on June 15, 2015, in an envelope marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." Respondent's counsel called Mr. Schultz' office, and he was given a new mailing address for him. On August 13, 2015, respondent's counsel sent a revised Branerton letter to Mr. Schultz at the new address. According to the certified mail receipt, the revised Branerton letter was delivered to Mr. Schultz' office. On August 24, 2015, according to respondent's motion for continuance, respondent's counsel again called Mr. Schultz' office, and he was told that Mr. Schultz was not available. Respondent's counsel left a message for him to return the call.

Respondent's motion for continuance also states that on August 24, 2015, respondent's counsel received a telephone call from Mr. Cerda's accountant. According to the motion, the accountant did not identify the case, but he explained

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[1]In this Memorandum Sur Order, the term "respondent" refers to the Commissioner of Internal Revenue.

to respondent's attorney that his client had a case in which his client's attorney was not responding to the client's attempts to contact the attorney. Respondent's attorney told the accountant that he could not discuss the case with him. Finally, respondent's motion states that respondent's attorney telephoned Mr. Schultz on August 31, 2015, and left a voice mail message for Mr. Schultz.

On September 1, 2015, one day after respondent's motion for continuance was filed, the Court denied it based upon the length of time the case had been pending. However, there is nothing in the record to suggest that Mr. Schultz responded to the allegations about his conduct set forth in the motion. Several days later, on September 4, 2015, respondent's attorney filed Respondent's Pretrial Memorandum. The pretrial memorandum states as follows:

> Petitioner's counsel [Mr. Schultz] has not responded to letters or phone calls from respondent's counsel. On August 24, 2015, an accountant called counsel for respondent on behalf of petitioner and sought to discuss the case, because, the accountant claimed, petitioner's counsel had not been responding to petitioner's communications either. Due to ABA Model Rule 4.2, counsel for respondent informed the accountant that as long as petitioner had counsel of record on this case, counsel could not speak to petitioner either directly or through an on-attorney [sic] representative. Accordingly, the parties have not engaged in discussions regarding a stipulation of facts or the possibility of settling this matter.

Again, there is nothing in the record to suggest that Mr. Schultz responded to the allegations about his conduct that are set forth in respondent's pretrial memorandum.

Response to Order to Show Cause

The Court received Mr. Schultz' Response to Order to Show Cause (Mr. Schultz's Response or Response) on December 16, 2015. In that document, Mr. Schultz did not inform the Court of his intent to appear at the hearing scheduled for January 5, 2016, and, thus he waived his right to a hearing on the Order to Show Cause.

In his Response, Mr. Schultz states that on April 23, 2015, "I was told by Attorney Jeff Neppl that Mr. Cerda had hired another attorney for this matter." During the telephone call, according to Mr. Schultz, Mr. Neppl discussed "Mr. Cerda's allegation that Mr. Schultz was somehow negligent about the Tax Court case despite the fact that the Tax Court petition was timely filed and was pending in the Tax Court." It is hard to understand what "allegations of negligence" Mr. Neppl might have discussed. After all, the petition was filed at the end of January, and the notice setting the case for trial had just been issued by the Court on April 14, 2015, shortly before the telephone call with Mr. Neppl.

Mr. Schultz states, he informed Mr. Neppl that the trial of the case was calendared for September 14, 2015, at 10:00 a.m., and that both Mr. Neppl and Mr. Cerda must be present. On April 29, 2015, Mr. Schultz sent a facsimile to Mr. Neppl which stated as follows:

> Attached please find a copy of the Notice Setting Case For Trial in the United States Tax Court. Mr. Cerda's trial date is September 14, 2015 at 10:00 a.m. in Peoria, Illinois. The United States Tax Court is similar to a Small Claims call during which all of the cases are called and report to the Judge as they are called. Then the attorneys report if the case is settled, if the case may be settled that day, or cannot be settled. If the case cannot be settled, then it is set for sometime during the week of September 14, 2015, which may be any day of that week.
>
> After you have had an opportunity to review this fax and the attached documents, please call me with any questions. Thank you for your cooperation and assistance regarding this matter.

The facsimile included a copy of the Notice Setting Case For Trial and the Standing Pretrial Notice pertaining to Mr. Cerda's case, at Docket No. 1576-14SL. However, the above facsimile contains no explicit confirmation that Mr. Neppl had told Mr. Schultz that Mr. Cerda had retained another attorney to represent him. Furthermore, there is nothing to suggest that Mr. Neppl requested, or that Mr. Schultz sent to him, any other documents or information about the case, such as the notice of determination.

Mr. Schultz' Response summarizes the history of his relationship with Mr. Cerda, after Mr. Cerda had retained him. According to Mr. Schultz, Mr. Cerda failed to pay the retainer of $500 and he was not responsive to Mr. Schultz' request for payment until September 18, 2012, when he remitted $50. Mr. Schultz attached letters that he wrote to Mr. Cerda on September 10, 2012, September 20, 2012, and December 4, 2012, asking Mr. Cerda to contact him regarding his case.

In the December 4, 2012, letter, Mr. Schultz urged Mr. Cerda to cooperate, informed Mr. Cerda that he had received materials from the Internal Revenue Service (IRS), and reminded him that the balance of his bill exceeded the retainer. Other than the payment of $50 on September 18, 2012, and a payment of $100 on November 14, 2012, Mr. Cerda did not contact Mr. Schultz until they met on December 17, 2012. After their meeting, Mr. Cerda made another payment of $100 on December 20, 2012. According to Mr. Schultz's billing records, by the end of 2012, Mr. Cerda had paid $250, but he owed a balance of $526.95.

During 2013, Mr. Cerda made payments of $50 on February 25, 2013, and $200 on May 23, 2013, but, otherwise, Mr. Schultz states, he had no contact with Mr. Cerda until meeting with him on October 1, 2013, and October 9, 2013, in response to his September 17, 2013, letter which demanded that Mr. Cerda cooperate with him and pay his account balance of $634.56. The meetings involved preparation for Mr. Cerda's collection due process (CDP) hearing and obtaining a Form 433-A (Collection Information Statement for Wage Earners and Self-Employed Individuals) from Mr. Cerda. Respondent's Appeals Office issued a Notice of Determination to Mr. Cerda sustaining the proposed levy on December 24, 2013. Mr. Schultz' billing records for calendar year 2013 show that Mr. Cerda had remitted a total of $450, but he owed a balance of $1,136.27.

Mr. Schultz prepared and filed the petition in Cerda v. Commissioner, Docket No. 1576-14SL on January 28, 2014, seeking review the Notice of Determination issued to Mr. Cerda. On February 12, 2014, he called Mr. Cerda to discuss the petition and the outstanding balance in his account. Mr. Schultz' billing records show that, after his telephone call to Mr. Cerda, he did no further work on behalf of Mr. Cerda or his case, except for his telephone conversation with Mr. Neppl on April 23, 2015. According to Mr. Schultz's billing records, during that time, Mr. Cerda made payments of $50 on March 6, 2014; $50 on March 28, 2014; $50 on August 22, 2014; $100 on November 17, 2014; $50 on January 26, 2015; and $50 on February 27, 2015. Mr. Schultz asserts in his response that as of December 14, 2015, Mr. Cerda had an outstanding balance of $1,829.60.

Discussion

The Rules of this Court require practitioners to carry on their practice in accordance with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association. Rule 201 of the Tax Court Rules of Practice and Procedure, hereafter, Tax Court Rules. It is fundamental to any attorney-client relationship that, by agreeing to undertake the representation of a client, the attorney accepts the obligation of seeing the representation through to completion. See, e.g., Laster v. District of Columbia, 460 F. Supp. 2d 111, 113 (D.D.C. 2006);

Streetman v. Lynaugh, 674 F. Supp. 229, 234 (E.D. Tex. 1987). This obligation, to carry each matter through to conclusion, persists until the matter is concluded, or until the attorney-client relationship is terminated as provided in Model Rule 1.16. See ABA Model Rules of Professional Conduct, Rule 1.3, Comment 4.

ABA Model Rule 1.16(a) sets forth the circumstances that require a lawyer to withdraw from a representation, so-called mandatory withdrawal. ABA Model Rule 1.16 (a)(3) provides as follows:

> (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
>
> * * * * * * *
>
> (3) the lawyer is discharged.

The comments to ABA Model rule 1.16(a) include the following:

> Discharge
> [4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

ABA Model Rule 1.16(b) sets forth the circumstances in which a lawyer may withdraw from the representation, so-called optional withdrawal. ABA Model Rule 1.16(b)(5) provides as follows:

> (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
>
> * * * * * * *
>
> (5) 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 comments to ABA Model Rule 1.16(b) include the following:

> Optional Withdrawal
>
> [8] 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.

In either situation, mandatory or optional, withdrawal of the attorney is subject to ABA Model Rule 1.16(c) which provides as follows:

> (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation not withstanding good cause for terminating the representation.

See Fry v. Commissioner, 92 T.C. 368, 373 (1989).

In this Court, the "applicable law" governing withdrawal of the appearance of a counsel of record is set forth in Rule 24(c) of the Tax Court Rules. That rule provides as follows:

> (c) **Withdrawal of Counsel.** Counsel of record desiring to withdraw such counsel's appearance, or any party desiring to withdraw the appearance of counsel of record for such party, must file a motion with the Court requesting leave therefor, showing that prior notice of the motion has been given by such counsel, and stating whether there is any objection to the motion. A motion to withdraw as counsel and a motion to withdraw counsel shall each also state the then current mailing address and telephone number of the party in respect of whom or by whom the motion is filed. The Court may, in its discretion, deny such motion.

As provided by Tax Court Rule 24(c), a lawyer seeking to withdraw his or her appearance as counsel of record must file a motion requesting leave from the Court, and, in such motion, the attorney must show that prior notice of the motion had been given to the client and to the other parties or their counsel. As we said in Fry v. Commissioner, 92 T.C. at 375, in considering a motion to withdraw under Tax Court Rule 24(c), we must balance the interests of petitioner, respondent, the attorney seeking withdrawal, and the Court. Tax Court Rule 24(c) makes it clear that the Court may deny a motion to withdraw as counsel of record. In that case, ABA Model Rule 1.16(c) requires the lawyer to continue the representation notwithstanding good cause for terminating the representation.

In his Response, Mr. Schultz claims that "Mr. Cerda terminated our professional relationship in April of 2005." Mr. Schultz does not explain the legal consequences of Mr. Cerda's alleged action. He does not mention ABA Model Rule 1.16(a)(3) or Rule 24(c) of the Tax Court Rules. Presumably, Mr. Schultz is asking the Court to make the factual finding that he was discharged from the representation by Mr. Cerda, and he is asking the Court to draw the legal conclusion that he was justified, as a result, in taking no further action with respect to the matter.

First, we are unable to make the factual finding that Mr. Schultz was discharged from his representation of Mr. Cerda in Cerda v. Commissioner, Docket No. 1576-14SL. As mentioned above, Mr. Schultz claims that his discharge took place during a telephone conversation with Mr. Neppl, another attorney, and that Mr. Neppl "later confirmed verbally that he was going to representing Mr. Cerda." However, there is nothing in the record, such as a letter or affidavit from Mr. Neppl, corroborating Mr. Schultz' statements, and we find it unlikely that Mr. Neppl had any such intention to take over the representation. In coming to that conclusion, we take judicial notice of the fact that Mr. Neppl is not a member of the Tax Court bar, and we further note that Mr. Neppl did not ask Mr. Schultz for any information or documents about the case, there is no evidence that

he contacted the government's attorney about the case, and he did not appear with Mr. Cerda when the case was called from the calendar.

We also find it odd that Mr. Schultz did not contact Mr. Cerda by phone or by letter to confirm his alleged termination. Indeed, Mr. Cerda's appearance at the calendar call, and his statements to the Court at that time, make it clear that he had not discharged Mr. Schultz as his attorney. We believe that the attempt made by Mr. Cerda's CPA on August 24, 2015, to tell respondent's attorney that Mr. Cerda could not contact Mr. Schultz gives credence to Mr. Cerda's statements to the Court at calendar call. Furthermore, contrary to Mr. Schultz' vague statements in his Response that he had notified respondent's attorney of his discharge as Mr. Cerda's attorney, respondent's motion for continuance, respondent's pretrial memorandum, and the statements to the Court by respondent's attorney at calendar call, make it clear that respondent's attorneys were unaware of the alledged discharge of Mr. Schultz.

Second, even if Mr. Schultz had been discharged as Mr. Cerda's attorney, we cannot draw the legal conclusion that Mr. Schultz was justified in taking no further action to represent Mr. Cerda. As counsel of record, Mr. Schultz still had an obligation under Rule 24(c) of the Tax Court Rules to notify both the other party and the Court that he had been discharged, and to file a motion requesting

leave to withdraw his appearance as counsel of record, as required. He was not at liberty to simply walk away from the case.

Findings

After filing the petition on January 28, 2014, through the time the case was called for trial, approximately twenty-one months later on September 14, 2015, Mr. Schultz performed no legal services on behalf of Mr. Cerda, other than discussing the case with Mr. Cerda on February 12, 2014, and making a phone call to Mr. Neppl, on April 23, 2015. The Court finds that Mr. Schultz'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.

Even if, as Mr. Schultz's Response suggests, he believed that he had been discharged as Mr. Cerda's attorney, Mr. Schultz disregarded the obligations he owed to the Court and to the opposing party by reason of the entry of his appearance in Cerda v. Commissioner as Mr. Cerda's attorney. 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 that violated the

Rules of Professional Conduct in violation of Model Rule 8.4(a), he engaged in conduct prejudicial to the administration of justice, in violation of Model Rule 8.4(d), he engaged in conduct which violated the letter and spirit of the Model Rules and in conduct unbecoming a member of the Bar of the Court, in violation of Rule 202(a)(3) and (4) of the Tax Court Rules of Practice and Procedure, respectively.

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, 2012. 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), 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. Schultz is his duty to the legal system. After entering his appearance in the Cerda case, Mr. Schultz 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 disbarment, suspension, reprimand, or admonition. 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. Schultz maliciously or intentionally failed the legal system. Rather, it is evident that Mr. Schultz had found Mr. Cerda to be a difficult client and one who did not pay for Mr. Schultz' legal services as they were rendered. Even so, Mr. Schultz prepared and filed the petition in the case at docket number 1576-14SL in January of 2014, to protect Mr. Cerda's right to challenge the notice of determination. After the case was set for trial, and Mr. Cerda still owed approximately $1,500, Mr. Schultz did nothing further. As a result, he violated his obligations under the Tax Court Rules and

Court orders to prepare for trial and appear when the case was called from the trial calendar. Mr. Schultz' misconduct goes beyond "an isolated instance of negligence in complying with a court order or rule." See Standard 6.24, quoted above. It fits more comfortably within Standard 6.23.

The Actual or Potential Injury: Mr. Schultz's failure to appear when his client's case was called for trial led to no actual injury because another attorney entered his appearance on petitioner's behalf. As a result, the Court continued the case and gave Mr. Cerda an opportunity to work out a settlement with respondent. Potentially, Mr. Schultz's misconduct could have led to the dismissal of Mr. Cerda's case. In that event, the Internal Revenue Service would have been free to levy Mr. Cerda's assets to satisfy almost $25,000 of tax liabilities and penalties.

The Existence of Aggravating and Mitigating Factors: We are not aware of any aggravating circumstances. Mitigating circumstances 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. James H. Schultz be publicly reprimanded for his conduct in Cerda v. Commissioner, Docket No. 1576-14SL.

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
February 19, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: John S. Shaffer

ORDER OF REINSTATEMENT

On July 14, 2003, this Court issued an Order to Show Cause to Mr. Shaffer based upon the order of the Supreme Court of Ohio, on March 19, 2003, suspending Mr. Shaffer from the practice of law in the State of Ohio for a period of one year, with six months stayed on the condition he commit no further violations of the Disciplinary Rules. See Office of Disciplinary Counsel v. Shaffer, 98 Ohio St.3d 342, 785 N.E.2d 429, 431 (2003). Mr. Shaffer did not submit a response to the Court's Order to Show Cause, nor did he request a hearing before the Court. Accordingly, by Order of Suspension dated November 14, 2003, the Court made the Order to Show Cause absolute in that, under the provisions of Rule 202 of the Tax Court Rules of Practice and Procedure, Mr. Shaffer was suspended from practice before this Court until further order of the Court.

On November 18, 2015, the Court received Mr. Shaffer's petition for reinstatement to practice before the Court. Mr. Shaffer's petition states that on October 17, 2003, he was reinstated to the practice of law in the State of Ohio by Order of the Supreme Court of Ohio. See Office of Disciplinary Counsel v. Shaffer, 100 Ohio St.3d 1242, 798 N.E.2d 24 (2003). Since that time, he has maintained an active membership in the Ohio State Bar Association and there is no indication that he has been subject to further discipline. Mr. Shaffer's petition also states that he was reinstated to practice before the United States District Court for the Northern District of Ohio on September 2, 2009. We find that Mr. Shaffer is eligible for reinstatement before this Court under Rule 202(f)(2)(B) of the Tax Court Rules of Practice and Procedure.

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Upon due consideration, it is hereby

ORDERED that Mr. Shaffer's petition for reinstatement is granted and John Stanley Shaffer is hereby reinstated to practice before the United States Tax Court.

By the Court:

(Signed) Michael B. Thornton

Michael B. Thornton
Chief Judge

Dated: Washington, D.C.
February 19, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: James A. Widtfeldt

ORDER OF SUSPENSION

The Court issued an Order to Show Cause to Mr. James A. Widtfeldt on September 9, 2015, affording him 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 was predicated on two opinions of the Supreme Court of Nebraska. The first opinion, State Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. Widtfeldt, 691 N.W.2d 531 (Neb. 2005) (per curiam), suspended Mr. Widtfeldt from the practice of law in the State of Nebraska for an indefinite period followed by a period of probation of not less than one year. The second opinion, State Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. Widtfeldt, 716 N.W.2d 68 (Neb. 2006) (per curiam), suspended Mr. Widtfeldt for one year based upon the finding that Mr. Widtfeldt had entered into an agreement for an illegal or clearly excessive fee in two matters.

The Order to Show Cause instructed Mr. Widtfeldt to submit a written response to the Order on or before October 1, 2015, and notify the Court in writing on or before October 1, 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, at 10:00 a.m. on October 16, 2015. At Mr. Widtfeldt's request, the Court extended to December 18, 2015, the date for him to show cause why he should not be suspended or disbarred from practice before the Court or otherwise disciplined, and it continued the date for his hearing to January 5, 2016. See Order dated October 7, 2015.

Mr. Widtfeldt made the following submissions to the Court between September 29, 2015, and December 18, 2015: A letter received on September 29, 2015, addressed to the Chair of the Committee on Admissions, Ethics, and Discipline, together with various attachments; a document received on December 15, 2015, entitled, "Application for Reinstatement," State of Nebraska Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. James A. Widtfeldt, S-03-1312, S-04-1400, together with various attachments; a document received on December 18, 2015, entitled, "In re James A. Widtfeldt, Complaint for Irregular Tax Court Procedures," together with various attachments; and a document

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received on December 18, 2015, entitled, "Notice of Appeal All Orders Including Memorandum and Order of Gerrard November 23, 2015, Appeal Fee of $505", Widtfeldt v. Unites States, et al., No. 8:15 CV 143, D.C. Neb.

On December 28, 2015, shortly before Mr. Widtfeldt's hearing on January 5, 2016, the Court received five subpoena forms purporting to have been issued in connection with the case, James Widtfeldt, Petitioner v. Commissioner of Internal Revenue. The subpoenas purport to have been sent to the following individuals: "John Koskinen, Commissioner of the Internal Revenue Service", "Janet Yellen, Federal Reserve Bank", "Robert Amic, IRS Station Chief", "Arthur Welp, IRS Administrative Appeals Agent", "John Steele, Nebraska Counsel for Discipline." Each subpoena commanded the named individual to appear before a court reporter on January 5, 2016. None of the subpoenas contained a return on service.

Mr. Widtfeldt appeared at his hearing before a panel of three Judges on January 5, 2016, and testified. On January 7, 2016, after his hearing, the Court received from Mr. Widtfeldt a document entitled, "Application for Order to Take Deposition to Perpetuate Evidence", purporting to have been issued in connection with a case entitled, "James Widtfeldt, Petitioner v. John Koskinen, Commissioner of Internal Revenue, Respondent". On January 11, 2016, the Court received from Mr. Widtfeldt a document entitled, "Requests for Admission to Arthur C. Welp on behalf of the Internal Revenue Service" purporting to be a document filed before the Appeals Office of the Internal Revenue Service in the Matter of the Estate of Albert Widtfeldt and Gusteva Widtfeldt Gift, Deceased.

At the end of his hearing, the panel gave Mr. Widtfeldt one more opportunity to submit documents relevant to the issues in his disciplinary proceeding and directed that the Court would accept a further submission from Mr. Widtfeldt if postmarked on or before January 20, 2016. On January 20, 2016, the Court received a document entitled, "Petitioner Motion to Compel Production of Documents or Sanctions." On January 21, 2016, the Court received a document entitled, "Objection to This Case as Matter of Widtfeldt Licensing Already Decided in Widtfeldt Favor in 15907-10 about April 26, 2011.

Upon due consideration of Mr. Widtfeldt's written responses to the Court, his testimony before the panel at the January 5, 2016, hearing, and for reasons set forth more fully in the attached Memorandum Sur Order, it is

ORDERED that the Court's Order to Show Cause, issued September 9, 2015, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Widtfeldt is forthwith suspended from practice before the United States Tax Court, until further order of the Court. See Rule 202(f), Tax Court Rules of Practice and Procedure, for reinstatement requirements and procedures. It is further

ORDERED that, until reinstated, Mr. Widtfeldt is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Widtfeldt practitioner access to case files maintained by the Court in electronic form, if any such access was given to him, is hereby revoked. It is further

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

ORDERED that Mr. Widtfeldt 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.
February 19, 2016

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re James A. Widtfeldt

MEMORANDUM SUR ORDER

The Court issued an Order to Show Cause to Mr. James A. Widtfeldt on September 9, 2015, affording him 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 was predicated on two opinions of the Supreme Court of Nebraska. The first opinion, State Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. Widtfeldt, 691 N.W.2d 531 (Neb. 2005) (per curiam), suspended Mr. Widtfeldt from the practice of law in the State of Nebraska for an indefinite period followed by a period of probation of not less than one year, for the reasons discussed below. The second opinion, State Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. Widtfeldt, 716 N.W. 2d 68 (Neb. 2006) (per curiam), suspended Mr. Widtfeldt for one year based upon the finding that Mr. Widtfeldt had entered into an agreement for an illegal or clearly excessive fee in two matters.

The Order to Show Cause instructed Mr. Widtfeldt to submit a written response to the order on or before October 1, 2015, and notify the Court in writing on or before October 1, 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, at 10:00 a.m. on October 16, 2015. At Mr. Widtfeldt's request, the Court extended to December 18, 2015, the date for him to show cause why he should not be suspended or disbarred from practice before the Court or otherwise disciplined, and it continued the date for his hearing to January 5, 2016. See Order dated October 7, 2015,

In response to the Order to Show Cause, the Court received the following documents from Mr. Widtfeldt:

1. A letter received on September 29, 2015, to the Chair of the Committee on Admissions, Ethics, and Discipline together with various attachments;

2. A document received on December 15, 2015, entitled, "Application for Reinstatement," State of Nebraska Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. James A. Widtfeldt, S-03-1312, S-04-1400, together with various attachments;

3. A document received on December 18, 2015, entitled, "In re James A. Widtfeldt, Complaint for Irregular Tax Court Procedures," together with various attachments; and

4. A document received on December 18, 2015, entitled, "Notice of Appeal All Orders Including Memorandum and Order of Gerrard November 23, 2015, Appeal Fee of $505", Widtfeldt v. Unites States, et al, No. 8:15 CV 143, D.C. Neb.

We refer to the above documents, and the attachments thereto, as Mr. Widtfeldt's Response.

Shortly before Mr. Widtfeldt's hearing on January 5, 2016, the Court received five subpoena forms purporting to have been issued in connection with the case, James Widtfeldt, Petitioner v. Commissioner of Internal Revenue. The subpoenas purport to have been sent to the following individuals: "John Koskinen, Commissioner of the Internal Revenue Service", "Janet Yellen, Federal Reserve Bank", "Robert Amic, IRS Station Chief", "Arthur Welp, IRS Administrative Appeals Agent", "John Steele, Nebraska Counsel for Discipline." Each subpoena commands the named individual to appear before a court reporter on January 5, 2016. None of the subpoenas contains a return on service.

On January 5, 2016, Mr. Widtfeldt appeared before a panel of three Judges for hearing on the subject Order to Show Cause, and his hearing was held on such date. On January 7, 2016, after his hearing, the Court received from Mr. Widtfeldt a document entitled, "Application for Order to Take Deposition to Perpetuate Evidence", purporting to have been issued in connection with a case entitled, "James Widtfeldt, Petitioner v. John Koskinen, Commissioner of Internal Revenue, Respondent." In that document, Mr. Widtfeldt seeks to depose four persons employed by the Internal Revenue Service, including the Commissioner of Internal Revenue, John Koskinen, regarding the assets in his mother's estate.

On January 11, 2016, the Court received from Mr. Widtfeldt a document entitled, "Requests for Admission to Arthur C. Welp on behalf of the Internal Revenue Service" which purports to be a document filed before the Appeals Office of the Internal Revenue Service in the Matter of the Estate of Albert Widtfeldt and Gusteva Widtfeldt Gift, Deceased.

At the end of Mr. Widtfeldt's hearing, the panel gave Mr. Widtfeldt one more opportunity to submit documents relevant to the issues in his disciplinary proceeding and directed that the Court would accept a further submission from Mr. Widtfeldt if postmarked on or before January 20, 2016. Pursuant to that Order, Mr. Widtfeldt submitted "Petitioner Motion to Compel Production of Documents or Sanctions" received on January 20, 2016, and he submitted "Objection to This Case as Matter of Widtfeldt Licensing Already Decided in Widtfeldt Favor in 15907-10 about April 26, 2011," received January 21, 2016.

BACKGROUND

The disciplinary proceeding that led to Mr. Widtfeldt's indefinite suspension from the practice of law in the State of Nebraska, State Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. Widtfeldt, 691 N.W.2d, supra, began with the complaint of the Nebraska Counsel for Discipline that Mr. Widtfeldt had filed improper motions and pleadings in several cases. Id. at 533. Included in the

record of that disciplinary proceeding were "examples of poorly drafted pleadings and motions [by Mr. Widtfeldt] that are lengthy and contain numerous, rambling, irrelevant details, making the pleadings difficult to understand" [and] "in one instance, Widtfeldt filed a Motion in Limine that had no relation to the alleged facts of the action." Id. In that proceeding, Mr. Widtfeldt answered the complaint of the Counsel for Discipline with "lengthy responses containing irrelevant and inflammatory material." Id.

During his disciplinary proceeding, Mr. Widtfeldt underwent a psychological evaluation. Id. at 534. The psychologist concluded that, while Widtfeldt had superior intelligence, he is likely to have difficulty understanding non-verbal interactions, is likely to "'get caught up in the details,'" and sometimes misses the "'big picture.'" Id. The psychologist also noted narcissistic and obsessive-compulsive personality features, and he concluded that personality issues interfere with Widtfeldt's ability to reason through certain issues and form working alliances with others. Id.

After Mr. Widtfeldt's hearing, a referee found that Mr. Widtfeldt's actions interfered with the administration of justice and adversely affected his fitness to practice law. The referee also concluded that Mr. Widtfeldt had violated his oath of office as an attorney licensed to practice law in Nebraska. Id. The referee

recommended that Mr. Widtfeldt be publically reprimanded, that he consult with a mentor who would review his pleadings and filings, and that he receive further counseling for one year. Id.

Upon review, the Nebraska Supreme Court agreed that Mr. Widtfeldt had "repeatedly filed irrelevant and abusive motions and pleadings" and noted that - even while under investigation - he had submitted written responses to the Counsel Discipline which included irrelevant and abusive material. Id. at 535. The court also noted that the psychologist had "found that personality issues interfere with Widtfeldt's ability to reason through certain issues and form working alliances with others." The court concluded that Mr. Widtfeldt required further psychological treatment and counseling. Id. To ensure that Mr. Widtfeldt was properly treated before returning to practice of law, the court ordered a period of indefinite suspension followed by a period of probation of not less than one year. Id. at 536. The court made clear that the suspension was not designed as punishment but "as a time period in which the respondent can seek treatment without imposing a danger to his * * * clients." Id. at 535-36.

DISCUSSION

Mr. Widtfeldt's submissions in response to the Order to Show Cause are composed of irrelevant and immaterial discussions of matters that have nothing to

do with the issues raised by the Order to Show Cause. He appears fixated with the deficiency case involving the estate tax on his mother's estate and a gift tax deficiency for calendar year 2004. The case was dismissed for failure to prosecute, and the dismissal was affirmed by the United States Court of Appeals for the Eighth Circuit. See Widtfeldt v. Commissioner, No. 15907-10, Order of Dismissal and Decision entered, May 16, 2011, aff'd, 449 F. App'x 561 (8th Cir. 2012). Mr. Widtfeldt is also fixated on the treatment of Lyme disease and the U.S. Government's wrongful definition of the disease "as being totally cured with only 30 days maximum of antibiotics," a "misdefinition of a cure [that] violates the Federal civil rights of nearly all criminal defendants in the U.S., under 42 U.S.C. §1983 Medical Civil Rights." Like the motions and pleadings described in Mr. Widtfeldt's disciplinary proceedings, his submissions in response to the Order to Show Cause contain "vast quantities of verbiage having nothing whatever to do with the captioned matters." State Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. Widtfeldt, 691 N.W.2d, supra at 534.

As true in the case of every reciprocal discipline case, the order of the Supreme Court of Nebraska indefinitely suspending Mr. Widtfeldt raises a serious question about his character and fitness to practice law in this Court. The landmark opinion of the United States Supreme Court in Selling v. Radford, 243

U.S. 46 (1917), in effect, directs that we recognize the absence of "fair private and professional character" inherently arising as the result of the action of the Nebraska Supreme Court, and that we follow the disciplinary action of that court, unless we determine, from an intrinsic consideration of the record Nebraska proceeding that one or more of the following factors should appear: (1) that Mr. Widtfeldt was denied due process in the form of notice and an opportunity to be heard with respect to the Nebraska proceeding; (2) that there was such an infirmity of proof in the facts found to have been established in the proceeding as to give rise to a clear conviction that we cannot accept the conclusions of the Nebraska proceeding; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed by the Nebraska Supreme Court. See, e.g., Selling v. Radford, 243 U.S. at 50-51; In re Squire, 617 F.3d 461, 466 (6th Cir. 2010); In re Edelstein, 214 F.3d 127, 131 (2d Cir. 2000).

Mr. Widtfeldt bears the burden of showing why, notwithstanding the discipline imposed by the Nebraska Supreme Court, this Court should impose no reciprocal discipline, or should impose a lesser or different discipline. See, e.g., In re Roman, 601 F.3d 189, 193 (2d Cir. 2010); In re Sibley, 564 F.3d 1335, 1340 (D.C. Cir. 2009); In re Surrick, 338 F.3d 224, 232 (3d Cir. 2003); In re Calvo, 88 F.3d 962, 967 (11th Cir. 1996); In re Thies, 662 F.2d 771, 772 (D.C. Cir. 1980).

We have given Mr. Widtfeldt an opportunity to present, for our review, the record of the disciplinary proceeding in Nebraska, and to point out any grounds to conclude that we should not give effect to the action of the Nebraska Supreme Court. See Selling v. Radford, 243 U.S. at 51-52 ("an opportunity should be afforded the respondent * * * to file the record or records of the state court * * * [and] to point out any ground within the limitations stated which should prevent us from giving effect to the conclusions established by the action of the supreme court of Michigan which is now before us * * *"). Mr. Widtfeldt has not shown any of the three factors identified by the Supreme Court in Selling v. Radford. First, Mr. Widtfeldt has neither alleged nor shown a "want of notice or opportunity to be heard" with respect to the Nebraska proceeding. Second, Mr. Widtfeldt has neither alleged nor shown any infirmity of proof as to the facts in his disciplinary proceeding before the Nebraska courts. Finally, Mr. Widtfeldt has not shown any "other grave reason" not to give effect to the action of the Nebraska Supreme Court. See Selling v. Radford, 243 U.S. at 51.

Mr. Widtfeldt's response to the Order to Show Cause, together with the numerous irrelevant attachments to his response, and the statement of his position at his hearing demonstrate that Mr. Widtfeldt is incapable of addressing the issues raised by the Order to Show Cause. As mentioned earlier, the opinion of the

Nebraska Supreme Court made reference to Mr. Widtfeldt's psychological evaluation and suggested that Mr. Widtfeldt required further treatment. State Ex Rel. Counsel for Discipline of the Nebraska Supreme Court v. Widtfeldt, 691 N.W.2d, supra at 536. The court imposed a suspension followed by a period of probation, not as discipline but to give Mr. Widtfeldt the time in which he can seek treatment without imposing a danger to his clients. Id. at 535-36. From our observation, it appears that Mr. Widtfeldt continues to require treatment. Accordingly, we will give full effect to the discipline imposed by Nebraska Supreme Court, supra.

Considering the entire record in this matter, we conclude that Mr. Widtfeldt has not shown good cause why he should not be suspended, disbarred or otherwise disciplined. We further conclude that, under Rule 202 of the Tax Court Rules of Practice and Procedure, the appropriate discipline in this case is suspension.

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
February 19, 2016