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

DIRECTOR, OFFICE OF
PROFESSIONAL RESPONSIBILITY
Complainant

COMPLAINT NO. 2005-13

v.

ROBERT ALAN JONES
Respondent

DECISION

JOSPEPH GONTRAM, Administrative Law Judge. The Director, Office of Professional Responsibility (the Complainant or OPR) instituted the present case through a complaint alleging that Robert Alan Jones (the Respondent or Jones) should be suspended from practice before the Internal Revenue Service for a period of twenty-four months. A hearing was held in Las Vegas, Nevada on September 11 and 12, 2006 with both parties being present and represented by counsel.

I. Issues and Contentions

Jones is charged with having violated various provisions of 31 C.F.R., Part 10. These regulations have been issued pursuant to 31 U.S.C. § 330, which authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department of the Treasury and to require that representatives demonstrate the necessary qualifications and competency to advise and assist persons in presenting their cases. The statute also provides that the Secretary of the Treasury may suspend or disbar from practice before the Department a representative who is incompetent, disreputable, or violates regulations prescribed under the statute. The regulations in 31 C.F.R., Part 10 are contained in Circular No. 230 titled "Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service." (Circular No. 230).

The complaint alleges that Jones failed to exercise due diligence in violation of 31 C.F.R. § 10.22(a)(1), (2) and (3), and engaged in disreputable conduct in violation of 31 C.F.R. § 10.51, including subsections (d) and (j), by signing and filing with the IRS numerous powers of attorney forms (Form 2848) which falsely identified one or more of three cosigners as Enrolled Agents. The three cosigners, who falsely claimed to be enrolled agents on the Forms 2848, were Employee 1, Employee 2 and Employee 3.

The cited regulations provide as follows:

> § 10.22 Diligence as to accuracy.
>
> (a) In general. A practitioner must exercise due diligence –
> (1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents affidavits, and other papers relating to Internal Revenue Service matters;
> (2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and
> (3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.
>
> § 10.51 Incompetence and disreputable conduct.
>
> Incompetence and disreputable conduct for which a practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service includes, but is not limited to -- . . .
>
> (d) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term information. . . .
>
> (j) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

The complaint also alleges that Jones failed to exercise due diligence in violation of 31 C.F.R. § 10.22(a)(1), (2) and (3), and engaged in disreputable conduct in violation of 31. C.F.R. § 10.51, including subsection (d), by signing and filing with the IRS several powers of attorney (Forms 2848) that the named

taxpayers had not signed, but whose signatures had been "cut and pasted" onto the Forms 2848.

31 C.F.R. § 10.30(a) provides as follows:

> § 10.30 Solicitation.
>
> (a) Advertising and solicitation restrictions.
>
> (1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. . . .

Jones disputes that he violated the provisions of 31 C.F.R. Part 10. Jones contends that Employee 1 and Employee 2 refer to themselves as "enrolled agents" with the IRS because (1) they had practiced before the IRS in the past as enrolled agents and (2) the IRS has changed its rules and forms, without affording notice to Employee 1 and Employee 2, resulting in the improper and unlawful disqualification of Employee 1 and Employee 2 as enrolled agents. Alternatively, Jones contends that Employee 1 and Employee 2 were entitled to refer to themselves as "enrolled agents" in IRS filings because the respective organizations to which they belonged, the Society Number 1 and the Public Accountants Society of State 1, allowed Employee 1 and Employee 2 to call themselves enrolled agents.

Finally, Jones contends that he should not be held responsible for the truth or accuracy of the statements made by Employee 1, Employee 2, or Employee 3 on the Forms 2848, but rather, those individuals are solely responsible for the truth and accuracy of statements they made about their qualifications. Jones contends that to hold him liable for the truthfulness or accuracy of cosigners' representations about their qualifications places an unreasonable and unlawful burden on him.

The Complainant seeks to suspend Jones for a period of twenty-four months. As required by 31 C.F.R. § 10.76(a), the following findings must be and have been proven by clear and convincing evidence.

II. Findings and Conclusions

Jones is a licensed attorney with offices in Las Vegas, Nevada. He is a member of the Bar of the District of Columbia as well as various individual federal courts, including the United States Tax Court. His practice is almost exclusively devoted to IRS matters. He represents numerous clients in IRS

matters, and he regularly engages accountants to work with him in representing these clients. Among the accountants who work with or for Jones are Employee 1 and Employee 2. Employee 1 and Employee 2 are not certified public accountants; they are public accountants.

A. Misrepresentations regarding the status of Employee 1, Employee 2 and Employee 3

Jones frequently cosigns Forms 2848 with Employee 1, Employee 2, and Employee 3. Twelve such powers of attorney, relating to eleven different taxpayers, were received in evidence in the present case. Jones cosigned every such power of attorney with Employee 1, Employee 2, and/or Employee 3.[1] The dates of the powers of attorney received in evidence extend from July 30, 2003 to April 24, 2004. Jones does not seriously dispute that he filed with the IRS many more such powers of attorney. Indeed, he admits that Employee 1 and Employee 2's names "appear on many Powers of Attorney (Form 2848) issued by my office," and that Employee 3's name appears on various such forms. (R Exh. 3, pp. 2, 3, and 4).[2]

Forms 2848 contain two parts, the first part (Part I) being the power of attorney, which is signed by the taxpayer, and the second part (Part II) being the declaration of the representative, which is signed by the representative(s). By signing Part II of Form 2848, the representative attests to the following, among other things:

> Under penalties of perjury, I declare that:…
>
> I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;…
>
> I am one of the following:…
>
> a Attorney...
> b Certified Public Accountant…
> c Enrolled Agent - enrolled as an agent under the requirements of Treasury Department Circular No. 230.

On the Forms 2848 cosigned by Employee 1, Employee 2, and Employee 3, they attested that they were Enrolled Agents (EAs) by placing the letter "c" on the designation lines in the forms next to their signatures. Jones cosigned

[1] The powers of attorney in evidence, other than the ones received for the purpose of showing the cutting and pasting of taxpayer's signatures, demonstrated that the following portions of the complaint are proven; subparagraphs III. (A) to (G) and (I) to (X). Subparagraphs (H) and (T) were withdrawn by the Complainant.

[2] The Respondent's exhibits are designated R Exh., the Complainant's exhibits as C. Exh., and references to the transcript of the hearing are designated as Tr.

these powers of attorney forms, and he signed all but two of the forms[3] after or concurrent with Employee 1, Employee 2, and Employee 3.

Employee 1, Employee 2, and Employee 3 are not EAs under the requirements of Circular 230. An EA must apply to and be accepted by the Director of Practice after "demonstrate[ing] special competence in tax matters by written examination…" 31 C.F.R. § 10.4. Employee 1, Employee 2, and Employee 3 had not applied to the IRS for EA certification, had not taken the IRS written examination for the certification, and had not been recognized by the IRS as EAs.

Jones makes parallel contentions regarding Employee 1 and Employee 2's alleged status as EAs.[4] Jones claims that the respective organizations to which Employee 1 (National Society of Public Accountants) and Employee 2 (Public Accountants Society of State 1) belong allow members to call themselves EAs. Accordingly, Jones claims that the representations on the Forms 2848 regarding Employee 1 and Employee 2's status as EAs were not false.

It is unnecessary to decide whether the private organizations to which Employee 1 and Employee 2 belonged allowed members to call themselves EAs because the Forms 2848 in this case defines an EA as someone who is enrolled as an agent under the requirements of Treasury Department Circular No. 230. Employee 1 and Employee 2's organizations do not and cannot give license to members to call themselves EAs contrary to Department of Treasury regulations and contrary to the forms signed by Jones. Employee 1 and Employee 2 do not satisfy the requirements of EAs as set forth in the forms and regulations, and Jones knew they did not when he signed the Forms 2848 with Employee 1 and Employee 2.

Jones asserts that Employee 1 and Employee 2 were EAs under his personal definition of that term. Jones testified (Tr. 429.):

> I define an enrolled agent as somebody who has been designated by their state or national society as an enrolled agent. I do not examine as a case of first impression, the qualifications that are represented to me to see if the Director of Practice will later disagree with that.

[3] These two forms are C Exh. 4, in which Jones signed the Form 2848 concurrent with Employee 2, but before Employee 1, and C Exh. 10, in which Jones signed the form concurrent with Employee 3, but before Employee 1.

[4] The following discussion deals with Employee 1 and Employee 2, not Employee 3, because Jones does not contend that Employee 3 was in any way entitled or qualified to refer to herself as an EA. Indeed, as noted above, Jones denies that Employee 3 signed the Forms 2848 with the intent to act as a representative for the respective taxpayers. Rather, Jones contends that Employee 3 signed the Forms 2848 solely as a convenience to Jones and to enable Employee 3 to schedule Jones's appointments with the IRS.

Thus, Jones elected to disregard the meaning of the term Enrolled Agent as it is defined on Form 2848 and as it is set forth in the regulations. By substituting his own definition of Enrolled Agent for the definition on Form 2848, Jones contends that (1) the Forms 2848 he signed, which listed Employee 1 and Employee 2 as Enrolled Agents, did not contain false information, and (2) even if the forms did contain false information, he did not participate in providing this information to the IRS knowing that such information was false. These claims are not credible and are rejected. As noted above, when Jones signed the Forms 2848, he knew that Employee 1 and Employee 2 falsely claimed to be Enrolled Agents on those forms. He cannot, credibly at least, claim that he lacked knowledge of those falsehoods because of his personal, and secret, definition of Enrolled Agent. Moreover, even if Jones did believe that his personal definition of Enrolled Agent were somehow controlling, the Forms 2848 that he, Employee 1, and Employee 2 signed provided a different definition for Enrolled Agent. Jones knew Employee 1 and Employee 2 were not Enrolled Agents under that definition without regard to Jones's personal definition of Enrolled Agent.

Even if Jones believed that his definition of enrolled agent was better or more reasonable than the definition of Enrolled Agent on Form 2848 and in the regulations, he knew that under the IRS's definition Employee 1 and Employee 2 were not EAs. He nevertheless signed the Forms 2848 with the knowledge that Employee 1 and Employee 2 were falsely claiming to be EAs under the definition provided in the form, viz., "Enrolled Agent - enrolled as an agent under the requirements of Treasury Department Circular No. 230."

Jones also claims that Employee 1 and Employee 2 had attested in other Forms 2848 that they were EAs, but the IRS did not challenge such statements and permitted Employee 1 and Employee 2 to practice before the IRS as EAs while representing other taxpayers. However, even if IRS agents had dealt with Employee 1 or Employee 2 as EAs, such dealings would have been a direct result of Employee 1 and Employee 2's misrepresentations on the forms that they were EAs. Thus, Jones's claim devolved into the injudicious and unwarranted proposition that Employee 1 and Employee 2 misrepresented their status to the IRS, and the IRS, by relying on the misrepresentations, is now bound by or estopped by Employee 1 and Employee 2's false statements that they were EAs. This claim is rejected.

Jones asserts that the IRS has changed its Forms 2848 over the years, and that the form in effect during the period of October 1982 and October 1983 (R Exhs. 10 and 11) allowed a representative to fill in a blank line identifying the representative's qualifications to represent the taxpayer. Jones claims that this blank line allowed public accountants to represent taxpayers because public accountants could place "public accountant" on the blank line. This claim is rejected. A public accountant is not entitled to represent taxpayers before the IRS. Simply because the power of attorney form, during a one year period, allowed the representative to list his or her qualifications does not and would not allow unqualified persons to represent taxpayers.

Moreover, the Form 2848 in effect from October 1982 to October 1983 is the only such form that has allowed representatives to list the representative's qualifications to represent taxpayers. All other such forms, including the forms signed by Employee 1, Employee 2, and Jones in the present case, do not allow the representative to list his or her qualifications, but rather, require the representative to choose from a list of qualifications provided on the form. Employee 1 and Employee 2 do not fulfill any of the listed qualifications on the form. Accordingly, Employee 1 and Employee 2 misrepresented their qualifications by falsely stating that they were EAs, and Jones signed and submitted the forms to the IRS with the knowledge of the misrepresentations.

Moreover, the fact that a form allows a representative to list his or her qualifications does not give license to any person, and without regard to qualifications, to claim entitlement to representative status. Jones does not claim that the regulations were changed in 1982-1983 or that the regulations at any time permitted public accountants to represent taxpayers. Under Jones's contention, any person could claim the right to represent taxpayers before the IRS by merely listing some training, education, or aptitude. In addition, and without regard to the flawed logic of Jones's claim, a blank line on a twenty year-old form does not authorize aspiring representatives to falsely state their qualifications on current forms that do not contain a blank line on which to state qualifications.

In addition, Jones's contention makes the Form 2848 control the law rather than the opposite. The regulations that list the required qualifications for taxpayer's representatives do not permit public accountants to represent taxpayers, unless the public accountants have become EAs. 31 C.F.R. Part 10. However, Jones contends that a Form 2848, which was in existence for one year from October 1982 to October 1983, and which contained a blank line for a representative to list his or her qualifications, effectively changed the regulations and suddenly, and without warning or authorization or specific reference, allowed public accountants to represent taxpayers before the IRS. Jones cites no authority for this novel and unwarranted proposition, and it is rejected.

Because the current Form 2848 does not have a blank line on which representatives can list qualifications, Jones claims that Employee 1 and Employee 2 are being unfairly denied the right to represent taxpayers before the IRS, a right that Jones claims existed from 1982 to 1983. Nevertheless, Jones has not filed any lawsuit or proceeding on behalf of Employee 1 and Employee 2 to assert or rectify the alleged denial of their right nor has Jones raised this claim to the IRS prior to the commencement of the present proceeding. Moreover, and as noted above, Employee 1 and Employee 2 never possessed the qualifications, and therefore never had the right, to represent taxpayers before the IRS, whether in 1982, 1983, or the present. Accordingly, nothing has been taken from or denied to Employee 1 and Employee 2 that they ever lawfully possessed or had a right to claim.

Employee 1 and Employee 2 claim to have spoken to different employees of the IRS and that these employees told Employee 1 and Employee 2 to list themselves as EAs on the Form 2848, despite the fact that Employee 1 and Employee 2 were not EAs. Employee 1 and Employee 2 claim that the IRS employees advised them to falsely state their qualifications on the Forms 2848 because there was no blank line on the current form, or, indeed, on any form since 1983, that would enable them to list their "qualifications" as public accountants. Employee 1 and Employee 2 provided no corroboration for this bald claim. Considering their demeanor and other aspects of their testimony, Employee 1 and Employee 2 were not credible witnesses.

Moreover, Employee 1 and Employee 2's claims that they were both told at different times and by different IRS agents to falsify their qualifications on the Form 2848 is neither plausible nor credible. Indeed, the contentions are so incredible that Jones's reliance on these claims in asserting his due diligence, 31 C.F.R. § 10.22, demonstrates a reckless disregard of Employee 1 and Employee 2's qualifications to practice before the IRS, and a reckless disregard for the accuracy of Forms 2848 signed by Jones.

Jones admits that Employee 3, his office manager, is not an EA and he makes no claim that she is entitled to call herself an EA. Nevertheless, Jones signed Forms 2848 in which Employee 3 falsely listed herself as an EA, and these forms were submitted to the IRS. Jones explains his conduct of signing Forms 2848 that falsely represented Employee 3 to be an Enrolled Agent by claiming that (1) Employee 3 listed herself as an EA merely as a matter of convenience and in order to permit her to schedule conferences between Jones and the IRS, and (2) Employee 3 did not represent clients before the IRS, and therefore, Jones's conduct did not violate 31 C.F.R § 10.51(j).

A representative who knowingly signs and submits to the IRS a form that contains false information is not excused because the falsehood was uttered in order to allow the representative's office to operate more conveniently. The mere fact that the representative's motivation was not more nefarious does not make the deceptions in his false Forms 2848 any less deceptive. Motivation is not an element of the offenses described in 31 C.F.R. §§ 10.22 and 10.51 (j).

Jones contends that Employee 3 did not represent clients before the IRS, and therefore, she did not "practice" before the IRS. Accordingly, Jones contends that he did not violate 31 C.F.R. § 10.51 (j) which prohibits aiding and abetting another person to "practice" before the IRS during a period of ineligibility of such other person. However, Jones admits that he listed Employee 3 as an EA on the Forms 2848 because the IRS is such a "stickler" in discussing a taxpayer's case that it will not talk to a person about a taxpayer's case unless such person is on the Form 2848 as a representative. (Tr. 405.) Thus, Jones acknowledges that he signed and submitted the false forms in order to evade and negate attempts by IRS personnel to comply with the law. See, e.g. 26 U.S.C. § 6103.

Moreover, Jones's evasive techniques are designed to enable Employee 3 to practice before the IRS because the falsehoods entice and permit IRS agents to discuss matters relating to Jones's clients with Employee 3. Indeed, Employee 3 stated the following regarding Jones's legal practice in her affidavit to the Director of Practice before the present proceeding was instituted:

> The client is instructed that licensed attorney Robert Alan Jones will be the primary taxpayer representative, but that accountants assigned to his or her, or their entities, tax issues will also represent them before the IRS, including specifically…Ms. Employee 3.

Employee 3 is an accountant and is a member of the State 2 Society of Public Accountants. She possesses similar qualifications as Employee 1 and Employee 2. It is not credible that Employee 3 did not, on occasion if not frequently, engage in discussions with IRS agents about substantive matters in a client's case. Such substantive discussions would constitute practice before the IRS.

In addition, Jones's contention equated "practice before the IRS" with practicing law or representing clients. However, the regulation is not limited to practicing law or representing clients. The regulation more broadly prohibits aiding and abetting unlicensed persons from practicing before the IRS. Moreover, "practice before the IRS" is defined in the regulations to include "all matters connected with a presentation to the Internal Revenue Service… [including] corresponding and communicating with the Internal Revenue Service." 31 C.F.R. § 10.2(d). Accordingly, when Employee 3 was communicating with IRS personnel regarding [redacted (b)(3)/26 USC 6103], and under the present circumstances in which she and Jones had signed Forms 2848 in which she claimed to be an EA and to represent the taxpayer, she was practicing before the IRS.

Also, Jones and Employee 3 knew that the IRS agents would not talk to Employee 3 about scheduling a taxpayer's case unless Employee 3 was authorized to represent the taxpayer pursuant to the Form 2848. Accordingly, Jones knew that Employee 3 was engaged in activities that only a representative could perform, and to this extent, Jones knew that Employee 3 was practicing before the IRS.

Accordingly, Employee 3 did practice before the IRS by discussing and scheduling client's cases with the IRS, and Jones knowingly aided and abetted her practice by signing and submitting to the IRS a Form 2848 in which Employee 3 falsely stated that she was an Enrolled Agent. In any event, Jones does not dispute that Employee 1 and Employee 2 practiced before the IRS and that he signed the Forms 2848 in which Employee 1 and Employee 2 were falsely listed as EAs. Moreover, Jones knew when he signed the Forms 2848 that Employee 1, Employee 2, and Employee 3 were not EAs according to the forms. Jones knowingly aided and abetted Employee 1, Employee 2 and

Employee 3 to practice before the IRS during periods when they were not eligible to practice, and accordingly, Jones violated 31 C.F.R. § 10.51(j).

Jones also contends that he should not be held responsible for the truth or accuracy of statements made by Employee 1, Employee 2 or Employee 3 on the Forms 2848, but rather, those individuals are solely responsible for the truth and accuracy of statements they made about their qualifications. Jones contends that to hold him liable for the truthfulness or accuracy of cosigners' representations about their qualifications places an unreasonable and unlawful burden on him. This argument misapprehends the misconduct for which Jones in charged under 31 C.F.R. §§ 10.22 and 10.51.

Under 31 C.F.R § 10.22, Jones is not held responsible as an insurer and without regard to fault against false statements made by third parties who sign documents with Jones. Rather, Jones is held responsible for exercising "due diligence" in preparing and determining the correctness of documents filed with and representations made to the IRS. Accordingly, under 31 C.F.R. §10.22, Jones is not responsible for the accuracy of Employee 1, Employee 2, and Employee 3's statements on the Forms 2848, but rather, for failing to exercise due diligence in determining the correctness of Employee 1, Employee 2, and Employee 3's statements.

Moreover, Jones's argument concerning an unreasonable and unlawful burden on him fails to address the fact that he admittedly knew Employee 3 was not an EA, yet he signed the Forms 2848 in which she claimed to be an EA. Such intentional misconduct violates Jones's duty of due diligence without regard to the burden placed on him concerning the accuracy of statements made by other persons who signed the forms with Jones.

Jones contends that his conduct was, at most, negligent. He further contends that he may not be disciplined for negligent conduct, and that OPR's attempt to discipline him for negligent conduct fails to accord him proper notice and violates rule-making procedures. Accordingly, Jones contends that his conduct may not be disciplined.

It is not necessary to address Jones's legal argument on rule-making and fair notice because his contention regarding negligence is misplaced. The regulations that Jones is charged with violating proscribe the lack of due diligence (§10.22); knowingly giving false or misleading information, or participating in the giving of false or misleading information (§ 10.51(d)); knowingly aiding and abetting an ineligible person to practice before the Internal Revenue Service (§ 10.51(j)); and using or participating in the use of public communication containing a false statement or claim (§ 10.30(a)). Jones does not claim that these regulations fail to give proper notice or were improperly issued. In addition, even if "lack of due diligence" were essentially the same as negligence, Jones has cited no authority for the proposition that OPR cannot, or indeed should not, discipline negligent conduct by a representative.

Jones cites *Florida Bar v. Brown*, 790 So.2d 1081 (Fla. 2001) for the proposition that mere negligence will not support attorney discipline. The *Brown* court held that a negligent violation of a state statute regulating contributions to political candidates did not "reflect adversely on Brown's honesty, trustworthiness, or fitness." 790 So.2d 1085. This holding does not support Jones's broad contention that an attorney's negligent acts cannot be the subject of discipline. Moreover, even if Florida, or other states, determined that attorney negligence could not be the subject of discipline, this would not prevent OPR, a federal agency, from disciplining lawyers for a similar conduct when those lawyers appear before the IRS.

When a lawyer appears before federal agencies, the lawyer is subject to the ethical and disciplinary rules of such agencies as well as his state bar. In such cases, the state bar and the federal agency share jurisdiction to discipline attorneys, and their respective disciplinary rules need not be coterminous. See *Bender v. Dudas*, 2006 WL 89831 (D DC 2006) (p. 8 joint jurisdiction; p 11, violation because of attorney's negligence in failing to notify his clients.)

Moreover, because Jones does not contest the legality or applicability of 31 C.F.R. § 10.22, he appears to make a distinction between negligence and the lack of due diligence. However, he does not explain the distinction nor does he explain how his conduct may be negligent but not lacking in due diligence. In any event, the evidence clearly and convincingly shows that Jones violated the regulations by (1) failing to exercise due diligence in preparing and filing documents with the IRS and in determining the correctness of representations made to the IRS, (2) knowingly giving or participating in the giving of false and misleading information to the IRS in connection with a matter pending before the IRS, (3) knowingly aiding an ineligible person to practice before the IRS, and (4) participating in the use of an internet website that contained false statement or claim. Accordingly, Jones's contention that he may not be disciplined for his negligent conduct is rejected.

Under 31 C.F.R. § 10.51(d), Jones is liable for incompetence and disreputable conduct by participating in any way in the giving of false or misleading information to the IRS "knowing such information to be false or misleading." This regulation requires knowledge or intentional conduct, a mental element that is not required by 31 C.F.R § 10.22. Accordingly, this regulation also does not support Jones's argument that the regulations place an unreasonable and unlawful burden on him.

The question remains whether the evidence satisfies the knowledge or intention element of 31 C.F.R. § 10.51(d). With respect to the Forms 2848 that Jones signed with Employee 3,[5] the knowledge or intention element is satisfied because Jones admittedly knew that Employee 3 was not an EA as the forms represented. Moreover, Jones knew, or must have known, that neither Employee 1 nor Employee 2 was an EA pursuant to the definition of that term on

[5] C Exhs. 1, 2, 6, 9, 10, 11, and 12.

the Form 2848. Yet, Jones signed the forms with the knowledge that Employee 3, Employee 1, and Employee 2 had misrepresented their qualifications on the forms.

Accordingly, I find that Jones violated 31 C.F.R. § 10.22(a)(1), (2), and (3) by failing to exercise due diligence in preparing and assisting in the preparation of, approving, and filing Forms 2848 with the IRS in which Employee 1, Employee 2, and Employee 3 were falsely represented as being EAs. I further find that Jones violated 31 C.F.R. §10.51(d) and (j) by giving false or misleading information and participating in the giving of false or misleading information to the IRS in connection with matters pending before the IRS, knowing such information to be false or misleading; and by knowingly aiding and abetting other persons to practice before the IRS during a period of ineligibility of those persons.

B. False signatures

OPR charges that four of the Forms 2848 that Jones filed with the IRS contain signatures by taxpayers that, in fact, were not signed by the taxpayers, but rather were cut from some other document signed by the taxpayers signed by the taxpayers and pasted onto the Forms 2848. (C Exh. 7, 8, 13, and 14.) The authenticity of the signatures is important because, among other things, the taxpayer's signature authorizes the IRS to talk to the representative about the taxpayer's case, which involves the disclosure of confidential information.

Jones contends that the evidence was insufficient to prove that the taxpayers' signatures had been pasted onto the forms.[6] Jones also contends that, if the taxpayer's signatures had been pasted onto the forms, this was done without his knowledge.

The striking aspect of the taxpayers' signatures on the four forms in issue is not only their similarity. The signatures are exact in every respect. They are photocopies, or, as OPR charges, they are "cut and pasted." Moreover, the handwritten dates next to the signatures are exact replicas. Thus, the taxpayers did not actually sign the forms authorizing Jones, Employee 1, Employee 2, and Employee 3 to represent them before the IRS. Accordingly, the forms were false.

Jones claims that even if the taxpayers did not sign the forms, he did not know that their signatures had been pasted onto the forms. This claim is not credible. First, two of the forms are dated the same date for the taxpayers' and Jones's signatures. In these circumstances, it is likely that Jones would know that the taxpayers had not signed the forms. Moreover, the photocopy of the signatures and the pasting of the signatures would have made it clear to Jones that the taxpayers had not signed the forms.

[6] This contention is effectively negated by Jones's defense in mitigation of the penalty that he discharged his clerk who had cut and pasted the signatures.

It is possible that the taxpayers authorized Jones to copy their signatures and to paste the signatures onto the forms in question. However, no evidence was presented of such authorization. Indeed, with the evidence of copying and pasting so apparent, Jones could have called the taxpayers to testify about such authorization, if authorization existed. The failure to present any evidence of authorization leads me to conclude that there was none.

Accordingly, I find that Jones violated 31 C.F.R. § 10.22(a)(1), (2) and (3) by failing to exercise due diligence in preparing and assisting in the preparation of, approving, and filing Forms 2848 with the IRS that falsely represented the taxpayers signatures. I further find that Jones violated 31 C.F.R. § 10.51 (d) by giving false or misleading information and participating in the giving of false or misleading information to the IRS in connection with matters pending before the IRS, knowing such information to be false or misleading.

C. Website

Jones maintains a website in which he advertises his legal practice under the heading "American Tax Payers Defense." That website identifies Jones, Employee 1, and Employee 4 as principals in the company. Jones is listed as the president. Employee 1 is listed as the forensic tax accountant, and is described as an "Enrolled IRS Agent." Employee 4 is listed as tax planning management, and is described as an "IRS enrolled agent." As noted above, neither Employee 1 nor Employee 4 is an Enrolled Agent with the IRS.

31 C.F.R. § 10.30(a) prohibits a practitioner from participating in the use of public communication containing a false statement or claim. Jones's website, a public communication contains the false statements and claims that Employee 1 and Employee 4 were EAs before the IRS. Accordingly, Jones has violated 31 C.F.R. §10.30(a).

III. Penalty

OPR has determined that the appropriate discipline for Jones's conduct is suspension for two years. OPR's penalty determination is committed to the discretion of the agency and is entitled to substantial deference. *Bender v. Dudas*, 2006 WL 89831, p. 8 (D DC 2006) (substantial deference); *Sicignano v. US*, 127 F. Supp.2d 325, 331 (D CT 2001) (agency discretion); see *Polydoroff v. ICC*, 773 F.2d 372, 375 (DC Cir. 1985) (agency discretion). The regulations confirm OPR's discretion in these actions, including the determination of the penalty. 31 C.F.R. § 10.60(a) (the director "may" institute a proceeding for the censure, suspension, or disbarment of a practitioner); see also *Beard v. GSA*, 801 F.2d 1318 (Fed Cir. 1986) (where an agency proposed to remove an employee, the penalty was committed to the sound discretion of the agency, which was in the best position to judge the impact of the misconduct.) *Valdez v. Department of Justice*, 65 MSPR 390 (1994).

Before instituting this action, OPR notified Jones of its intention to file charges and afforded him an opportunity to respond. (R Exh. 2.) Jones responded to the proposed charges in a six-page, single-spaced letter. (R Exh. 3.) After receiving Jones's letter, OPR sent Jones's attorney a letter advising that a complaint would be filed and inquiring about the possibility of a settlement. No settlement was reached. However, the correspondence and the testimony of Carolyn Gray, senior advisor to the Director of OPR, show that OPR considered Jones's submission in determining the penalty that the agency seeks in this case.

In mitigation of the proposed penalty, Jones claims he did not know that taxpayers' signatures had been "cut and pasted" on Forms 2848 he filed with the IRS. Jones claims that when he discovered this had been done, he discharged the clerk in his office who had cut and pasted the taxpayers' signatures. Jones presented this mitigating factor to OPR, and OPR considered it in determining the penalty.

Jones asserts that he has never before been disciplined by any bar association. This factor was also considered by OPR in determining the penalty before the present proceeding was instituted.

Jones asserts that the designation of Employee 4 as an EA was an innocent mistake. This claim, insofar as the Forms 2848 are concerned, was also considered by OPR before the present proceeding was instituted. Jones's assertion that he mistakenly designated Employee 4 as an EA on Jones's website is not credible and is rejected. Jones has demonstrated a complete disregard of the agency's definition of "Enrolled Agent" and has steadfastly determined to substitute his own definition for that term in his submissions to the IRS and in his representations to the public. Jones has exhibited a cavalier and presumptuous attitude regarding Employee 1, Employee 2, and Employee 3's qualifications as EAs. Jones's actions regarding Employee 4's false designation as an EA follows that pattern. Jones was no more mistaken about Employee 4's EA status as he was about Employee 1, Employee 2 or Employee 3's status.

Jones asserts that Employee 4 is a CPA and is entitled to represent taxpayers before the IRS. Accordingly, Jones claims, whether or not Employee 4 is an EA is not relevant to Employee 4's ability to represent taxpayers before the IRS, and therefore, no harm was done by the misrepresentation. However, whether Employee 4 is an EA is relevant to the truth, and Jones knowingly participated in falsely claiming that Employee 4 was an EA, both on Forms 2848 and on Jones's website.

Jones's position exhibits a low regard for being honest, at least when, as he presumes, no one is harmed. This position is rejected. Besides, whether anyone has been harmed by the false representations about Employee 4's qualifications (to say nothing about the false representations about Employee 1, Employee 2, and Employee 3's qualifications) is not known, but someone certainly could have been. For example, what if a taxpayer has or had contacted Employee 4 on the basis of Employee 4 being an EA, and on the basis of the

taxpayer's not unreasonable belief that EAs are more adept than CPAs at handling tax disputes. Jones and Employee 4's false representation that Employee 4 is an EA would harm such a taxpayer. In conclusion, Jones's knowing participation in falsely designating Employee 1, Employee 2, Employee 3, and Employee 4 as EAs violated the regulations and reflects on his character and qualifications to represent clients before the IRS. These are considerations that OPR could properly take into account in determining the discipline to be imposed.

A troubling aspect of Jones's violations of the regulations pertaining to the representations regarding Employee 1, Employee 2, Employee 3, and Employee 4's status as EAs is his refusal to admit or recognize that his actions were wrongful. Jones contends that the respective associations in which Employee 1 and Employee 2 were members allowed Employee 1 and Employee 2 to call themselves enrolled agents. Jones states that he believes these authorizations from these private associations entitle Employee 1 and Employee 2 to attest to the IRS that they are Enrolled Agents on a form that contains a completely separate and different definition of enrolled agent. Jones's persistence in maintaining and espousing this contention, in which his personal definition of enrolled agent is different from and paramount to the definition in the regulations and the instructions on the Form 2848, is indicative of a person who is likely to repeat his offense. It is a factor that supports the discipline in this case.

Jones contends that his conduct in this case was, at worst, negligent, and that this conduct warrants the lesser penalty of a public censure rather than suspension. This argument is misplaced because Jones's conduct was more than negligent. He knew that Employee 1, Employee 2, Employee 3 and Employee 4 were not accurately and truthfully listed as EAs on the Forms 2848 he filed with the IRS. He knew that his clients' signatures had been copied and pasted onto the Forms 2848 he filed with the IRS because their pasted signatures were on the forms when he signed them. He knew that Employee 1 and Employee 4 were not EAs, but he allowed them to claim this status on his website.

Jones's violations were not necessarily committed with evil motivation, such as fraud. However, the violations bespeak a lackadaisical, almost contemptuous attitude toward the rules and regulations that govern a representative's conduct before the IRS. He would rather approve, if not direct, his office manager to misrepresent her status to the IRS than suffer the inconvenience of speaking to the IRS himself when arranging a conference or hearing for a client. He would rather have signatures of clients cut and pasted onto forms rather than suffer the inconvenience of having the clients come to Jones's office to sign the forms or mailing the forms to the clients for their signatures. He would rather deceive the IRS into believing that Employee 1, Employee 2, and Employee 3 were EAs, rather than suffer the inconvenience of requiring those persons to follow the regulations and be appointed EAs by the IRS. And, he would rather deceive the public into believing that Employee 4 was

an EA rather than require Employee 4 to follow the regulations and be appointed an EA by the IRS.

Jones's protestations that he believe Employee 1 and Employee 2 could designate themselves as EAs because their respective private associations allowed them to use that term is incredible and is not worthy of Jones's intelligence nor his many years in the Bar and his many years of practice before the IRS. Moreover, and without regard to Employee 1 and Employee 2, Jones admittedly knew that Employee 4 and Employee 3 were not members of any association that permitted them to designate themselves as EAs. Thus, Jones admits that he knowingly participated in the misrepresentations regarding Employee 4 and Employee 3's status as EAs.

After considering Jones's defenses and mitigating contentions, OPR determined that the appropriate discipline in this case is a suspension of two years. The evidence does not show that OPR abused it discretion in making this determination. Moreover, the penalty is reasonable under the circumstances of this case. Accordingly, I conclude that Robert Alan Jones should be suspended from practice before the Internal Revenue Service for a period of two years.

1/16/07
Date

/s/ Joe Gontram
Joseph Gontram
Administrative Law Judge