UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

April 13, 2017

PRESS RELEASE

The Chief Judge of the United States Tax Court announced today that the following practitioners have been disbarred or suspended 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 Charles G. Kinney, Francis Malofiy, and Jeffrey D. Moffatt.

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

1. Charles G. Kinney
2. Francis Malofiy
3. Jeffrey D. Moffatt
4. Tara M. Warrington

Attachments

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Charles G. Kinney

ORDER OF DISBARMENT

On May 25, 2016, the Supreme Court of California filed an Order En Banc disbarring Mr. Kinney from the practice of law in California. The Order of the Supreme Court of California involved an appeal from an Opinion and Order of the State Bar Court of California, Review Department, filed December 12, 2014. See In re Kinney, Nos. 09-0-18100, 09-0-18760, 2014 WL 7046611 (State Bar Ct. CA, December 12, 2014).

The Court issued an Order to Show Cause to Mr. Kinney on September 7, 2016, 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 directed Mr. Kinney to (1) submit a written response to the Order on or before October 7, 2016 and (2) notify the Court in writing on or before October 7, 2016 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 26, 2016.

On September 29, 2016, the Court received Mr. Kinney's Response to 9/7/16 Order to Show Cause and Intention to Appear at the Hearing (First Response). The First Response included notification to the Court of Mr. Kinney's intention to appear at a hearing on October 26, 2016, and documents from proceedings before the Supreme Court of California; the State Bar of California, Review Department; the United States Court of Appeals for the Ninth Circuit; and the U.S. District Court for the Northern District of California. On October 25, 2016, Mr. Kinney advised the Court by phone that he was unable to appear at the hearing on October 26, 2016. Mr. Kinney did not appear at the hearing on October 26, 2016.

On October 31, 2016, the Court received Mr. Kinney's Further Response to 9/7/16 Order to Show Cause and Intention to not Appear at Hearing (Second Response). The Second Response also notified the Court Mr. Kinney was unable to attend the hearing on October 26, 2016, and included a petition for writ of

certiorari to the Supreme Court of the United States.

On November 30, 2016, the Court issued an Order to Mr. Kinney, directing him to submit a status report to the Court within 30 days after the United States Supreme Court takes action on his appeal. On January 9, 2017, the United States Supreme Court denied Mr. Kinney's petition for writ of certiorari. Mr. Kinney failed to inform the Co-Chairs of this Court's Committee on Admissions, Ethics, and Discipline that the petitioner for writ of certiorari was denied.

Upon due consideration of Mr. Kinney's written responses to the Court and for reasons set forth more fully in the attached Memorandum Sur Order, it is

ORDERED that Mr. Kinney's Further Response to 9/7/16 Order to Show Cause and Intention to Not Appear at Hearing, received by the Court on October 31, 2016, beyond the deadline of October 7, 2016, is hereby accepted by the Court and included in the record of the proceedings. It is further

ORDERED that the Court's Order to Show Cause, issued September 7, 2016, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Kinney is disbarred from practice before the United States Tax Court. It is further

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

ORDERED that Mr. Kinney'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. Kinney as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Kinney 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) L. Paige Marvel

L. Paige Marvel
Chief Judge

Dated: Washington, D.C.
April 13, 2017

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re Charles G. Kinney

MEMORANDUM SUR ORDER

On September 7, 2016, the Court issued an Order to Show Cause to Mr. Charles G. Kinney, a member of the bar, affording him the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before the Court, or otherwise disciplined. The Order to Show Cause was predicated on Mr. Kinney's disbarment from the practice of law in the State of California by Order of the Supreme Court of the State of California, En Banc, filed May 25, 2016. See Rule 202(c), Tax Court Rules of Practice and Procedure.

The Order to Show Cause instructed Mr. Kinney to submit a written response on or before October 7, 2016, and to notify the Court therein of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the Court on October 26, 2016, at 10:00 a.m.

On September 29, 2016, the Court received Mr. Kinney's Response to 9/7/16 Order to Show Cause and Intention to Appear at the Hearing (First Response). The First Response included notification to the Court of Mr. Kinney's intention to appear at a hearing on October 26, 2016. Attached to the First Response were documents from proceedings before the Supreme Court of California; the State Bar of California, Review Department (Review Department);

the United States Court of Appeals for the Ninth Circuit; and the U.S. District Court for the Northern District of California.

On October 25, 2016, Mr. Kinney advised the Court by phone that he was unable to appear at the hearing on October 26, 2016. Mr. Kinney did not appear at the hearing on October 26, 2016. On October 31, 2016, the Court received Mr. Kinney's Further Response to 9/7/16 Order to Show Cause and Intention to not Appear at Hearing, wherein he notified the Court of his intention not to appear at the hearing on October 26, 2016. Accordingly, Mr. Kinney waived his right to appear before the Court at a hearing concerning the Order to Show Cause.

Background

The action of the Supreme Court of California disbarring Mr. Kinney followed the recommendation of the Review Department's Opinion and Order filed December 12, 2014. In re Kinney, 5 Cal. State Bar Ct. Rptr. 360, 369 (Cal. Bar Ct. Dec. 12, 2014). The Opinion and Order also involuntarily enrolled Mr. Kinney as an inactive member of the State Bar as of December 15, 2014. Id.

Mr. Kinney's disbarment from the practice of law in the State of California was based on underlying lawsuits related to property that Mr. Kinney owned as tenants in common with Kimberly Jean Kempton and other lawsuits related to property owned by Mr. Kinney's clients, Gerald and Robin Toste. Id. at 363-367.

The Review Department concluded that Mr. Kinney failed to maintain a just action as required by Cal. Bus. & Prof. Code §6068(c) and committed acts of moral turpitude in violation of Cal. Bus. & Prof. Code §6106 when litigating the cases related to the property that Mr. Kinney owned with Ms. Kempton. In re Kinney, 5 Cal. State Bar Ct. Rptr. at 365-366. The Review Department concluded that Mr. Kinney failed to maintain a just action as required by Cal. Bus. & Prof. Code §6068(c) when litigating the cases on behalf of his clients Mr. and Mrs. Toste. In re Kinney, 5 Cal. State Bar Ct. Rptr. at 367.

Discussion

As true in the case of every reciprocal discipline case, the Order of the California Supreme Court disbarring Mr. Kinney from the practice of law in the State of California 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 California Supreme Court and that we follow the disciplinary action of that court, unless we determine, from an intrinsic consideration of the record of the California proceedings, that one or more of the following factors appears: (1) that Mr. Kinney was denied due process in the form

of notice and an opportunity to be heard with respect to the California 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 California proceedings; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed by the California 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. Kinney bears the burden of showing why, notwithstanding the discipline imposed by the California 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. Kinney an opportunity to present, for our review, the record of the disciplinary proceedings in California, and to point out any grounds to conclude that we should not give effect to the action of the California 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. Kinney argues that the Court should deviate from the disbarment imposed by the Supreme Court of California for three principal reasons. First, Mr. Kinney asserts that the Order to Show Cause is premature because Mr. Kinney could still appeal to the United States Supreme Court. Mr. Kinney filed a petition for a writ of certiorari on October 24, 2016. On January 9, 2017, the United States Supreme Court denied Mr. Kinney's petition for writ of certiorari.

Second, Mr. Kinney argues that his federal rights have been violated because (1) there was a deprivation of due process by the State Bar and by state and federal courts, (2) there was an infirmity of proof, and (3) there were other substantial reasons. These alleged violations of Mr. Kinney's federal rights are based on Mr. Kinney's assertion that the recommendation by the Review Department was based on void-on-their-face state court orders and procedural flaws in the California administrative process. The orders to which Mr. Kinney refers to are one in which Mr. Kinney was declared a vexatious litigant by the Los Angeles County Superior Court in 2008 and one in which Mr. Kinney was declared a vexatious litigant by the Court of Appeal, Second Appellate District, in

2011. See In re Kinney, 5 Cal. State Bar Ct. Rptr. at 363. Although the fact that Mr. Kinney was determined to be a vexatious litigant in two courts was mentioned in the Review Department's Opinion and Order, Mr. Kinney's disbarment was based upon his actions in lawsuits related to property that Mr. Kinney owned as tenants in common with Kimberly Jean Kempton and other lawsuits related to property owned by Mr. Kinney's clients, Gerald and Robin Toste. See In re Kinney, 5 Cal. State Bar Ct. Rptr. at 363-367.

Mr. Kinney asserts that there were procedural flaws in the California administrative process because (1) Cal. Bus. & Prof. Code §6108 requires an oath by each person complaining about Mr. Kinney, and no oath was obtained and (2) Cal. Bus. & Prof. Code §6085 gives Mr. Kinney the right to a fair, adequate and reasonable opportunity to defend himself, including the right to subpoena witnesses, but these rights were denied to Mr. Kinney. Mr. Kinney does not specifically discuss the record of his disciplinary proceedings. We note that the denial of a motion to subpoena witnesses is within the court's discretion. In re Sibley, 564 F.3d at 1341. In addition, to the extent that Mr. Kinney asserts that his disbarment was not supported by the record of his disciplinary proceeding, we point out that we do not sit as a court of review with respect to the proceedings before the Review Department. See Selling v. Radford, 243 U.S. at 49-50; In re

Sibley, 564 F.3d at 1341. To the contrary, as mentioned above, we are required to accept the facts found by the Review Department, and to follow the action of the California Supreme Court unless, from an intrinsic consideration of the record before that court, we find one or more of the three factors identified by the Supreme Court in Selling v. Radford, discussed above.

Third, Mr. Kinney argues that his federal rights have been violated because imposition of the discipline would result in grave injustice and public harm because Mr. Kinney's cases had public benefits. We note that the Review Board recommended Mr. Kinney's disbarment "as the only discipline adequate to protect the public, the courts, and the legal profession." In re Kinney, 5 Cal. State Bar Ct. Rptr. at 369.

In sum, Mr. Kinney has not shown any of the three factors identified by the Supreme Court in Selling v. Radford. Mr. Kinney was given a full opportunity to be heard by both the Hearing Department and the Review Department and, thus, there was no "want of notice or opportunity to be heard" in the California proceeding. See Rosenthal v. Justices of the Supreme Court of California, 910 F.2d 561, 565 (9th Cir. 1990) ("The State of California provides attorneys subject to discipline with more than constitutionally sufficient procedural due process."). Mr. Kinney has shown no infirmity of proof as to the facts in his disciplinary

proceedings before the Hearing Department and the Review Department. See Selling v. Radford, 243 U.S. at 51. Finally, Mr. Kinney has shown no "other grave reason" not to give effect to the action of the California Supreme Court. See Id. Considering the entire record in this matter, we conclude that Mr. Kinney 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 disbarment.

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
April 13, 2017

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Francis Malofiy

ORDER OF SUSPENSION

On June 9, 2015, the United States District Court for the Eastern District of Pennsylvania (District Court) filed an Order suspending Mr. Malofiy from practice before that Court for a period of three months and one day. On June 11, 2015, he appealed his suspension to the United States Court of Appeals for the Third Circuit (Third Circuit). On July 7, 2015, the District Court filed an Order staying his suspension. On June 30, 2016, the Third Circuit affirmed the Order of the District Court suspending him from practice. See In re Malofiy, 653 F. App'x 148 (3d Cir. 2016). On July 13, 2016, Mr. Malofiy petitioned the Third Circuit for rehearing. On July 26, 2016, the Third Circuit denied Mr. Malofiy's petition for rehearing. On August 10, 2016, the District Court filed an Order dissolving its stay of his suspension and directing that the District Court's order dated June 9, 2015 should be complied with in all respects.

The Court issued an Order to Show Cause to Mr. Malofiy on September 7, 2016, 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 directed Mr. Malofiy to (1) submit a written response to the Order on or before October 7, 2016 and (2) notify the Court in writing on or before October 7, 2016 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 26, 2016.

On October 6, 2016, the Court received Mr. Malofiy's Answer of Francis Malofiy to the Rule to Show Cause (Response). The Response included documents from proceedings before the Third Circuit. On October 6, 2016, the Court also received Mr. Malofiy's Notice of Intention Not to Appear at the October 26, 2016 (sic), which notified the Court of Mr. Malofiy's intention not to appear at a hearing on October 26, 2016 and waived his right so to appear.

On October 24, 2016, Mr. Malofiy filed a petition for writ of certiorari with the United States Supreme Court, to appeal the decision of the Third Circuit. On

November 30, 2016, the Court issued an Order to Mr. Malofiy, directing him to submit a status report to the Court within 30 days after the United States Supreme Court takes action on his appeal. On January 9, 2017, the United States Supreme Court denied Mr. Malofiy's petition for writ of certiorari. On January 24, 2017, the Court received a letter from Mr. Malofiy advising the Court that the petition had been denied.

In addition, on November 22, 2016, the Supreme Court of Pennsylvania filed an order suspending Mr. Malofiy from the practice of law in the Commonwealth of Pennsylvania for a period of three months and one day as reciprocal discipline consistent with the discipline imposed by the District Court.

Upon due consideration of Mr. Malofiy's written response to the Court 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 7, 2016, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Malofiy is 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. Malofiy is prohibited from holding himself out as a member of the Bar of the United States Tax Court. It is further

ORDERED that Mr. Malofiy'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. Malofiy as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Malofiy 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) L. Paige Marvel

L. Paige Marvel
Chief Judge

Dated: Washington, D.C.
April 13, 2017

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re Francis Malofiy

MEMORANDUM SUR ORDER

On September 7, 2016, the Court issued an Order to Show Cause to Mr. Francis Malofiy, a member of the bar, 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 Mr. Malofiy's suspension from the practice of law before the United States District Court for the Eastern District of Pennsylvania (District Court) for a period of three months and one day by Order of the District Court filed June 9, 2015. See Rule 202(c), Tax Court Rules of Practice and Procedure. On June 11, 2015, Mr. Malofiy appealed his suspension to the United States Court of Appeals for the Third Circuit (Third Circuit). On July 7, 2015, the District Court filed an Order staying his suspension. On June 30, 2016, the Third Circuit affirmed the Order of the District Court suspending him from practice. See In re Malofiy, 653 F. App'x 148 (3rd Cir. 2016). On July 13, 2016, Mr. Malofiy petitioned the Third Circuit for rehearing. On July 26, 2016, the Third Circuit denied Mr. Malofiy's petition for rehearing. On August 10, 2016, the District Court filed an Order dissolving its stay of Mr. Malofiy's suspension and directing that the District Court's Order dated June 9, 2015, should be complied with in all respects.

The Order to Show Cause was also predicated on Mr. Malofiy's failure to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of the filing of the June 9, 2015 Order of the District Court within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Order to Show Cause instructed Mr. Malofiy to submit a written response on or before October 7, 2016, and to notify the Court therein of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the Court on October 26, 2016, at 10:00 a.m.

The Court received Mr. Malofiy's Answer of Francis Malofiy to the Rule to Show Cause (Response) on October 6, 2016, in which he notified the Court of his intention not to appear at the hearing on October 26, 2016. Accordingly, Mr. Malofiy waived his right to appear before the Court at a hearing concerning the Order to Show Cause. Attached to his Response was his Brief of Francis Malofiy to the United States Court of Appeals for the Third Circuit (Third Circuit Brief) filed in his appeal of his suspension.

On November 22, 2016, after the Order to Show Cause had been issued, the Supreme Court of Pennsylvania filed an Order suspending Mr. Malofiy from the practice of law in the Commonwealth of Pennsylvania for a period of three months and one day as reciprocal discipline consistent with the discipline imposed by the

District Court.

Background

Mr. Malofiy's suspension from the practice of law before the District Court was based upon his activities and conduct in Daniel Marino v. Usher, et al., Civ. A. No. 11-6811. Judge Diamond concluded that Mr. Malofiy violated Pennsylvania Rule of Professional Conduct 4.3 (dealing with unrepresented person) (Rule 4.3) by obtaining an affidavit and deposition testimony from an unrepresented defendant (Mr. Guice) without first advising him to get a lawyer or correcting his perception that he was merely a witness. In re Malofiy, 653 F. App'x at 152. Judge Diamond referred the matter to Chief Judge Tucker, who appointed a three-judge panel to hear testimony and review the record de novo. Id. The panel concluded that Mr. Malofiy violated Rule 4.3 and also concluded that Mr. Malofiy violated Pennsylvania Rules of Professional Conduct 4.1(a) (a lawyer shall not knowingly make a false statement of material fact or law to a third person), 8.4(c) (prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation), and 8.4(d) (prohibiting conduct that is prejudicial to the administration of justice), based on Mr. Malofiy's representation to Mr. Guice that he would not take any action against him. Id. at 152-153. By Order filed June 9, 2015, the District Court suspended Mr. Malofiy from the practice of law before the

District Court for a period of three months and one day, based on these violations.

Discussion

As true in the case of every reciprocal discipline case, the Order of the District Court suspending Mr. Malofiy from the practice of law before the District Court for a period of three months and one day 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 District Court and that we follow the disciplinary action of that court, unless we determine, from an intrinsic consideration of the record of the District Court proceedings, that one or more of the following factors appears: (1) that Mr. Malofiy was denied due process in the form of notice and an opportunity to be heard with respect to the District Court 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 District Court proceeding; or (3) that some other grave reason exists which convinces us that we should not follow the discipline imposed by the District 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. Malofiy bears the burden of showing why, notwithstanding the discipline imposed by the District 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. Malofiy an opportunity to present, for our review, the record of the disciplinary proceedings in the District Court, and to point out any grounds to conclude that we should not give effect to the action of the District 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. Malofiy argues that the Court should deviate from the three month and one day suspension imposed by the District Court for four principal reasons. First, Mr. Malofiy asserts that the discipline of three months and one day is excessive

and punitive in nature. Mr. Malofiy made a similar argument in his appeal of his suspension by the District Court to the Third Circuit. In re Malofiy, 653 F. App'x at 154. The Third Circuit noted that the American Bar Association publishes a guide that serves as a model for determining the appropriate sanctions for lawyer misconduct and that, for violations involving improper communications with individuals in the legal system, the guide provides that a suspension is generally appropriate when a lawyer knows that a communication is improper and the communication causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding. Id. The Third Circuit noted that the District Court made findings of both knowledge and harm. Id. The District Court concluded that Mr. Malofiy knew his conduct violated the rules because, after being advised by another lawyer of the need to be clear about the adverse relationship between Mr. Guice and Mr. Malofy's client, Mr. Malofiy led Mr. Guice to believe that Mr. Malofiy's client was not pursuing claims against Mr. Guice and that Mr. Guice was only a witness. Id. The District Court also concluded that, but for Judge Diamond's intervention, Mr. Guice was at risk of having a default judgment entered against him. Id.

Second, Mr. Malofiy asserts that the District Court demonstrated bias because the District Court petitioned to intervene as a party of interest in the

disciplinary proceeding when Mr. Malofiy appealed his suspension to the Third Circuit. In his Third Circuit Brief, Mr. Malofiy made a similar argument in his appeal of his suspension by the District Court to the Third Circuit. The Third Circuit interpreted this argument as an argument that the intervention of the District Court was improper. Id. at 151 n.2. The Third Circuit noted that this position is foreclosed by the Third Circuit's decision to grant the District Court's motion to intervene. Id.

Third, Mr. Malofiy asserts that the evidence was insufficient to support a finding of violations of Pennsylvania Rules of Professional Conduct 4.1(a), 4.3, 8.4(c), and 8.4(d). Mr. Malofiy asserts that the District Court ignored the unrefuted evidence that Mr. Guice admitted that Mr. Malofiy told him to seek counsel during the first telephone call, that Mr. Guice was aware he was being sued civilly as a defendant for wrongdoing, that Mr. Malofiy told Mr. Guice that he represented the plaintiff, that Mr. Guice lied to Mr. Malofiy, and that Mr. Malofiy never misled Mr. Guice. Mr. Malofiy referred the Court to his Third Circuit Brief where he made a similar argument in his appeal of his suspension by the District Court to the Third Circuit. The Third Circuit noted that the District Court rejected Mr. Malofiy's testimony that he told Mr. Guice during the first call that he could get a lawyer and instead credited Mr. Guice's testimony to the

contrary. In re Malofiy, 653 F. App'x at 153. In addition, we point out that we do not sit as a court of review with respect to the proceedings before the District Court. See Selling v. Radford, 243 U.S. at 49-50; In re Sibley, 564 F.3d at 1341. To the contrary, as mentioned above, we are required to accept the facts found by the District Court, and to follow the action of that court unless, from an intrinsic consideration of the record before that court, we find one or more of the three factors identified by the Supreme Court in Selling v. Radford, discussed above.

Finally, Mr. Malofiy asserts that he has not been disciplined in any attorney disciplinary proceeding other than the current matter. The Third Circuit noted that the District Court considered the fact that Mr. Malofiy had no prior disciplinary record as mitigating factor. Id. at 154.

In sum, Mr. Malofiy has not shown any of the three factors identified by the Supreme Court in Selling v. Radford. He was given a full opportunity to be heard by the District Court both before Judge Diamond and the three judge panel and, thus, there was no "want of notice or opportunity to be heard" in the District Court proceeding. See Selling v. Radford, 243 U.S. at 51. Mr. Malofiy has shown no infirmity of proof as to the facts in his disciplinary proceeding before the District Court. See Id. Finally, Mr. Malofiy has shown no "other grave reason" not to give effect to the action of the District Court. See Id.

Considering the entire record in this matter, we conclude that Mr. Malofiy 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.
April 13, 2017

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Jeffrey D. Moffatt

ORDER OF DISBARMENT

On March 7, 2016, the Presiding Disciplinary Judge of the Supreme Court of Arizona issued a Decision and Order Imposing Sanctions that disbarred Mr. Moffatt from the practice of law in the State of Arizona. On April 6, 2016, Mr. Moffatt appealed his disbarment from the practice of law in Arizona to the Supreme Court of Arizona, but he did not request a stay of imposition nor was one granted. On April 19, 2016, the Presiding Disciplinary Judge of the Supreme Court of Arizona issued a Final Judgment and Order of Disbarment that disbarred Mr. Moffatt from the practice of law in Arizona. Mr. Moffatt failed to inform the Chair of this Court's Committee on Admissions, Ethics, and Discipline of his disbarment within 30 days after the entry of each of the disciplinary actions as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

Also, by Judgment and Order of the Supreme Court of Arizona's Disciplinary Commission dated September 14, 2009, Mr. Moffatt was censured and placed on probation for a period of one year. Furthermore, by letter dated May 6, 2005, Mr. Moffatt was admonished by this Court's Committee on Admissions, Ethics, and Discipline for his conduct in a case before this Court, Igor A. & Irena R. Ostopenko v. Commissioner, T.C. Docket No. 8543-03.

The Court issued an Order to Show Cause to Mr. Moffatt on September 7, 2016, 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 directed Mr. Moffatt to (1) submit a written response to the Order on or before October 7, 2016, and (2) notify the Court in writing on or before October 7, 2016 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 26, 2016.

On October 7, 2016, the Court received Mr. Moffatt's Response on (sic) Order to Show Cause regarding Jeffrey Moffatt (Response). The Response

included notification to the Court of Mr. Moffatt's intention to appear at a hearing on October 26, 2016 and Exhibits A through KK.

On October 17, 2016, Mr. Moffatt filed a Motion To Compel Discovery. By Order dated October 19, 2016, the Court recharacterized certain requests in Mr. Moffatt's Response as a Motion for Service of Subpoenas, a Motion for Continuance, a Motion To Seal, and a Motion for Referral for Prosecutorial Misconduct. By Order dated October 19, 2016, the Court denied Mr. Moffatt's Motion To Compel Discovery, Motion for Service of Subpoenas, Motion for Continuance, Motion To Seal, and Motion for Referral for Prosecutorial Misconduct.

On October 26, 2016, Mr. Moffatt appeared and was heard before a panel of two Judges of the Court's Committee on Admissions, Ethics, and Discipline at a hearing concerning his proposed discipline. During his hearing, Mr. Moffatt filed a Request for Reconsideration, Moffatt Motion Motion (sic) To Compel 2, and a Moffatt Motion for Expert Witness Designation. The Court took these motions under advisement.

The Request for Reconsideration requests that the Court reconsider the Order dated October 19, 2016 denying Mr. Moffatt's previous motions. For the reasons stated in that Order, the Court will deny the Request for Reconsideration.

The Moffatt Motion Motion (sic) To Compel 2 asks the Court to serve a number of subpoenas. As the Court stated in the Order dated October 19, 2016, the Court does not serve subpoenas and Mr. Moffatt has not alleged that he properly served any subpoenas. See Tax Court Rules of Practice and Procedure 147. In the motion, Mr. Moffatt suggests that the Tax Court may request for a witness to appear itself, citing Hadsell v. Commissioner, 107 F.3d 750 (1997). In that case, Mr. Hadsell served three subpoenas duces tecum without tendering the required witness and mileage fees, claiming that he was completely without income due to his incarcerated status. Id. at 751. In this case, Mr. Moffatt has not shown that he properly served any subpoenas without tendering the required witness and mileage fees or that he is without income. In addition, Mr. Moffatt is not incarcerated. Therefore, the limited exception in Hadsell v. Commissioner does not apply to this case and the Court will deny the motion.

The Moffatt Motion for Expert Witness Designation seeks to designate Rachel Alexander as an expert witness. Mr. Moffatt did not cause Ms. Alexander to prepare a written report for submission to the Court. See Tax Court Rules of Practice and Procedure 143(g). Therefore, the Court will deny the motion.

On November 30, 2016, the Court issued an Order to Mr. Moffatt, directing him to submit a status report to the Court within 30 days after the Supreme Court of Arizona takes action on his appeal of that Court's Order entered on April 19, 2016 and to provide a copy of any order issued by the Supreme Court of Arizona. On December 13, 2016, the Supreme Court of Arizona denied Mr. Moffatt's notice of appeal of that Court's Order entered on April 19, 2016.

On November 17, 2016, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) granted Mr. Moffatt's request to stay reciprocal disciplinary proceedings pending the outcome of his appeal of his disbarment to the full Arizona Supreme Court. On December 19, 2016, the Ninth Circuit issued an Order that lifted the stay and advised Mr. Moffatt to appear for a show cause hearing on February 23, 2017. On February 22, 2017, the Ninth Circuit issued an Order rescheduling the hearing for March 21, 2017.

On January 24, 2017, the Court received a letter from Mr. Moffatt in which he asserts that he has submitted a 'notice of appeal' to the United States Supreme Court. Mr. Moffatt, did not submit, however a copy of a filed petition for writ of certiorari with the United States Supreme Court; nor was the Court able to verify that Mr. Moffatt has in fact filed a petition.

Upon due consideration of Mr. Moffatt's motions, Mr. Moffatt's written response to the Court, his testimony before the panel at the hearing held on October 26, 2016, and for reasons set forth more fully in the attached Memorandum Sur Order, it is

ORDERED that Mr. Moffatt's Request for Reconsideration, filed October 26, 2016, is hereby denied. It is further

ORDERED that Mr. Moffatt's Moffatt Motion Motion (sic) To Compel 2, filed October 26, 2016, is hereby denied. It is further

ORDERED that Mr. Moffatt's Moffatt Motion for Expert Witness Designation, filed October 26, 2016, is hereby denied. It is further

ORDERED that the Court's Order to Show Cause, issued September 7, 2016, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Mr. Moffatt is disbarred from practice before the United States Tax Court. It is further

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

ORDERED that Mr. Moffatt'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. Moffatt as counsel in all pending cases in which he appears as counsel of record. It is further

ORDERED that Mr. Moffatt 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) L. Paige Marvel

L. Paige Marvel
Chief Judge

Dated: Washington, D.C.
April 13, 2017

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re Jeffrey D. Moffatt

MEMORANDUM SUR ORDER

On September 7, 2016, the Court issued an Order to Show Cause to Mr. Jeffrey D. Moffatt, a member of the bar, 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 Mr. Moffatt's disbarment from the practice of law in the State of Arizona by Decision and Order Imposing Sanctions (Decision and Order), filed on March 7, 2016, and Final Judgment and Order of Disbarment, filed on April 19, 2016, by the Presiding Disciplinary Judge of the Supreme Court of Arizona. Mr. Moffatt appealed his disbarment to the Supreme Court of Arizona on April 6, 2016. On December 13, 2016, the Arizona Supreme Court denied his Notice of Appeal. On December 23, 2016, Mr. Moffatt filed a Motion for Reconsideration and En Banc Review. Mr. Moffatt also filed an Amended Motion for Reconsideration and En Banc Review. On December 27, 2016, the Arizona Supreme Court denied both the Motion for Reconsideration and En Banc Review and the Amended Motion for Reconsideration and En Banc Review.

The Order to Show Cause was also predicated on Mr. Moffatt's failure to inform the Chair of the Committee on Admissions, Ethics, and Discipline of the

action of the Presiding Disciplinary Judge of the Supreme Court of Arizona no later than 30 days after such action, as required by Rule 202(b) of the Tax Court Rules of Practice and Procedure.

The Order to Show Cause instructed Mr. Moffatt to submit a written response on or before October 7, 2016, and notify the Court therein of his intention to appear, in person or by counsel, at a hearing concerning his proposed discipline scheduled before the Court on October 26, 2016, at 10:00 a.m.

The Court received Mr. Moffatt's Response on (sic) Order to Show Cause regarding Jeffrey Moffatt (Response) on October 7, 2016. The Response included notification to the Court of Mr. Moffatt's intention to appear at a hearing on October 26, 2016 and Exhibits A through KK. Additionally, Mr. Moffatt appeared before a panel of two Judges of the Court at the hearing on October 26, 2016.

On January 24, 2017, the Court received a letter from Mr. Moffatt in which he asserts that he submitted a "notice of appeal" of the Supreme Court of Arizona decision to the United States Supreme Court. Mr. Moffatt did not include with his letter a copy of a filed petition for writ of certiorari with the United States Supreme Court; nor was the Court able to verify that Mr. Moffatt has in fact filed a petition.

BACKGROUND

Mr. Moffatt's disbarment from the practice of law in the State of Arizona was based on his misconduct in communications via Facebook Messenger on October 11, 2013. According to the Findings of Fact in the Decision and Order, the exchange was as follows:

> MS. CHILDERS: Hi[,] I'm the person [P]at [S]purlin talked to you about ... I just wanted to let you know i'm trying to get the 75.00 round up [for an initial consultation] and hopefully will be in touch with you next week.
>
> MR. MOFFATT: I take all sort of things as trade fyi. C.A.P. Cash, Assets....
>
> MS. CHILDERS: I've pretty much sold everything I have of value[.] ... So ... I will get it[,] it will just take [the] weekend.
>
> Mr. Moffatt then asked Childers to send "me the basics" and stated that he would take "the position that it [the fee] is on the way."
>
> MR. MOFFATT: fyi-I have a bad boy streak in me, just like my father. This allows me to be flexible.
>
> MS. CHILDERS: Awesome. Rock on bad boy.
>
> MR. MOFFATT: How about a pic. And then send me the money later.
>
> MS. CHILDERS: A picture of????
>
> MR. MOFFATT: [W]hatever you think might motivate me. How does that sit with you? Did I offend you or are we ok.
>
> MS. CHILDERS: I am not sure what motivates you. Lol.
>
> MR. MOFFATT: I am a bad boy that likes women. Any shape. Does that focus it[?].

Childers then sent Mr. Moffatt a picture of herself with her grandson.

MR. MOFFATT: [C]ash and assets are best, but a woman has more options. Nice pic.

MR. MOFFATT: How about a pic without [the] kid or ?? How much less will I be able to see. Workable or not?

Childers subsequently sent Mr. Moffatt another picture of herself clothed.

MS. CHILDERS: [i]s this what you wanted.

MR. MOFFATT: [G]ood start. How about removing something[?] [W]hen are you going to send me the docs. So I can get started.

MR. MOFFATT: [A]re you going to give me the pic with less as well. Lets just call it what I want. Yes I want a nude.

MS. CHILDERS: I don't even take a shower nude. And what would that get me[?]

MR. MOFFATT: Give me a surrogate for you, or cash works.

Childers asked Mr. Moffatt what he meant by "a surrogate" and Mr. Moffatt informed her this meant "[a]nother woman."

MS. CHILDERS: [h]ow would I do that[?]

MR. MOFFATT: How many friends do you have[?] Say [c]an I borrow$ [sic]. No, if not, I need a pic for **.

MS. CHILDERS: [h]ow much in services will that cover[?]

MR. MOFFATT: Pics buys time. Physical attention will be bartered. I could collect when I am in town later in year.

MR. MOFFATT: [W]hich way are we going, pic, cash, physical?

> MS. CHILDERS: I'm getting my babies ready for a nap[.] I will get back with you.
>
> Mr. Moffatt informed Complainant he would call her and then subsequently messaged her stating that he tried to call her twice.

The above Findings of Fact are the result of a default judgment rendered against Mr. Moffatt.[1] However, in the Findings of Fact, the Presiding Disciplinary Judge states that Mr. Moffatt admitted in his June 22, 2015 letter to the Arizona State Bar that he "advised that an alternative barter would be possible to obtain more time to cover the consultation fee", acknowledged his communications with Ms. Childers, and argued that his bartering was "viable." The Presiding Disciplinary Judge also noted that Mr. Moffatt indirectly admitted the communications with Ms. Childers in a letter dated July 1, 2015, when Mr. Moffatt argued, "Since no nude was ever received, nor was it shared, no crime existed, even under the current regulation." In the Conclusions of Law in the Decision and Order, the Presiding Disciplinary Judge stated that "Although the allegations are deemed admitted by [the entry of the default judgment], there has been an independent determination by the Panel that the State Bar has proven by

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[1]On January 28, 2016, the Presiding Disciplinary Judge issued an Order Issuing Sanctions and Setting Aggravation/Mitigation Hearing, in which Mr. Moffatt's Answer was stricken and a default judgment was rendered against him because he non-willfully failed to submit an initial disclosure statement.

clear and convincing evidence that Mr. Moffatt violated the ethical rules." In the Decision and Order, the Presiding Disciplinary Judge concluded that Mr. Moffatt violated Rule 42, Ariz. R. Sup. Ct.[2], specifically Arizona Rules of Professional Conduct 8.4(a) (professional misconduct for lawyer to violate or attempt to violate the Rules of Professional Conduct including through the acts of another), 8.4(b) (engage in criminal conduct), 8.1(b) (knowingly fail to respond to lawful demand for information from disciplinary authority). The Presiding Disciplinary Judge concluded that Mr. Moffatt also violated Rules 54(d) (refusal to cooperate or failure to furnish complete information) and 41(g) (unprofessional misconduct), Ariz. R. Sup. Ct. By Order filed April 19, 2016, the Presiding Disciplinary Judge disbarred Mr. Moffatt based on these violations.

DISCUSSION

As an initial matter, we denied several motions Mr. Moffatt filed with the Court on October 7, 2016 by Order dated October 19, 2016. Mr. Moffatt requested a continuance in the current proceeding so that he could conduct

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[2]Rule 42, Ariz. R. Sup. Ct., states, "The professional conduct of members shall be governed by the Model Rules of Professional Conduct of the American Bar Association, adopted August 2, 1983, as amended by this court and adopted as the Arizona Rules of Professional Conduct."

discovery. We denied this motion and he later renewed it prior to the hearing together with a Motion to Compel third party testimony and discovery.

Mr. Moffatt also requested that his Response to Order To Show Cause be sealed because he is afraid that someone will retaliate against him if the information in the response is not sealed. Mr. Moffatt asserts that he has had flat tires that were tampered with and a knife was pulled on him by a criminal. Mr. Moffatt has not persuaded the Court that if the contents of the response are not sealed, he will be retaliated against by some unknown assailant. Therefore, Mr. Moffatt's Motion To Seal was denied.

In disciplinary hearings, the Committee does not make referrals for prosecutorial misconduct. Therefore, Mr. Moffatt's Motion To Refer for Prosecutorial Misconduct was denied.

In the motions immediately prior to the hearing and in argument at the hearing, Mr. Moffatt requested that the Court issue various subpoenas including a subpoena to Facebook to obtain clarification of his communications with Ms. Childers. Further explanation of these subpoena requests is warranted.

Mr. Moffatt did not have service made on any party. As he was advised by Order dated October 19, 2016, the Court does not serve subpoenas. See Tax Court

Rule of Practice and Procedure 147.[3] Nevertheless, Mr. Moffatt requested this Court issue subpoenas to Facebook, the State Bar of New Mexico, the Arizona State Bar Association, the Carlsbad New Mexico Police Department, and the Federal Bureau of Investigation. At the hearing on October 26, 2016, Mr. Moffatt noted that Exhibits A and B in his Response show different communications between Mr. Moffatt and Ms. Childers. Mr. Moffatt stated that the way to determine which exhibit was an accurate record of the communication would be to issue a subpoena.

In the State Bar of New Mexico subpoena, Mr. Moffatt would have requested information regarding the State Bar of New Mexico's investigation of the incident where he requested a nude photograph from Ms. Childers. Mr. Moffatt asserts that the State Bar of New Mexico investigated this incident and exonerated him in December of 2013. Mr. Moffatt made a similar claim in the

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[3]By Order dated October 19, 2016, the Court denied Mr. Moffatt's Motion for Service of Subpoenas, filed October 7, 2016, because the Court does not serve subpoenas. At the hearing on October 26, 2016, Mr. Moffatt stated that the Tax Court may request a witness to appear itself and cited Hadsell v. Commissioner, 107 F.3d 750 (9th Cir. 1997). In that case, Mr. Hadsell served three subpoenas duces tecum without tendering the required witness and mileage fees, claiming that he was completely without income due to his incarcerated status. Id. at 751. In this case, Mr. Moffatt has not shown that he properly served any subpoenas. In addition, Mr. Moffatt is not incarcerated. Therefore, the limited exception in Hadsell v. Commissioner does not apply to this case.

Arizona proceeding. A staff investigator from the State Bar of Arizona contacted the State Bar of New Mexico to seek documents regarding Mr. Moffatt. The State Bar of New Mexico would not provide the documents unless respondent executed a waiver. Mr. Moffatt refused to sign any waiver.

After the hearing, Mr. Moffatt provided us with a copy of the confidential letter that he received from the Disciplinary Board of the Supreme Court of New Mexico. The letter was an official Letter of Caution issued pursuant to Rule 17-105(B)(3)(b) of the New Mexico Supreme Court Rules Governing Discipline for Mr. Moffatt's communication with Ms. Childers. The letter includes several of the problematic quotes from Mr. Moffatt's communication with Ms. Childers including: "pics buy time. Physical attention will be bartered.", "[l]ets (sic) just call it what I want. Yes I want a nude.", "which way are we going, pic, cash, physical?", and "collect the physical when [you were] in town later this year."

The Arizona State Bar Association subpoena would have requested admissions that appear to be similar if not identical to the admissions that Mr. Moffatt requested from the Arizona State Bar Association in the Arizona proceeding. The subpoenas to the Carlsbad New Mexico Police Department and the Federal Bureau of Investigation are related to Mr. Moffatt's assertions that the potential client and an accomplice attempted to extort money from Mr. Moffatt

after he requested the nude photograph. In conclusion, Mr. Moffatt did not serve the subpoenas and did not make a showing that the service of these subpoenas would provide evidence relevant to the factors in Selling v. Radford, 243 U.S. 46, 50-51 (1917), discussed below.

As is true in the case of every reciprocal discipline case, the Order of the Presiding Disciplinary Judge of the Supreme Court of Arizona disbarring Mr. Moffatt from the practice of law in the State of Arizona 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, in effect, directs that we recognize the absence of "fair private and professional character" inherently arising as the result of the action of the Presiding Disciplinary Judge, and that we follow the disciplinary action of that judge, unless we determine, from an intrinsic consideration of the record of the Arizona proceedings that one or more of the following factors appears: (1) that Mr. Moffatt was denied due process in the form of notice and an opportunity to be heard with respect to the Arizona 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 Arizona proceedings; or (3) that some other grave reason exists which convinces us that we should not follow the

discipline imposed by the Presiding Disciplinary Judge of the Supreme Court of Arizona. 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. Moffatt bears the burden of showing why, notwithstanding the discipline imposed by the Presiding Disciplinary Judge, 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. Moffatt an opportunity to present, for our review, the record of the disciplinary proceedings in Arizona, and to point out any grounds to conclude that we should not give effect to the action of the Presiding Disciplinary Judge. 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. Moffatt has not shown any of the three factors identified by the Supreme Court in Selling v. Radford. First, Mr. Moffatt has not shown a "want of

notice or opportunity to be heard" with respect to the Arizona proceedings. See Selling v. Radford, 243 U.S. at 51. To the contrary, Mr. Moffatt participated in the disciplinary proceedings before the Presiding Disciplinary Judge. He filed an answer asserting 38 affirmative defenses. He attended the mandatory telephonic initial case management conference. Mr. Moffatt served 106 requests for admission on the Arizona State Bar. He moved for a stay of proceedings. Mr. Moffatt filed a Motion for Expanded Request for Admissions in which he requested a hearing. Mr. Moffatt also moved for recusal of the Presiding Disciplinary Judge, to quash a subpoena for his deposition, to strike the State Bar of Arizona's request for admissions, to strike the State Bar of Arizona's request for production of documents, and to recommend an investigation of the Arizona Inspector General. However, Mr. Moffatt failed to file an initial disclosure statement. On December 30, 2015, the State Bar of Arizona moved for sanctions alleging that Mr. Moffatt had failed and refused to file an initial disclosure statement. Mr. Moffatt did not respond to this motion and did not appear at the hearing to determine if sanctions were appropriate on January 26, 2016. As mentioned above, the Presiding Disciplinary Judge found that Mr. Moffatt non-willfully failed to submit an initial disclosure statement and sanctioned Mr. Moffatt by striking his Answer, rendering a default judgment against him. In

addition, the Presiding Disciplinary Judge found that Mr. Moffatt willfully failed to appear and submit answers at his deposition. Mr. Moffatt also failed to appear at his aggravation/mitigation hearing on February 18, 2016.

Second, Mr. Moffatt has not shown any infirmity of proof as to the facts in his disciplinary proceedings before the Presiding Disciplinary Judge. As we discussed previously, the third party evidence he sought was not properly, procedurally secured (in that the subpoenas were not served) and was also irrelevant to our review. In addition, to the extent that Mr. Moffatt asserts that his disbarment was not supported by the record of his Arizona disciplinary proceedings, we again note that we do not sit as a court of review with respect to the proceedings before the Presiding Disciplinary Judge. See Selling v. Radford, 243 U.S. at 49-50; In re Sibley, 564 F.3d at 1341. To the contrary, as mentioned above, we are required to accept the facts found by the Presiding Disciplinary Judge, and to follow the action of the Presiding Disciplinary Judge unless, from an intrinsic consideration of the record before that judge, we find one or more of the three factors identified by the Supreme Court in Selling v. Radford, discussed above.

Finally, Mr. Moffatt has not shown any "other grave reason" not to give effect to the action of the Presiding Disciplinary Judge. See Selling v. Radford,

243 U.S. at 51. Mr. Moffatt argued that Arizona does not have jurisdiction over his actions. Arizona Rules of Professional Conduct 8.5(a) states in part, "A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs." Mr. Moffatt also argued that the Arizona proceedings were double jeopardy since New Mexico also considered whether to discipline him based on his communications with Ms. Childers. Arizona Rules of Professional Conduct 8.5(a) states in part, "A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct." In addition, Mr. Moffatt argued that he cannot be disciplined for his behavior because he was not criminally convicted. In the Decision and Order, the Presiding Disciplinary Judge stated, "It is unnecessary for a lawyer to be convicted of, or even charged with, a crime for disciplinary sanctions to be imposed for criminal conduct." Mr. Moffatt also argued that he could not be disciplined for his communications with Ms. Childers because of the freedom of speech in the First Amendment. In Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949), the Supreme Court stated:

> But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. [Citations omitted.] Such an expansive interpretation of the constitutional guaranties of speech and

> press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.

We have considered all of Mr. Moffatt's other arguments, and, to the extent not addressed herein, we conclude that they are moot, irrelevant, or without merit. Accordingly, we will give full effect to the discipline imposed by the Presiding Disciplinary Judge.

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

The Committee on Admissions,
Ethics, and Discipline

Dated: Washington, D.C.
April 13, 2017

UNITED STATES TAX COURT

WASHINGTON, DC 20217

In re: Tara M. Warrington

ORDER OF SUSPENSION

The Court issued an Order to Show Cause to Ms. Tara M. Warrington on November 21, 2016, affording her the opportunity to show cause, if any, why she should not be suspended or disbarred from practice before this Court, or otherwise disciplined, based upon her suspension by Order of the Supreme Court of Florida filed September 15, 2016, from the practice of law in the State of Florida until further order of that Court. Ms. Warrington failed to inform the Co-Chairs of this Court's Committee on Admissions, Ethics, and Discipline of the entry of the order by the Supreme Court of Florida within 30 days, as required by Rule 202(b), Tax Court Rules of Practice and Procedure.

The Order to Show Cause instructed Ms. Warrington to (1) submit a written response to the Order on or before December 21, 2016, and (2) notify the Court in writing on or before December 21, 2016, of her intention to appear, in person or by counsel, at a hearing concerning her 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 17, 2017.

The Order to Show Cause was mailed by both certified and regular mail to an office address in Cocoa, Florida, and to a Post Office box in Cocoa, Florida. Both the copy of the Order to Show Cause mailed by certified mail to the office address and the copy mailed by regular mail to the Post Office box address were returned to the Court by the United States Postal Service, the envelopes marked, "Return to Sender - Not Deliverable as Addressed - Unable to Forward." The copy of the Order to Show Cause mailed by certified mail to the Post Office box address was returned to the Court by the United States Postal Service, the envelope marked, "Return to Sender -Unclaimed." The copy mailed by regular mail to the office address has not been returned to the Court by the United States Postal Service. The Court has received no response from Ms. Warrington to the Order to Show Cause, nor has the Court received notice of Ms. Warrington's intention to appear at the scheduled hearing.

Upon due consideration and for cause, it is hereby

ORDERED that the Court's Order to Show Cause, issued November 21, 2016, is hereby made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Ms. Warrington is 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, Ms. Warrington is prohibited from holding herself out as a member of the Bar of the United States Tax Court. It is further

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

ORDERED that the Court will file orders to withdraw Ms. Warrington as counsel in all pending cases in which she appears as counsel of record. It is further

ORDERED that Ms. Warrington shall, within 20 days of service of this order upon her, surrender to this Court her certificate of admission to practice before this Court.

By the Court:

(Signed) L. Paige Marvel

L. Paige Marvel
Chief Judge

Dated: Washington, D.C.
April 13, 2017