



North Carolina State Board of Certified Public Accountant Examiners

NEWS RELEASE

STATE BOARD OF CPA EXAMINERS REVOKES CPA LICENSE OF LINDA ROUSE SHARP

Raleigh - On June 20, 2023, the North Carolina State Board of Certified Public Accountant (CPA) Examiners ("Board") revoked the North Carolina CPA license issued to Linda Rouse Sharp of Kill Devil Hills, NC.

In December 2022, the Board referred its cases against Ms. Sharp to the North Carolina Office of Administrative Hearings (OAH) and requested the designation of an Administrative Law Judge (ALJ) pursuant to NC General Statute (NCGS) 150B-40(e). At issue was Ms. Sharp's alleged violation of NCGS 93-12 and North Carolina Administrative Code (NCAC) Title 21, Chapter 8, *Rules of Professional Ethics and Conduct*.

On May 24, 2023, the Administrative Law Judge issued a Proposal for Decision that contained Findings of Fact and Conclusions of Law and proposed the permanent revocation of Ms. Sharp's North Carolina CPA license. At its June 20, 2023, meeting, the Board, with a quorum present, issued a Final Agency Decision revoking the North Carolina CPA license issued to Ms. Sharp.

Under 21 NCAC 08A .0308, *Holding Out to the Public*, Ms. Sharp may not represent herself as a North Carolina CPA in connection with an offer to perform or the performance of accountancy services.

Representation includes any "oral, electronic, or written communication indicating that the person holds a certificate, including, without limitation, the use of titles or legends on letterheads, reports, business cards, brochures, resumes, office signs, telephone directories, websites, the Internet, or any other advertisements, news articles, publications, listings, tax return signatures, signatures on experience or character affidavits for exam or certificate applicants, displayed membership in CPA associations, displayed CPA licenses from this or any other jurisdiction, and displayed certificates or licenses from other organizations which have the designation "CPA" or "Certified Public Accountant" by the person's name."

For additional information, please contact the Board's Staff Attorney, Frank Trainor, at ftrainor@nccpaboard.gov.

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA STATE BOARD OF
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS
CASE #s C2018386, C2020154, C2020204, C2022137, C2022293

N.C. STATE BOARD OF CERTIFIED)
PUBLIC ACCOUNTANT EXAMINERS,)
Petitioner,)
v.)
LINDA R. SHARP, CPA)
Respondent.)

**FINAL AGENCY DECISION
BY THE N.C. STATE BOARD OF
CERTIFIED PUBLIC ACCOUNTANT
EXAMINERS**

The North Carolina State Board of Certified Public Accountant Examiners (the “Board”) hereby issues its Final Agency Decision in the above-captioned matters, as set forth below.

PROCEDURAL HISTORY AND FINDINGS

1. On December 16, 2022, the Board referred this matter to the Office of Administrative Hearings and submitted a Request for Designation of Administrative Law Judge pursuant to N.C. Gen. Stat. §150B-40(e).
2. The Matter was designated as Case# 22 CPA 04794 at the Office of Administrative Hearings and assigned to Administrative Law Judge Linda F. Nelson (“ALJ” or “ALJ Nelson”).
3. On March 29, 2023, ALJ Nelson entered an Order Granting Petitioner’s Motion for Partial Summary Judgment on all issues, except the appropriate disciplinary action to be taken against Respondent.
4. A contested case hearing on the issue of appropriate disciplinary action was held in the Office of Administrative Hearings before ALJ Nelson in Raleigh, North Carolina on May 15, 2023. The Respondent, Linda Sharp (“Sharp”), did not attend the hearing. The Board was represented by Douglas J. Broucker and Dauna L. Bartley, Esq.
5. On May 24, 2023, ALJ Nelson filed a Proposal for Decision. ALJ Nelson’s Proposal for Decision contained Findings of Fact and Conclusions of Law and proposed a permanent revocation of Sharp’s CPA certificate.
6. As indicated by the Certificate of Service attached to the Proposal for Decision, the Proposal for Decision was served upon the Respondent on May 24, 2023, pursuant to “electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:.”
7. As stated in the Proposal for Decision and pursuant to N.C. Gen. Stat. §150B-40(e), on May 25, 2023, the Board informed Sharp that it would review the Proposal for Decision at its meeting

scheduled for June 20, 2023. Sharp was informed that she could present oral arguments on that day and further informed that she could submit written arguments and exceptions prior to June 12, 2023.

8. The notice was sent to Sharp via certified mail and email. Sharp did not submit written arguments and exceptions to the Proposal for Decision.

9. The official record from the Office of Administrative Hearings was issued and sent to the parties on June 7, 2023, and received by the Board on June 9, 2023. The official transcript of the hearing before Judge Nelson was filed on June 15, 2023.

10. The Board provided access to a courtesy copy of the OAH's official record and the transcript to Respondent on June 15, 2023, via electronic means.

11. Mr. Brocker presented oral arguments to the Board on June 20, 2023, in support of adoption of ALJ Nelson's Proposal for Decision.

12. Sharp did not attend the June 20, 2023, consideration of this matter despite being timely and properly informed of the meeting.

13. A quorum of the Board was present for the deliberations.

FINAL AGENCY DECISION

Having considered ALJ Nelson's Proposal for Decision; the entire official record in this matter, including the transcript of the hearing at OAH and Petitioner Exhibits 1-14 including subparts 8A, 9A, and 10A, and 16-20; and oral arguments, the Board issues this Final Agency Decision pursuant to N.C. Gen. Stat. § 150B-42.

STATUTES AND RULES AT ISSUE

The Board hereby adopts the Statutes and Rules at Issue proposed by ALJ Nelson as set forth in the Proposal for Decision, without amendment or modification. The Statutes and Rules at Issue are as follows:

N.C. Gen. Stat. § 93-12(9)(e) 21 N.C.A.C. 08N .0203
21 N.C.A.C. 08N .0204
21 N.C.A.C. 08N .0206
21 N.C.A.C. 08N .0207
21 N.C.A.C. 08N .0208
21 N.C.A.C. 08N .0212
21 N.C.A.C. 08N .0305

FINDINGS OF FACT

The Board hereby adopts the following Findings of Facts. These Findings of Fact are substantially the same ones proposed by ALJ Nelson as set forth in her Proposal for Decision:

Parties and Witnesses

1. Petitioner, the Board, is an agency established pursuant to N.C. Gen. Stat. § 93-12 and is charged with protecting the health, welfare, and safety of the public by overseeing the licensing of certified public accountants (“CPAs”) in North Carolina.
2. The Board has the authority to examine, license, and discipline certified CPAs in North Carolina. *See* N.C. Gen. Stat. § 93-12. The Board also has the authority to promulgate rules governing North Carolina CPAs and their practice, including those governing professional ethics and conduct, which are found in 21 N.C.A.C. 8N .0200 *et seq.*
3. David R. Nance (“Mr. Nance”) has been employed by the Board for over 10 years, and he currently serves as the agency’s Executive Director. Mr. Nance has been involved in or supervised the matters alleged in this contested case and testified regarding the Board’s efforts to obtain information and responses from Respondent, the effect of Respondent’s conduct at issue, prior disciplinary action taken by the Board against Respondent, and disciplinary action taken by the Board in other similar cases. Mr. Nance was a credible witness.
4. Respondent is a North Carolina licensed CPA subject to the provisions of Chapter 93 of the North Carolina General Statutes and Title 21, Chapter 8 of the North Carolina Administrative Code.
5. Respondent appeared before the OAH in 2015, in which the presiding Administrative Law Judge recommended she be censured by the Board and pay a civil monetary penalty for violations of the Board’s rules occurring from 2008 through 2015. *See N.C. State Board of Certified Public Accountant Examiners v. Linda R. Sharp*, 15 CPA 04488 (O.A.H. Jan. 26, 2016). The findings of fact and conclusions of law included in the Proposal for Decision in the prior case are incorporated fully herein.
6. On December 16, 2022, the Board filed the petition in this contested case, seeking a determination with respect to the facts and violations alleged in Petitioner’s Amended Notice of Hearing, which was attached to the petition.
7. On December 19, 2022, the OAH issued a Notice of Contested Case and Assignment, and ALJ Nelson issued an Order for Prehearing Statements which required the parties to file prehearing statements on or before January 18, 2023, which the Board timely filed.
8. Respondent did not file a Prehearing Statement as ordered.
9. On February 13, 2023, ALJ Nelson issued a Second Order for Prehearing

Statements which required Respondent to file a Prehearing Statement on or before February 23, 2023.

10. Respondent again failed to timely file a Prehearing Statement, and instead filed it on February 24, 2023.

11. On March 13, 2023, the Board filed a Motion for Partial Summary Judgment requesting that judgment be entered against Respondent as to all alleged violations, based in part on Respondent's failure to respond to discovery requests properly served upon her pursuant to Rule 36 of the North Carolina Rules of Civil Procedure, requesting that she admit the truth of the matters set forth.

12. That same day, ALJ Nelson issued a request for response to the Board's Motion, requiring Respondent to file a written response on or before March 23, 2023.

13. Respondent failed to file a response to Petitioner's Motion for Partial Summary Judgment.

14. In all instances, Respondent has been properly served by mail at the address Respondent provided to the Board, which is the address of record in this case.

Facts Established Upon Summary Judgment

15. On March 29, 2023, ALJ Nelson entered an Order Granting's Motion for Partial Summary Judgment (the "Summary Judgment Order"), finding that all matters within the Board's requests for admission are deemed admitted and are conclusively established, and fully incorporating the requests for admission. The OAH hearing on the contested case was limited in scope to the appropriate disciplinary action to be taken against Respondent. The following uncontested facts established upon and set forth in the Summary Judgment Order are adopted in this Final Agency Decision:

Case No. #C2018386

16. On June 29, 2018, Respondent disclosed to the Board that she had "been sued by the IRS Office of Professional Responsibility." Respondent did not provide any additional information.

17. In response to the disclosure, the Board opened a disciplinary case against Respondent and requested additional information, which was due on or before October 18, 2018. Respondent did not respond.

18. On October 25, 2018, the Board sent a second request for additional information, which required a response on or before November 15, 2018. Respondent did not respond.

19. On May 9, 2019, the Board discovered that Respondent had been disbarred from practice before the IRS. The Board did not have a copy of the IRS decision (the "IRS Disbarment

Decision.”)

20. Respondent did not notify the Board of the disbarment nor provide the Board a copy of the IRS Disbarment Decision.

21. By letter dated May 20, 2019, the Board requested additional information regarding the IRS disbarment from Respondent. The Board required Respondent to respond on or before June 10, 2019. Respondent did not timely respond.

22. The Board blocked Respondent’s annual certification renewal until she provided a response regarding the IRS Disbarment Decision.

23. On June 30, 2019, the day before her certification expired, Respondent provided a partial response to the Board, but she did not provide a copy of the IRS Disbarment Decision or any information regarding an appeal, as the Board requested.

24. On July 10, 2019, after receiving the partial response, the Board allowed Respondent to renew her CPA certificate and informed her that she needed to provide additional information regarding the IRS decision.

25. Respondent did not provide any additional information regarding the IRS decision. As a result, the Board blocked her annual CPA firm registration for 2020.

26. On December 31, 2019, Respondent informed the Board that she did not have any additional information, but that she was working on a motion for reconsideration of the IRS Disbarment Decision.

27. On January 8, 2020, the Board unblocked Respondent’s firm registration but informed her that the Board needed additional information, including a copy of the IRS Disbarment Decision, her appeal of the decision, and communications with the IRS regarding the matter.

28. Respondent did not provide any additional information for over five more months. As a result, the Board blocked Respondent’s annual certification renewal.

29. On June 30, 2020, the day before her certification expired, Respondent contacted the Board and informed the Board that she had paid civil penalties to the IRS to have IRS liens against her released. This was the first time that Respondent had disclosed, or the Board had learned of, an IRS lien against Respondent.

30. On July 6, 2020, the Board again requested additional information on the IRS matter.

31. On July 29, 2020, for the first time, Respondent provided a copy of the IRS decision against her and some information regarding tax liens placed against her property. Respondent again did not provide any information regarding whether there was a pending appeal or motion for reconsideration of the IRS Disbarment Decision, as she previously indicated. *Director, Office of Profess. Res. v. Linda R. Sharp, CPA*, No. 18-AF-0132-OD- 002 (I.R.S. Sept.

7, 2018); Pet. Ex. 7.

32. The IRS Disbarment Decision was dated September 7, 2018, which was prior to the Board's first request to Respondent asking for additional information about her limited disclosure. It took Respondent more than twenty-two months before finally providing it to the Board.

33. The IRS Disbarment Decision is a default judgment issued by U.S. Administrative Law Judge Alexander Fernandez on September 7, 2018, disbaring Respondent from practice before the IRS. Pet. Ex. 1.

34. Respondent did not file an answer or otherwise respond or appear in the matter before U.S. Administrative Law Judge Fernandez.

35. The IRS Disbarment Decision found Respondent engaged in 62 counts of misconduct in violation of Federal regulations from 2011 through 2014.

36. The IRS Disbarment Decision included findings that Respondent:

- a. prepared tax returns for twelve taxpayers between 2011 and 2014 in which Respondent claimed deductions not permitted by law or not supported by adequate documentation;
- b. willfully assisted taxpayers in violating federal law for tax years 2011 through 2014;
- c. willfully assisted taxpayers in filing returns or taking positions on tax returns that lacked a reasonable basis;
- d. willfully encouraged taxpayers to take positions on documents submitted to the IRS that were frivolous for tax years 2012 through 2014;
- e. provided false information to the IRS in connection with certain taxpayers' pending matters for tax years 2012 through 2014;
- f. willfully assisted or counseled taxpayers in a plan to evade federal taxes;
- g. provided false opinions that were intentionally misleading;
- h. engaged in a pattern of providing incompetent opinions; and
- i. engaged in disreputable conduct and willfully violated the regulations governing practice before the IRS by willfully failing to respond to the IRS Office of Professional Responsibility's request for information despite being granted an extension to respond.

Case No. #C2020154

37. The Board received a complaint against Respondent from two of her clients. The

clients stated that they had engaged Respondent to prepare their 2019 taxes, but that Respondent deferred the preparation of the returns until after the tax deadline.

38. Respondent told her clients she had filed requests for extensions, but she did not provide the clients with copies of the extension requests she claimed to have filed.

39. Respondent failed to prepare and file the clients' 2019 tax returns by the filing deadline.

40. Respondent failed to file a request for an extension of time to file the clients' 2019 tax returns.

41. Respondent failed to return the clients' records to them when they requested their return.

42. The Board mailed a copy of the clients' complaint to Respondent on September 8, 2020, and requested that Respondent respond to the complaint on or before September 29, 2020. Respondent did not respond.

43. The Board emailed a copy of the clients' complaint to Respondent on September 30, 2020, and requested Respondent respond on or before October 21, 2020.

44. On October 1, 2020, Respondent called the Board and confirmed receipt of the email.

45. On October 26, 2020, the Board emailed Respondent to inform her that she had failed to timely respond to the complaint. Respondent asserted that she could not open the email and asked the Board to fax information to her. The Board complied with her request.

46. Respondent emailed the Board on November 2, 2020, requesting additional time to respond to the clients' complaint.

47. On December 14, 2020, Respondent untimely responded to the clients' complaint. The clients provided additional information to the Board in the form of a reply to Respondent's response on December 29, 2020. The following day, this information was forwarded to Respondent.

48. Respondent did not provide any additional information regarding the clients' complaint until June 30, 2021, after the Board had blocked her annual CPA certificate renewal.

Case No. #C2020204

49. On December 29, 2020, the Board received a client complaint against Respondent concerning alleged deficiencies in a tax engagement and failure to return client records.

50. Respondent failed to prepare and file the client's 2018 and 2019 tax returns by the filing deadlines.

51. Respondent failed to file a request for an extension of time to file the client's 2018 and 2019 tax returns.

52. Respondent failed to return the client's records to the client when she requested their return.

53. A copy of this client complaint was emailed, faxed, and mailed to Sharp on December 30, 2020, requesting that Respondent respond on or before January 20, 2021. Respondent did not timely respond.

54. The Board emailed Respondent on January 22, 2021, and extended the deadline to respond to January 29, 2021. Respondent replied, confirming she would respond by January 29, 2021, but failed to do so.

55. On February 1, 2021, the Board faxed a copy of both aforementioned client complaints to Respondent, because the Board had not received a response. Respondent confirmed via telephone call that she would provide a response but again failed to do so in a timely manner.

56. On March 3, 2021, the Board emailed and faxed an additional copy of the complaints to Respondent. The Board then blocked Respondent's ability to renew her CPA certificate, after Respondent again failed to timely respond.

57. On June 28, 2021, several days before her certificate expired, Respondent requested that her renewal be unblocked. The Board indicated it would only unblock Respondent's renewal if she provided a response to the complaints.

58. Respondent provided a response, which the Board had been requesting for almost six months, the following day on June 29, 2021.

Case No. #C2022137

59. On May 16, 2022, another client filed a complaint with the Board against Respondent, alleging failure to return client records and deficiencies in her performance.

60. Respondent failed to prepare and file the client's 2017, 2018, and 2019 tax returns by the filing deadlines.

61. Respondent failed to file a request for an extension of time to file the client's 2019 tax returns.

62. Respondent failed to return the client's records when he requested their return.

63. The Board mailed a copy of the complaint to Respondent on May 18, 2022, requiring a response on or before June 8, 2022.

64. Respondent did not respond to the client complaint.

65. Respondent later falsely informed the complainant that the Board dismissed the complaint against her.

Case No. #C2022293

66. On November 2, 2022, the Board received a fourth client complaint against Respondent.

67. Respondent failed to prepare and file the client's 2021 tax returns by the filing deadline.

68. Respondent failed to file a request for an extension of time to file the client's 2021 tax returns.

69. Respondent failed to return the client's records to the client when he requested their return.

70. The Board mailed a copy of the complaint to Respondent and required her to provide a response on or before November 29, 2022.

71. Respondent did not timely submit a response.

Additional Material Facts Relevant to Appropriate Disciplinary Action

72. Respondent failed to disclose or provide the IRS Disbarment Decision to the Board for almost two years after it was issued.

73. Respondent failed to respond or provide documentation timely in response to the Board's inquiries regarding the IRS matters over the course of several years. Pet. Exs. 2-6.

74. Respondent's repeated failures to timely disclose, provide, and respond about the IRS Disbarment Decision over several years, and her repeated misrepresentations regarding the existence of an appeal or reconsideration, substantially delayed the Board from being able to take action to protect the public and impeded its ability to regulate the CPA profession.

75. Respondent's misconduct and violations established in the IRS Disbarment Decision have a detrimental effect on the tax system generally, on her taxpayer clients, and on the public's perception of the honesty and trustworthiness of CPAs.

76. Respondent's actions established in the IRS Disbarment Decision demonstrate discreditable conduct and acts that reflect adversely on her honesty, integrity, trustworthiness, good moral character, and fitness as a CPA.

77. Generally, when the Board has been presented with disciplinary action taken against a CPA by another board or agency, the Board imposes discipline of a similar nature against the CPA.

78. The Board may take one or more of three actions: censure, assessment of a civil monetary penalty, or revocation of a CPA certificate. Revocation may be permanent or for a specified period. N.C. Gen. Stat. § 93-12(9).

79. Permanent revocation is the most similar action to the IRS' disbarment of Respondent.

80. Respondent was subject to a federal tax lien filed in 2017 in the amount of \$135,000 for failing to pay civil tax preparer penalties related to the violations set out in the IRS Disbarment Decision. Pet. Exs. 7, 8, 8A.

81. Respondent was subject to a federal tax lien filed in 2019 for failing to pay personal income taxes for the 2017 tax year in the amount of \$5,204.65. Pet. Exs. 9, 9A.

82. Respondent was subject to a federal tax lien originally assessed in 2014 and filed in 2020 for failing to pay personal income taxes for the 2013 tax year in the amount of \$9,524.66. Pet. Exs. 10, 10A.

83. Respondent did not timely disclose to the Board the existence of the 2017 and 2019 liens, never disclosed to the Board the existence of the lien for 2013, and repeatedly failed to timely respond to the Board's requests for information about the liens.

84. A CPA's repeated failure to pay civil penalties and taxes owed has a detrimental effect on the tax system generally and on the public's perception of the trustworthiness and competence of CPAs.

85. In all cases involving client complaints filed against Respondent in this contested case, Respondent failed to prepare or file tax returns by the respective filing deadlines; failed to file requests for an extension of time to file tax returns; and failed to return client records upon client request. Pet. Exs. 11-14.

86. A CPA's failure to timely prepare and file a client's tax returns and failure to return tax records to a client have detrimental effects on the taxpayer client, including causing the client to incur significant penalties and interest and impeding the client's ability to file returns in future years, and also on clients' and the public's perception of CPAs generally.

87. The Board made many requests to Respondent for the information necessary to investigate the client complaints, and Respondent repeatedly failed to timely respond or provide documentation.

88. Respondent did not timely respond to the Board's repeated inquiries related to the client complaints or the IRS matters.

89. On many occasions with respect to its inquiries related to client complaints or the IRS matters, the Board had to block renewal of Respondent's individual CPA certificate and her firm registration before Respondent would provide any information responsive to the Board's requests, and even then Respondent consistently failed to provide complete information

or documentation.

90. Respondent's repeated failure to respond timely and accurately to the Board's inquiries about client complaints substantially delayed the Board from taking action to protect the public and impeded the Board's ability to regulate the CPA profession.

91. Respondent was previously disciplined by the Board for similar misconduct. In 2016, the Board censured Respondent and ordered her to pay a civil penalty of \$500, based on Respondent's failures to disclose litigation filed against her on many renewal applications, and failures to cooperate with and/or respond to the Board regarding matters related to investigations from 2010 through 2014. Pet. Ex. 16.

92. In its 2016 disciplinary decision, Respondent took both of the two lesser sanctions available against Respondent under N.C. Gen. Stat. § 93-12(9).

93. Many of the violations established in this contested case occurred after the time period at issue in the Board's 2016 disciplinary decision and are of the same nature as the conduct for which Respondent was disciplined previously.

94. Many of the violations established in this contested case occurred after the IRS Disbarment Decision and involve similar misconduct related to incompetence in the preparation of taxpayer returns and failure to respond to the requests of regulatory authorities.

95. Respondent's persistent pattern of failure to disclose and failure to respond to the Board's inquiries related to client complaints and other proceedings against her has a detrimental effect on the Board's ability to fulfill its regulatory obligations, to protect the public, and to conduct timely investigations of complaints. It also negatively impacts the Board's ability to regulate the CPA profession, and the public's perception of the Board and CPAs generally.

96. In disciplinary cases involving other CPAs with similar facts and violations related to failure to timely prepare and file tax returns, failure to return tax records, failure to timely respond to the Board's requests for information, and failure to appear for the contested case hearing, the Board previously has taken disciplinary action in the form of a permanent revocation of the CPA certificate. Pet. Exs. 17-19.

97. The Board's consistent treatment of disciplinary cases is important to the public's perception of the Board and CPAs generally, and to the Board's ability to fulfill its regulatory obligations in a fair and just manner.

98. The Notice of Hearing setting the hearing of this contested case on May 15, 2023, was issued by the ALJ on February 17, 2023, and was served upon Respondent by certified mail to Respondent's address of record. The certified mail receipt shows it was delivered to the record address and signed for by Respondent on February 21, 2023.

99. Respondent's Prehearing Statement referred to the trial date of May 15, 2023, confirming that Respondent received notice of the hearing date, yet Respondent failed to appear at the hearing of this contested case or request a continuance.

100. Respondent's failure to comply with the ALJ's orders, failure to respond and participate in the proceedings, and failure to appear at the hearing of this contested case is consistent with her pattern of not responding to the Board's requests for information and as established in the IRS Disbarment Decision.

CONCLUSIONS OF LAW

The Board hereby adopts the following Conclusions of Law. These Conclusions of Law are substantially the same ones proposed by ALJ Nelson in her Proposal for Decision:

1. If a party fails to appear in a contested case after she has been given proper notice, the agency may proceed make its decision in the absence of that party. N.C. Gen. Stat. § 150B-40(a).

2. In contested cases brought under Article 3A of Chapter 150B of the North Carolina General Statutes, "[t]he provisions of [Article 3A] . . . shall govern a contested case in which the agency requests an administrative law judge from the Office of Administrative Hearings." N.C. Gen. Stat. § 150B-40(e). Further, "[t]he administrative law judge . . . shall sit in place of the agency and shall have the authority of the presiding officer in a contested case" *Id.* After presiding over an Article 3A contested case, "[t]he administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law." *Id.*

3. The Office of Administrative Hearings and Board have jurisdiction over the parties and the subject matter of this contested case and there is no question as to misjoinder and nonjoinder.

4. To the extent the foregoing Findings of Fact contain conclusions of law, or these Conclusions of Law contain findings of fact, they should be so considered regardless of the given label. *See Westmoreland v. High Point Healthcare, Inc.*, 218 N.C. App. 76, 79, 721 S.E.2d 712, 716 (2012) (citations omitted); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011) (citations omitted).

5. The Board is subject to Article 3A of Chapter 150B. N.C. Gen. Stat. § 150B-38(a).

6. The Board properly instructed the Director of the Office of Administrative Hearings to assign an administrative law judge to act as a hearing officer in this contested case. N.C. Gen. Stat. § 150B-40(e).

7. The ALJ had the authority and duties of a hearing officer of the Board, under Article 3A and the Board's rules. The ALJ is required to make a proposal for final decision on this matter to the Board, and may do so notwithstanding Respondent's failure to appear at the hearing of this contested case after she was given proper notice. N.C. Gen. Stat. § 150B-40(a), (e).

8. The Board properly served discovery requests upon Respondent pursuant to Rule 36 of the North Carolina Rules of Civil Procedure. Rule 36(a) provides 30 days for a party to respond to requests for admission. If a response is not received within the 30-day period, then matters are deemed “admitted.” Any matter admitted under Rule 36 is “conclusively established.” N.C. R. Civ. P. 36(b).

9. As Respondent did not respond to the Board’s requests for admission under Rule 36 and did not file a motion or otherwise request relief, all matters within the Board’s requests for admissions are deemed admitted and are conclusively established. N.C. R. Civ. P. 36(b).

10. A Rule 36 admission constitutes a judicial admission, “comparable to an admission in pleadings or a stipulation drafted by counsel for use at trial, rather than to an evidentiary admission of a party.” *Eury v. N.C. Emp’t Sec. Comm’n*, 115 N.C. App. 590, 599 (1994) (quoting G.S. 1A-1, Rule 36 cmt.).

11. “A judicial admission is a formal concession which is made by a party in the course of litigation for the purpose of withdrawing a particular fact from the realm of dispute. Such an admission is not evidence, but it, instead, serves to remove the admitted fact from the trial by formally conceding its existence.” *Contractors, Inc. v. Forbes*, 302 N.C. 599, 604 (1981).

12. Respondent’s admissions of all matters within the Board’s requests for admission constitute judicial admissions of the facts admitted pursuant to Rule 36, removing those admitted facts from trial by formally conceding them. The requests for admission are fully incorporated herein.

13. Matters in this contested case were subject to disposition on summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, N.C. Gen. Stat. § 150B-40(e) and 26 N.C.A.C. 03 .0101.

14. The ALJ entered the Summary Judgment Order in this matter on March 29, 2023, on the grounds that there were no genuine issues of material fact and the Board was entitled to judgment as a matter of law with respect to Respondent’s violations in accordance with Rule 56(c).

15. Additionally, pursuant to Rule 56(e), when faced with a properly supported motion for summary judgment, “an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”

16. Because Respondent failed to respond to the Board’s Motion for Partial Summary Judgment, summary judgment against Respondent was also proper pursuant to Rule 56(e).

17. The uncontested facts and conclusions of law in the Summary Judgment Order are incorporated fully herein. In accordance with Rule 56(d), at the hearing of this matter, the facts specified as uncontested in the Summary Judgment Order are deemed established.

18. N.C. Gen. Stat. § 93-12(9)(e) authorizes the Board to adopt rules of professional

ethics and conduct for CPAs in North Carolina. The Board has adopted the following pertinent rules:

- a. 21 N.C.A.C. 08N .0203:
 - (a) A CPA shall not engage in conduct discreditable to the accounting profession.
 - (b) Prohibited discreditable conduct includes [] acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA.
- b. 21 N.C.A.C. 08N .0204:
 - (a) A CPA shall not act in a way that would cause the CPA to be disciplined by federal or state agencies or boards for violations of laws or rules on ethics. CPAs who engage in activities regulated by other federal or state authorities [including the IRS] shall comply with all such authorities' ethics laws and rules.
 - (b) A conviction or final finding of unethical conduct by a competent authority is prima facie evidence of a violation of this Rule.
 - (c) A CPA shall notify the Board in writing within 30 days of any conviction or finding against him or her of unlawful conduct by any federal or state court or regulatory authority.
- c. 21 N.C.A.C. 08N .0206:

A CPA shall provide full cooperation in connection with any inquiry made by the Board. Full cooperation includes responding within 21 days to all inquiries of the Board . . .
- d. 21 N.C.A.C. 08N .0207:

A CPA shall not knowingly violate any state or federal tax laws or regulations in handling the CPA's personal business affairs, . . . [or] the business affairs of an employer or client.
- e. 21 N.C.A.C. 08N .0208:
 - (b) A CPA shall notify the Board within 30 days of any judgment or settlement in . . . [an] administrative proceeding . . . that: (1) is grounded upon an allegation of professional negligence, gross negligence, dishonesty, fraud, misrepresentation, incompetence, or violation of any federal or state tax law and (2) was brought against . . . the CPA.
- f. 21 N.C.A.C. 08N .0212:

A CPA shall perform professional services competently and shall . . . (2) exercise due professional care in the performance of an engagement.
- g. 21 N.C.A.C. 08N .0305:
 - (a) A CPA shall return client-provided records in the CPA's custody or control to the client at the client's request.

19. As set out in the ALJ's Partial Summary Judgment Order, Respondent's conduct in these matters constituted numerous violations of the Board's rules governing North Carolina CPAs, including:

- a. Respondent's misconduct and violations set out in the IRS Disbarment Decision violated many of the rules listed above, including 21 N.C.A.C. 08N .0203, .0204, .0207, .0208, and .0212.
- b. Respondent did not notify the Board of the IRS Disbarment Decision within 30 days of the decision date in violation of 21 N.C.A.C. 08N .0204(c).
- c. Respondent repeatedly failed to respond to the Board's requests for additional information or requests for response to complaints within the specified time in violation of 21 N.C.A.C. 08N .0206.
- d. Respondent was subject to federal tax liens assessed for failure to pay amounts owed to the IRS in violation of 21 N.C.A.C. 08N .0207.
- e. Respondent failed to timely return client records and failed to perform professional services competently in violation of 21 N.C.A.C. 08N .0212 and .0305.

20. Pursuant to N.C. Gen. Stat. § 93-12(9), the disciplinary actions the Board may take with respect to CPAs found to be in violation of its rules are censure, assessment of a civil penalty, or revocation, which may be either permanent or for a specified period.

21. Respondent has already been subject to two of the three possible Board actions by for similar conduct. In 2016, Respondent was censured and ordered to pay a civil penalty for failures to disclose litigation filed against her and failure to cooperate with and/or respond to the Board's requests for information related to its investigations.

22. Respondent continued engaging in the pattern of misconduct despite prior discipline by the Board.

23. Respondent's misconduct and violations are part of a pattern of similar misconduct extending more than ten years.

24. The IRS Disbarment Decision is sufficient standing alone to support a permanent revocation of Respondent's CPA certificate as reciprocal discipline.

25. Respondent's failures to disclose the IRS Disbarment Decision and the federal tax liens and repeated failures to cooperate and/or respond to the Board's requests for information and documentation related to the IRS disbarment over the course of several years, obstructing the Board's investigation and efforts to fulfill its regulatory obligations, are sufficient standing alone to support a permanent revocation of Respondent's CPA certificate.

26. Respondent's repeated failures to perform professional services for clients competently and return client records upon the client's request, resulting in many instances of harm and potential harm to clients, are sufficient standing alone to support a permanent revocation of Respondent's CPA certificate.

27. Respondent's repeated failures to cooperate and/or respond to the Board's requests for her response to client complaints or for additional information and documentation,

obstructing the Board's ability to investigate, respond to complainants, and fulfill its regulatory obligation to protect the public, are sufficient standing alone to support a permanent revocation of Respondent's CPA certificate.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board hereby adopts the ALJ's Proposal for Decision to PERMANENTLY REVOKE Respondent Sharp's CPA certificate.



NORTH CAROLINA STATE BOARD OF CERTIFIED
PUBLIC ACCOUNTANT EXAMINERS

BY: Gary R Massey 6/20/2023
Gary R. Massey, CPA
President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **FINAL AGENCY DECISION** is served upon the following person by United States Postal Service:

Douglas J. Brocker
The Brocker Law Firm
1135 Kildaire Farm Road, Suite 200
Cary, NC 27511
Attorney For Petitioner Board

The undersigned hereby certifies that a copy of the foregoing **FINAL AGENCY DECISION** is served upon the following person by certified mail, return receipt requested:

Linda R Sharp, CPA
3003 North Croatan Highway
Kill Devil Hills, NC 27948
Respondent

This the 21st day of June, 2023.



Frank X. Trainor, III

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 CPA 04794

<p>N.C. STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, Petitioner</p> <p>v.</p> <p>LINDA ROUSE SHARP, CPA, Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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THIS MATTER came on for hearing on May 15, 2023, before Administrative Law Judge Linda F. Nelson in Raleigh, North Carolina after Petitioner requested, pursuant to N.C. Gen. Stat. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

For Petitioner: Douglas J. Brocker, Esq.
Dauna L. Bartley, Esq.
The Brocker Law Firm, P.A.
1135 Kildaire Farm Road, Suite 200
Cary, NC 27511

For Respondent: Failed to Appear

ISSUES

Whether Linda Rouse Sharp, CPA (hereinafter “Respondent”) engaged in acts or omissions in violation of N.C. Gen. Stat. § 93-12(9)(e) and the statutes and regulations administered by the North Carolina State Board of Certified Public Accountant Examiners (hereinafter “Petitioner” or the “Board”) and, if so, what discipline is appropriate under the particular facts and circumstances of this case.

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. § 93-12(9)(e)
21 N.C.A.C. 08N .0203
21 N.C.A.C. 08N .0204
21 N.C.A.C. 08N .0206
21 N.C.A.C. 08N .0207
21 N.C.A.C. 08N .0208

21 N.C.A.C. 08N .0212
21 N.C.A.C. 08N .0305

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibits 1-14 including subparts 8A, 9A, and 10A, and 16-20.

WITNESSES

For Petitioner: David R. Nance
 Petitioner's Executive Director

Based upon careful consideration of the exhibits admitted into evidence, the entire record in this proceeding, and the credibility and believability of witness testimony at hearing including the witness' credibility, demeanor, any interests, biases or prejudices, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, and whether the testimony of the witness is reasonable and consistent with other believable evidence in the case, the Undersigned finds as follows:

FINDINGS OF FACT

Parties and Witnesses

1. Petitioner, the Board, is an agency established pursuant to N.C. Gen. Stat. § 93-12 and is charged with protecting the health, welfare, and safety of the public by overseeing the licensing of certified public accountants ("CPAs") in North Carolina.

2. The Board has the authority to examine, license, and discipline certified CPAs in North Carolina. *See* N.C. Gen. Stat. § 93-12. The Board also has the authority to promulgate rules governing North Carolina CPAs and their practice, including those governing professional ethics and conduct, which are found in 21 N.C.A.C. 8N .0200 *et seq.*

3. David R. Nance ("Mr. Nance") has been employed by the Board for over 10 years, and he currently serves as the agency's Executive Director. Mr. Nance has been involved in or supervised the matters alleged in this contested case, and testified regarding the Board's efforts to obtain information and responses from Respondent, the effect of Respondent's conduct at issue, prior disciplinary action taken by the Board against Respondent, and disciplinary action taken by the Board in other similar cases. Mr. Nance was a credible witness.

4. Respondent is a North Carolina licensed CPA subject to the provisions of Chapter 93 of the North Carolina General Statutes and Title 21, Chapter 8 of the North Carolina Administrative Code.

5. Respondent appeared before this Tribunal in 2015, in which the presiding Administrative Law Judge recommended she be censured by the Board and pay a civil

monetary penalty for violations of the Board's rules occurring from 2008 through 2015. *See N.C. State Board of Certified Public Accountant Examiners v. Linda R. Sharp*, 15 CPA 04488 (O.A.H. Jan. 26, 2016). The findings of fact and conclusions of law included in the Proposal for Decision in the prior case are incorporated fully herein.

6. On December 16, 2022, the Board filed the petition in this contested case, seeking a determination with respect to the facts and violations alleged in Petitioner's Amended Notice of Hearing, which was attached to the petition.

7. On December 19, 2022, this Tribunal issued a Notice of Contested Case and Assignment, and an Order for Prehearing Statements which required the parties to file prehearing statements on or before January 18, 2023, which the Board timely filed.

8. Respondent did not file a Prehearing Statement as ordered.

9. On February 13, 2023, the Undersigned issued a Second Order for Prehearing Statements which required Respondent to file a Prehearing Statement on or before February 23, 2023.

10. Respondent again failed to timely file a Prehearing Statement, and instead filed it on February 24, 2023.

11. On March 13, 2023, the Board filed a Motion for Partial Summary Judgment requesting that judgment be entered against Respondent as to all alleged violations, based in part on Respondent's failure to respond to discovery requests properly served upon her pursuant to Rule 36 of the North Carolina Rules of Civil Procedure, requesting that she admit the truth of the matters set forth.

12. That same day, the Undersigned issued a request for response to the Board's Motion, requiring Respondent to file a written response on or before March 23, 2023.

13. Respondent failed to file a response to Petitioner's Motion for Partial Summary Judgment.

14. In all instances, Respondent has been properly served by mail at the address Respondent provided to the Board, which is the address of record in this case.

Facts Established Upon Summary Judgment

15. On March 29, 2023, the Undersigned entered an Order Granting's Motion for Partial Summary Judgment (the "Summary Judgment Order"), finding that all matters within The Board's requests for admission are deemed admitted and are conclusively established, and fully incorporating the requests for admission. The hearing of this contested case was limited in scope to the appropriate disciplinary action to be taken against Respondent. The following uncontested facts established upon and set forth in the Summary Judgment Order are adopted in this Proposal for Decision:

Case No. #C2018386

16. On June 29, 2018, Respondent disclosed to the Board that she had “been sued by the IRS Office of Professional Responsibility.” Respondent did not provide any additional information.

17. In response to the disclosure, the Board opened a disciplinary case against Respondent and requested additional information, which was due on or before October 18, 2018. Respondent did not respond.

18. On October 25, 2018, the Board sent a second request for additional information, which required a response on or before November 15, 2018. Respondent did not respond.

19. On May 9, 2019, the Board discovered that Respondent had been disbarred from practice before the IRS. The Board did not have a copy of the IRS decision (the “IRS Disbarment Decision.”)

20. Respondent did not notify the Board of the disbarment nor provide the Board a copy of the IRS Disbarment Decision.

21. By letter dated May 20, 2019, the Board requested additional information regarding the IRS disbarment from Respondent. The Board required Respondent to respond on or before June 10, 2019. Respondent did not timely respond.

22. The Board blocked Respondent’s annual certification renewal until she provided a response regarding the IRS Disbarment Decision.

23. On June 30, 2019, the day before her certification expired, Respondent provided a partial response to the Board, but she did not provide a copy of the IRS Disbarment Decision or any information regarding an appeal, as the Board requested.

24. On July 10, 2019, after receiving the partial response, the Board allowed Respondent to renew her CPA certificate and informed her that she needed to provide additional information regarding the IRS decision.

25. Respondent did not provide any additional information regarding the IRS decision. As a result, the Board blocked her annual CPA firm registration for 2020.

26. On December 31, 2019, Respondent informed the Board that she did not have any additional information, but that she was working on a motion for reconsideration of the IRS Disbarment Decision.

27. On January 8, 2020, the Board unblocked Respondent’s firm registration but informed her that the Board needed additional information, including a copy of the IRS Disbarment Decision, her appeal of the decision, and communications with the IRS regarding the matter.

28. Respondent did not provide any additional information for over five more months. As a result, the Board blocked Respondent's annual certification renewal.

29. On June 30, 2020, the day before her certification expired, Respondent contacted the Board and informed the Board that she had paid civil penalties to the IRS to have IRS liens against her released. This was the first time that Respondent had disclosed, or the Board had learned of, an IRS lien against Respondent.

30. On July 6, 2020, the Board again requested additional information on the IRS matter.

31. On July 29, 2020, for the first time, Respondent provided a copy of the IRS decision against her and some information regarding tax liens placed against her property. Respondent again did not provide any information regarding whether there was a pending appeal or motion for reconsideration of the IRS Disbarment Decision, as she previously indicated. *Director, Office of Profess. Res. v. Linda R. Sharp, CPA*, No. 18-AF-0132-OD-002 (I.R.S. Sept. 7, 2018); Pet. Ex. 7.

32. The IRS Disbarment Decision was dated September 7, 2018, which was prior to the Board's first request to Respondent asking for additional information about her limited disclosure. It took Respondent more than twenty-two months before finally providing it to the Board.

33. The IRS Disbarment Decision is a default judgment issued by U.S. Administrative Law Judge Alexander Fernandez on September 7, 2018, disbaring Respondent from practice before the IRS. Pet. Ex. 1.

34. Respondent did not file an answer or otherwise respond or appear in the matter before U.S. Administrative Law Judge Fernandez.

35. The IRS Disbarment Decision found Respondent engaged in 62 counts of misconduct in violation of Federal regulations from 2011 through 2014.

36. The IRS Disbarment Decision included findings that Respondent:

- a. prepared tax returns for twelve taxpayers between 2011 and 2014 in which Respondent claimed deductions not permitted by law or not supported by adequate documentation;
- b. willfully assisted taxpayers in violating federal law for tax years 2011 through 2014;
- c. willfully assisted taxpayers in filing returns or taking positions on tax returns that lacked a reasonable basis;
- d. willfully encouraged taxpayers to take positions on documents submitted to the IRS that were frivolous for tax years 2012 through 2014;

- e. provided false information to the IRS in connection with certain taxpayers' pending matters for tax years 2012 through 2014;
- f. willfully assisted or counseled taxpayers in a plan to evade federal taxes;
- g. provided false opinions that were intentionally misleading;
- h. engaged in a pattern of providing incompetent opinions; and
- i. engaged in disreputable conduct and willfully violated the regulations governing practice before the IRS by willfully failing to respond to the IRS Office of Professional Responsibility's request for information despite being granted an extension to respond.

Case No. #C2020154

37. The Board received a complaint against Respondent from two of her clients. The clients stated that they had engaged Respondent to prepare their 2019 taxes, but that Respondent deferred the preparation of the returns until after the tax deadline.

38. Respondent told her clients she had filed requests for extensions, but she did not provide the clients with copies of the extension requests she claimed to have filed.

39. Respondent failed to prepare and file the clients' 2019 tax returns by the filing deadline.

40. Respondent failed to file a request for an extension of time to file the clients' 2019 tax returns.

41. Respondent failed to return the clients' records to them when they requested their return.

42. The Board mailed a copy of the clients' complaint to Respondent on September 8, 2020, and requested that Respondent respond to the complaint on or before September 29, 2020. Respondent did not respond.

43. The Board emailed a copy of the clients' complaint to Respondent on September 30, 2020, and requested Respondent respond on or before October 21, 2020.

44. On October 1, 2020, Respondent called the Board and confirmed receipt of the email.

45. On October 26, 2020, the Board emailed Respondent to inform her that she had failed to timely respond to the complaint. Respondent asserted that she could not open the email and asked the Board to fax information to her. The Board complied with her request.

46. Respondent emailed the Board on November 2, 2020, requesting additional time to respond to the clients' complaint.

47. On December 14, 2020, Respondent untimely responded to the clients' complaint. The clients provided additional information to the Board in the form of a reply to Respondent's response on December 29, 2020. The following day, this information was forwarded to Respondent.

48. Respondent did not provide any additional information regarding the clients' complaint until June 30, 2021, after the Board had blocked her annual CPA certificate renewal.

Case No. #C2020204

49. On December 29, 2020, the Board received a client complaint against Respondent concerning alleged deficiencies in a tax engagement and failure to return client records.

50. Respondent failed to prepare and file the client's 2018 and 2019 tax returns by the filing deadlines.

51. Respondent failed to file a request for an extension of time to file the client's 2018 and 2019 tax returns.

52. Respondent failed to return the client's records to the client when she requested their return.

53. A copy of this client complaint was emailed, faxed, and mailed to the Board on December 30, 2020, requesting that Respondent respond on or before January 20, 2021. Respondent did not timely respond.

54. The Board emailed Respondent on January 22, 2021, and extended the deadline to respond to January 29, 2021. Respondent replied, confirming she would respond by January 29, 2021, but failed to do so.

55. On February 1, 2021, the Board faxed a copy of both aforementioned client complaints to Respondent, because the Board had not received a response. Respondent confirmed via telephone call that she would provide a response but again failed to do so in a timely manner.

56. On March 3, 2021, the Board emailed and faxed an additional copy of the complaints to Respondent. The Board then blocked Respondent's ability to renew her CPA certificate, after Respondent again failed to timely respond.

57. On June 28, 2021, several days before her certificate expired, Respondent requested that her renewal be unblocked. The Board indicated it would only unblock Respondent's renewal if she provided a response to the complaints.

58. Respondent provided a response, which the Board had been requesting for almost six months, the following day on June 29, 2021.

Case No. #C2022137

59. On May 16, 2022, another client filed a complaint with the Board against Respondent, alleging failure to return client records and deficiencies in her performance.

60. Respondent failed to prepare and file the client's 2017, 2018, and 2019 tax returns by the filing deadlines.

61. Respondent failed to file a request for an extension of time to file the client's 2019 tax returns.

62. Respondent failed to return the client's records when he requested their return.

63. The Board mailed a copy of the complaint to Respondent on May 18, 2022, requiring a response on or before June 8, 2022.

64. Respondent did not respond to the client complaint.

65. Respondent later falsely informed the complainant that the Board dismissed the complaint against her.

Case No. #C2022293

66. On November 2, 2022, the Board received a fourth client complaint against Respondent.

67. Respondent failed to prepare and file the client's 2021 tax returns by the filing deadline.

68. Respondent failed to file a request for an extension of time to file the client's 2021 tax returns.

69. Respondent failed to return the client's records to the client when he requested their return.

70. The Board mailed a copy of the complaint to Respondent and required her to provide a response on or before November 29, 2022.

71. Respondent did not timely submit a response.

Additional Material Facts Relevant to Appropriate Disciplinary Action

72. Respondent failed to disclose or provide the IRS Disbarment Decision to the Board for almost two years after it was issued.

73. Respondent failed to respond or provide documentation timely in response to the Board's inquiries regarding the IRS matters over the course of several years. Pet. Exs. 2-6.

74. Respondent's repeated failures to timely disclose, provide, and respond about the IRS Disbarment Decision over several years, and her repeated misrepresentations regarding the existence of an appeal or reconsideration, substantially delayed the Board from being able to take action to protect the public and impeded its ability to regulate the CPA profession.

75. Respondent's misconduct and violations established in the IRS Disbarment Decision have a detrimental effect on the tax system generally, on her taxpayer clients, and on the public's perception of the honesty and trustworthiness of CPAs.

76. Respondent's actions established in the IRS Disbarment Decision demonstrate discreditable conduct and acts that reflect adversely on her honesty, integrity, trustworthiness, good moral character, and fitness as a CPA.

77. Generally, when the Board has been presented with disciplinary action taken against a CPA by another board or agency, the Board imposes discipline of a similar nature against the CPA.

78. After a contested case hearing, the Board may take one or more of three actions: censure, assessment of a civil monetary penalty, or revocation of a CPA certificate. Revocation may be permanent or for a specified period. N.C. Gen. Stat. § 93-12(9).

79. Permanent revocation is the most similar action to the IRS' disbarment of Respondent.

80. Respondent was subject to a federal tax lien filed in 2017 in the amount of \$135,000 for failing to pay civil tax preparer penalties related to the violations set out in the IRS Disbarment Decision. Pet. Exs. 7, 8, 8A.

81. Respondent was subject to a federal tax lien filed in 2019 for failing to pay personal income taxes for the 2017 tax year in the amount of \$5,204.65. Pet. Exs. 9, 9A.

82. Respondent was subject to a federal tax lien originally assessed in 2014 and filed in 2020 for failing to pay personal income taxes for the 2013 tax year in the amount of \$9,524.66. Pet. Exs. 10, 10A.

83. Respondent did not timely disclose to the Board the existence of the 2017 and 2019 liens, never disclosed to the Board the existence of the lien for 2013, and repeatedly failed to timely respond to the Board's requests for information about the liens.

84. A CPA's repeated failure to pay civil penalties and taxes owed has a detrimental effect on the tax system generally and on the public's perception of the trustworthiness and competence of CPAs.

85. In all cases involving client complaints filed against Respondent in this contested case, Respondent failed to prepare or file tax returns by the respective filing deadlines; failed to file requests for an extension of time to file tax returns; and failed to return client records upon client request. Pet. Exs. 11-14.

86. A CPA's failure to timely prepare and file a client's tax returns and failure to return tax records to a client have detrimental effects on the taxpayer client, including causing the client to incur significant penalties and interest and impeding the client's ability to file returns in future years, and also on clients' and the public's perception of CPAs generally.

87. The Board made many requests to Respondent for the information necessary to investigate the client complaints, and Respondent repeatedly failed to timely respond or provide documentation.

88. Respondent did not timely respond to the Board's repeated inquiries related to the client complaints or the IRS matters.

89. On many occasions with respect to its inquiries related to client complaints or the IRS matters, the Board had to block renewal of Respondent's individual CPA certificate and her firm registration before Respondent would provide any information responsive to the Board's requests, and even then Respondent consistently failed to provide complete information or documentation.

90. Respondent's repeated failure to respond timely and accurately to the Board's inquiries about client complaints substantially delayed the Board from taking action to protect the public and impeded the Board's ability to regulate the CPA profession.

91. Respondent was previously disciplined by the Board for similar misconduct. In 2016, the Board censured Respondent and ordered her to pay a civil penalty of \$500, based on Respondent's failures to disclose litigation filed against her on many renewal applications, and failures to cooperate with and/or respond to the Board regarding matters related to investigations from 2010 through 2014. Pet. Ex. 16.

92. In its 2016 disciplinary decision, Respondent took both of the two lesser sanctions available against Respondent under N.C. Gen. Stat. § 93-12(9).

93. Many of the violations established in this contested case occurred after the time period at issue in the Board's 2016 disciplinary decision and are of the same nature as the conduct for which Respondent was disciplined previously.

94. Many of the violations established in this contested case occurred after the IRS Disbarment Decision and involve similar misconduct related to incompetence in the preparation of taxpayer returns and failure to respond to the requests of regulatory authorities.

95. Respondent's persistent pattern of failure to disclose and failure to respond to the Board's inquiries related to client complaints and other proceedings against her has

a detrimental effect on the Board's ability to fulfill its regulatory obligations, to protect the public, and to conduct timely investigations of complaints. It also negatively impacts the Board's ability to regulate the CPA profession, and the public's perception of the Board and CPAs generally.

96. In disciplinary cases involving other CPAs with similar facts and violations related to failure to timely prepare and file tax returns, failure to return tax records, failure to timely respond to the Board's requests for information, and failure to appear for the contested case hearing, the Board has taken consistent disciplinary action in the form of a permanent revocation of the CPA certificate. Pet. Exs. 17-19.

97. The Board's consistent treatment of disciplinary cases is important to the public's perception of the Board and CPAs generally, and to the Board's ability to fulfill its regulatory obligations in a fair and just manner.

98. The Notice of Hearing setting the hearing of this contested case on May 15, 2023, was issued by the Tribunal on February 17, 2023, and was served upon Respondent by certified mail to Respondent's address of record. The certified mail receipt shows it was delivered to the record address and signed for by Respondent on February 21, 2023.

99. Respondent's Prehearing Statement referred to the trial date of May 15, 2023, confirming that Respondent received notice of the hearing date, yet Respondent failed to appear at the hearing of this contested case or request a continuance.

100. Respondent's failure to comply with this Tribunal's orders, failure to respond and participate in the proceedings, and failure to appear at the hearing of this contested case is consistent with her pattern of not responding to the Board's requests for information and as established in the IRS Disbarment Decision.

CONCLUSIONS OF LAW

1. If a party fails to appear in a contested case after she has been given proper notice, the agency may proceed with the hearing and make its decision in the absence of that party. N.C. Gen. Stat. § 150B-40(a).

2. In contested cases brought under Article 3A of Chapter 150B of the North Carolina General Statutes, "[t]he provisions of [Article 3A] . . . shall govern a contested case in which the agency requests an administrative law judge from the Office of Administrative Hearings." N.C. Gen. Stat. § 150B-40(e). Further, "[t]he administrative law judge . . . shall sit in place of the agency and shall have the authority of the presiding officer in a contested case . . ." *Id.* After presiding over an Article 3A contested case, "[t]he administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law." *Id.*

3. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case and there is no question as to misjoinder and nonjoinder.

4. To the extent the foregoing Findings of Fact contain conclusions of law, or these Conclusions of Law contain findings of fact, they should be so considered regardless of the given label. See *Westmoreland v. High Point Healthcare, Inc.*, 218 N.C. App. 76, 79, 721 S.E.2d 712, 716 (2012) (citations omitted); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011) (citations omitted).

5. The Board is subject to Article 3A of Chapter 150B. N.C. Gen. Stat. § 150B-38(a).

6. The Board properly instructed the Director of the Office of Administrative Hearings to assign an administrative law judge to act as a hearing officer in this contested case. N.C. Gen. Stat. § 150B-40(e).

7. The Undersigned has the authority and duties of a hearing officer of the Board, under Article 3A and the Board's rules. The Undersigned must make a proposal for final decision on this matter to the Board, and may do so notwithstanding Respondent's failure to appear at the hearing of this contested case after she was given proper notice. N.C. Gen. Stat § 150B-40(a), (e).

8. The Board properly served discovery requests upon Respondent pursuant to Rule 36 of the North Carolina Rules of Civil Procedure. Rule 36(a) provides 30 days for a party to respond to requests for admission. If a response is not received within the 30-day period, then matters are deemed "admitted." Any matter admitted under Rule 36 is "conclusively established." N.C. R. Civ. P. 36(b).

9. As Respondent did not respond to the Board's requests for admission under Rule 36 and did not file a motion or otherwise request relief, all matters within the Board's requests for admissions are deemed admitted and are conclusively established. N.C. R. Civ. P. 36(b).

10. A Rule 36 admission constitutes a judicial admission, "comparable to an admission in pleadings or a stipulation drafted by counsel for use at trial, rather than to an evidentiary admission of a party." *Eury v. N.C. Emp't Sec. Comm'n*, 115 N.C. App. 590, 599 (1994) (quoting G.S. 1A-1, Rule 36 cmt.).

11. "A judicial admission is a formal concession which is made by a party in the course of litigation for the purpose of withdrawing a particular fact from the realm of dispute. Such an admission is not evidence, but it, instead, serves to remove the admitted fact from the trial by formally conceding its existence." *Contractors, Inc. v. Forbes*, 302 N.C. 599, 604 (1981).

12. Respondent's admissions of all matters within the Board's requests for admission constitute judicial admissions of the facts admitted pursuant to Rule 36, removing those admitted facts from trial by formally conceding them. The requests for admission are fully incorporated herein.

13. Matters in this contested case were subject to disposition on summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, N.C. Gen. Stat. § 150B-40(e) and 26 N.C.A.C. 03 .0101.

14. The Undersigned entered the Summary Judgment Order in this matter on March 29, 2023, on the grounds that there were no genuine issues of material fact and the Board was entitled to judgment as a matter of law with respect to Respondent's violations in accordance with Rule 56(c).

15. Additionally, pursuant to Rule 56(e), when faced with a properly supported motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

16. Because Respondent failed to respond to the Board's Motion for Partial Summary Judgment, summary judgment against Respondent was also proper pursuant to Rule 56(e).

17. The uncontested facts and conclusions of law in the Summary Judgment Order are incorporated fully herein. In accordance with Rule 56(d), at the hearing of this matter, the facts specified as uncontested in the Summary Judgment Order are deemed established.

18. N.C. Gen. Stat. § 93-12(9)(e) authorizes the Board to adopt rules of professional ethics and conduct for CPAs in North Carolina. The Board has adopted the following pertinent rules:

- a. 21 N.C.A.C. 08N .0203:
 - (a) A CPA shall not engage in conduct discreditable to the accounting profession.
 - (b) Prohibited discreditable conduct includes [] acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA.

- b. 21 N.C.A.C. 08N .0204:
 - (a) A CPA shall not act in a way that would cause the CPA to be disciplined by federal or state agencies or boards for violations of laws or rules on ethics. CPAs who engage in activities regulated by other federal or state authorities [including the IRS] shall comply with all such authorities' ethics laws and rules.
 - (b) A conviction or final finding of unethical conduct by a competent authority is prima facie evidence of a violation of this Rule.
 - (c) A CPA shall notify the Board in writing within 30 days of any conviction or finding against him or her of unlawful conduct by any federal or state court or regulatory authority.

- c. 21 N.C.A.C. 08N .0206:

A CPA shall provide full cooperation in connection with any inquiry made by the Board. Full cooperation includes responding within 21 days to all inquiries of the Board

- d. 21 N.C.A.C. 08N .0207:
A CPA shall not knowingly violate any state or federal tax laws or regulations in handling the CPA's personal business affairs, . . . [or] the business affairs of an employer or client.
- e. 21 N.C.A.C. 08N .0208:
(b) A CPA shall notify the Board within 30 days of any judgment or settlement in . . . [an] administrative proceeding . . . that: (1) is grounded upon an allegation of professional negligence, gross negligence, dishonesty, fraud, misrepresentation, incompetence, or violation of any federal or state tax law and (2) was brought against . . . the CPA.
- f. 21 N.C.A.C. 08N .0212:
A CPA shall perform professional services competently and shall . . . (2) exercise due professional care in the performance of an engagement.
- g. 21 N.C.A.C. 08N .0305:
(a) A CPA shall return client-provided records in the CPA's custody or control to the client at the client's request.

19. As set out in this Tribunal's Summary Judgment Order, Respondent's conduct in these matters constituted numerous violations of the Board's rules governing North Carolina CPAs, including:

- a. Respondent's misconduct and violations set out in the IRS Disbarment Decision violated many of the rules listed above, including 21 N.C.A.C. 08N .0203, .0204, .0207, .0208, and .0212.
- b. Respondent did not notify the Board of the IRS Disbarment Decision within 30 days of the decision date in violation of 21 N.C.A.C. 08N .0204(c).
- c. Respondent repeatedly failed to respond to the Board's requests for additional information or requests for response to complaints within the specified time in violation of 21 N.C.A.C. 08N .0206.
- d. Respondent was subject to federal tax liens assessed for failure to pay amounts owed to the IRS in violation of 21 N.C.A.C. 08N .0207.
- e. Respondent failed to timely return client records and failed to perform professional services competently in violation of 21 N.C.A.C. 08N .0212 and .0305.

20. Pursuant to N.C. Gen. Stat. § 93-12(9), the only disciplinary actions the Board may take with respect to CPAs found to be in violation of its rules are censure,

assessment of a civil penalty, or revocation, which may be either permanent or for a specified period.

21. Respondent has already been subject to two of the three possible Board actions by for similar conduct. In 2016, Respondent was censured and ordered to pay a civil penalty for failures to disclose litigation filed against her and failure to cooperate with and/or respond to the Board's requests for information related to its investigations.

22. Respondent continued engaging in the pattern of misconduct despite prior discipline by the Board.

23. Respondent's misconduct and violations are part of a pattern of similar misconduct extending more than ten years.

24. The IRS Disbarment Decision is sufficient standing alone to support a permanent revocation of Respondent's CPA certificate as reciprocal discipline.

25. Respondent's failures to disclose the IRS Disbarment Decision and the federal tax liens and repeated failures to cooperate and/or respond to the Board's requests for information and documentation related to the IRS disbarment over the course of several years, obstructing the Board's investigation and efforts to fulfill its regulatory obligations, are sufficient standing alone to support a permanent revocation of Respondent's CPA certificate.

26. Respondent's repeated failures to perform professional services for clients competently and return client records upon the client's request, resulting in many instances of harm and potential harm to clients, are sufficient standing alone to support a permanent revocation of Respondent's CPA certificate.

27. Respondent's repeated failures to cooperate and/or respond to The Board's requests for her response to client complaints or for additional information and documentation, obstructing the Board's ability to investigate, respond to complainants, and fulfill its regulatory obligation to protect the public, are sufficient standing alone to support a permanent revocation of Respondent's CPA certificate.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby proposes that the North Carolina State Board of Certified Public Accountant Examiners permanently revoke Linda Rouse Sharp's CPA certificate.

NOTICE

The Undersigned's Proposed Decision in this contested case will be reviewed by the agency making the final decision. Pursuant to N.C. Gen. Stat. §150B-40(e), the agency may make its final decision only after the administrative law judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. The North Carolina State Board of

Certified Public Accountant Examiners will make the final decision in this contested case, pursuant to N.C. Stat. § 150B-42(a).

This the 24th day of May, 2023.



Linda F. Nelson
Linda F. Nelson
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

NC State Board of Certified Public Accountant Examiners
P.O. Box 12827
Raleigh NC 27605
Petitioner

Douglas J Brocker
The Brocker Law Firm
doug@brockerlawfirm.com
Attorney For Petitioner

Linda Rouse Sharp
3003 N Croatan Highway
Kill Devil Hills NC 27948
Respondent

This the 24th day of May, 2023.



Travis C. Wiggs
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