

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-136

IN THE MATTER OF
WALTER M. STENHACH
AN ATTORNEY AT LAW

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Decision

Argued: May 15, 2003

Decided: July 21, 2003

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (“OAE”), pursuant to R. 1:20-14, following the imposition of a nine-month suspension against respondent in Pennsylvania.

Respondent was admitted to the New Jersey and the Pennsylvania bars in 1981. He has no history of discipline in New Jersey.

On November 25, 2002, the Supreme Court of Pennsylvania suspended respondent for willful failure to file and willful failure to pay Pennsylvania income taxes, effective October 26, 2002. The pertinent facts set forth in the September 26, 2002 Report and Recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania were summarized in the OAE's brief as follows¹:

During the period from late 1982 through 1989, Respondents were subject to highly publicized criminal and disciplinary investigations and prosecutions. The proceedings related to Respondents' representation of a criminal defendant in Potter County, and their decision to hold a rifle stock that had been discovered as part of Respondents' investigation of murder charges against their client.

Respondents were arrested on charges of tampering with evidence and hindering prosecution. Respondents were subsequently found guilty by a Potter County Jury in June 1984.

Respondents appealed the conviction, which was ultimately reversed on appeal three years after the jury verdict.

Disciplinary proceedings were initiated against Respondents, but eventually dismissed by the Board. . . .

During this time period, Respondents failed to file tax returns or to pay their taxes.

In 1992, the IRS began an investigation and audit of Respondents' financial records, and thereafter, federal criminal charges were filed against Respondents.

On May 8, 1996, Respondents each pled guilty to one count of willful failure to file federal income tax returns for the calendar year 1991, and were sentenced.

In addition, Respondents entered into an agreement with the IRS to file their tax returns and to make monthly payments on the arrearages.

¹ The report related to both respondent and his brother, his Pennsylvania law partner, who is not admitted in New Jersey.

As a result of this tax conviction, disciplinary proceedings against Respondents were commenced on August 13, 1996.

At the disciplinary hearing on December 12, 1996, Respondents admitted to the misconduct, but sought mitigation on the basis that their prior state criminal conviction, which was now reversed, had had an adverse impact on their law practice and had caused great financial difficulties such that paying taxes was not a high priority. More importantly, Respondents testified that they had learned from the circumstances and understood their obligations, and they assured the Hearing Committee that they would timely file their tax returns henceforth.

Respondents each received a Public Censure on November 17, 1998, relating to their federal tax conviction.

On June 30, 1999, the Attorney General of the Commonwealth of Pennsylvania filed informations with the Court of Common Pleas, Dauphin County, Pennsylvania [citation omitted], charging Respondents with two counts each of willful failure to file and willful failure to remit Pennsylvania income taxes in violation of 72 P.S. § 7353(c)^[2] for the years 1996 and 1997.

Respondents pled not guilty and subsequently a jury trial was held before the Honorable Richard A. Lewis. On June 9, 2000, a jury found Respondents guilty of all charges.

On August 9, 2000, Judge Lewis sentenced each Respondent on count 1 to pay the costs of prosecution, a fine of \$500, and to undergo a period of incarceration in the Dauphin County Prison for not less than one month nor more than twelve months.

The prison sentences were staggered by one month so that Respondents would not be imprisoned at the same time.

On counts 2 through 4, each Respondent received a combined sentence of 36 months probation, consecutive with the sentence for count 1, and were each ordered to pay additional fines totaling \$1000. Further, Respondents, were directed to complete at least 400 hours of community service each.

² This section provides that "(a)ny person required under this article to pay any tax or to make a return, keep any records or supply any information, who willfully fails to pay such tax or make such return, keep such records or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding five thousand dollars (\$5,000), or to undergo imprisonment not exceeding two years, or both.

Respondents have completed all the terms and conditions of their probation and by Order dated January 31, 2002, Judge Lewis terminated Respondents' probation.

All of Respondents' outstanding state and federal tax returns through calendar year 1999 have been filed.

Respondents are paying past due federal income taxes pursuant to an agreement with the Internal Revenue Service, and are currently in compliance with such agreement.

Respondents are paying no amount of the overdue taxes owed to the Commonwealth of Pennsylvania, and have no agreement with the Commonwealth of Pennsylvania regarding said outstanding balance.

Respondents' misconduct did not adversely impact their representation of a particular client.

Respondents were remorseful.

Respondent did not advise the OAE of his suspension in Pennsylvania, his prior public censure in Pennsylvania and either of his tax convictions, as required by R.1:20-14(a) and R.1:20-13(a).

The OAE urged us to impose a nine-month prospective suspension.

* * *

Upon a de novo review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of disciplinary proceeding), we adopted the findings of the Supreme Court of Pennsylvania.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4),

which directs that

[t]he Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the misconduct established warrants substantially different discipline.

We agree with the OAE that the record does not reveal any conditions that would fall within the bounds of subparagraphs (A) through (E).

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R.1:20-13(c)(1); In re Rosen, 88 N.J. 1, 3 (1981). The only issue left for determination is the discipline to be imposed. Disciplinary cases in New Jersey involving the willful failure to file income tax returns have resulted in the imposition of suspensions. See In re Hall, 117 N.J. 675 (1989) (one-year suspension); In re Fahy, 85 N.J. 698 (1981) (one-year suspension); In re Silverman, 143 N.J. 134 (1996) (six-month suspension; compelling mitigating circumstances considered); In re Willis, 114 N.J. 42 (1989) (six-month

suspension; attorney was recovering from his addiction to alcohol); In re Hughes, 69 N.J. 116 (1976) (six-month suspension; mitigating circumstances included attorney's series of debilitating heart attacks). But see In re Williams, 172 N.J. 325 (2002) (reprimand for recordkeeping violations and failure to file income tax returns; the attorney owed no taxes and incurred no penalties).

Our review of the record revealed no reason to deviate from the degree of discipline imposed in Pennsylvania. We, therefore, determined to impose a nine-month suspension. We agreed with the OAE that the suspension should be prospective because of respondent's failure to notify that office of either his disciplinary actions or his tax convictions, as required by the rules.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Robyn M. Hill
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

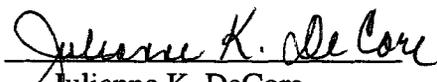
In the Matter of Walter M. Stenhach
Docket No. DRB 03-136

Argued: May 15, 2003

Decided: July 21, 2003

Disposition: Nine-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Nine-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Boylan</i>		X					
<i>Holmes</i>		X					
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		9					


Julianne K. DeCore
Acting Chief Counsel