

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-390

IN THE MATTER OF :
: IRVING SILVERMAN :
: AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: December 21, 1994

Decided: October 23, 1995

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

Lawrence S. Horn appeared on behalf of respondent.

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

This matter was before the Board on a motion for final discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's guilty plea to one count of a three-count federal information charging him with willful failure to file a federal income tax return for calendar year 1988, in violation of 26 U.S.C.A. § 7203.

Respondent has been a member of the New Jersey bar since 1959. Respondent requested an extension for filing his personal income tax return for calendar year 1988, claiming that he did not have the resources to pay his indebtedness. Though the Internal Revenue Service (IRS) granted his request, respondent failed to file the return for that year and to tender his payment obligation.

Respondent attributes his misconduct to his experience with

the IRS two decades before, when his house was sold at a sheriff's sale after he failed to satisfy \$6,000 in owed taxes. Reminded of this disaster, respondent erroneously believed that failure to file income taxes would be better than to reveal that he owed taxes that he could not meet. Although respondent intended to pay the arrears the following tax season, his failure to file for one year snowballed into failure to file for subsequent years because he could not accumulate enough money to pay multiple years of taxes, magnified by fines and interest. In addition to being the sole supporter of his family, he contributed to his ailing mother-in-law's expenses, including her mortgage, "making it impossible to save money." Not wanting to exacerbate his wife's diabetic condition, which has caused her to be hospitalized a number of times for insulin shock, respondent did not tell his wife about their financial predicament. Instead, he unrealistically convinced himself that his financial obligations would somehow disappear.

At sentencing, respondent was placed on probation for a period of three years, ordered to pay a \$1,000 fine and to make full restitution of all taxes, interest, and penalties due the Internal Revenue Service. As a special condition of probation, respondent was ordered confined to his residence for a period of four months.

The OAE requests that respondent receive a six-month suspension from the practice of law.

* * *

Upon review of the full record, the Board has determined to grant the OAE's motion for final discipline.

A criminal conviction is conclusive evidence of a respondent's guilt in disciplinary proceedings. R. 1:20-6(c)(1) (now R. 1:20-13(c)(1)); In re Goldberg, 105 N.J. 278, 280 (1987); In re Rosen, 88 N.J. 1, 3 (1981). Once an attorney is convicted of a crime, the sole question remaining is the measure of discipline to be imposed. R. 1:20-6(c)(2)(ii) (now R. 1:20-13(c)(2)); In re Infinito, 94 N.J. 50, 56 (1983).

Though respondent's misconduct is not related to the practice of law, any misbehavior, whether private or professional, that reveals an absence of the good character and integrity essential for an attorney constitutes a basis for discipline. In re La Duca, 62 N.J. 133, 140 (1973). Respondent has been convicted of willful failure to file a federal income tax return, in violation of 26 U.S.C.A. § 7203. Any violation of a tax law committed by a member of the bar is viewed as a serious breach of ethics, In re Queenan, 61 N.J. 579, 580 (1972), which adversely reflects on his or her honesty, trustworthiness or fitness as a lawyer, in violation of RPC 8.4(b). Attorneys are held to a higher standard than other members of society. "A lawyer's training obliges him to be acutely sensitive of the need to fulfill his personal obligations under the federal income tax law." In re Gurnik, 45 N.J. 115, 116 (1965).

Willful failure to file federal income tax returns has uniformly resulted in the imposition of a term of suspension from the practice of law. In re Spritzer, 63 N.J. 532, 533 (1973). The

duration of discipline for this type of offense ranges from six months to one year. See, e.g., for six-month suspensions: In re Doyle, 132 N.J. 98 (1993); In re Leahey, 118 N.J. 578 (1990); In re Chester, 117 N.J. 360 (1990). As to one-year suspensions, see In re Hall, 117 N.J. 675 (1989); In re Moore, 103 N.J. 702 (1986); In re Fahy, 85 N.J. 698 (1981). Aggravating circumstances may extend the term beyond that period. See In re Pollack, 60 N.J. 548 (1972) (membership in the judiciary when the offenses occurred resulted in a two and one-half-year suspension); and In re Margolis, 55 N.J. 291 (1970) (admission of failing to file returns for a period of sixteen years resulted in a three-year suspension).

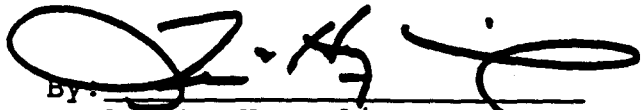
In the instant case, the Board gave consideration to several circumstances mitigating respondent's conviction. First, respondent fully cooperated with the disciplinary system, advising the OAE of his legal difficulties prior to any charges being filed and expressing his remorse for such actions. Furthermore, respondent has been under financial and emotional distress stemming from the support of his ailing mother-in-law and his wife's diabetic condition. Finally, respondent's conviction was not motivated by a desire to evade his tax obligations. His indebtedness to the IRS snowballed until it became impossible for him to regain his financial footing.

As an aggravating factor, respondent received a private reprimand in December 1981, for failing to act diligently in two matters. The distance of that action must, however, minimize its impact on the resolution of this disciplinary action.

In light of the foregoing, the Board has determined to suspend respondent for six months. One member dissented, believing that respondent should be disbarred for his misconduct. Two members did not participate.

The Board has also determined to require respondent to reimburse the Disciplinary Oversight Committee for appropriate administrative costs.

Dated: 10/22/18



By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board