

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 95-303

IN THE MATTER OF :
OSCAR N. GASKINS :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: October 26, 1995

Decided: July 15, 1996

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

Oscar N. Gaskins appeared pro se.

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 a one-count felony information charging him with failure to file an income tax return, in violation of 26 U.S.C.A. 7203.

Respondent has been a member of the New Jersey bar since 1979. On March 14, 1995, respondent pleaded guilty to one count of failure to file a federal income tax return for calendar year 1987. During 1987, respondent's taxable income was \$77,452 and the tax due and owing for that year was \$25,585. As part of his plea

agreement, respondent also admitted to willfully failing to file income tax returns for calendar years 1988, 1989 and 1990. During those years, respondent's taxable income was \$39,912, \$65,212 and \$11,154, respectively. The tax due and owing for the years 1987 through 1990, without interest and penalties, was \$66,742.

At sentencing on June 7, 1995, respondent was placed on probation for a period of two years. As special conditions of probation, he was ordered to pay a fine of \$2,000, to serve on home detention for a period of two months, to cooperate with the Internal Revenue Service and pay any taxes, penalties and interest due and owing, and to participate in a program of testing and treatment for alcohol abuse.

The OAE urged the Board to suspend respondent 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 proof of a respondent's guilt in disciplinary proceedings. R. 1:20-13(c)(1); In re Rosen, 88 N.J. 1, 3 (1981). Respondent's conviction for failure to file a tax return is clear and convincing evidence that he has violated RPC 8.4(b) (by committing a criminal act that reflects adversely on

his honesty, trustworthiness, or fitness as a lawyer). Only the limited question of the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Infinito, 94 N.J. 50, 56 (1983).

A lawyer's training and special knowledge of the law require that he possess a sensitive awareness of the need to fulfill all obligations created under the federal income tax laws. In re Gurnick, 45 N.J. 115, 116 (1965); In re Van Arsdale, 44 N.J. 318, 319 (1965). 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).

Disciplinary cases in New Jersey involving willful failure to file federal income tax returns have uniformly resulted in the imposition of a term of suspension. See, e.g., In re Leahey, 118 N.J. 578 (1990); In re Chester, 117 N.J. 360 (1990); In re Hughes, 69 N.J. 116 (1976); In re Kleinfeld, 58 N.J. 217 (1971); In re Knox, 58 N.J. 218 (1971); In re Vieser, 56 N.J. 60 (1970) (six-month suspensions for failure to file income tax returns for two or more calendar years).


In In re Chester, supra, 117 N.J. at 364, the Court ruled that "absent such strong mitigating factors [such as alcoholism, severe emotional distress, or other medical disabilities], a suspension of one year or more is normally imposed." However, the purpose of discipline is not the punishment of the offender, but "protection of the public against an attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing

In re Stout, 76 N.J. 321, 325 (1978). The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances. In re Nigohosian, 88 N.J. 308, 315 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

Respondent offered in mitigation his depression and alcohol addiction, contending that they had impaired his ability to file the tax returns. He has also admitted his wrongdoing. Under the totality of the circumstances, the Board unanimously determined to suspend respondent for six months. Two members did not participate.

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

Dated: 7/15/96

BY: 
LEE M. HYMERLING
Chair
Disciplinary Review Board