

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-041

IN THE MATTER OF :
CLIFTON E. HALL :
AN ATTORNEY-AT-LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: May 17, 1989

Decided: July 19, 1989

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

Respondent did not appear.¹

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

This matter is before the Board on a Motion for Final Discipline Based Upon a Criminal Conviction filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-6(b)(2)(1). Respondent pleaded guilty to willful failure to file an income tax return for the calendar year 1976, in violation of 26 U.S.C.A. 7203.

On August 4, 1983, respondent was charged in a Federal Information, filed in the United States District Court for the Southern District of New York, with four counts of failure to file personal income tax returns for the calendar years 1976,

¹Respondent was notified of the hearing by certified and regular mail sent to his address listed with the Client Security Fund.

1977, 1978, and 1979. On that same day, August 4, 1983, respondent entered a guilty plea to the first count of the information. On October 28, 1983, he was sentenced to a probationary term of three years, subject to three conditions:

1. Performance of meaningful voluntary community service of 15 hours per week under the direction of the probation department.
2. Payment of a fine of \$1,000.
3. Payment of his tax indebtedness.

As a result of this 1983 guilty plea, on May 11, 1988, respondent was disbarred from practice before the Internal Revenue Service ("IRS"). The Office of Attorney Ethics learned of respondent's criminal conviction only upon receipt of the IRS's quarterly disciplinary report dated June 8, 1988.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt. Matter of Goldberg, 105 N.J. 278, 280 (1987); Matter of Tuso, 104 N.J. 59, 61 (1986); R. 1:20-6(c)(1). Only the limited question of the quantum of discipline to be imposed remains at issue. R. 1:20-6(c)(2)(ii); In re Infinito, 94 N.J. 50, 56 (1983). Respondent's guilty plea to willful failure to file a

federal income tax return clearly and convincing shows that he engaged in illegal conduct that adversely reflected on his fitness to practice law, in violation of DR 1-102(A)(3).

In determining the proper discipline to be imposed on the attorney guilty of misconduct, many factors have to be considered. Aggravating factors include the severity of the crime and whether the crime was related to the practice of law. Mitigating factors include evidence of the attorney's otherwise good reputation, prior trustworthy professional conduct, and general good character. Matter of Kushner, 101 N.J. 397, 400 (1986).

The Board finds respondent's crime to be serious. In the words of Chief Justice Vanderbilt:

Taxes are the lifeblood of government and no taxpayer should be permitted to escape the payment of his just share of the burden of contributing thereto.

[Appeal of N.Y. State Realty and Terminal Co., 21 N.J. 90, 96 (1956) (citations omitted).]

Disciplinary cases in New Jersey involving willful failure to file federal income tax returns have uniformly resulted in a term of suspension from the practice of law.

...[We] have many times said that the dereliction [failure to file an income tax return] is a serious one on the part of any member of the bar, no matter what the excuse, and that a period of suspension is required in all such cases.

[In re Spritzer 63 N.J. 532, 533 (1973) (citations omitted).]

Like the case at hand, most failure to file income tax return cases involve personal tax violations and do not directly involve the practice of law. Furthermore, strong mitigating circumstances are present in many of the cases. See, e.g., Matter of Willis, 114 N.J. 42 (1989) (attorney who was afflicted with alcoholism but subsequently rehabilitated himself received a six-month suspension); In re Esposito, 96 N.J. 122 (1984) (attorney who suffered severe emotional stress resulting from mother's long illness and death was suspended for six months); In re Hughes, 69 N.J. 116 (1976) (attorney who suffered from recurring and debilitating heart attacks received a six-month suspension). Absent such strong mitigating factors, a suspension for one year or more is normally imposed.

Here, respondent did not advance extenuating medical or psychological illness. The Board did consider several mitigating factors. Respondent, who has been a member of the bar since 1972, has no prior disciplinary record. In addition, on the date he was charged with failure to file income tax returns, respondent pled guilty to the first count. He readily admitted his wrongdoing.

Respondent explained that he was financially strapped at the time of the violations. However, all citizens, no matter how strained financially, have to meet their tax obligation. An attorney, sworn to uphold the tax laws, can do no less.

Moreover, respondent failed to notify the Office of Attorney Ethics of his I.R.S. disbarment in violation of R. 1:20-7(a).

Accordingly, based on the totality of the circumstances, the Board unanimously recommends that respondent be suspended from the practice of law for a period of one year. The Board further recommends respondent be required to reimburse the Ethics Financial Committee for appropriate costs.

Dated: 7/19/59



Raymond R. Trombadore
Chair
Disciplinary Review Board