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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 98-481

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IN THE MATTER OF :  
 :  
DAVID S. BOK, ESQ. :  
 :  
AN ATTORNEY AT LAW :  
\_\_\_\_\_  
 :

Decision

Argued: February 11, 1999

Decided: December 6, 1999

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

Respondent, who is currently incarcerated, did not appear.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's conviction for federal income tax evasion, in violation of 26 U.S.C.A. 7201, and the filing of false corporate income tax returns, in violation of 26 U.S.C.A. 7206 (1). On May 2, 1997, following a lengthy trial, the jury returned a guilty verdict on all three counts of the federal indictment. On October 17, 1997,

respondent was sentenced to thirty months' incarceration, followed by three years' supervised release. In addition, and as a condition of respondent's supervised release, the court required him to cooperate in calculating the back taxes owed to the government and to pay ten percent of his gross monthly income towards his individual tax liability. Respondent's conviction was affirmed by the United States Court of Appeals for the Second Circuit on September 8, 1998.

Respondent was admitted to practice law in the state of New Jersey in 1984. On November 10, 1987, he was temporarily suspended by the Supreme Court as a result of his failure to respond to the OAE's request for production of books and records in a separate ethics matter. To date, respondent has not provided the necessary information nor has he filed an application for reinstatement with the Court. His temporary suspension continues to date.

The facts of this case are set forth in the decision of the Second Circuit, as follows:

Bok was in the construction contracting business in 1988 and 1989, during which time he was the president and sole shareholder of Abacus Construction Corp. Abacus had numerous clients both for commercial and residential projects, mostly in Manhattan. In the years before 1988, Bok had occupied a similar position with Abacus's predecessor corporation and, immediately before that, had attended and graduated from law school, having passed courses both in personal and corporate taxation.

Bok ran into trouble with the Internal Revenue Service in the early 1990s because he had not filed a personal income tax return for the 1988 tax year, and because Abacus had not filed

corporate returns for 1988 and 1989. Responding to the IRS's requests, Bok eventually filed all three returns, in each case using the services of an accountant to prepare them. The accountant testified that he in turn had based his work on information provided by Bok. When Bok did file Abacus's corporate returns, there were significant discrepancies between Abacus's reported gross receipts and its actual gross receipts as suggested by a review of the company's bank statements. Similar discrepancies existed with respect to Bok's personal return for 1988, on which he had failed to include over \$200,000 he had received from Abacus that year.

Specifically, for the 1988 tax year, a review of Abacus's bank statements indicated that the company had gross receipts of between \$3.9 million and \$4.8 million. Abacus's tax return for that year reflected gross receipts of just below \$410,000. Similarly in 1989, Abacus's bank statements indicated gross receipts of just over \$2 million, while its tax return reported slightly less than \$405,000. Bok's 1988 individual tax return listed his gross income as \$58,154, only \$16,700 of which derived from Abacus. During 1988, however, Bok used \$202,765 of Abacus's assets to purchase a condominium in Manhattan, which Bok used as a personal residence. Also in 1988, Bok used \$20,122.22 of Abacus's funds to purchase municipal bonds in his own name. In neither case did Bok disclose to his accountant his appropriation of Abacus's funds, and his personal income tax return in no way reflected his appropriation of those funds.

[Exhibit D to OAE's brief]

Following his conviction, respondent failed to notify the OAE of the charges brought against him and of the conviction, contrary to R.1:20-13(a)(1).

The OAE urged the Board to recommend respondent's disbarment.

\* \* \*

Upon a de novo review of the record, we determined to grant the OAE's motion for final discipline.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75,77 (1986). Respondent's conviction clearly and convincingly demonstrates a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on an attorney's honesty, trustworthiness or fitness as a lawyer). Clearly, his attempted federal income tax evasion and false statements on corporate income tax returns constitute violations of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The sole issue to be determined is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443,445 (1989).

The discipline imposed in disciplinary matters arising from the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

Even where an attorney's illegal conduct was not directly related to the practice of law, discipline has been held to be appropriate. "An attorney is bound even in the absence of an attorney-client relationship to a more rigid standard of conduct than required of laymen. To the public he is a lawyer whether he acts in a represented capacity or otherwise." In re Gavel, 22 N.J. 248,265 (1956). In re Katz, 109 N.J. 17, 22-23 (1987).

The level of discipline imposed where an attorney has violated federal tax law depends on the nature of the criminal conduct itself. In situations involving tax evasion convictions, a two-year suspension has frequently been determined to be adequate. In re Battella, 142 N.J. 616 (1995) (two-year suspension for evasion of nearly \$40,000 in income taxes by under-reporting personal income for two years.); In re Tuman, 74 N.J. 143 (1997) (two-year suspension for evading income tax on \$3,295); In re Becker, 69 N.J. 188 (1976) (two-year suspension for filing false tax returns for a three-year period, where the attorney had an otherwise unblemished record). In all of these two-year suspension cases, the attorneys had not previously run afoul of the ethics system.

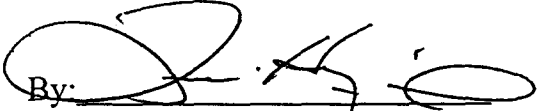
The Court recently determined to disbar an attorney who pleaded guilty to one count of federal income tax evasion. During a four-year period, that attorney had evaded more than \$100,000 in federal income taxes. In re Braun, 149 N.J. 414 (1997). The facts of this case more closely parallel that of Braun. Here, respondent not only failed to include nearly \$200,000 in his personal tax return, but he also intentionally evaded corporate income taxes by under-reporting gross receipts by more than \$4 million, causing the government a tax loss of nearly \$1,500,000. This fraud on the government is of such a magnitude that disbarment is required.

We have also considered respondent's temporary suspension as an aggravating factor in this case. We, therefore, unanimously determined to recommend respondent's disbarment.

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

Dated:

12/6/99

By: 

LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of David S. Bok  
Docket No. DRB 98-481**

**Argued: February 11, 1999**

**Decided: December 6, 1999**

**Disposition: Disbar**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	x						
Zazzali	x						
Cole	x						
Brody	x						
Lolla							x
Maudsley	x						
Peterson	x						
Schwartz	x						
Thompson							x
<b>Total:</b>	<b>7</b>						<b>2</b>

*Robyn M. Hill* 12/13/99  
Robyn M. Hill  
Chief Counsel