

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 98-019

IN THE MATTER OF
SEAMUS M. TOUHEY
AN ATTORNEY AT LAW

Decision

Argued: February 5, 1998

Decided: September 28, 1998

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

Respondent waived appearance before the Board.

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 the charge of willful failure to file a federal corporate income tax return, in violation of 26 U.S.C.A. § 7203.

Respondent was admitted to the New Jersey bar in 1986. On July 2, 1997 respondent pleaded guilty to a criminal complaint filed in the United States District Court for the District of New Jersey, charging him with willful failure to file a federal corporate income tax return

for 1991, in violation of 26 U.S.C.A. § 7203.

According to the transcript of the plea, respondent entered into a business relationship with Edward Gross. During 1991, respondent received a total of \$42,500 from Gross and used that money to establish a corporation. Respondent did not file an income tax return for his corporation, despite his knowledge that he was legally required to take such action.

The OAE urged the Board to suspend respondent for a period of six months.

* * *

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

The existence of a conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75,77 (1986). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2)(ii); In re Lunetta, 118 N.J. 443, 445 (1989). The primary purpose of discipline is not to punish the attorney, but to preserve the confidence of the public in the bar. In re Barbour, 109 N.J. 143, 161 (1988).

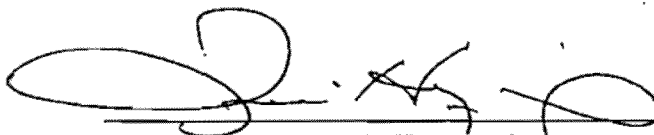
The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re

Lunetta, supra, 118 N.J. at 445-46. For willful failure to file income tax returns, in violation of 26 U.S.C.A. §7203, the Court has imposed suspensions ranging from six months to one year, depending on the individual mitigating circumstances. See In re Leahey, 118 N.J. 578 (1990) (six-month suspension); In re Hall, 117 N.J. 675 (1989) (one-year suspension). Generally, in cases where an attorney's failure to file a federal income tax return is not related to the practice of law and there are mitigating factors, a six-month suspension is imposed. In re Willis, 114 N.J. 42 (1989) (six-month suspension where respondent was recovering from his addiction to alcohol and his failure to file a federal income tax return was not related to the practice of law); In re Silverman, 143 N.J. 134 (1996) (six-month suspension where there were several mitigating circumstances and respondent's failure to file a federal income tax return was not associated with the practice of law).

Here, although respondent willfully engaged in illegal activity, his misconduct did not directly involve the practice of law. Moreover, respondent cooperated with the disciplinary authorities. In light of the foregoing, the Board unanimously determined to suspend respondent for six months. One member did not participate.

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

Dated: 9/28/98



LEE M. HYMERLING
Chair
Disciplinary Review Board