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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-239
District Docket No. XIV-2002-264E

IN THE MATTER OF
JAMES A. WALDRON
AN ATTORNEY AT LAW

Decision

Argued: October 18, 2007

Decided: December 5, 2007

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

Andrew R. Jacobs appeared on behalf of respondent.

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

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), following respondent's guilty plea in the United States District Court for the District of New Jersey, Newark Vicinage, to one count of

knowing and willful failure to file an income tax return with the Internal Revenue Service (IRS) at the time required by law, in violation of 26 U.S.C. § 7203. The OAE requested that we impose a six-month suspension, retroactive to September 25, 2006, the date that respondent became ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund). Respondent did not oppose the motion and concurred with the OAE's recommendation. For the reasons stated below, we determine to impose a six-month suspension, retroactive to September 25, 2006, for respondent's violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1970. At the relevant times, he maintained an office for the practice of law in Cape May. Respondent has no disciplinary history.

On June 25, 2002, the United States Attorney for the District of New Jersey charged respondent with four counts of willful failure to file an income tax return with the IRS for the calendar years 1994, 1995, 1996, and 1997, in violation of

26 U.S.C. § 7203. On October 31, 2006, respondent appeared in the United States District Court for the District of New Jersey, Newark Vicinage, and entered a guilty plea to one count of failure to file an income tax return for the year 1994. To establish the factual basis for his plea, respondent testified that, in the calendar year 1994, he received \$186,000 in taxable income. Although he knew that he had a legal obligation to file an income tax return with the IRS no later than October 15, 1995, respondent willfully failed to do so.

Respondent was sentenced on March 7, 2007. Based on a number of mitigating factors, respondent avoided prison and, instead, was placed on probation for two years.

Respondent reported his criminal conviction to the OAE. According to respondent's counsel in this proceeding, respondent has retired from the practice of law and has no intention of returning to practice law, given his continuing health problems.

Following a review of the full record, we determine to grant the OAE's motion for final discipline.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under the rule, criminal or quasi-criminal conduct is deemed conclusively established by any of the following:

a certified copy of a judgment of conviction, the transcript of a plea of guilty to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program, a plea of no contest, or nolo contendere, or the transcript of the plea.

The rule authorizes the OAE to file a motion for final discipline upon the conclusion of a criminal matter (through the appellate level) "involving findings or admissions of guilt." R. 1:20-13(c)(2). In this case, respondent pleaded guilty to a criminal offense. The OAE provided us with a copy of the transcript of the plea and the judgment of conviction. Therefore, pursuant to R. 1:20-13(c), respondent's criminal conduct is conclusively established. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986).

With respect to the charges stemming from respondent's failure to file an income tax return for the year 1994, 26 U.S.C. § 7203 (emphasis added) provides, in relevant part:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall,

in addition to other penalties provided by law, be guilty of a misdemeanor.

RPC 8.4(b) provides that "[i]t is professional misconduct

for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." RPC 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Here, respondent violated both RPCs.

A violation of federal tax law is a serious ethics breach. In re Queenan, 61 N.J. 579, 580 (1972). "[D]erelections of this kind by members of the bar cannot be overlooked. A lawyer's training obliges him [or her] to be acutely sensitive of the need to fulfill his [or her] personal obligations under the federal income tax law." In re Gurnik, 45 N.J. 115, 116-17 (1965) (two-year suspension for plea of nolo contendere to willfully and knowingly attempting to evade and defeat a part of the income tax due and owing by attorney and his wife). "[N]o matter what the excuse, . . . a period of suspension is required in all such cases." In re Spitzer, 63 N.J. 532, 533 (1973). The length of the suspension is determined on a case-by-case basis. In re Wilentz, 69 N.J. 121, 121-22 (1976) (one-year

suspension for attorney's failure to file federal income tax return for one year).

Prior to the 1990s, one-year suspensions were typically

imposed for an attorney's failure to file a federal income tax return for one or two calendar years. See, e.g., In re Spritzer, 63 N.J. 532, 533 (1973) (failure to file income tax return for one calendar year; mitigating factors present); In re Hartman, 54 N.J. 372 (1969) (failure to file income tax return for two calendar years); In re Van Arsdale, 44 N.J. 318, 319 (1965) (failure to file income tax returns for two calendar years); In re James, 26 N.J. 392 (1958) (failure to file income tax return for one year; mitigation included the attorney's self-imposed retirement); and In re Wilson, 24 N.J. 277 (1957) (failure to file income tax return for one calendar year).

In recent years, however, violations of RPC 8.4(b) and RPC 8.4(c) based upon the willful failure to file one or two income tax returns have typically resulted in the imposition of a six-month suspension. In re Tuohey, 156 N.J. 547 (1999) (attorney pled guilty to failure to file income tax return for one tax year); In re Gaskins, 146 N.J. 572 (1996) (attorney pled guilty to failure to file an income tax return); In re Silverman, 143 N.J. 134 (1996) (attorney pled guilty to one count of failure to

file tax return); In re Doyle, 132 N.J. 98 (1993) (attorney pled guilty to failure to file one income tax return); In re Chester, 117 N.J. 360 (1990) (guilty plea to failure to file one income tax return); and In re Leahy, 118 N.J. 578 (1990) (guilty plea to one count of failure to file a tax return resulted in six-month suspension).

Following the more recent line of cases, respondent's guilty plea to failure to file a federal income tax return for a single calendar year warrants a six-month suspension. There remains for consideration only the date on which the suspension should start.

The OAE requests that the suspension be made retroactive to the date that respondent became ineligible to practice law, September 25, 2006, for failure to pay the annual fee to the Fund. However, after the OAE submitted its brief in this matter, respondent was reinstated on July 3, 2007.

According to respondent's counsel, respondent cured his ineligibility solely as a result of his belief that he had to be "in complete compliance with the applicable Court Rules, given the pendency of these proceedings and the anticipated disciplinary motion of the Office of Attorney Ethics." Despite his current eligibility, respondent remains retired from the

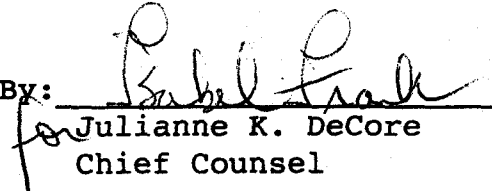
practice of law. In this regard, respondent's counsel submitted proof that respondent has closed his attorney business and trust accounts.

Given respondent's retirement, we see no reason to deviate from the date of retroactivity proposed by the OAE. We, therefore, determine to impose a six-month suspension on respondent, retroactive to September 25, 2006.

Member Lolla did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy
Chair

By: 
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

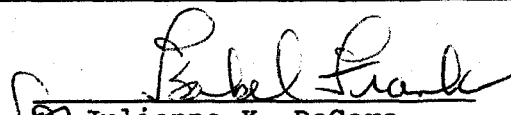
In the Matter of James A. Waldron
Docket No. DRB 07-239

Argued: October 18, 2007

Decided: December 5, 2007

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh		X				
Boylan		X				
Frost		X				
Lolla						X
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		8				1


for Julianne K. DeCore
Chief Counsel