

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-050

IN THE MATTER OF :
JEROME T. WILLIAMS :
AN ATTORNEY AT LAW :
_____ :

Decision

Argued: May 17, 2001

Decided: December 31, 2001

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us based on a recommendation for discipline filed by the District XI Ethics Committee ("DEC"), based on respondent's failure to timely file federal and state income tax returns for the years 1995 through 1998 and failure to maintain the required attorney books and records. The complaint charged respondent with violations of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's fitness to practice law), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and R.1:21-6 and RPC 1.15(d) (recordkeeping violations).

Respondent was admitted to the New Jersey bar in 1979. He maintains an office for the part-time practice of law in Passaic County. He is also employed as a guidance counselor by the Jersey City Board of Education.

Respondent has twice been disciplined. In March 1995 he received a reprimand for gross neglect and lack of diligence in a civil proceeding. In re Williams, 139 N.J. 445 (1995). Eight months later, in November 1995, he received a second reprimand for failure to collect sufficient funds to pay a title insurance fee and failure to reply to the title company's attempts to collect the fee. In addition, he commingled personal and client funds, failed to maintain trust and business account records and failed to cooperate with the DEC. In re Williams, 142 N.J. 553 (1995).

Count One (Failure to File Income Tax Returns)

Respondent did not contest the facts alleged in the complaint, which charged him with the willful failure to timely file income tax returns. He disputed, however, that his violation was willful. The facts are as follows:

By letter dated April 22, 1999 the Honorable Salvatore Bovino, P.J.F.P., notified the Office of Attorney Ethics ("OAE") that respondent had appeared before him in connection with respondent's own child support matter. According to Judge Bovino, respondent testified that he had not filed federal and state income tax returns since 1995. The OAE then began an investigation into the matter.

In July 1999, during a telephone conversation with an OAE investigative auditor, respondent stated that he was in the process of filing his delinquent tax returns for the years 1995 through 1998. Pursuant to a request from the OAE, respondent forwarded microfilm copies of his trust account bank statements for January 1995 through June 1999. After a review of these documents, the OAE determined to conduct a demand audit of his attorney books and records.

During the OAE audit, respondent admitted that he had not filed tax returns. He stated that his dereliction was caused by depression and lethargy due to marital problems. Respondent stated further that he had hired an accountant to prepare his delinquent tax returns. He subsequently forwarded copies of the completed returns to the OAE.

At the DEC hearing, respondent contended that his failure to file the returns had not been willful because he had no intent to avoid payment. By way of explanation, respondent testified that he had sufficient funds withheld from his salary as a school counselor to cover any taxes owed from his law practice. Respondent's law practice is quite limited and, in fact, according to the tax returns that he submitted to the OAE for review, he did not owe any additional taxes. Respondent advanced the lack of additional tax liability as a mitigating factor.

As noted above, respondent contended that, as a result of a difficult domestic situation, he was depressed and "in a funk." He acknowledged being aware of his obligation to file his tax returns, but claimed that he was unable to do so because of depression. He

testified that he no longer suffers from depression.¹

The complaint charged that respondent's willful failure to timely file federal and state tax returns violated 26 U.S.C. §7203 and N.J.S.A. 54:52-10, respectively, and RPC 8.4(b) and (c).

Count Two (Recordkeeping Violations)

The demand audit disclosed the following recordkeeping deficiencies:

- (1) Respondent did not maintain detailed, descriptive client ledger cards with running balances.
- (2) Respondent did not maintain cash receipts and disbursements journals for his trust or business accounts.
- (3) Respondent did not maintain trust or business account checkbooks with running balances.
- (4) Respondent did not note clients' names on deposit tickets.
- (5) Respondent did not perform quarterly reconciliations.

¹Respondent did not seek professional treatment for depression. His contention was, therefore, uncorroborated. Respondent stated, however, that he was not offering his depression as a mitigating circumstance.

Also, we note that, in the matter that led to respondent's March 1995 reprimand, he

Respondent admitted that he had not kept the mandatory records. He admitted knowing that he was obligated to maintain such records.

The record is silent as to whether respondent has corrected his recordkeeping deficiencies.

The complaint charged respondent with violations of R.1:21-6 and RPC 1.15(d).

* * *

With regard to the first count, the DEC considered respondent's position that his failure to timely file tax returns was "not a willful violation due to the fact that although no return was filed, once he did file there wasn't any deficiency." The OAE countered that argument with caselaw indicating that respondent's conduct was a per se violation.

The DEC found that respondent had violated RPC 8.4(b) and (c), RPC 1.15(d) and R.1:21-6. In recommending the appropriate measure of discipline, the DEC noted that respondent had been cooperative throughout the proceeding and took into account his testimony about his severe depression. In the DEC's view, respondent has since "gotten his life together and acknowledged his wrongdoing as an attorney. He now realizes that although there was not any money owed to the government, he had an obligation to file his returns."

The DEC recommended a six-month suspension.

* * *

claimed "mental and physical fatigue." There, too, his claim was unsupported by evidence.

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent's conduct was unethical was fully supported by clear and convincing evidence.

Respondent's failure to file income tax returns from 1995 through 1998 was clearly improper. The OAE relied on In re Garcia, 119 N.J. 86 (1990), for the proposition that a criminal conviction is not required for a finding of violations of RPC 8.4(b) and (c) in situations that involve income tax violations. In Garcia, the attorney had applied to be licensed by the Federal Communications Commission ("FCC") to locate a radio station in Jersey City. During the course of the FCC proceedings, it came to light that she had failed to file her income tax returns for three years. While initially the attorney claimed that a financial shortfall was the reason for the deficiency, it became clear that the attorney had made a conscious decision not to pay her income taxes, choosing to use the money for other expenses. The FCC concluded that the attorney had violated the provisions of 26 U.S.C. § 7203, despite the lack of a criminal conviction under that statute. Our Supreme Court found that such a finding, in a collateral proceeding where the standard of proof is different, cannot be disregarded in a disciplinary proceeding. The Court stated as follows:

Obviously, the attorney-disciplinary system is not a fiscal agent of the Treasury. But when the private affairs of an attorney have been put in issue and it has been plainly established, by the attorney's own admissions or by the collateral findings of another tribunal of government, that the attorney has willfully violated the provisions of law, we can no more blink than if it were a jury verdict.

[In re Garcia, supra, 119 N.J. at 89 (1990)]

In Garcia, a case of first impression, the Court imposed only a reprimand, noting that it was refraining from imposing a suspension because it had not “heretofore made it clear that a finding of willful failure to file income tax returns would merit the same discipline absent a criminal conviction.” Id. at 87.

The applicable statute, 26 U.S.C. §7203, states as follows, in pertinent 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.

“Willfulness,” for purposes of prosecution under 26 U.S.C. § 7203, does not require any motive other than a voluntary, intentional violation of a known legal duty. It does not need to be careless, thoughtless, heedless or inadvertent. See United States v. Rothbart, 723 F.2d 752 (10th Cir. 1983); United States v. Francisco, 614 F.2d 617 (8th Cir. 1980); and Haner v. United States, 315 F.2d 792 (5th Cir. 1963). Under this definition, respondent’s failure to file his income tax returns was a willful act for the purpose of the statute. We, thus, find that respondent’s conduct established the substantive elements of the offense, despite the absence of a jury verdict. See In re Rigoletti, 107 N.J. 192 (1987). Respondent’s conduct is, thus, deemed a violation of RPC 8.4(b), even absent a criminal conviction.

The plain meaning of 26 U.S.C. §7203 makes it clear that the fact that respondent did not owe taxes, in addition to what had been withheld from his salary, was simply fortuitous. Although we viewed the absence of overdue taxes as a mitigating factor, as respondent suggested, that circumstance did not remove his misconduct from the realm of the statute. Indeed, the language of the statute makes it clear that the mere failure to file tax returns, regardless of an accompanying failure to pay, violates the law.

In New Jersey, disciplinary cases involving willful failure to file federal income tax returns have uniformly resulted in the imposition of a term of suspension. See In re Vecchione, 159 N.J. 507 (1999) (six-month suspension where attorney failed to file federal tax returns for twelve years); In re Gaskins, 146 N.J. 572 (1996) (six-month suspension where attorney pleaded guilty to failure to file income tax returns for one year); In re Silverman, 143 N.J. 134 (1996) (six-month suspension where attorney pleaded guilty to one count of failure to file tax returns for one year); In re Doyle, 132 N.J. 98 (1993) (six-month suspension where attorney pleaded guilty to failure to file tax returns for one year); In re Leahy, 118 N.J. 578 (1990) (six-month suspension where attorney pleaded guilty of one count of failure to file income tax returns); In re Chester, 117 N.J. 360 (1990) (six-month suspension where attorney pleaded guilty to willful failure to file income tax returns for one year); In re Hughes, 69 N.J. 116 (1976) (six-month suspension where attorney pleaded nolo contendere to charges of failure to file federal tax returns for three years); In re Knox, 58 N.J. 218 (1971) (six-month suspension where attorney pleaded nolo contendere to failure to file

income tax returns for two years); and In re Vieser, 56 N.J. 60 (1970) (six-month suspension where attorney pleaded nolo contendere to charges of failure to file income tax returns for two years).

Nothing in this record suggests a reason to impose less than the customary measure of discipline imposed for failure to file tax returns – a six-month suspension. Respondent's claims of psychological problems, offered to explain his derelictions, are unsupported by competent evidence and have not been considered, particularly in light of the fact that respondent made similar unsubstantiated claims in the matter that led to his March 1995 reprimand. In addition, respondent stated that he was not offering depression as a mitigating factor. That respondent did not owe any additional taxes is not sufficient mitigation to militate against the imposition of a six-month suspension, particularly in light of his continuing failure to maintain the required attorney books and records.

Accordingly, we unanimously determined that, in light of precedent, a six-month suspension is warranted for respondent's willful failure to file tax returns, in violation of RPC 8.4(b) and (c), and recordkeeping deficiencies, in violation of RPC 1.15(d). As noted above, respondent was previously reprimanded for, among other things, failure to maintain required books and records. Although he continued to neglect his recordkeeping responsibilities after his reprimand, we determined that more severe discipline than a six-month suspension would be too harsh for the within misconduct.

One member did not participate.

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

By:



ROCKY L. PETERSON

Chair

Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Jerome T. Williams
Docket No. DRB 01-050

Argued: May 17, 2001

Decided: December 31, 2001

Disposition: Six-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Six-month suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>		X					
<i>Maudsley</i>		X					
<i>Boylan</i>							X
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Wissinger</i>		X					
Total:		8					1

Robyn M. Hill 1/3/01

Robyn M. Hill
Chief Counsel