SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-122
District Docket No. XIV-03-331E

IN THE MATTER OF	:
MATTHEW J. KIRNAN	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 20, 2004

Decided: July 7, 2004

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

Paul B. Brickfield appeared on behalf of respondent.

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").

Respondent was admitted to the New Jersey bar in 1986. He has no prior discipline.

On June 3, 2003, as a result of the within criminal matter, respondent was temporarily suspended from the practice of law, in

accordance with R. 1:20-13 (b). In re Kirnan, 176 N.J. 420 (2003). He remains suspended to date.

On May 28, 2003, respondent entered a guilty plea in the United States District Court for the District of New Jersey ("DNJ") to an information charging him with filing a false federal tax return, in violation of 26 U.S.C.A. 7206 (1), which provides in pertinent part that

> [a]ny person who willfully makes and subscribes any return, statement, or other documents, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter . . . shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than three years, or both, together with the costs of prosecution.

At the plea hearing, the following facts were elicited by Assistant United States Attorney Perry A. Carbone.

On August 3, 2000, respondent signed a joint United States individual income tax return for the year 1999. In his plea, respondent conceded that, during 1999 and 2000, he had generated income from his law practice, Matthew Kirnan, P.C., and had improperly paid personal expenses out of firm proceeds. Thereafter, he deliberately failed to report the receipt of that income on his individual tax return. Moreover, respondent admitted that his declaration on the return, which attested to the accuracy of his statements, was false. Indeed, respondent knew at the time that the

information contained therein did not accurately reflect the amount of income he derived from Matthew Kirnan, P.C. The total amount of lost taxes for the years 1999 and 2000 was approximately $31,000.[1] Therefore, respondent pleaded guilty to subscribing to a false tax return, in violation of 26 U.S.C. Section 7206 (1).

Respondent's misconduct came to light when, in 2002, the United States Attorney was conducting an investigation of U.S. Senate hopeful, and then Essex County Executive, James Treffinger. Respondent's personal records were seized as the result of his position as Treffinger's Senate campaign manager.

When confronted by authorities, respondent cooperated fully. As a result of his cooperation, the U. S. Attorney sent the DNJ judge an October 6, 2003 letter supporting a downward departure from the applicable federal sentencing guidelines. The letter stated, in part:

> [Respondent] was confronted with the false statements on his tax returns in February of 2002 and immediately expressed remorse and agreed to cooperate with the government in its ongoing investigation of corruption in Essex County. [Respondent]'s decision to cooperate in the investigation against Treffinger was not an easy one. [Respondent] had known Treffinger for many years and maintained extremely close political ties. Further, at the time of his decision to cooperate, [respondent] received substantial income from the practice of law. His decision to cooperate and plead guilty to a felony meant losing his

[1] Respondent repaid the IRS $31,000, along with $15,000 in penalties and interest, prior to sentencing.

> license, foregoing income and incurring substantial fines and penalties to the Internal Revenue Service, which he immediately agreed to pay. It also meant resigning from his elected position as Councilman for the Town of Verona. Notwithstanding these significant costs, [respondent] agreed to cooperate completely and truthfully, and to fully disclose his role and the role of others in Treffinger's Senate campaigns.
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> [Exhibit D at 2.]

On October 21, 2003, respondent was placed on probation for three years, ordered to perform 300 hours of community service and fined $3,000.

The OAE urged the imposition of an eighteen-month suspension, retroactive to June 3, 2003, the date of respondent's temporary suspension.

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

The existence of a criminal record is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1), In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction for subscribing to a false tax return is clear and convincing evidence that he violated RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline remains at issue. R. 1:20-13(c)(2)(ii); In re Lunetta, 118 N.J. 443, 445 (1989).

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." Id. at 445-46. That respondent's offense was not directly related to the practice of law does not negate the need for discipline. Even a minor violation of the law tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 95 N.J. 121, 124 (1984).

As noted by the OAE in its submission, a violation of federal tax law is a serious ethics breach. In re Queenan, 61 N.J. 579, 580 (1972). "[D]erelictions of this kind by members of the bar cannot be overlooked. A lawyer's training obliges him to be acutely sensitive of the need to fulfill his personal obligations under the federal income tax law." In re Gurnik, 45 N.J. 115, 116 (1965). See also In re Landi, 65 N.J. 322 (1974) (one-year suspension for income tax evasion; mitigating factors included prior unblemished record); and In re Kleinfeld, 58 N.J. 217 (1971) (six-month suspension following plea of nolo contendere to one count of tax evasion, for which a fine was paid; unspecified mitigating circumstances considered). Although the level of discipline imposed for violation of federal tax law depends on the underlying circumstances of the matter, in recent years, when an attorney has

been guilty of tax evasion, a two-year suspension has been deemed the standard measure of discipline, even where the attorney has not been previously disciplined. See, e.g., In re Mischel, 166 N.J. 219 (2001) (two-year suspension for an attorney with a prior unblemished history, who pleaded guilty in the Supreme Court of the State of New York to a charge of offering a false instrument for filing; the false instrument was a New York State tax return that she knew contained false and fraudulent deductions); In re Rakov, 155 N.J. 593 (1998) (two-year suspension for an attorney with an unblemished disciplinary record, convicted of five counts of attempted income tax evasion; attorney failed to report the interest paid to him on personal loans on his federal income tax returns); In re Batalla, 142 N.J. 616 (1995) (attorney suspended for two years for evading $39,066 in taxes by underreporting his earned income in 1990 and 1991; prior unblemished record); and In re Nedick, 122 N.J. 96 (1991) (two-year suspension for failing to report $7,500 in cash legal fees in his taxable income; unblemished record and additional mitigating factors considered). See also In re Tuman, 74 N.J. 143 (1977) (filing a false and fraudulent joint tax return merited a two-year suspension from the practice of law); In re Becker, 69 N.J. 118 (1976) (a plea of guilty to the filing of false and fraudulent tax returns warranted suspension from practice of law for two years); and In re Gurnik, supra, 45 N.J. at 115 (attorney suspended for a period of two years after he pleaded nolo

contendere to a charge of tax evasion for one calendar year). Here, five members were satisfied that an eighteen-month suspension, retroactive to respondent's June 3, 2003 temporary suspension, is sufficient discipline under the circumstances of the case, which included respondent's cooperation with the criminal authorities. Three members voted for a two-year suspension, retroactive to respondent's June 3, 2003 temporary suspension. Those members believe that respondent's cooperation with the U.S. Attorney's Office should not be considered a mitigating circumstance. One member did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Matthew J. Kirnan
Docket No. DRB 04-122

Argued: May 20, 2004

Decided: July 7, 2004

Disposition: Eighteen-month suspension

Members	*Disbar*	*Eighteen-month Suspension*	*Reprimand*	*Two-year Suspension*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy				X			
Boylan							X
Holmes		X					
Lolla		X					
Pashman		X					
Schwartz		X					
Stanton				X			
Wissinger				X			
Total:		5		3			1

Julianne K. DeCore
Chief Counsel