

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 92-366

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IN THE MATTER OF :  
JOSEPH F. DOYLE :  
AN ATTORNEY AT LAW :

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: November 18, 1992

Decided: February 7, 1993

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

John Tomasello appeared on behalf of respondent.

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

This matter is before the Board on a Motion for Final Discipline Based Upon a Criminal Conviction filed by the Office of Attorney Ethics ("OAE"). R.1:20-6(c)(2)(i).

Respondent, Joseph F. Doyle, was admitted to the bar of New Jersey in 1965. On April 16, 1992, pursuant to a plea bargain agreement, respondent pled guilty to one count of a federal information charging him with knowingly and willfully failing to file a federal income tax return for the calendar year 1988, in violation of 26 U.S.C.A. § 7203. In calendar year 1988, respondent had a gross income of \$81,320 and a taxable income of \$61,735. Hence, he owed \$21,635 in federal income taxes.

On July 23, 1992, respondent was placed on probation for three years. As additional conditions of probation, respondent was required to reside for a period of two months in a community treatment center or a similar residential facility such as a half-way house, to cooperate fully with the Internal Revenue Service by filing all delinquent returns as well as future returns in a timely fashion, and to complete 100 hours of community service. Additionally, a \$1,000 fine was imposed.

The OAE requests that the Board recommend to the Court that respondent be suspended for a period of six months.

#### CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of a respondent's guilt in disciplinary proceedings. In re Goldberg, 105 N.J. 278, 280 (1987); In re Tusso, 104 N.J. 59, 61 (1981); In re Rosen, 88 N.J. 1,3 (1981). R.1:20-6(c)(1). Therefore, no independent examination of the underlying facts is necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). The only issue to be determined is the quantum of discipline to be imposed. In re Goldberg, supra, at 280.

Respondent's criminal conviction clearly and convincingly demonstrates that he has engaged in activity that reflects adversely on his honesty, trustworthiness and fitness as a lawyer, in violation of RPC 8.4 (b).

A calculus for discipline, however, even in cases of criminal conviction, must include the nature and severity of the crime, whether the crime was related to the practice of law, and any mitigating factors, such as evidence of the attorney's good reputation and character. In re Kushner, 101 N.J. 397, 400 (1986). In addition, every disciplinary matter is factually different and must be judged on its own merit. In re Infinito, 94 N.J. 50, 57 (1983); In re Alosio, 99 N.J. 84, 89 (1985).

The failure to file a federal income tax return is considered a serious dereliction "on the part of any member of the bar, no matter what the excuse...." In re Queenan, 61 N.J. 579, 580 (1972). The Court has repeatedly stated that delinquency of this nature may not be tolerated. In fact, if anything, a lawyer is held to a higher standard than a non-attorney. "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). Moreover, conviction for such a dereliction cannot be "treated as a matter merely for reprimand." In re Van Arsdale, 44 N.J. 318, 319 (1965); In re Vieser, 56 N.J. 60, 61 (1970).

In the past, the Court has uniformly imposed a term of suspension from the practice of law as the appropriate discipline for the willful failure to file a federal income tax return. In re Spritzer, 63 N.J. 532, 533 (1973); In re Queenan, supra.

While the totality of the circumstances of any given case is considered, typically the term of suspensions has been for either a period of six months or one year. See, e.g., In re Hall, 117 N.J. 675 (1989); In re Moore, 103 N.J. 702 (1986); and In re Fahy, 85 N.J. 698 (1981) (one-year suspension); In re Leahey, 118 N.J. 578 (1990); In re Chester, 117 N.J. 360; In re Willis, 114 N.J. 42 (1989); and In re Hughes, 69 N.J. (1976) (six-month suspension). The majority of these cases involves the delinquent filing of personal tax returns and does not directly involve the practice of law. Furthermore, strong mitigating circumstances are usually present. See, e.g., In re Willis, supra (remarkable recovery from the alcoholism that contributed significantly to attorney's misconduct); In re Esposito, 96 N.J. 122 (1984) (severe emotional distress from mother's long illness and eventual death); and In re Hughes, supra (series of debilitating heart attacks);

In those cases that resulted in longer terms of suspension, there have been aggravating circumstances. See, e.g., In re Pollack, 60 N.J. 548, 549 (1972) (membership in the judiciary when the offenses occurred resulted in a two-and one-half-year suspension); In re Margolis, 55 N.J. 291 (1970) (admission regarding failure to file returns for a period of sixteen years resulted in a three-year suspension); and In re Tuman, 74 N.J. 143 (1977) (engaging in other unethical conduct involving dishonesty, fraud, and deceit resulted in a two-year suspension).

In the instant case, the Board gave consideration to several circumstances mitigating respondent's failure to file a federal income tax return. Respondent has practiced law in this jurisdiction for more than twenty-seven years, with an honorable and unblemished record and for sixteen of those years he served as a member of the judiciary in various municipalities in the South Jersey area. Respondent has also served as a prosecutor and public defender subsequent to stepping down from the bench, and has participated in the district fee and ethics district committees.

The Board gave further consideration to respondent's personal and family life, including what respondent terms an emotionally draining and financially disastrous divorce in 1982. Moreover, at the time the information was handed down, respondent was undergoing a permanent separation from his second wife, whom he married in 1986. The Board found no aggravating circumstances present.

Accordingly, the Board unanimously recommends that respondent be suspended from the practice of law for a period of six months. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 2/7/1993

By: 

Raymond R. Trombadore  
Chair  
Disciplinary Review Board