

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-198

IN THE MATTER OF :
: :
MATTHEW A. LEAHEY, :
: :
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 29, 1989

Decided: February 7, 1990

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

John C. Whipple 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 respondent's guilty plea to willful failure to file an income tax return for the calendar year 1984, in violation of 26 N.J.S.A. 7203.

Respondent was admitted to the practice of law in New Jersey in 1977. On February 28, 1989, respondent was charged in a Federal Information, filed in United States District Court for the District of New Jersey, with three counts of failure to file personal income tax returns for the calendar years 1982, 1983, and 1984, in violation of 26 U.S.C. 7203. On March 23, 1989, respondent entered a guilty plea to the third count of the information, failure to file in 1984. Thereafter, on March 27, 1989, respondent notified

the Office of Attorney Ethics of this plea through counsel. Respondent was sentenced to a probationary term of three years and a fine of \$10,000 on May 4, 1989. In addition, the following conditions were imposed: (1) respondent must properly file delinquent returns as well as returns coming due during his probation, and make full restitution of all taxes, interest and penalties owed; (2) respondent, at the discretion of the probation office, must participate in a substance abuse program.

CONCLUSION AND RECOMMENDATION

In disciplinary proceedings, a criminal conviction is conclusive evidence of respondent's guilt. Matter of Goldberg, 105 N.J. 278, 280 (1987); Matter of Tusso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1,3 (1981); R. 1:20-6(b)(i). 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. Matter of Goldberg, supra, 105 N.J. at 280; Matter of Kaufman, 104 N.J. 509, 510 (1986); Matter of Kushner, 101 N.J. 397, 400 (1986); In re Addonizio, 95 N.J. 121, 123-124 (1984); In re Infinito, 94 N.J. 50, 56 (1983).

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

The illegal activity underlying respondent's conviction is not

related to the practice of law. See Matter of Kinnear, 105 N.J. 391, 395 (1987). Nonetheless, good moral character is a basic condition for membership in the bar. In re Gavel, 22 N.J. 248, 266 (1956). Any misbehavior, private or professional, that reveals lack of the good character and integrity essential for an attorney, constitutes a basis for discipline. In re LaDuca, 62 N.J. 133, 140 (1973). That respondent's activity did not arise from a lawyer-client relationship, that his behavior was not related to the practice of law or that this offense was not committed in his professional capacity is immaterial. In re Suchanoff, 93 N.J. 226, 230 (1983); In re Franklin, 71 N.J. 425, 429 (1976).

The crime for which respondent was convicted is serious. As stated by Chief Justice Vanderbilt:

Taxes are the lifeblood of government and no taxpayer should be permitted to escape the payment of his just share of the burden of contributing thereto.

[Appeal of N.Y. State Realty and Terminal Co., 21 N.J. 90, 96 (1956) (citations omitted).]

Disciplinary cases in New Jersey involving willful failure to file income tax returns have uniformly resulted in a term of suspension from the practice of law.

. . . We have many times said that the dereliction [failure to file an income tax return] is a serious one on the part of any member of the bar, no matter what the excuse, and that a period of suspension is required in all such cases.

[In re Spritzer, 63 N.J. 533, 533 (1973) (citations omitted).]

In determining the quantum of discipline to be imposed, the Board considered several factors in mitigation, including respondent's personal and professional difficulties that led to

his failure to file his tax returns. Respondent's rehabilitation has also been noted.

Respondent argues that this matter is similar to the cases of Matter of Stier, 108 N.J. 455 (1987), and Matter of Kotok, 108 N.J. 314 (1987). In those cases, the imposition of one-year suspensions was suspended, and a period of probation was ordered. Respondent contends that he presents many of the same mitigating factors found in those cases. However, the Court has warned against wide-scale reliance on Stier and Kotok, explaining that "[w]hatever precedential effect may be accorded them is certain to be given sparingly and only in closely analogous circumstances." Matter of Leahy, 111 N.J. 127, 133 (1988). In Stier and Kotok, the Court emphasized the remoteness in time of the respondents' offenses -- sixteen years and ten years respectively -- and noted that one of the goals of discipline, rehabilitation, would not be advanced by imposing suspensions. In both cases, the Court noted that, in the long intervening time period between their transgressions and imposition of discipline, respondents had rehabilitated themselves.

Here, the extensive time period between transgression and discipline emphasized by the Court is not present. The rationale applied in Stier and Kotok is, therefore, not relevant here.

The Board notes the recent decision in Matter of Chester, _____ N.J. _____ (1990), a similar criminal case involving tax derelictions that resulted in a six-month suspension. Chester presented mitigating circumstances similar to respondent's: Chester had admitted his wrongdoing; paid most of his tax

liability; and as here, was under significant emotional and financial distress at the time of his criminal conduct.

In view of the foregoing, the Board unanimously recommends that respondent be suspended for six months. One member did not participate.

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

Dated: February 7, 1990.

By: Shirley O'Neill, Vice Chair
for Raymond R. Trombadore
Chair
Disciplinary Review Board