SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-069
District Docket No. XIV-2009-0363E

IN THE MATTER OF	:
B. JAY BAGDIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 21, 2016

Decided: December 1, 2016

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument.[1]

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) pursuant to R. 1:20-13, following respondent's conviction of one count of attempting to obstruct the administration of the Internal Revenue Code, 26 U.S.C. §7212(a); seven counts of conspiracy to

[1] Respondent's requests for an adjournment until his release from incarceration were denied.

defraud the United States, 18 U.S.C. §371; eleven counts of aiding and assisting the preparation of false tax returns, 26 U.S.C. §7206(2); three counts of failure to file tax returns or supply information, 26 U.S.C. §7203; and five counts of failure to file currency transaction reports by business, 31 U.S.C. §5322.

The OAE recommends respondent's disbarment. For the reasons set forth below, we agree with the recommendation.

Respondent was admitted to the New Jersey bar in 1986, the Pennsylvania bar in 1982, and the Florida bar in 1984. He is currently incarcerated in Schuylkill, Pennsylvania.

Respondent has no history of discipline in New Jersey. However, he was disbarred on consent from the Pennsylvania bar and from the United States District Court, Eastern District of Pennsylvania ("Eastern District") in 2010.

On September 12, 2016, respondent's license to practice was revoked, based on his failure to pay the New Jersey Lawyers' Fund for Client Protection assessment since 2010.

On March 11, 2016, respondent requested that this matter be deferred until his motions are resolved, as he was seeking to overturn the verdict in his case. Respondent asserted that, as a result of the appeal process, the "baseline facts have significantly changed," and he is preparing a motion under 28

U.S.C. §2255 (remedies on motion attacking sentence) to re-open and expand the record and to set aside the verdict or to be granted a new trial.

In reply to respondent's request, the OAE, by letter also dated March 11, 2016, asserted that, pursuant to R. 1:20-13, it had the discretion to file a motion for final discipline after a finding of guilt at the conclusion of all direct appeals, that a number of respondent's appeals had been dismissed, and that there was no basis to defer a disposition on its motion for final discipline.

On July 18, 2012, the United States Court of Appeals for the Third Circuit ("Third Circuit") denied respondent's direct appeal, affirmed his conviction, and remanded the case to the Eastern District for resentencing. United States v. Bagdis, 488 Fed. Appx. 593 (2012). On January 22, 2013, respondent's petition for writ of certiorari to the United States Supreme Court was denied. Bagdis v. United States, 133 S. Ct. 983 (2013). After resentencing, respondent again filed an appeal, which the Third Circuit denied, finding it "meritless." United States v. Bagdis, 591 Fed. Appx. 593 (2014). On October 5, 2015, his petition for writ of certiorari to the United States Supreme Court again was denied. Bagdis v. United States, 136 S. Ct. 194 (2015). Finally, on November 30, 2015, respondent's petition for

rehearing was denied. Baqdis v. United States 136 S. Ct. 577 (2015).

R. 1:20-13(c)(2) confers on the Director of the OAE the discretion to file a motion for final discipline, based on a criminal conviction, at the conclusion of all direct appeals. The Rule does not require the resolution of post-judgment motions prior to the filing of a motion for final discipline. We, therefore, determined to proceed with this matter.

A brief overview of respondent's conduct was set forth in respondent's first appeal, in connection with his conviction of, and sentence for, tax evasion, conspiracy to defraud the United States, and violation of the related tax provisions. Respondent argued that the Eastern District erred by denying him a hearing in connection with a prior grant of immunity and that the court committed various procedural errors at sentencing. The Third Circuit found that the Eastern District had not abused its discretion when it declined to hold a hearing and determined that the government had met its burden of demonstrating that it had acquired its information independently of any immunized testimony. U.S. v. Baqdis, supra, 488 Fed. Appx. 593. The Third Circuit, therefore, affirmed respondent's conviction, but vacated the sentence, and remanded the matter for resentencing

on the aiding and assisting others in the filing of false returns counts and as to the special assessment. Id. at 600.

According to the Third Circuit, respondent "believed that he had unlocked the secret to avoiding all federal income taxes." As one of his associates testified, respondent's strategy was to "hide his clients in plain sight." Respondent severed any link between an individual's social security number and the income he or she earned, often by having the income made payable to a corporation the individual controlled, rather than to himself or herself. Id. at 594-595. Respondent created convoluted corporate transactions to render it difficult for the Internal Revenue Service (IRS) to trace the flow of his and his clients' monies. Despite earning substantial income, respondent had not filed an income tax return since 1990. Id. at 595.

Respondent's above-referenced appeals followed a lengthy jury trial. On April 22, 2009, he had been found guilty of twenty-seven counts of a ninety-six count superseding indictment returned against him in the Eastern District. On remand, he was sentenced to imprisonment for 120 months, followed by three years of supervised release, and was ordered to pay restitution in the amount of $2,494,493.

Specifically, the counts of the superseding indictment (SI) for which respondent was found guilty charged that, using

various aliases, he owned and controlled several entities that he used to facilitate his extensive and longstanding efforts to obstruct and impede the administration of the United States internal revenue laws. Respondent employed an associate, a paralegal, and an administrative assistant to assist in his efforts to defraud the IRS and to encourage others to commit tax crimes.

Through his actions, respondent caused individuals and entities to underreport to the IRS approximately $24 million in income, which resulted in an approximate loss of $4.9 million in tax revenue.

Beginning in or about 1996, through the date of the SI, respondent "corruptly endeavored to obstruct and impede the due administration of the internal revenue laws" by helping taxpayers to (1) circumvent filing accurate federal income tax returns; (2) impede the compliance and collection efforts of the IRS; and (3) evade the assessment and payment of income taxes owed to the IRS.

Respondent recruited various individuals, including physicians, lawyers, and small business owners, to engage in his tax obstruction and tax evasion schemes. The goal of the schemes was to conceal from the IRS personal and corporate income and to evade the assessment and payment of income taxes through the

filing of false tax returns and/or through the failure to file any tax returns.

Respondent helped his clients create "nominee entities" to conceal their income by funneling money through bank accounts of the nominee entities and by paying bills out of the nominee entities' bank accounts and the bank accounts of other corporations he controlled. The sources and uses of the funds were not directly traceable to the individual clients or to their social security numbers.

For example, respondent assisted individuals to form corporations; obtained employer identification numbers for the corporations and registered the corporations in Delaware or Pennsylvania; assisted clients and employees in opening bank accounts for their corporations to deposit payroll checks or other forms of income and then pay for personal expenses through the corporate bank accounts; used and encouraged clients to use fictitious identities that he created to conceal assets and income; prepared and instructed his employees to prepare false tax returns that omitted substantial amounts of wages and other income, and falsely understated the amount of taxes due and owing to the IRS; and advised and encouraged clients not to file yearly income tax returns.

Respondent also represented himself as the agent and United States representative of Merchants and Manufacturers Trust (MMT), a foreign financial institution that was a dormant Irish shell corporation and that, in 2000, had been dissolved. Respondent, nevertheless, misrepresented to clients that he was in charge of MMT's United States operations. He then used MMT to help those clients conceal their income and disguise their expenses; assisted them in circumventing federal law requiring the payment of taxes and early withdrawal penalties; concealed profits from investments; and assisted clients in creating phony encumbrances on their properties and fictional mortgage interest expense deductions with sham promissory notes and mortgages.

Respondent instructed his clients to send their IRS notices to him, determined the amounts of third party payments reported to the IRS on his clients' behalf, directed the preparation of false federal tax returns for clients, delayed replying to IRS inquiries, and prepared and filed false documents with the IRS to hide the clients' actual income.

Respondent also concealed his own income from legal fees and from ownership in various businesses by transferring money among numerous bank accounts and entities he controlled, and by maintaining assets in the names of entities he controlled.

Count one of the SI identifies eleven of respondent's clients whom he assisted with elaborate schemes to avoid the reporting and paying of taxes, or the filing of false returns. For example, respondent assisted clients to (1) create shell corporations to conceal their income; (2) open numerous bank accounts to receive income and to pay expenses; (3) file false returns that reported only the client's spouse's income known to have been reported by the spouse's employer; (4) have third parties report compensation to the IRS under an employer identification number (EIN) used by the client but not under the client's social security number, thereby making the client's income more difficult to trace; (5) stall IRS action by filing false individual income tax returns; (6) create sub-accounts at banks to make it difficult for the IRS to trace the clients' income; (7) funnel clients' salaries through companies owned by respondent, then pay the clients nominal amounts of income that did not have to be reported; (8) create phony documentation to fraudulently reflect that premature and taxable IRA distributions had been rolled-over into a qualified account at MMT; and (9) make false statements to state investigators and IRS agents.

Count one also included the detailed efforts that respondent undertook with regard to concealing his own personal

income and assets obtained from his law practice, his "tax" clients, his ownership in various business entities, and his investments. Respondent had not filed any individual federal income tax returns for himself or any of the corporations he owned since at least 1990. According to the indictment, because of respondent's extraordinary and complex efforts to conceal his income and disguise his expenses, "it was virtually impossible to determine the entire amount of his unreported income and his unpaid federal tax obligations."

The steps respondent took to conceal his own income and assets were similar to those employed in connection with concealing his clients' assets. Respondent deposited his income into numerous bank accounts over which he exercised control; commingled his funds and his clients' funds; made numerous transfers of funds among the myriad of accounts he controlled, using bank accounts in the names of nominee companies; made regular payments to his wife, using corporate credit cards for personal and non-business related purchases; applied for and received a credit card by using a fictitious name to purchase personal items; obtained title to real estate in the names of nominee entities; and failed to file or pay individual federal income tax returns.

One of respondent's clients, Basement Doctor Waterproofing Company (BDWC), was a successful waterproofing and home remodeling company based in Pennsylvania. In October 1999, respondent, Kenneth Klinger (count thirty-six), and Stephen Schulz (count thirty-eight), purchased sixty-nine percent of the company from Bertram Russell (count two). Respondent owned Chronos, Inc., which processed all of BDWC's credit card sales. Those funds were deposited into a bank account in Chronos' name and the funds were later transferred to BDWC. Respondent provided financial and accounting services to BDWC, including services relating to taxes, payroll, banking, and credit card processing, in return for fees and commissions.

Respondent caused BDWC to open a corporate bank account at Commerce Bank, using a fictitious identity, "Chris White," as the authorized signatory for the account. The account was designated as BDWC's payroll account. Another individual wrote wage checks from the payroll account to some of BDWC's employees, signing the checks with a signature stamp containing the name "Chris White."

Respondent directed the owners, officers, and employees of BDWC to disregard the internal revenue law, including the filing of federal individual and corporate income tax returns and paying income and wage taxes. At respondent's direction, BDWC

did not file a corporate income tax return from 1999 through 2003, even though it was required to do so.

Respondent solicited officers and employees of BDWC to join "the program," the purpose of which was to assist clients to conceal their personal income and assets and to evade personal income taxes. Respondent advised and assisted participants in "the program" by organizing a shell corporation, transferring taxable income into a bank account held in the name of the shell corporation, paying for personal expenses with the income deposited into the corporate account, and neither filing any tax returns for the shell corporation nor reporting the income to the IRS. The effect of respondent's system was to disguise salaries of participants in "the program" as corporate, not personal income. Therefore, the income was not directly associated with the employee's social security number, thereby making it difficult for the IRS to discover.

To avoid detection of "the program" participants, respondent prevented BDWC from filing IRS forms that reported wages and compensation paid by BDWC to participants in "the program," and directed BDWC to file false annual and quarterly payroll tax returns that failed to report wages and compensation paid by BDWC to participants in "the program." Respondent

designed BDWC's accounting practices and procedures and directed the misclassification of officers and employees of the company.

As a result of respondent's scheme, from 2000 to 2003, BDWC did not report to the IRS compensation to its employees totaling approximately $2,123,480.

The IRS conducted an undercover operation to investigate respondent's practices. During the operation, respondent took a two percent fee from the undercover agents to assist them to conceal more than $100,000 in cash. He did so by providing them with checks from corporations that he controlled. The checks then were deposited into bank accounts maintained in the names of nominee corporations that respondent had created, which were not directly traceable back to the undercover agents.

During the course of his dealings with IRS undercover agents, respondent described himself to them as an active member of the "anti-tax underground," and encouraged his "new clients" to organize their affairs so they, too, could stop filing federal income tax returns. Respondent advised the undercover agents about the most effective methods to conceal income and assets from the IRS, specifically explaining that the best approach was to hide income and assets "in plain sight."

Respondent informed one of the agents that he could conceal a significant amount of cash from the agent's business through MMT,

the Irish Bank that respondent owned. Respondent explained further that the agent could purchase a house with cash he had accumulated, but could make it appear to the IRS that the house was encumbered, by creating a sham mortgage with MMT as the purported lender and mortgage holder. Respondent informed the undercover agent that, during the time the phony mortgage was in place, the undercover agent could take IRS deductions based on mortgage interest the agent would pay to himself. Respondent further advised the agent that he could employ additional schemes to purchase a house with cash and could avoid the Currency Transaction Report (CTR) filings.[2] In furtherance of the scheme with the undercover agents, respondent created a trust agreement; established a trust bank account; transferred funds from one account to another; created a signature stamp for a fictitious individual signatory on the trust account; gave the undercover agent checks payable to a shell corporation in return for cash; and offered to pay them tax-free investments in one of his ventures.

Counts sixty-eight through seventy-two of the SI relate to respondent's conduct in connection with the two undercover IRS agents, posing as husband and wife. In each count, respondent

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[2] A CTR is a report that financial institutions must file with the U.S. Department of the Treasury for each deposit or withdrawal involving more than $10,000 in currency.

failed to report cash payments of over $10,000, in violation of 31 U.S.C. §§5331, 5331, and C.F.R. §103.30.

More specifically, respondent opened a trust account for the agents with a $20,000 cash payment from them. In November 2003, in return for the cash payment, respondent gave the agents a $19,600 check, written on the MMT account maintained at Madison Bank, in the name of Sovereign Trust. Respondent failed to file a CTR, in violation of 31 U.S.C. §§5331, 5331, and C.F.R. §103.30.

Thereafter, in December 2003, and March, May, and July 2004, respondent met with the agents, who, during each visit, gave him cash totaling approximately $20,000, $20,467, $20,874, and 20,009.64, respectively. In return, respondent gave the agents checks drawn on accounts respondent controlled for amounts slightly less than the cash he received from them (his fee). In none of the transactions did respondent file the required CTR. In furtherance of the scheme, the agents opened a bank account at the Madison bank in the name of Trynon Corporation to deposit the checks and transfer the funds.

In October 2004, search warrants were executed at respondent's law and business offices and his residence.

Kenneth Klinger, a participant in "the program," faced significant criminal tax issues as a result of his involvement

with respondent. Respondent told Klinger that he was not worried about the federal investigation against him. He stated, "[l]et them do all the work. Let them start up with their best case it will take them two years and they are going to say you made $2 million and we go no we didn't let me see what you got. This is wrong, this is wrong, we do this all the time." He described the ongoing criminal tax investigation as "a fight to the death. And our exit strategy is to serve up Stephen [Schulz]." He stated further to Klinger "I'm working on my new book, it's called Federal Tax Fraud, the User's Guide."

Count two of the SI focused on the conspiracy between respondent and Bertram Russell, a radiologist. Russell received substantial compensation for his work through a complex arrangement that respondent created to conceal Russell's income from the IRS. At least as early as 1996, respondent and Russell agreed that Russell would "drop out of the system." In other words, with respondent's assistance, Russell would undertake to eliminate the reporting by third parties, to the IRS, compensation paid to him and he would no longer report or pay taxes on his income.

Respondent assisted Russell in establishing an arrangement with a local health care provider whereby Russell's corporation, Pennsylvania Physicians, would be paid for his professional

services. From 1998 through 2006, using a number of shell corporations and various bank accounts that respondent controlled, Russell received almost $3 million for his medical services, but did not report any of that income or pay any federal income taxes (personal or corporate). Moreover, an entity controlled by respondent issued checks for Russell's personal expenses, such as country club membership dues and expenses, cricket club dues and related expenses, and private school tuition and related expenses for Russell's children. Russell's earnings for the years 1999 through 2006, resulted in an approximate federal income tax due of approximately $942,382.

After the IRS initiated audit and collection proceedings against Russell for tax years 1998 through 2000, respondent assisted him in filing false income tax returns for each of those years. The returns did not include any of Russell's income, but, rather, only wages received and reported to the IRS by Russell's wife's employer.

Count seventeen relates to the conspiracy between respondent and surgeon John P. Leichner, M.D. In furtherance of their scheme, and with respondent's assistance, Leichner, formed various corporations and opened various bank accounts to conceal Leichner's income and assets, to receive income from his medical practice, and to pay personal and medical practice expenses.

During the years 1999 through 2006, Leichner earned approximately $1,270,000 in fees from his medical practice and from a withdrawal from an Individual Retirement Account (IRA).

With respondent's assistance, Leichner arranged for third parties to report any compensation paid for his medical services to the IRS under an EIN number of one of his corporations, instead of under his social security number.

Leichner and respondent tried to forestall any assessment and levy action by the IRS pertaining to Leichner's 1999 individual income tax year by creating two sub-accounts at a bank controlled by respondent and by preparing, but not filing, a false 1999 individual income tax return, which failed to disclose any of the "medical" income Leichner had earned. The creation of the bank accounts to receive and conceal Leichner's unreported and untaxed income and assets made it difficult for the IRS to trace Leichner's income.

With respondent's assistance, Leichner also created two trusts to serve as entities that did not file tax returns, but that assets that were not associated with Leichner's social security number and, thus, concealed unreported and untaxed income. The trusts held, among other things, five rental or vacation properties that Leichner purchased in North Carolina,

totaling approximately $2,500,000, luxury cars, and expensive watches.

In furtherance of the Leichner scheme, respondent assisted him in creating and incorporating Pennsylvania Physicians, P.C.; opening bank accounts; and transferring $100,000 in untaxed funds from an IRA to a bank that respondent controlled.

In September 2001, respondent replied to an IRS 1999 individual income tax assessment for Leichner, falsely stating that none of the transactions identified by the IRS represented Leichner's gross income, and requesting the IRS to explain how it arrived at its assessment.

Leichner did not file any federal income tax returns or pay federal income taxes for the years 1999 through 2005.

Count twenty-six relates to respondent's conspiracy with Richard J. Frase. Respondent and Frase created GT Technical Services, Inc. (GTTS), a shell corporation, to receive Frase's income from TAC Automotive Group (TAC).

Respondent assisted Frase in concealing his income from the IRS by depositing Frase's income into accounts respondent controlled and then into an account in the name of GTTS, at Wachovia Bank, from which Frase paid his personal expenses. Each year, one of respondent's companies provided Frase with a W-2 form that falsely reported Frase's income.

In response to IRS inquiries, respondent assisted Frase in filing false individual income tax returns for the years 1998 through 2000, which substantially underreported Frase's income. During the years 1998 through 2006, Frase received more than $1.5 million in income that he did not report to the IRS, which resulted in taxes due and owing of approximately $429,702.

Count thirty-six involved the conspiracy between respondent and Kenneth W. Klinger. Klinger was part owner and manager of BDWC and was responsible for overseeing the company's operations, while respondent controlled the company's finances, legal affairs, and tax filings. Stephen Schulz, also a part owner, managed BDWC's sales efforts.

Respondent and Klinger created and incorporated K&D Industries, Inc. K&D's sole function was to serve as a vehicle through which Klinger's personal income and expenses from BDWC would flow. K&D's mailing address was Klinger's residence, and one of respondent's companies was the registered agent for K&D.

From 1999 through 2003, Klinger and his spouse received approximately $1,385,542 from BDWC as salary, other income from BDWC, and income from other sources. To evade the payment of personal income taxes, respondent directed Klinger to funnel his salary and related BDWC income into the K&D bank account through bank accounts that respondent controlled.

From approximately 1999 through March 2004, respondent failed to issue (and caused BDWC to fail to issue) W-2 forms to Klinger for his BDWC compensation, and failed to file W-2 or W-3 forms with the IRS regarding such compensation. Respondent also had BDWC omit Klinger's compensation from BDWC's quarterly payroll tax returns (Forms 941), and annual payroll tax returns (Forms 940) that were filed with the IRS.

From approximately 1999 through April 2004, Klinger did not file or report income he received from BDWC and paid none of the approximately $393,067 in federal income taxes that he owed.

Count forty related to respondent's salaried employee, Michael S. Klein, Esq., who also operated a small, separate legal practice.[3]

Beginning in or about 1995, respondent and Klein agreed that respondent would no longer withhold federal employment and other taxes from Klein's salary. In October 1995, respondent and Klein created and incorporated Michael S. Klein, P.C., and, in July 1998, Klein opened a bank account in the name of Michael S. Klein, P.C. In August 2000, respondent and Klein created and incorporated, in Delaware, Rescot, Ltd., a shell company that

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[3] Klein, a licensed New Jersey attorney, was respondent's co-defendant. He received a prospective three-year suspension for his participation in respondent's tax fraud scheme. In re Klein, 209 N.J. 234 (2012).

had no business operations. They also opened a bank account in the corporation's name. Both were created to conceal Klein's income. Klein used the corporate bank account to deposit his salary and other income and to pay personal expenses.

Respondent paid Klein's salary checks from a variety of unrelated business accounts that respondent controlled to conceal Klein's sources of income.

For the years 1995 through 2003, Klein failed to file, report, or pay any individual federal income taxes, amounting to approximately $74,210.

Respondent and William K. Acosta were charged with conspiracy in count forty-five. Count forty-seven charged respondent with preparing a fraudulent tax return on Acosta's behalf, for the calendar year 1999.

During 1998 to 2003, Acosta was a partial owner of several businesses and partnerships. For tax years 1998 through 2003, respondent assisted Acosta in concealing his income and avoiding paying taxes. During those years, although Acosta received approximately $684,534 in salary and other income from the various companies he owned and from taxable IRA distributions, he paid no federal income taxes.

Respondent prepared Acosta's federal income tax returns for tax years 1998 and 1999, but falsely reported that Acosta owed

no taxes for those years. For years 1998 through 2003, Acosta paid none of the approximately $167,680 of the federal income taxes he owed.

Respondent assisted Acosta in concealing his income from the IRS by (1) using bank accounts for a dormant company; (2) creating fraudulent, backdated documents, submitted to the IRS, showing that premature distributions Acosta took from an IRA were rolled over into a legitimate IRA account with MMT (respondent's shell company that he claimed was authorized to receive tax exempt IRA rollovers); and (3) preparing false federal income tax returns for 1998 and 1999 on Acosta's behalf.

Count seventy-five described the assistance respondent gave his client, Wayne D. Bozeman, to avoid paying approximately $137,635 in personal income taxes for the years 2000 through 2006, by failing to report his income for those years.[4]

Bozeman was the principal owner and operator of Keystone Game Supply, Inc. In October 1999, respondent helped Bozeman use Advanced Game Concepts, a defunct corporation, to evade the assessment and payment of personal income taxes. Respondent orchestrated Keystone's payment of Bozeman's salary directly to

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[4] Bozeman, who was admitted to the New Jersey bar in 2006, also received a prospective three-year suspension for his role in respondent's scheme. In re Bozeman, 217 N.J. 613 (2014).

a bank account registered to Advanced Game Concepts. Bozeman used the funds from that bank account to pay his personal expenses. Bozeman did not report his income from Keystone on his individual tax returns and never filed corporate returns for Advanced Game Concept. Both respondent and Bozeman made false statements to IRS investigators and to the Commonwealth of Pennsylvania that the deposits made by Keystone did not represent Bozeman's compensation.

Counts eighty-eight through ninety-two charged respondent with willfully aiding, assisting, counseling, and advising Bozeman in the preparation and filing of joint individual tax returns (Form 1040). The returns were false and fraudulent, in that they underreported Bozeman's and his spouse's joint taxable income. Counts eighty-eight through ninety referred to years 2002 to 2004, respectively, when Bozeman's and his spouse's joint taxable income was reported as $0; count ninety-one referred to 2005, when the joint taxable income was reported as $4,004; and count ninety-two referred to 2006, when the joint taxable income was reported as $25,544. Respondent knew the returns were false because they did not report Bozeman's substantial additional income.

Counts forty-nine, fifty-four, and fifty-nine charged respondent with falsely reporting gross payroll amounts. In

2001, the approximate total amount of unreported wages was $1,772,292.44; in 2002, it was $2,453,902.34; and in 2003, it was $4,924,553.17.

Count sixty related to respondent's preparation of a false Form 1096 on behalf of Basement Doctor, Inc., for 1998. Form 1096 had attached to it an amended Form 1099, which reported a corrected gross income of $0, even though the company had actually received substantial income.

Counts sixty-five through sixty-seven charged respondent with failure to file income tax returns in years 2001 through 2003.

As noted above, respondent was resentenced on October 24, 2013, before the Honorable J. Curtis Joyner, U.S.D.C. At the time of sentencing, respondent had been incarcerated for approximately five years. At the resentencing, respondent stated that, at the time of his conduct, he did not believe that what he was doing was wrong, but understood that he had "made a lot of mistakes and for that reason [had been punished]."

Judge Joyner found that respondent's "sentencing rehabilitation [was] very limited, if at all" and that respondent was in the "identical" frame of mind that he had been when previously before the court for sentencing. Judge Joyner did not find that respondent was a changed individual or that he

had accepted responsibility for his wrongdoing; rather he found that respondent's conduct had ruined the lives of the other participants in the conspiracy against the IRS.

The judge underscored the significance of federal taxes to support the important operations of the government. The judge stated:

> And for you to think that you are above the ability to pay taxes to the government or that you can help others in a conspiracy not to pay taxes to the government is tantamount to saying that the operation of our government should not operate on your back, you should not be responsible to pay your fair share. And this court finds that reprehensible, as an attorney, an officer of the court to advise someone in ways to commit crimes, to avoid paying their taxes, their lawful taxes, we find requires this court to impose the sentence that I am going to impose upon you again today.
>
> [T46.][5]

Judge Joyner emphasized the significant period over which respondent's scheme to defraud the government extended. The judge, thus, imposed a sentence to promote respondent's "respect for the law," to serve as a deterrent to respondent and others, and to protect the public from further crimes by respondent. The judge pointed out that a lesser sentence would "depreciate the seriousness" of respondent's offenses.

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[5] T refers to the October 24, 2013 resentencing transcript.

The OAE asserts that, ordinarily, two-year suspensions have been imposed in standard tax evasion cases, citing In re Rakov, 155 N.J. 593 (1998) (two-year retroactive suspension for attempted income tax evasion, stemming from personal loans made by the attorney between 1988 and 1992 and the attorney's failure to report the interest paid on the loans on federal tax returns); In re Batalla, 142 N.J. 616 (1995) (two-year retroactive suspension for evading $39,066 in income taxes by underreporting earned income for two years); and In re Nedick, 122 N.J. 96 (1991) (two-year retroactive suspension for failing to include $7,500 in taxable income on a tax return).

The OAE maintained that, where more egregious circumstances existed, attorneys have been disbarred. See, e.g., In re Cardone, 175 N.J. 155 (2003) (attorney filed tax returns for years 1987 through 1991 but failed to pay $77,706 to the IRS; instead, he took steps to prevent the IRS from collecting the outstanding taxes); In re Bok, 163 N.J. 499 (2000) (attorney was convicted of income tax evasion and filing false corporate and personal tax returns; he under-reported $200,000 on his personal tax return and $4,000,000 on his corporate tax return, causing a tax revenue loss of nearly $1,500,000); and In re Braun, 149 N.J. 414 (1997) (attorney pleaded guilty to one count of income tax evasion; over a five year period, he used various means to

conceal income and to evade the payment of $116,310 in federal income taxes, including opening eight bank accounts with one account opened in Romania).

The OAE recommended respondent's disbarment, viewing his conduct to be more akin to the above-mentioned attorneys who were disbarred, and underscoring the fact that respondent was the creator and driving force behind the conspiracy, and that his conduct was significantly more egregious than his co-conspirators, who received prospective three-year suspensions.

We determine to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction of violations of the tax laws constitutes a violation of RPC 8.4(b) and RPC 8.4(c). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction 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 . . . prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

Violations of federal tax law are serious ethics breaches. In re Queenan, 61 N.J. 578, 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, 116-17 (1965).

While there are no known cases where the attorney's conduct was as egregious as this respondent's, the Braun case provides a starting point for purposes of comparison. In Braun, the attorney pleaded guilty to one count of an indictment for income tax evasion, but stipulated that he committed the other offenses charged in the remaining counts of the indictment. In the Matter of Robert A. Braun, DRB 96-173 (1996) (slip op. at 2). Braun was sentenced to one-year imprisonment, three years supervised release, and ordered to pay a $15,000 fine.

Braun and his mother maintained a joint bank account into which she deposited large sums of cash at Braun's direction. He also deposited $65,000 into their joint account, of which she was unaware. She also was unaware that Braun had purchased a condominium in her name, which he later transferred to himself and his wife for $1.

Braun falsely represented to the IRS that he maintained three bank accounts, when in fact he maintained eight accounts,

in order to conceal his income. When he attempted to cash two checks totaling $11,000, and was told that a CTR would have to be filed, the attorney cashed only one of the checks and later returned to cash the other one. When the bank realized what Braun had done, it contacted him to obtain the necessary information for the CTR. Braun then attempted to return one of the checks.

In addition, Braun failed to file tax returns between 1987 and 1990, but filed forms to obtain extensions, enclosing partial payments of taxes due. The tax returns substantially understated Braun's actual tax liability.

We determined that Braun's actions evidenced a conspiracy that extended over a long period of time and that was motivated by personal greed. In recommending Braun's disbarment, we pointed to his pattern of misconduct, specifically his numerous bank accounts and repeated filings for extensions. We cited In re Goldberg, 142 N.J. 557, 567 (1995), in which the Court held that "[w]e have emphasized that when a criminal conspiracy evidences 'continuing and prolonged rather than episodic, involvement in crime,' is 'motivated by personal greed,' and involved the use of the lawyer's skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment.' [citations omitted]. We found that

Braun's behavior established a pattern of criminal conspiracy to evade taxes, warranting his disbarment. Id. at 5.

Here, respondent's co-defendants played significantly lesser roles in his tax evasion conspiracy. Michael S. Klein pleaded guilty to charges of tax evasion and criminal conspiracy to defraud the United States. During the plea hearing, Klein admitted that respondent did not withhold any taxes from his salary. Klein deposited the funds into a bank account for his own professional corporation, which he created at respondent's suggestion. He knew that, by doing so, he was avoiding his duty to pay taxes. In the Matter of Michael Scott Klein, DRB 11-137 (November 1, 2011) (slip op. at 3). At his sentencing, Klein expressed sincere remorse for his conduct. Id. at 4-5.

The government urged a significant downward departure from the sentencing guidelines, based on the substantial assistance that Klein had provided to the government in the investigation and prosecution of other individuals involved in respondent's conspiracy. The court sentenced Klein to a five-year term of probation for each count, to run concurrently, a nine-month period of house arrest, and ordered payment of restitution in the amount of $75,446. Id. at 5.

In imposing a three-year suspension, we viewed, as an aggravating factor, the fact that Klein's tax evasion continued for

approximately eight years and that he provided assistance to respondent's clients in similar conduct. Id. 14. Klein had obtained records from the IRS and prepared false tax returns for those clients. Klein was not charged with conduct relating to the other clients, however. We noted that "[i]ndividuals who came to the Bagdis firm for sound legal counsel were instead advised to violate the tax laws." Id. at 15.

Wayne D. Bozeman, too, received a three-year suspension. Bozeman was charged with one count of conspiracy to defraud the United States, six counts of income tax evasion, and six counts of subscribing false tax returns. While he initially entered a not guilty plea, two weeks before trial, he pleaded guilty to a single charge of conspiracy to defraud the United States. In the Matter of Wayne D. Bozeman, DRB 13-222 (December 19, 2013) (slip op. at 3).

At the plea proceedings, Bozeman admitted that, with respondent's help, he formed a company where all of his funds were transferred and, from 1999 through 2007, he did not pay personal income taxes. Bozeman received about $830,369 in unreported income.

As part of the plea agreement, the parties stipulated that the tax loss caused by Bozeman's tax evasion totaled approximately $137,635. Id. at 6. Klein and Bozeman were sentenced by the same judge. The sentencing judge did not find that Bozeman was remorseful for his conduct. He only sought to plead guilty when he

saw that "the writing was on the wall, and it was clear he was going down in a big pile of flames." In addition, the judge found aggravating factors. Bozeman had not assisted federal authorities in their investigation of respondent; he waited until two weeks before his trial to "come clean;" and he engaged in repeated criminal acts with every paycheck he received for years on end - while attending law school, during an internship in the Camden County Prosecutor's Office, while serving a judicial clerkship, and, finally, as a newly licensed, practicing attorney. Id. at 17. The judge found that Bozeman only "regrets that he faces what he faces today." He was sentenced to twenty-two months imprisonment, three years supervised released, and payment of restitution in the amount of $137,635. Id. at 4 and 8.

We found that Bozeman entered the practice of law with unclean hands and that the total tax he evaded was twice that of Klein's, who had significant mitigation in his favor. Bozeman received a prospective three-year suspension.

A three-year suspension, although retroactive, was also imposed in In re Cooper, 139 N.J. 260 (1995). There, the attorney pleaded guilty to bank fraud, conspiracy to defraud the United States and the IRS, and aiding and abetting income tax evasion. Cooper was a principal and employee of an art supply business. He, his brother, and his sister-in-law set up a family pension plan for

the corporation. For several years, Cooper and his brother funded the pension plan through legitimate deposits and corresponding deductions on the corporation's federal income tax returns. In the Matter of Arthur B. Cooper, DRB 94-083 (October 4, 1994) (slip op. at 3).

Thereafter, Cooper, his brother, and his sister-in-law conspired to skim and divert cash receipts from the company and used a variety of means to conceal their conduct from the IRS. As part of their tax evasion scheme, Cooper created pension plan accounts in the names of fictitious individuals; diverted receipts into personal bank accounts; converted cash into traveler's checks; purchased and improved real property; and prepared and filed false income tax returns. For a three-year period, Cooper and his brother also prepared and filed false corporate income tax returns on behalf of the company, which failed to report substantial income. Cooper and his sister-in-law prepared and filed false individual tax returns that failed to report significant income and that substantially understated the taxes due to the IRS. Cooper also helped his brother fraudulently obtain a loan. Id. at 4.

Cooper was sentenced to an eight-month term of imprisonment, followed by three years of supervised release, and a $20,000 fine.

In assessing the appropriate discipline to impose, we considered mitigating factors: Cooper's conduct was not undertaken

for his own personal gain, but rather for the benefit of his brother and sister-in-law; prior thereto, he had an unblemished record; he cooperated fully with the criminal justice system; he expressed contrition and regret for his actions; and most significantly, he had a history of personal and family mental problems. Id. at 9-10.

Respondent's co-conspirators' misconduct, which resulted in three-year suspensions, paled in comparison to respondent's. Here, respondent was the instigator of the long-running tax evasion conspiracy. Not only did he evade his own taxes, but he also lured others into his web of illegal conduct — lawyers, doctors, and small business owners, and ruined the lives of other participants in his scheme. He used aliases and false social security and EIN numbers, created shell corporations, funneled money into and out of bank accounts created for nominee entities, paid bills from the entities' bank accounts, and used his scam to hinder the IRS's ability to trace the funds and their sources. As one judge remarked, respondent's strategy was to hide his and his clients' money in plain sight.

Respondent showed no remorse at either sentencing. In fact, he did not admit any wrongdoing at all, only that he "made mistakes." Respondent has presented no mitigation to dissuade us from our

conclusion that respondent's character is unsalvageable. We, therefore, recommend his disbarment.

Vice-Chair Baugh 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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of B. Jay Bagdis
Docket No. DRB 16-069

Argued: July 21, 2016

Decided: December 1, 2016

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8		1

Ellen A. Brodsky
Chief Counsel