

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-321
District Docket No. XIV-2016-0553E

IN THE MATTER OF
STUART I. RICH
AN ATTORNEY AT LAW

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Corrected Decision

Argued: November 16, 2017

Decided: February 26, 2018

Eugene Racz appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper service.

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) following respondent's guilty plea in the New York Supreme Court to one count of fifth-degree criminal tax fraud, in violation of 20 N.Y.C.R.R. §1802, a Class A misdemeanor under §70.14 of the New York Penal Code. The OAE requests the imposition of a two-year suspension for respondent's violation of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as

a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons stated below, we determine to grant the motion for final discipline and impose a two-year prospective suspension on respondent for his misconduct.

Respondent was admitted to the New Jersey bar in 1991. In 1992, he was admitted to the New York and Pennsylvania bars. It appears that respondent does not practice law in New Jersey.

Respondent has no disciplinary history in New Jersey. However, the Court entered an Order, effective August 28, 2017, declaring respondent ineligible to practice, based on his failure to pay his annual registration fee to the New Jersey Lawyers' Fund for Client Protection.

On May 25, 2016, a criminal complaint was filed against respondent in the Criminal Court of the City of New York, County of New York, State of New York, charging him with four counts of second-degree criminal tax fraud, in violation of New York Tax Law §1805, and four counts of fifth-degree criminal tax fraud, in violation of New York Tax Law §1802. The complaint alleged that respondent had not filed state income tax returns for the years 2008 through 2013, despite earned partnership income ranging from \$583,342 to \$852,422.

On an unidentified date in 2016, upon respondent's waiver of indictment, the district attorney for the County of New York filed

a nine-count information against respondent, charging him with three counts of second-degree criminal tax fraud, in violation of 20 N.Y.C.R.R. §1805, based on his willful failure to file a New York State resident income tax return for the years 2010 through 2012; one count of fifth-degree criminal tax fraud, in violation of 20 N.Y.C.R.R. §1805, based on his willful failure to file a New York State resident income tax return for the year 2013; and four counts of repeated failure to file personal income and earnings taxes, in violation of 20 N.Y.C.R.R. §1808(a), based on his failure to file a tax return for three consecutive years and corresponding unpaid tax liability. The repeated-failure-to-file charges covered the following time periods: January 1, 2009 to December 31, 2011; January 1, 2010 to December 31, 2012; January 1, 2011 to December 2013; and January 1, 2012 to December 31, 2014.

On June 2, 2016, respondent pleaded guilty to the single count of fifth-degree criminal tax fraud. He testified that he willfully failed to file a New York State personal income tax return for the years 2008 through 2013 and that, for each of those years, he had a tax liability of more than \$50,000. He admitted that, in doing so, he intentionally evaded paying taxes to the State of New York for each of those years.

Respondent agreed to pay nearly \$1.2 million in back taxes, including penalties and interest. He was sentenced to a one-year conditional discharge, which was to expire on June 1, 2017.

On an unidentified date, respondent notified the OAE of his conviction.

* * *

Following a review of the record, we determine to grant the OAE's motion. A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's conviction establishes a violation of RPC 8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." The facts underlying respondent's conviction also establish that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish

the attorney but to preserve the confidence of the public in the bar." Principato, supra, 139 N.J. at 460. Fashioning the appropriate penalty involves a consideration of many 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." In re Lunetta, 118 N.J. 443, 445-46 (1989).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

A violation of either state or federal tax law is a serious ethics breach. In re Queenan, 61 N.J. 578, 580 (1972), and In re Duthie, 121 N.J. 545 (1990). "[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).

Cases involving an attorney's attempted or actual income tax evasion typically have resulted in two-year suspensions. See, e.g., In re Rubin, 227 N.J. 229 (2016) (two-year suspension imposed on attorney who pleaded guilty to one count of tax evasion, under New York law, arising out of his failure to remit the appropriate taxes for a three-year period in amounts totaling \$26,742); In re Lewis, 214 N.J. 515 (2013) (two-year suspension imposed on attorney convicted of one count of knowingly and willfully subscribing to a false federal income tax return, in contravention of 26 U.S.C. §7206(1); the attorney failed to report more than \$950,000 in income derived from his law practice from 2003 through 2005 and for which he owed in excess of \$300,000 in federal taxes); and In re Foglia, 207 N.J. 62 (2011) (two-year suspension imposed on attorney who pleaded guilty to one count of willfully attempting to evade the payment of federal income tax, a violation of 26 U.S.C. §7201, and one count of knowingly or willfully making "any materially false, fictitious or fraudulent statement or representation," a violation of 18 U.S.C. §1001).¹ But see, In re

¹ For additional two-year suspension cases, see In re Grasso, 220 N.J. 105 (2014); In re Orlovsky, 220 N.J. 106 (2014); In re Weiner, 204 N.J. 589 (2011); In re McManus, 179 N.J. 415 (2004); In re Mischel, 166 N.J. 219 (2001); In re Rakov, 155 N.J. 593 (1998); In re Batalla, 142 N.J. 616 (1995); In re Nedick, 122 N.J. 96

Kleinfield, 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); In re Landi, 65 N.J. 322 (1974) (one-year suspension for filing a false and fraudulent joint income tax return for one calendar year; the attorney was found guilty of income tax evasion; twenty-nine-year career without a disciplinary record considered in mitigation, along with other unspecified factors); In re D'Andrea, 186 N.J. 586 (2006) (eighteen-month suspension imposed on attorney who pleaded guilty to willfully subscribing to a false federal income tax return; the attorney was sentenced to one year of probation, including six months of house arrest, and fifty hours of community service; the attorney also was ordered to pay a \$10,000 fine and \$34,578 in restitution to the Internal Revenue Service (IRS); mitigating factors were the attorney's unblemished disciplinary history, his genuine remorse, the deficiencies in his law office's accounting system, and the passage of ten years since he had filed the return); In re Kirnan, 181 N.J. 337 (2004) (eighteen-month retroactive suspension for filing a joint individual tax return that deliberately did not report the receipt of income from the attorney's law practice, resulting in the

(1991); In re Tuman, 74 N.J. 143 (1977); In re Becker, 69 N.J. 118 (1976); and In re Gurnik, supra, 45 N.J. 115.

nonpayment of \$31,000 for two tax years; the attorney's cooperation with the criminal authorities was considered in mitigation); In re Gottesman, 222 N.J. 28 (2015) (three-year retroactive suspension for attorney guilty of tax evasion and willful failure to remit payroll taxes that he withheld from his employees' wages; he used his trust account to conceal the true extent of his income; he was sentenced to concurrent six-month terms of imprisonment on both counts and three years of supervised release; prior censure); In re Bozeman, 217 N.J. 613 (2014) (three-year suspension imposed on attorney who pleaded guilty to one count of conspiracy to defraud the United States, in violation of 18 U.S.C. §371; the conspiracy involved his evasion of federal income tax payments by filing false tax returns for the years 2000 through 2007; he was required to make restitution of more than \$137,000; the attorney had no disciplinary record, except for the temporary suspension imposed following his guilty plea); In re Klein, 209 N.J. 234 (2012) (three-year suspension imposed on attorney who pleaded guilty to one count of tax evasion (26 U.S.C. §7201), and one count of criminal conspiracy to defraud the United States (18 U.S.C. §371); in aggravation, we considered that the attorney had failed to report his indictment to the OAE and had assisted other clients in similar conduct); and In re Gillespie, 124 N.J. 81 (1991) (attorney received a retroactive three-year suspension

after pleading guilty to willfully aiding and assisting in the presentation of false corporate tax returns for a non-client corporation, J.P. Sasso, Inc.; the attorney assisted Joseph Sasso and others in diverting nearly \$80,000 in corporate funds during a period in excess of three months; the attorney did so by depositing corporate checks in his personal account, issuing eight personal checks, and then giving cash to Sasso; the eight checks were written in amounts no greater than \$10,000 in order to avoid federal reporting requirements; numerous compelling mitigating factors considered).

When the attorney's conduct is particularly egregious, disbarment may result. See, e.g., In re Baqdis, 228 N.J. 1 (2017) (in addition to his conviction of eleven counts of aiding and assisting the preparation of false tax returns, in violation of 26 U.S.C. §7206(2), and three counts of failure to file tax returns or supply information, in violation of 26 U.S.C. §7203, attorney was convicted of one count of attempting to obstruct the administration of the Internal Revenue Code, in violation of 26 U.S.C. §7212(a), seven counts of conspiracy to defraud the United States, in violation of 18 U.S.C. §371, and five counts of failure to file currency transaction reports by business, in violation of 31 U.S.C. §5322); In re Cardone, 175 N.J. 155 (2003) (attorney pleaded guilty to attempted income tax evasion, in violation of

26 U.S.C.A. §7201; attorney had filed income tax returns acknowledging taxes owed, but thereafter took various steps designed to prevent the IRS from collecting the taxes; previous three-year suspension for engaging in fraudulent conduct in three separate business transactions with a client); and In re Braun, 149 N.J. 414 (1997) (although attorney pleaded guilty to one count of income tax evasion, in violation of 26 U.S.C. §7201, resulting in a total tax loss of \$116,310 for 1987-1991, he also stipulated to additional offenses; disbarment was warranted because his actions were motivated by personal greed and involved a criminal conspiracy to evade taxes extending over a long period of time; he had received a prior three-month suspension for conviction of recklessly endangering another person, in violation of 18 Pa.C.S.A. §2705, resulting from the installation of a gas meter in a reversed position in an apartment building owned by him to allow the gas to flow through without registering; and he failed to report his federal conviction to the OAE).

In this case, a two-year suspension is appropriate. A lesser suspension would be inadequate, given the number of tax years involved and the amount of restitution. See, e.g., In re Landi, supra, 65 N.J. 322 (one-year suspension; single tax return for one calendar year), and In re D'Andrea, supra, 186 N.J. 586 (eighteen-month suspension; single tax return; \$34,578 in restitution).

Disbarment would be excessive because the record lacks evidence that respondent engaged in criminal conduct above and beyond "simple" tax fraud. See, e.g., In re Baqdis, supra, 228 N.J. 1 (in addition to his income tax violations, the attorney was convicted of attempting to obstruct the administration of the Internal Revenue Code, conspiracy to defraud the United States, and failure to file currency transaction reports).

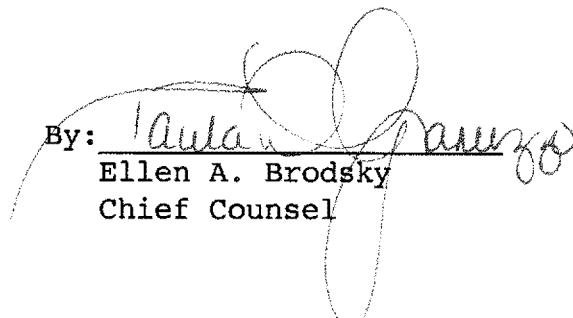
Respondent's conduct is similar to that of the attorneys in In re Rubin, supra, 227 N.J. 229 (two years; failure to remit the appropriate taxes for a three-year period in amounts totaling \$26,742), and In re Lewis, supra, 214 N.J. 515 (two years; failure to report for a three-year period; outstanding tax liability exceeded \$300,000). We recognize that respondent failed to file a return for six calendar years, and was required to pay \$1.2 million in restitution, penalties, and interest. Yet, his conduct was far less egregious than that of the attorneys who have received three-year suspensions. Unlike respondent, the attorneys who received three-year suspensions also had attempted to conceal income (Gottesman), engaged in a conspiracy (Bozeman), had aggravating factors (Klein), and diverted funds for a third party (Gillespie).

For these reasons, we determine to impose a two-year suspension on respondent for his conviction of criminal tax fraud in the State of New York.

Member Gallipoli voted to recommend respondent's disbarment.
Vice-Chair Baugh and Member Zmirich 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

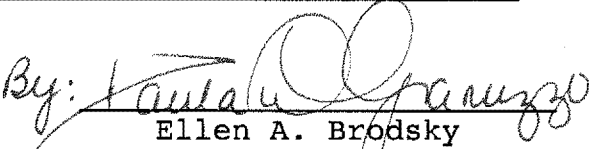
In the Matter of Stuart I. Rich
Docket No. DRB 17-321

Argued: November 16, 2017

Decided: February 26, 2018

Disposition: Two-year Suspension

Members	Two-year Suspension	Disbar	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich			X
Total:	6	1	2

By: 
Ellen A. Brodsky
Chief Counsel