SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-082
District Docket No. XIV-2021-0376E

In the Matter of Conrad J. Benedetto
An Attorney at Law

Argued
June 20, 2024

Decided
September 18, 2024

Hilliary K. Horton appeared on behalf of the
Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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Introduction

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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and convictions, in the United States District Court for the Eastern District of Pennsylvania (the EDPA), for three counts of failing to file federal income tax returns, in violation of 26 U.S.C. § 7203, and one count of failing to remit payroll taxes, in violation of 26 U.S.C. § 2702. The OAE asserted that these offenses constitute violations of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to grant the motion for final discipline and recommend to the Court that respondent be disbarred.

Ethics History

Respondent earned admission to the New Jersey bar in 1983 and to the Pennsylvania bar in 1981. During the relevant timeframe, he maintained a

practice of law in Philadelphia, Pennsylvania. He has prior discipline in both New Jersey and Pennsylvania.

Benedetto I

On September 2, 1988, respondent received a private reprimand (now, an admonition) for violating former RPC 5.5(a) (failing to maintain a bona fide New Jersey office). In the Matter of Conrad J. Benedetto, DRB 88-202 (Sept. 2, 1988) (Benedetto I).

Benedetto II

On May 9, 2001, respondent received a reprimand for practicing law in South Carolina without a license, in violation of RPC 5.5(a)(1) (engaging in the unauthorized practice of law). In re Benedetto, 167 N.J. 280 (2001) (Benedetto II). In that matter, in 1997, respondent, via his Pennsylvania and New Jersey based law offices, improperly represented several clients in connection with their personal injury matters in Anderson County, South Carolina. In the Matter of Conrad J. Benedetto, DRB 00-022 (Dec. 20, 2000) at 2. For his misconduct, respondent pleaded guilty, in a South Carolina state court, to misdemeanor unauthorized practice of law, in violation of S.C. Code Ann. § 40-5-320, and received a $1,000 fine. Id. at 1-2. In determining that a reprimand was the

appropriate quantum of discipline, we weighed, in mitigation, the lack of any harm to respondent's South Carolina clients. Id. at 4.

Benedetto III

On March 24, 2023, respondent received a second reprimand for failing to adequately supervise his associate's handling of an estate matter. In re Benedetto, __ N.J. __ (2023), 2023 N.J. LEXIS 335 (Benedetto III). Specifically, in August 2014, the Camden County Surrogate's Court informed respondent that his associate's complaint for estate administration on behalf of a client needed to identify and provide notice to the client's siblings, who had equal standing to administer the client's mother's estate. In the Matter of Conrad J. Benedetto, DRB 21-220 (March 24, 2022) at 17. However, rather than convey that information to his associate, respondent merely told his office manager to inform his associate to "check the [R]ules." Ibid. Thereafter, when the associate submitted the proposed complaint to respondent for review, respondent failed to ensure that the client's siblings (and their children) were properly identified and ignored the fact that the client was not, in fact, the only competent heir, as the complaint falsely alleged. Id. at 18. Following the associate's filing of the complaint, the Surrogate's Court notified the associate that he had omitted the client's siblings from that document. Ibid. When the associate sought

respondent's advice regarding these issues, respondent, inexplicably, dismissed the Surrogate's Court's concerns and directed the associate to instruct the Surrogate's Court to accept the complaint as submitted. Id. at 21.

In determining that a reprimand was the appropriate quantum of discipline, we weighed, in mitigation, the passage of almost eight years since respondent's misconduct had concluded. Id. at 29. However, in aggravation, we noted that respondent failed to demonstrate any remorse or appreciate his role as the supervising attorney to substantively review his associate's work to ensure that it was free of deception. Id. at 30-31. The Court agreed with our recommended discipline.

New Jersey Temporary Suspension and Pennsylvania Discipline

Effective February 1, 2023, the Court temporarily suspended respondent in connection with his misconduct underlying this matter.

On February 14, 2024, the Supreme Court of Pennsylvania suspended respondent for five years, on consent, retroactive to his May 22, 2023 temporary suspension in that jurisdiction, in connection with his criminal conduct underlying this matter. Office of Disciplinary Counsel v. Benedetto, 2024 Pa. LEXIS 223 (Feb. 14, 2024).

We now turn to the matter currently before us.

Facts

Underreporting of Gross Receipts for Tax Years 2013 Through 2015

As the sole owner of his law practice, respondent had an obligation to timely and accurately report his firm's gross receipts and expenses on his personal federal income tax returns. However, for the 2013 tax year, respondent underreported his firm's gross receipts to the Internal Revenue Service (the IRS) by approximately $225,800.40. Thereafter, for the 2014 tax year, respondent underreported his firm's gross receipts to the IRS by approximately $51,881.95, while overstating his firm's expenses by approximately $172,382.51. Additionally, for the 2015 tax year, respondent underreported his firm's gross receipts by approximately $742,671.80 and understated his firm's expenses by $278,048.35.

Respondent's failure to truthfully report his firm's gross receipts for the 2013 through 2015 tax years stemmed from his failure to provide his accountant with a "truthful and accurate accounting" of his firm's "escrow bank account" over which he "maintained sole responsibility." Based on his underreporting of his firm's gross receipts for the 2013 through 2015 tax years, along with his overstating of his firm's expenses for the 2014 tax year, respondent caused a $403,923 tax loss to the IRS.

Failing to File Federal Tax Returns for Tax Years 2016 Through 2018

During each of the 2016, 2017, and 2018 tax years, respondent earned more than $1 million in legal fees. During that same timeframe, he earned more than $8 million in total gross receipts. Despite his significant earnings, respondent willfully failed to file federal income tax returns for the 2016, 2017, and 2018 tax years, resulting in a $229,266 tax loss to the IRS.

Failing to Remit Payroll Taxes for the 2017 Tax Year

Respondent had a duty to withhold taxes from his employees' paychecks, including federal income tax and Social Security and Medicare taxes. He also was required to remit those tax withholdings to the IRS, on a semi-weekly basis, and to report to the IRS, on a quarterly basis, the total amount of wages and other compensation subject to withholding, the total income tax withheld, and the total amount of Social Security and Medicare taxes due to the IRS.

For the 2017 tax year, respondent continuously withheld tax payments from his employees' paychecks. However, beginning in approximately April 2017, he willfully failed to remit the required payroll tax withholdings to the IRS. Thereafter, in connection with the second, third, and fourth tax quarters of 2017, he failed to file the required tax forms with the IRS setting forth the amount of his employees' payroll tax withholdings. Additionally, during each

of those same tax quarters, he failed to remit to the IRS approximately $18,986 in payroll taxes. Consequently, for the 2017 tax year, respondent failed to timely report and pay to the IRS a total of $56,904 in payroll taxes.

The Criminal Proceedings Before the EDPA

On October 12, 2021, an EDPA grand jury issued a nine-count indictment, charging respondent with (1) three counts of filing false federal income tax returns for the 2013 through 2015 tax years, in violation of 26 U.S.C. § 7206(1) (counts one through three); (2) three counts of failing to file federal income tax returns for the 2016 through 2018 tax years, in violation of 26 U.S.C. § 7203 (counts four through six); and (3) three counts of failing to remit payroll taxes for the second through fourth quarters of the 2017 tax year, in violation of 26 U.S.C. § 2702 (counts seven through nine). Six days later, on October 18, 2021, respondent, through counsel, reported his criminal charges to the OAE, as R. 1:20-13(a)(1) requires.

On November 22, 2022, respondent agreed to plead guilty to counts four through six of the indictment, regarding his willful failure to file federal income tax returns for the 2016 through 2018 tax years, and to count seven, regarding his willful failure to remit payroll taxes for the second quarter of the 2017 tax year. As part of the plea agreement, respondent agreed to pay $425,463 in

restitution to the IRS. However, respondent stipulated, for purposes of sentencing, that his criminal conduct had resulted in a $715,746 total tax loss to the federal government.

On November 28, 2022, respondent appeared before the Honorable Wendy Beetlestone, U.S.D.J., pleading guilty to three counts of failure to file income tax returns and one count of failure to remit payroll taxes, in accordance with the plea agreement. During the proceeding, respondent stipulated to the facts underlying his willful (1) filing of false federal income tax returns for the 2013 through 2015 tax years; (2) failure to file income tax returns for the 2016 through 2018 tax years; and (3) failure to remit a total of $56,904 in payroll taxes for the second through fourth quarters of the 2017 tax year.

On August 29, 2023, respondent appeared for sentencing, where he agreed that, pursuant to the existing Federal Sentencing Guidelines, a twenty-four to thirty-month prison term constituted the appropriate range of sentence for his crimes, based on his acceptance of responsibility, his assistance in the investigation of his misconduct by timely notifying federal authorities of his intent to plead guilty, and the fact that his actions had resulted in a $715,746 total tax loss to the federal government. However, based on a pending

amendment to the sentencing guidelines,[1] respondent, through counsel, argued that an eighteen to twenty-four-month prison term constituted the appropriate sentencing range for his crimes.

Moreover, despite the applicable Federal Sentencing Guidelines providing for a term of incarceration, respondent urged the imposition of a non-custodial sentence, emphasizing his lengthy career at the bar "doing good for others in his community." Respondent also underscored how his misconduct had resulted in the loss of his reputation, business, and the respect of his friends and colleagues. Similarly, respondent expressed his desire "to continue to work" and to "make amends" for his criminal conduct, maintaining that he was not a risk to re-offend. Moreover, respondent claimed that he had paid approximately $260,000 of the $425,463 in total restitution he had agreed to remit to the federal government.

Respondent addressed Judge Beetlestone and stated that he was "a good man" who "committed a serious criminal act." Specifically, he admitted that he "was selfish" and that he did not "realize what [he] had and how much [he] would lose at the time" he had committed his crimes. Respondent also

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[1] Effective November 1, 2023, the United States Sentencing Commission promulgated new sentencing guidelines, which, in relevant part, reduced a defendant's level of offense "by 2 levels" for certain non-violent offenders, such as respondent. <u>See</u> Federal Sentencing Guidelines Manual § 4C1.1 (U.S. Sentencing Comm'n 2023).

maintained that he "was reckless" in failing to fulfill his tax obligations.

The government urged Judge Beetlestone to sentence respondent to a term of imprisonment of eighteen to twenty-four months, based on the pending amendment to the Federal Sentencing Guidelines concerning certain non-violent offenders. In support of its recommendation, the government noted that respondent willfully failed, for years, to pay his fair share in taxes, even after the IRS had, at some point, advised him that its "civil examination was now a criminal exam[ination]." The government also emphasized that respondent neither had filed nor paid federal taxes for the 2021 through 2023 tax years. Although the government stated that respondent had received extensions for his 2021 through 2023 tax obligations, such extensions did "not negate [his] obligation to pay." The government also emphasized how respondent, an attorney with "intelligence, resources, and support," elected "to break the law . . . year after year."

Judge Beetlestone sentenced respondent to an aggregate twenty-four-month term of imprisonment[2] followed by a three-year term of supervised release. Judge Beetlestone further ordered respondent to pay $425,463 in restitution. In imposing sentence at the highest level recommended by the

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[2] Judge Beetlestone determined to apply the forthcoming sentencing guidelines calling for an eighteen to twenty-four-month term of imprisonment for respondent's criminal conduct, as respondent and the government had urged.

forthcoming Sentencing Guidelines, Judge Beetlestone noted that respondent "had everything going good for him," having "built an extremely successful [law] practice." Nevertheless, during a six-year period, "he threw it all away" and "disregarded his tax responsibilities, even going so far as failing to pay to the IRS money that he had deducted from his employees' paychecks." Moreover, Judge Beetlestone noted that respondent "could not bring himself to clearly accept responsibility, suggesting, rather, that he was 'reckless' in doing so and suggesting that his crimes [were] simply errors of omission." Consequently, the court expressed concern that respondent "minimize[d] his criminal conduct [by] saying it happened because he . . . wasn't paying attention." Finally, Judge Beetlestone found that respondent's character reference letters did "not at times appear to have digested what he ha[d] done," emphasizing that the reference letters referred to his crimes merely as "mistakes;" "circumstances;" "transgressions;" "recent events;" "a predicament;" "an unfortunate discrepancy in his judgment;" "an oversight;" and "the acts of . . . a disorganized person, but not a person would purposely evade the law."[3]

[3] Respondent's character reference letters were not included in the record before us.

The Parties' Positions Before the Board

In support of its recommendation for an eighteen-month or two-year suspension, retroactive to respondent's February 1, 2023 temporary suspension, the OAE stressed that respondent's criminal conduct spanned several years, during which time he concealed the true extent of his law firm's income from the federal government. The OAE also underscored that respondent's conduct had resulted in a $715,746 tax loss to the federal government.

The OAE analogized respondent's misconduct to the attorney in In re Hand, 235 N.J. 367 (2018), who, as detailed below, received a one-year suspension for failing to file federal income tax returns for two years, resulting in a $50,588 tax loss to the federal government. However, unlike the attorney in Hand, the OAE noted that respondent also failed to remit payroll taxes and that his failure to file federal income tax returns spanned three years (rather than two). Further, in contrast to the attorney in Hand, respondent's conduct resulted in a much greater tax loss to the federal government. Finally, the OAE noted, in aggravation, respondent's disciplinary history, consisting of two public reprimands and a private reprimand.

In his April 22, 2024 letter to us, respondent expressed his agreement with the OAE's recommended quantum of discipline and requested that any term of suspension be imposed retroactive to his February 1, 2023 temporary

suspension. Respondent urged, in mitigation, his cooperation with the federal government's investigation of his criminal conduct, his view that he had accepted responsibility for his actions, and his view that his conduct did not result in any "fraud." Additionally, respondent argued that his disciplinary history for unrelated ethics infractions should not function as an aggravating factor sufficient to enhance the quantum of discipline in this matter. Finally, respondent maintained that his misconduct was less egregious than that of the attorney in In re Gottesman, 222 N.J. 28 (2015), who, as detailed below, received a three-year suspension for committing tax evasion and failing to remit payroll taxes, resulting in an $80,000 to $200,000 tax loss to the federal government. Respondent argued that, unlike Gottesman, he did not utilize his attorney trust account to conceal the true extent of his income from the federal government.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, 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 guilty plea and convictions for three counts of failing to file federal income tax returns, in violation of 26 U.S.C. § 7203, and one count of failing to remit payroll taxes, in violation of 26 U.S.C. § 2702, thus, establish his violations of RPC 8.4(b) and RPC 8.4(c). Pursuant to those respective Rules, 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" or to "engage in conduct involving dishonesty, fraud, deceit[,] or misrepresentation."

In sum, we find that respondent violated RPC 8.4(b) and RPC 8.4(c). Hence, the sole issue left for our determination is the proper quantum of discipline for respondent's misconduct. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; Principato, 139 N.J. at 460.

Quantum of Discipline

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Principato, 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).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances," including the "details of the offense, the background of respondent, and the pre-sentence report" before reaching a decision as to the sanction to be imposed. In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

It is well-settled that a violation of either state or federal tax law is a serious ethics breach. See In re Queenan, 61 N.J. 579, 580 (1972), and In re Duthie, 121 N.J. 545 (1990). "[D]erelictions of this kind by members of the bar cannot be overlooked." In re Gurnik, 45 N.J. 115, 116 (1965). "A lawyer's training obliges him to be acutely sensitive of the need to fulfill his personal obligations under the federal income tax law." Ibid.

Here, although respondent pleaded guilty only to three counts of failing to file income tax returns and one count of failing to remit payroll taxes, he agreed to accept, as the factual basis for the entire course of his criminal conduct,

the facts underlying his (1) filing of false federal income tax returns for the 2013 through 2015 tax years; (2) failure to file income tax returns for the 2016 through 2018 tax years; and (3) failure to remit a total of $56,904 in payroll taxes for the second through fourth quarters of the 2017 tax year. Consequently, in determining the appropriate quantum of discipline, we may consider the totality of respondent's admitted criminal conduct. See In re Gallo, 178 N.J. 115, 119-20 (2003) (in motions for final discipline, the Court "cannot ignore relevant information that places an attorney's conduct in its true light;" moreover, "[a]s there are no restrictions on the scope of disciplinary review in a case of an attorney who was not charged with a crime or who was acquitted of a crime, there is no commonsense or policy justification for imposing such restrictions when an attorney has pled guilty to a crime;" the Court emphasized that its "disciplinary oversight responsibility cannot be curtailed by artificial impediments to the ascertainment of truth"), and In re Garcia, 119 N.J. 86, 89 (1990) (even in the absence of a criminal conviction, the willful failure to file an income tax return requires the imposition of a suspension).

In United States v. Citron, 783 F.2d 307 (2d Cir. 1986), the Second Circuit Court of Appeals observed that the only difference between criminal tax evasion, in violation of 26 U.S.C. § 7201, and the filing of a false tax return, in violation of 26 U.S.C. § 7206(1), "is that § 7201 requires proof of an intention

to 'evade or defeat' a tax whereas § 7206(1) penalizes the filing of a false return even though the falsity would not produce tax consequences." Id. at 312 (quoting United States v. Tsanas, 572 F.2d 340, 343 (2d Cir.), cert. denied, 435 U.S. 995 (1978)). Historically, we have observed that, "'for purposes of discipline . . . we do not distinguish between the two crimes.'" In the Matter of David A. Lewis, DRB 12-410 (June 19, 2013) at 11-12 (quoting In the Matter of Joseph R. D'Andrea, DRB 06-037 (April 28, 2006) at 11).

Although we can envision circumstances in which an attorney files a false tax return without the intent to evade his tax obligations, here, based on respondent's multi-year scheme to grossly underreport his firm's significant earnings, we have no trouble finding that respondent's criminal conduct amounted to nothing more than an attempt to evade his taxes. Consequently, on these facts, we determine to adhere to disciplinary precedent finding no meaningful distinction between filing false tax returns and tax evasion in fashioning the appropriate quantum of discipline.

Cases involving an attorney's attempted or actual income tax evasion typically result in a substantial term of suspension, the length of which depends on the tax loss to the government, the duration of the misconduct, and the presence of other criminal offenses or aggravating factors. See, e.g., In re Kirnan, 181 N.J. 337 (2004) (eighteen-month suspension for an attorney who

pleaded guilty to filing a false federal income tax return; for tax years 1999 and 2000, the attorney utilized law firm funds to pay for his personal expenses; however, the attorney deliberately failed to report the receipt of that income on his personal income tax returns, resulting in a $31,000 tax loss to the IRS; the attorney was sentenced to serve a three-year probationary term sentence and to pay a $3,000 fine; in mitigation, the attorney promptly cooperated with criminal authorities); In re Burger, 244 N.J. 269 (2020) (two-year suspension for an attorney who, between 2010 and 2016, willfully evaded income taxes by filing false income tax returns; during that timeframe, the attorney received $2,732 in monthly interest income from his client, to whom he previously had loaned a total of $410,000; the attorney gave the monthly cash interest payments to his wife and failed to report that income to New Jersey tax authorities or to the IRS; the attorney paid his back-tax obligations only after an ethics grievance was filed against him); In re Bozeman, 217 N.J. 613 (2014) (three-year suspension for an attorney who pleaded guilty to one count of conspiracy to defraud the United States; between 1999 and 2007, the attorney arranged to have his bi-weekly salary from one company deposited directly in a separate, defunct company's bank account in order to conceal his income from the IRS; the attorney's eight-year scheme resulted in more than $830,000 in unreported personal income, which resulted in a $137,635 tax loss to the IRS; in

aggravation, the attorney showed no remorse for his tax evasion scheme, which became an integral part of his life as he honed his attorney skills in law school, his internship with a prosecutor's office, and his judicial clerkship; the attorney also failed to cooperate with the government's investigation).

However, attorneys who commit egregious acts of tax evasion have been disbarred. See In re Long, 255 N.J. 436 (2023) (during a four-year period, the attorney, while serving as an elected county freeholder, directed his firm's bookkeeper to falsely classify his personal expenses as legitimate business expenses and, thereafter, failed to report to the IRS those improperly classified "business expenses" as additional personal income; as a result of his scheme, the attorney failed to report more than $800,000 in personal income, resulting in a $388,362 tax loss to the federal government; the attorney's criminal conduct was motivated by greed and allowed him to live a lavish lifestyle while callously placing his bookkeeper and her liberty in jeopardy; although the attorney eventually accepted full responsibility for his actions and, at sentencing, paid the full amount of restitution to the federal government, he previously had been willing to frustrate the government's investigation of his firm's finances and failed, despite numerous opportunities, to express contrition and cease his criminal activities; the attorney received a fourteen-month term of incarceration for his crimes), and In re Freidman, 246 N.J. 59 (2021) (the attorney attempted

to salvage his New York taxi business by failing, for a three-year period, to remit more than $5 million in surcharges collected from taxi customers to the State of New York and the Metropolitan Transit Authority (the MTA); to conceal his theft and tax evasion, the attorney filed false MTA surcharge tax returns and submitted fraudulent information in his own tax returns; the attorney's actions affected more than 10 million taxicab riders and significantly impacted the MTA; in recommending the attorney's disbarment, we found that the attorney committed egregious tax fraud, over a number of years, for his own personal gain).

Here, additionally, between 2016 and 2018, respondent willfully failed to file federal income tax returns, despite earning more than $1 million in legal fees during each of those years and receiving more than $8 million in total gross receipts during that same timeframe.

As noted above, in Garcia, 119 N.J. 86, the Court observed that an attorney's willful failure to file an income tax return requires the imposition of a suspension, even in the absence of a criminal conviction. Id. at 89. Since Garcia, attorneys who willfully fail to file multiple income tax returns generally have received terms of suspension of at least one year, in the absence of compelling mitigation. See Hand, 235 N.J. 367 (one-year suspension for an attorney who pleaded guilty to two counts of failing to file federal income tax

returns for two calendar years, resulting in a $50,588 tax loss to the federal government; the attorney was sentenced to three years' federal probation, which included a five-month period of home confinement, and was ordered to pay $50,588 in restitution and to fully cooperate with the IRS; the attorney had a disciplinary history consisting of two prior admonitions), and In re Rich, 234 N.J. 21 (2018) (two-year suspension for an attorney who pleaded guilty in the New York Supreme Court to one count of fifth-degree criminal tax fraud, a Class A misdemeanor; the attorney had failed to file state personal income tax returns for the 2008 through 2013 tax years, and, for each year, he had a tax liability of more than $50,000; he agreed to pay nearly $1.2 million in back taxes, including penalties and interest).

Finally, from the second through the fourth quarters of the 2017 tax year, respondent willfully failed to remit to the IRS a total of $56,904 in payroll taxes that he had withheld from his employees' paychecks. Cases involving an attorney's criminal conviction for failing to account for and remit payroll taxes have resulted in discipline ranging from a term of suspension to disbarment, depending upon the presence of other criminal offenses or aggravating factors, the tax loss to the government, and the duration of the misconduct. See, e.g., In re Esposito, 96 N.J. 122 (1984) (six-month suspension for an attorney who pleaded guilty to one count of failing to pay his employees' social security and

income taxes for one calendar quarter; in mitigation, the attorney's conduct "was not marked by any attempt at personal gain," the funds due to the IRS were untouched and available in the attorney's business account, and the attorney suffered severe emotional distress caused by his mother's illness and death; no prior discipline); In re Gottesman, 222 N.J. 28 (2015) (three-year suspension for an attorney who pleaded guilty to one count of tax evasion and one count of willful failure to remit payroll taxes; although the attorney owed more than $24,400 in income taxes for the 2006 tax year, he failed to file an income tax return and paid only $1,612.73 toward his tax liability; the attorney used his attorney trust account to conceal the true extent of his income from the IRS; in 2009, the attorney willfully failed to remit to the IRS $2,395.99 in payroll taxes that he had withheld from his employees' wages; the attorney's criminal conduct resulted in tax loss to the IRS of between $80,000 and $200,000; in aggravation, although the attorney initially admitted his misconduct to the IRS, he did nothing to cooperate with the government, requiring the matter to be indicted in order to come to resolution; we rejected, as insufficient mitigation, the attorney's reporting of his crimes to the OAE, his prior good reputation, and his performance of pro bono legal services; the attorney had a prior censure for his gross mishandling of a client matter); In re Buonopane, 201 N.J. 408 (2007) (disbarment for an attorney who failed to remit taxes withheld from his

employees, coupled with tax evasion, amounting to the misapplication of $2.7 million in entrusted funds over a five-year period; in aggravation, the attorney's employees were denied benefits due to his failure to pay over withholdings to tax authorities).

Recently, in In the Matter of George R. Gilmore, DRB 23-193 (Feb. 17, 2024), we determined that a two-year suspension was the appropriate quantum of discipline for an attorney who, for two quarters during the 2016 tax year, failed to collect, account for, and remit more than $267,144.62 in payroll taxes, despite repeated warnings by the IRS. Id. at 22, 26. The attorney committed additional criminal conduct by making false statements on a mortgage loan application concerning his existing $400,000 debt to a third party, in violation of 18 U.S.C. §§ 2 and 1014. Id. at 12, 22.

In determining that a two-year suspension was the appropriate quantum of discipline, we weighed, in aggravation, the fact that, although the IRS repeatedly had warned the attorney that his failure to timely remit his payroll taxes would result in his criminal prosecution, he failed to remediate his conduct, which was motivated by his own pecuniary gain. Id. at 31. In mitigation, however, the attorney had no disciplinary history in almost fifty years at the bar and stipulated to his misconduct. Id. at 30. The Court agreed with our recommended discipline. In re Gilmore, 257 N.J. 353 (2024).

Here, for the 2013 through 2015 tax years, based on respondent's decision to provide his accountant with false information concerning his firm's finances, he underreported to the IRS a total of more than $1 million of his firm's gross receipts and, in 2014, he overstated his firm's expenses by more than $50,000. Thereafter, for the 2016 through 2018 tax years, respondent escalated his criminal behavior by altogether and willfully failing to file any federal income tax returns, despite his firm earning more than $8 million in gross receipts during that timeframe and, thus, owing a substantial tax obligation to the federal government. Finally, for three quarters during the 2017 tax year, respondent willfully failed to report and remit to the IRS a total of $56,904 in payroll taxes that he had withheld from his employees' paychecks.

In our view, respondent's protracted criminal scheme to evade his significant tax obligations is, arguably, just as egregious as that of the disbarred attorney in Long. Although respondent did not appear to have attempted to frustrate the government's investigation of his conduct or to place his subordinates in potential legal jeopardy, as occurred in Long, respondent's criminal conduct spanned a greater timeframe and resulted in a far more serious tax loss to the federal government. Significantly, unlike Long, who criminally failed to report more than $800,000 in personal income during a four-year period, resulting in a $388,362 tax loss to the federal government, respondent's

criminal conduct (1) spanned six years, during which time he concealed millions of dollars of his firm's gross receipts from the IRS; (2) resulted in diverse, serious criminal tax infractions, including repeatedly failing to remit payroll taxes that he had withheld from his employees' paychecks; and (3) caused a staggering $715,746 total tax loss to the federal government. Moreover, unlike the attorney in Long, respondent did not fully satisfy his restitution obligation to the federal government at sentencing.

In contrast to Long, who ultimately accepted responsibility for his crimes, respondent, as described by Judge Beetlestone, "could not bring himself to clearly accept responsibility, suggesting, rather, that" his criminal behavior was the product of recklessness and "that his crimes [were] simply errors of omission." Consequently, we echo Judge Beetlestone's concern that respondent has failed to appreciate the seriousness of his criminal actions by claiming, erroneously, that his conduct "happened because . . . he wasn't paying attention."

Conclusion

In conclusion, respondent willfully cast aside his successful legal practice by his brazen crimes of dishonesty towards the federal government, which suffered a substantial tax loss far greater than that caused by attorneys who have

received terms of suspension for committing similar tax related crimes. As the government noted during sentencing, respondent willfully failed, for years, to fulfill his significant tax obligations, even after the IRS had warned him that its civil examination had become a criminal investigation.

Given the staggering tax loss to the federal government that resulted from respondent's prolonged criminal scheme, his inability to clearly accept remorse for his actions before a federal judge, and his lack of any compelling mitigating factors, we determine that respondent is "'[in]capable of meeting the standards that must guide all members of the profession.'" In re Cammarano, 219 N.J. 415, 421 (2014) (quoting In re Harris, 182 N.J. 594, 609 (2005)). Thus, to effectively protect the public and preserve confidence in the bar, we recommend to the Court that respondent be disbarred.

Additionally, in Member Hoberman's view, respondent's repeated failure to remit to the federal government payroll taxes that he had withheld from his employees' paychecks, despite his fiduciary duty to do so, constitutes the knowing misappropriation of escrow funds, in violation of the principles of In re Hollendonner, 102 N.J. 21 (1985).

Vice-Chair Boyer and Members Campelo, Rodriguez, and Spencer voted to recommend the imposition of a three-year suspension, retroactive to respondent's February 1, 2023 temporary suspension, with the condition that,

prior to reinstatement, he demonstrate either that he has fully satisfied his restitution obligation to the federal government or has complied with a recognized restitution repayment plan with the federal government.

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
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Conrad J. Benedetto
Docket No. DRB 24-082

Argued: June 20, 2024

Decided: September 18, 2024

Disposition: Disbar

Members	Disbar	Three-Year Suspension
Cuff	X	
Boyer		X
Campelo		X
Hoberman	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez		X
Spencer		X
Total:	5	4

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel