

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2248 Disciplinary Docket No. 3
: :
Petitioner : No. 202 DB 2016
: :
v. : Attorney Registration No. 74667
: :
KELLY S. BALLENTINE, : (Lancaster County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 6th day of August, 2018, upon consideration of the Report and Recommendations of the Disciplinary Board, Kelly S. Ballentine is suspended from the Bar of this Commonwealth for a period of two years, and she shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 08/06/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 202 DB 2016
Petitioner	:	
	:	
v.	:	Attorney Registration No. 74667
	:	
	:	
KELLY S. BALLENTINE	:	(Lancaster County)
Respondent	:	

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on December 9, 2016, Petitioner, Office of Disciplinary Counsel charged Respondent, Kelly S. Ballentine with violations of the Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”), arising out of her failure to file individual federal and state income tax

returns and her criminal conviction for offering taxable goods for sale without possession of a valid sales tax license. Respondent failed to file an Answer to Petition.¹

Following prehearing conferences on March 8 and September 1, 2017, a disciplinary hearing was held on October 20, 2017, before a District II Hearing Committee. Petitioner and Respondent submitted Joint Stipulations of Fact and Conclusions of Law, and Joint Exhibits. Respondent offered her own testimony and the testimony of three character witnesses.

Following the parties' submission of briefs, the Hearing Committee filed a Report on March 13, 2018, concluding that Respondent violated the rules as charged in the Petition for Discipline and recommending that she be suspended for a period of two years.

The parties did not file exceptions to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on April 11, 2018.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice

¹ The Board never received a response to the Petition for Discipline, either timely or untimely filed. We note that as part of the Joint Exhibits, the parties include what appears to be an answer. We further note that Petitioner's Brief to the Hearing Committee refers to Respondent's "[f]ailure to file a timely answer to the Petition for Discipline." Brief, p. 19.

law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Kelly S. Ballentine, born in 1968 and admitted to practice law in the Commonwealth in 1995. Respondent maintains a registered office address at 477 S. Prince Street, Lancaster, Pennsylvania 17602. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. The parties entered into Joint Stipulations of Fact and Conclusions of Law. Joint Exhibit ("JE") 42.

Background

4. Following admission to the bar in Pennsylvania in 1994, Respondent served a judicial clerkship and by June 1995 had a solo practice in Lancaster. N.T. 52.

5. In 2005, Respondent was elected as a magisterial district judge. N.T. 53-54.

6. From January 2, 2006 to February 22, 2012, Respondent served as Magisterial District Judge for the Magisterial District 02-2-01 of the Second Judicial District, Lancaster County, Pennsylvania, encompassing the City of Lancaster, Wards 3 and 7. Stipulation ("S") - 6.

7. On February 13, 2012, the Pennsylvania Office of Attorney General charged Respondent with conflict of interest, tampering with public records or information, and obstructing administration of law or other governmental function. JE-1.

8. On February 13, 2012, the Judicial Conduct Board filed a Petition for Relief and requested that the Court of Judicial Discipline place Respondent on interim suspension with pay. JE-1.

9. On February 22, 2012, the Court Of Judicial Discipline issued an Order directing that Respondent be suspended with pay from her judicial duties, at docket no. 1 JD 12. JE-1.

10. On February 1, 2013, Respondent entered open guilty pleas before the Honorable Charles B. Smith, Senior Judge of the Chester County Court of Common Pleas, specially presiding, to three counts of Tampering with Public Records or Information, 18 Pa.C.S.A. § 4911(a)(1)–(3), each graded as a misdemeanor of the second degree, in a case in the Court of Common Pleas of Lancaster County captioned ***Commonwealth v. Kelly S. Ballentine***, docket no. CP-36-0002045-2012. S-7.

11. Respondent's guilty plea was based on the following conduct: On December 29, 2010, Respondent entered the Magisterial District Judge Computer System and dismissed two traffic citations issued to her on November 1, 2010. On January 27, 2011, Respondent entered the Magisterial District Judge Computer System and dismissed a third traffic citation issued to her on November 8, 2010. JE-1.

12. On March 18, 2013, Senior Judge Smith sentenced Respondent to pay a \$500.00 fine for each count of Tampering with Public Records or Information. Respondent paid in full the imposed fine. S-8, 8(a).

13. By Order of June 10, 2013, the Court of Judicial Discipline suspended Respondent from her duties as Magisterial District Judge and placed Respondent on probation under the supervision of the Judicial Conduct Board until December 31, 2014. The time frame of the suspension was February 22, 2012 through May 31, 2013. S-9; JE-1.

14. On June 1, 2013, Respondent returned to the bench and continued to serve as Magisterial District Judge, subject to the terms of probation as set forth by the Court of Judicial Discipline. S-10.

15. By Per Curiam Order dated June 16, 2014, the Supreme Court granted a Joint Petition in Support of Discipline on Consent filed by Office of Disciplinary Counsel and Respondent and suspended Respondent from the practice of law for a period of one year, based on her 2013 criminal conviction, as set forth above. S-11.

16. Based on Respondent's misconduct as set forth below (the subject of the instant proceedings), the Court of Judicial Discipline revoked Respondent's probation and removed her from the bench, by Order dated August 4, 2015. S-12; JE-2.

17. On or about August 19, 2015, Respondent filed an appeal of her removal in the Supreme Court of Pennsylvania, which was docketed at no. 73 MAP 2015. S-13.

18. By Per Curiam Order dated February 16, 2016, the Supreme Court affirmed the Order of the Court of Judicial Discipline dated August 4, 2015. S-14.

19. By Per Curiam Order dated March 4, 2016, the Supreme Court reinstated Respondent's license to practice law. S-15.

20. Since Respondent's reinstatement, she has done little in the way of practicing law, and has received financial support from her parents. N.T. 68, 71-73.

Criminal Conviction for Offering Taxable Goods for Sale Without Possession of a Valid
Sales Tax License

21. On June 29, 2009, Respondent opened a retail business, Walk-In-Style Fashion Footwear ("WISFF"), at 356 North Queen Street, Lancaster, Pennsylvania, which Respondent owned and operated through August 2014. S-16.

22. From June 29, 2009 until August 2014, as the owner of WISFF, Respondent was responsible for all aspects of managing WISFF, including the collection of sales tax on taxable items sold through WISFF. S-17, 17(a).

23. As the owner of WISFF, Respondent failed to remit any sales taxes collected in 2009, 2010, 2011 and 2012 until October 14, 2012, after Respondent received notification from the Pennsylvania Department of Revenue. S-18.

24. On January 25, 2012, as a result of Respondent's failure to pay sales taxes due and owing on the sale of taxable goods at WISFF, the Pennsylvania Department of Revenue provided a License Revocation Notice to Respondent that her license to sell taxable goods was revoked forthwith subject to criminal citation if she sold taxable goods without a sales tax license. S-19.

25. Respondent sold taxable goods during the first and second quarters of 2012, despite the License Revocation Notice dated January 25, 2012. Respondent's 2012 quarterly tax records for WISFF reflect that she sold taxable goods during the first and second quarters of 2012. S-20, 20(a).

26. On May 9, 2012, the District Administrator of the Bureau of Collections and Taxpayer Services of the Pennsylvania Department of Revenue sent Respondent a letter regarding the revocation of her sales, use and hotel occupancy tax

license and ordered Respondent to surrender her license to the Pennsylvania Department of Revenue. S-21.

27. The letter notified Respondent that she was prohibited from maintaining a place of business in Pennsylvania for the purpose of selling taxable goods until the revocation was rescinded and her license was restored. S-21(a).

28. On September 25, 2012, the Pennsylvania Department of Revenue issued Respondent a non-traffic citation for the summary offense violations of 72 P.S. § 7208(c), which prohibits the offering of taxable goods for sale without possession of a valid sales tax license. S-22.

29. On January 31, 2013, Respondent represented herself at a summary trial before Senior Magisterial District Judge Paula P. Correale, wherein Judge Correale found Respondent guilty of the summary offense of offering taxable goods for sale without possession of a valid sales tax license. S-23.

30. Respondent was sentenced to pay a \$300.00 fine and \$69.45 in costs. S-23(a).

31. On February 1, 2013, Respondent filed a Notice of Summary Appeal with the Lancaster County Court of Common Pleas. S-24.

32. On October 25, 2013, while represented, Respondent withdrew her summary appeal and the Honorable Margaret C. Miller of the Lancaster County Court of Common Pleas reinstated Respondent's finding of guilt and sentenced her to pay fines and costs. Respondent complied with her sentence. S-25; JE-11.

33. The penalty for offering taxable goods for sale without possession of a valid sales tax license is a fine of not less than \$300.00 nor more than \$1,500.00 and

in default thereof, to undergo imprisonment of not less than five days nor more than thirty days. S-26.

34. On December 20, 2010, Respondent presided over a summary case wherein the defendant business owner entered a guilty plea to the charge of conducting the sale or lease of services or tangible personal property that is subject to tax without a license, in violation of 72 P.S. § 7208(c). **Commonwealth v. Zemma Garrety Shand**, docket no. MJ-02201-NT-0001105-2010. S-28.

35. The summary offense charged in **Commonwealth v. Zemma Garrety Shand** is identical to the summary offense filed against Respondent on September 25, 2012, by the Pennsylvania Department of Revenue pertaining to the sale of taxable goods without a license at WISFF. S-29.

36. On October 11, 2011, Respondent presided over a summary case wherein the defendant business owner entered a guilty plea to the charge of failure to file tax returns and pay taxes on the sale of taxable goods in violation of 72 P.S. §7208(b.1). **Commonwealth v. Samir Abachndu**, docket no. MJ-02201-NT-0000340-2011. S-30.

37. The summary offense charged in **Commonwealth v. Samir Abachndu** was for conduct similar to Respondent's failure to file tax returns or remit sales taxes collected at WISFF. S-31.

38. During the time period that Respondent owned and operated WISFF and failed to fulfill her tax responsibilities (June 2009-October 2012), Respondent presided over multiple cases wherein defendants were charged with the summary offense of Doing Business Without a License; conducting cigarette sales without a license, in violation of 72 P.S. § 228-A(a): **Commonwealth v. Mario A. Naranjo-bernal**, docket no. MJ -02201-NT-0000302-2010; **Commonwealth v. Angel Luis Lelena**, docket no. MJ-

02201-NT-0000301-2010; *Commonwealth v. John W. Wright*, docket no. MJ-02201-NT-0000276-2009. S-32.

Failure to File Individual State and Federal Income Tax Returns

39. On August 25, 2014, Respondent, through her attorney, Samuel C. Stretton, Esquire, informed Robert C. Graci, Chief Counsel of the Judicial Conduct Board, that she failed to timely submit individual federal and state tax returns for the tax years 2009, 2010, 2011, 2012, and 2013. S-34.

40. In her response to the Judicial Conduct Board's August 11, 2014 Document Request and Supplemental Questions, Respondent admitted that she was aware that she was legally responsible for filing tax returns. S-35.

41. In late August 2014, Respondent initially contacted her tax preparer to request that he prepare and file Respondent's federal, state and local individual income tax returns for the tax years 2009, 2010, 2011, 2012 and 2013. S-36.

42. According to Respondent's tax records, in 2010, 2011, 2012 and 2013, Respondent timely requested that her tax preparer file IRS Form No. 44868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, for the tax years 2009, 2010, 2011, and 2012. S-37.

43. According to Respondent's tax records, in April 2010, 2011, 2012 and 2013, Respondent's tax preparer timely filed IRS Form No. 4868 for six-month extensions of time to file Respondent's federal individual income tax returns for tax years 2009, 2010, 2011 and 2012. S-38.

44. By the timely filing of IRS Form No. 4868, the time to file Respondent's federal individual income tax returns was extended for six months from the

April due dates to the new October due dates for the tax years 2009, 2010, 2011 and 2012. S-38(a).

45. By the timely filing of IRS Form No. 4868, the Pennsylvania Department of Revenue automatically granted six-month extensions of time for Respondent to file her state income tax returns for the tax years 2009, 2010, 2011 and 2012. S-38(b).

46. Despite the six-month extensions of time to file her tax returns, Respondent failed to timely file her federal, state and local individual income tax returns for the tax years 2009, 2010, 2011 and 2012. S-39.

47. On or before April 15, 2014, Respondent did not contact her tax preparer to request that he file IRS Form No. 4868 for a six-month extension of time to file Respondent's 2013 individual federal income tax returns, nor did he submit to the Pennsylvania Department of Revenue a request for an extension of time to file Respondent's individual state income tax returns. S-41.

48. On August 28 and 29, 2014, Respondent delivered to her tax preparer her tax records, in part, for tax years 2009, 2010, 2011, 2012 and 2013. S-42.

49. Prior to September 27, 2014, Respondent delivered to her tax preparer additional tax records for the tax years 2009 through 2013. S-42(a).

50. On September 27, 2014, Respondent's tax preparer prepared Respondent's 2009, 2010, and 2011 federal, state and local individual income tax returns, which Respondent signed and dated. S-43.

51. On October 15, 2014, Respondent's tax preparer prepared Respondent's 2012 and 2013 federal, state and local individual income tax returns, which Respondent signed and dated. S-44.

52. Respondent filed all tax returns for the tax years 2009 through 2013.

N.T. 65.

53. Respondent timely paid taxes that she owed for the years 2009 through 2013 to the federal, state and local governments solely through the withholding of tax money from her paychecks from the Administrative Office of Pennsylvania Courts.

S-46.

54. Respondent failed to file her federal individual income tax returns for the years 2009 through 2013, in violation of the Internal Revenue Code at 26 USCA§ 7203. S-48.

55. Respondent failed to file her state individual income tax returns for the years 2009 through 2013, in violation of the Pennsylvania Tax Reform Code at 72 P.S. § 7353. S-50.

56. Respondent was not charged with a crime for her failure to timely file tax returns.

Miscellaneous

57. At the hearing, Respondent offered the testimony of three witnesses.

58. Byron Folk is a Lancaster, Pennsylvania resident employed at a steel fabrication plant, who has known Respondent for nearly 40 years and considers her a good friend. N.T. 22-23.

59. Mr. Folk credibly testified that Respondent is a positive influence in the community and serves as a mentor and role model to some of the younger people in the Lancaster community. N.T. 24-26.

60. Mr. Folk credibly testified that Respondent's reputation for being honest and law abiding is still intact, despite her wrongdoing. N.T. 28-29.

61. Sylvester Jones is Respondent's father. He is a retired administrator with the School District of Lancaster. N.T. 31.

62. Mr. Jones credibly testified that Respondent is a hard-working and determined individual who has been involved in the community by tutoring, mentoring, and being available as a role model. N.T. 35.

63. Mr. Jones testified that Respondent owned up to her wrongdoing and accepted responsibility. N.T. 37. Despite her criminal conviction, Mr. Jones credibly testified that Respondent has a reputation as an honest and law-abiding person. N.T. 40.

64. Mary Ballentine is Respondent's mother. She is the head of cooking and housekeeping of a group home in Harrisburg. Ms. Ballentine credibly testified that Respondent is a person of good character whose reputation in the community as a good person has not been diminished following her misconduct. N.T. 41-46.

65. Respondent testified on her own behalf.

66. The acts which are the basis of the instant Petition for Discipline occurred prior to and/or contemporaneously with the acts which were the subject of Respondent's prior discipline.

67. Respondent's footwear business did very little business. Respondent opened the store so that her niece would have a business to run. N.T. 61.

68. Respondent admitted that she did not spend a lot of time at the store; was not conscientious in the operation of the store; and failed to keep proper records and pay sales tax. N.T. 63-64, 65, 77-78, 81.

69. Respondent's conviction generated negative publicity in her community. Respondent testified at the disciplinary hearing, "I have been in the front of the newspaper in Lancaster City more times than Mr. and Mrs. Obama..." N.T. 68.

70. Respondent suffers from Crohn's Disease, which causes struggles in her everyday life. N.T. 54, 55.

71. Respondent accepted full responsibility for her misconduct and expressed sincere remorse. She apologized and expressed shame for her actions and disappointment in herself N.T. 64, 66, 73-74.

72. Respondent cooperated with Petitioner by entering into stipulations of fact and law. JE-42.

III. CONCLUSIONS OF LAW

By her actions as set forth above, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

1. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as lawyer in other respects.

2. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

3. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

4. Pa.R.D.E. 203(b)(1) – Conviction of a crime shall be grounds for discipline.

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline charging Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of Respondent’s criminal conviction and separate misconduct related to Respondent’s individual tax returns. The parties entered into extensive stipulations and there are no material disputes of the underlying facts.

Respondent’s criminal conviction of offering taxable goods for sale without a valid sales tax license is conclusive evidence of the commission of a crime, and incontrovertible evidence of her professional misconduct, in violation of Pa.R.D.E. 203(b)(1), 8.4(b), 8.4(c) and 8.4(d). ***Office of Disciplinary Counsel v. Harold E. Casety, Jr.***, 512 A.2d 607, 609 (Pa. 1986). In addition, Respondent’s failure to timely file her

federal and state individual income tax returns violated RPC 8.4(b), 8.4(c) and 8.4(d).

The Board's task is to determine the appropriate level of discipline, bearing in mind that the recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating, ***Office of Disciplinary Counsel v. Joshua Eilberg***, 441 A.2d 1193, 1195 (Pa. 1982), and to "examine the underlying facts involved in the criminal charge to weigh the impact of the conviction upon the measure of discipline." ***Office of Disciplinary Counsel v. Frank Troback***, 383 A.2d 952, 953 (Pa. 1978). Despite the fact-intensive nature of the endeavor, consistency is required so that similar misconduct "is not punished in radically different ways." ***Office of Disciplinary Counsel v. Robert S. Lucarini***, 472 A.2d 186, 190 (Pa. 1983). Following our review of this matter, we conclude that a suspension for a period of two years is appropriate.

During four consecutive tax years beginning in 2009, Respondent, as the owner of a footwear business, was responsible for paying Pennsylvania sales tax on taxable goods in her retail store. Respondent failed to file sales tax returns and failed to remit sales taxes for those years; consequently, her sales tax license was revoked by the Pennsylvania Department of Revenue. The amount of unpaid sales tax was \$130.00.² Despite the revocation, Respondent continued to offer taxable goods for sale. On October 25, 2013, Respondent was adjudicated guilty of the summary offense of conducting the sale of taxable goods without a valid license and sentenced to pay a \$300.00 fine and costs. Respondent complied with her criminal sentence.

From all accounts, Respondent's footwear enterprise did very little

² Petitioner cited the unpaid taxes as \$170.00. As noted by the Hearing Committee in its Report, that difference is immaterial. Respondent made restitution.

business. Respondent admitted that she opened the store for her niece to run; was somewhat of an absentee owner; was not conscientious in operating the business; and failed to keep proper records and pay sales tax, despite the fact that almost no sales were done. This misconduct did not involve the practice of law.

During the same time frame, for five years from 2009 through 2013, Respondent failed to timely file her federal and state individual income tax returns. Her derelictions in this regard violated 26 U.S.C. § 7203 and 72 P.S. §7353, although Respondent was never charged with a crime. Respondent's misconduct involving her tax returns was not related to the practice of law and did not involve a client. Respondent's tax extension applications did not contain false information, she eventually filed the tax returns, and she paid her taxes through her paycheck withholdings.

There are no cases on point in which an attorney was found guilty of offering taxable goods for sale without possessing a valid sales tax license. Two older cases involve failing to file sales tax returns and failure to remit sales taxes. In the matter of *In re Anonymous No. 51 DB 85 (Edward Leach)*, 38 Pa. D. & C. 3d 440 (1986), the misconduct was more extensive than in the instant matter, as the respondent-attorney was charged with 14 counts of failure to remit approximately \$18,000. This respondent-attorney was suspended for a period of two years. In the matter of *In re Anonymous No. 125 DB 92*, the respondent-attorney received an informal admonition based on a conviction of one count of failure to remit \$67,146.42 in sales tax and one count of failure to file a sales tax return. This respondent-attorney paid restitution at the time of sentencing. Neither of the respondent-attorneys in the cited cases had prior discipline.

As to Respondent's failure to file income taxes, "disciplinary law in Pennsylvania establishes generally that the discipline imposed based on a conviction of

failure to file income tax returns ranges from private discipline to a one year suspension.” **Office of Disciplinary Counsel v. Frank J. Marcone**, No. 122 DB 2000 ((D. Bd. Rpt. 1/26/2004) (S. Ct. Order 9/10/2004). Notwithstanding the general rule, the term of suspension may exceed one year. See, **In re Anonymous No. 15 DB 1983 (John McCrea III)**, 28 Pa. D. & C. 3d 609 (1984) (one count of violating §7203; suspension for one year and twelve days).

The appropriate discipline for failing to file a tax return may be impacted by the presence or lack of a conviction; the number of delinquent tax years; the type and length of the criminal sentence, if any; restitution; and the presence or absence of a record of discipline. **Office of Disciplinary Counsel v. Blonde Grayson Hall**, No. 75 DB 2007 (D. Bd. Rpt. 9/10/2009) (S. Ct. Order 11/13/2009) (suspension for one year and one day for three counts of willful failure to file tax returns, supply information or pay tax with \$171,011.00 in restitution and no prior record of discipline); **Office of Disciplinary Counsel v. Robert G. Weisgerber**, No. 16 DB 1994 (D. Bd. Rpt. 7/25/1995) (S. Ct. Order 8/31/1995) (suspension for three years for four counts of willful failure to file tax returns and prior record of two Informal Admonitions.)

Upon our review of the decisional law, we conclude that Respondent’s misconduct of offering taxable goods for sale without a valid sales tax license and failing to file income tax returns, standing alone, would not warrant a lengthy suspension. However, Respondent’s disciplinary matter is aggravated by her status as a judicial officer at the time of her misconduct, her violation of judicial probation, and her prior disciplinary record.

Respondent gained admission to the bar in 1994, engaged in a judicial clerkship followed by a solo law practice, and was elected to the office of Magisterial

District Judge in Lancaster in 2005. From January 2, 2006 to February 22, 2012, Respondent served as a Magisterial District Judge. In February 2013, Respondent was convicted of three counts of tampering with records, as a result of dismissing her own traffic tickets on three occasions. Respondent paid a fine and costs. The Court of Judicial Discipline suspended Respondent from her judicial duties from February 2012 until May 31, 2013. She resumed her duties on June 1, 2013 and served a period of probation until December 31, 2014.

Respondent engaged in the instant misconduct during her time as a magisterial district judge. While she was violating her own tax obligations, Respondent presided over multiple cases in her judicial capacity in which the defendant was charged with the summary offense of doing business without a license or failing to pay tax on the sale of taxable goods. Respondent's status as a judicial officer at the time of her misconduct undermines the public's confidence and trust in the legal system and constitutes an aggravating factor. See, ***Office of Disciplinary Counsel v. Paul M. Pozonsky***, 177 A.3d 830 (Pa. 2018) (Judge of the Court of Common Pleas of Washington County disbarred following conviction of theft by unlawful taking, obstructing administration of law, misapplication of entrusted property of a governmental institution; judicial status served as a significant aggravating factor). See also, ***Office of Disciplinary Counsel v. David J. Murphy***, No. 188 DB 2010 (D. Bd. Rpt. 5/4/2010 (S. Ct. Order 1/30/2013) (guilty plea to multiple counts of forgery, identity theft, perjury and false signatures and statements, and one count of conspiracy; respondent-attorney's position as a magisterial district judge served as an aggravating factor). In comparing the instant matter to the cited cases, we conclude that Respondent's misconduct is less egregious than that committed by Murphy and Pozonsky and does not warrant

disbarment.

Respondent's summary conviction on the sales tax charge and her failure to file individual federal and state tax returns, the subject of the instant proceedings, violated the probation imposed by the Court of Judicial Discipline. This probation required, *inter alia*, that Respondent not engage in any activity prohibited by law. By Order Dated August 4, 2015, the Court of Judicial Discipline revoked Respondent's probation and removed her from the bench. Respondent's probation violation serves as an aggravating factor.

In addition to her judicial discipline and ultimate removal from the bench, Respondent has a history of attorney discipline. Pursuant to a Joint Petition for Discipline on Consent concerning Respondent's conviction for tampering with records, Respondent's law license was suspended for a period of one year, by Order of the Supreme Court dated June 16, 2014. The Court reinstated Respondent by Order dated March 4, 2016. Respondent's prior disciplinary record serves as an aggravating factor. ***Office of Disciplinary Counsel v. Suber W. Lewis***, 426 A.2d 1138, 1139, 1141, 1143 (Pa. 1981) (The Court noted respondent-attorney's history of prior informal admonitions); ***Office of Disciplinary Counsel v. Thomas Allen Crawford, Jr.***, No. 160 DB 2014 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 11/14/2017) (Respondent-attorney's misconduct aggravated by his prior informal admonitions and three-month suspension).

In mitigation, we find that Respondent was repentant and accepted full responsibility for her wrongdoing. Her character witnesses confirmed her remorse, and further confirmed that Respondent's good reputation in her community has not been diminished by her actions, due to her long-standing history of good works in that community.

The Hearing Committee recommended a suspension of two years to address Respondent's misconduct. The parties have not objected to this sanction. Upon our review of the facts, the aggravating and mitigating circumstances and the decisional law, we conclude that a suspension for two years is appropriate discipline.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Kelly S. Ballentine, be Suspended for a period of Two Years from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
P. Brennan Hart, Member

Date: 6/7/18