

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 665, Disciplinary Docket No. 3 -
Petitioner	:	Supreme Court
	:	
	:	No. 95 DB 2001 – Disciplinary Board
v.	:	
	:	Attorney Registration No. [ ]
[ANONYMOUS]	:	
Respondent	:	([ ] County)

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 Order of the Supreme Court of Pennsylvania dated June 28, 2001, [ ], Respondent in these proceedings, was placed on temporary suspension from the practice of law based on his conviction of two counts of failure to file federal income tax returns.

A Petition for Discipline was filed against Respondent by Petitioner, Office of Disciplinary Counsel, on July 31, 2001. Respondent filed an Answer to Petition for Discipline on August 10, 2001. A disciplinary hearing was held before Hearing Committee [ ] comprised of Chair [ ], Esquire, Member [ ], Esquire, and Alternate Member [ ], Esquire. Respondent was represented at the hearing by [ ], Esquire.

Following the submission of Memoranda of Law by the parties, the Hearing Committee filed a Report on November 27, 2001 and recommended that Respondent be suspended for a period of five months retroactive to July 28, 2001, the effective date of Respondent's temporary suspension.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of February 13, 2002.

## II. FINDINGS OF FACT

1. Petitioner, whose principal office is located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania 15219, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent was born in 1951 and was admitted to practice law in

Pennsylvania in 1982. Prior to his Temporary Suspension, he maintained his office at [ ].

3. Respondent was placed on Temporary Suspension by Supreme Court Order of June 28, 2001.

4. On September 14, 2000, Respondent entered a plea of guilty to two counts of willful failure to file federal income tax returns in violation of 26 U.S.C. §7203, for the years 1993 and 1994.

5. On January 3, 2001, Respondent was sentenced to four months of incarceration in a federal penitentiary, followed by four months of house detention and one year of probation with an effective date of sentence of March 12, 2001.

6. Respondent completed his period of incarceration and home detention without event.

7. Respondent was involved in a professional relationship with the law firm of [A] for a period of eight years.

8. The break-up of the firm coincides with Respondent's failure to file tax returns.

9. Respondent has filed his 1993 and 1994 tax returns, and has paid all tax liabilities associated with those returns, as well as a \$10,000 fine.

10. As of the date of the disciplinary hearing Respondent was not employed.

11. Respondent offered seven witnesses who testified to his excellent reputation for truth, honesty and morality in the community.

12. Respondent has a prior record of discipline, as follows:

- a) He received an Informal Admonition in January 1997 for violations of RPC 1.3 and 8.4(c) concerning his neglect of a divorce and support matter.
- b) He received a Private Reprimand in November 1997 for violations of RPC 1.3 and 1.8(h) as a result of his failure to pursue a matter, which resulted in the action being barred by the statute of limitations.
- c) He received a Private Reprimand in November 1998 for violations of RPC 1.3, 1.16(d), and 8.4(c) for his failure to take action in an estate matter for six years.
- d) He received a Private Reprimand in December 2001 for violations of RPC 1.4(a) and 1.5(b) for failing to pursue a client's appeal. Respondent was also placed on Probation with a practice monitor at that time.

### III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent has violated the following Rule of Disciplinary Enforcement:

- 1. Pa.R.D.E. 203(b)(1) – Respondent's conviction for willful failure to file income tax returns constitutes a conviction of a serious crime and is an independent basis for discipline.

#### IV. DISCUSSION

This matter is before the Disciplinary Board upon a Petition for Discipline charging Respondent with violation of the Rules of Disciplinary Enforcement based on his conviction of two counts of willful failure to file a federal income tax return.

When a disciplinary proceeding is commenced against an attorney based upon a criminal conviction, the Board's sole responsibility is to determine the appropriate measure of discipline in relationship to the seriousness of the crime. Office of Disciplinary Counsel v. Eilberg, 497 Pa. 388, 441 A.2d 1193 (1982). The aggravating and mitigating circumstances must be taken into consideration in the Board's final analysis of the discipline to be imposed. Office of Disciplinary Counsel v. Lucarini, 504 Pa. 271, 472 A.2d 186 (1983).

Respondent was convicted of two counts of willful failure to file income tax returns for the tax years 1993 and 1994. Respondent was sentenced to four months of incarceration in a federal penitentiary, followed by home detention and one year of probation. The tax returns for 1993 and 1994 have been filed and all associated liabilities associated have been paid by Respondent.

The prevailing case authority dictates that some form of public discipline is appropriate when an attorney is convicted of willful failure to file tax returns. Recent cases have resulted in public censure. See, e.g., In re Anonymous Nos. 98 DB 1996 and 99 DB 1996, No. 247, Disciplinary Docket No. 3, (Pa. April 14, 1998) and In re Anonymous No. 86 DB 1993, 28 Pa. D. & C. 4<sup>th</sup> 390 (1995).

A review of the circumstances in the instant case persuades the Board that public censure is not appropriate in this circumstance. Respondent's conviction, standing alone, might warrant a public censure, especially in light of the favorable character testimony from attorneys and community members who testified regarding Respondent's extensive community involvement and his good reputation for integrity and honesty. However, Respondent's prior discipline of one Informal Admonition and three Private Reprimands since January of 1997 compels the Board to recommend a one year suspension, retroactive to the date of Respondent's temporary suspension on July 28, 2001. Disciplinary recidivism, particularly four instances within the past four years, is an aggravating factor that must be taken into account. In addition, the Board has considered the length of incarceration and period of probation as a factor influencing the length of the suspension imposed here.

The Board also has considered the circumstances surrounding the breakup of Respondent's law firm at the time of the conduct at issue. Likewise, the Board has considered the testimony of community members and fellow lawyers who have testified to Respondent's public-minded outlook. Furthermore, the Board has considered the fact that Respondent cooperated with the Internal Revenue Service and never was charged with tax fraud. These factors strongly persuade the Board that Respondent should not be required to petition for reinstatement to the practice of law following his suspension, as would be required if a suspension of greater than one year were to be imposed.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [ ], be suspended from the practice of law in the Commonwealth of Pennsylvania for one (1) year, retroactive to the date of Respondent's temporary Suspension on July 28, 2001.

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: \_\_\_\_\_  
John E. Iole, Board Chair

Date: May 30, 2002

Board Member Morris did not participate in the disposition of this matter.

PER CURIAM:

AND NOW, this 25<sup>th</sup> day of July, 2002, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 30, 2002, it is hereby

ORDERED that [Respondent], be and he is SUSPENDED from the Bar of this Commonwealth for one (1) year, retroactive to July 28, 2001, and he shall comply with all the provisions of Rule 217 Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.