

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 212, Disciplinary Docket  
Petitioner : No. 3 - Supreme Court  
:  
:  
v. : No. 63 DB 1996-Disciplinary Board  
:  
:  
[ANONYMOUS] : Attorney Registration No. []  
:  
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

Respondent, [], was convicted on March 19, 1996 of one count of willful failure to file a timely income tax return for the year 1989, in violation of 26 U.S.C. '7203. He was sentenced to probation for one year with community confinement for three months. This matter was referred to the Disciplinary Board by Order of the Supreme Court dated May 20, 1996 pursuant to Rule 214(f)(1), Pa.R.D.E.

A Petition for Discipline was filed against Respondent by Office of Disciplinary Counsel on June 19, 1996. A hearing was held on October 10, 1996 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. The Respondent represented himself. Petitioner was represented by [], Esquire. The Committee filed a Report on January 6, 1997 and recommended that Respondent receive an Informal Admonition.

Petitioner filed a Brief on Exceptions on January 27, 1997 and contends that an Informal Admonition was insufficient discipline for the violation found. Respondent filed a Brief in Opposition to Petitioner's Exceptions on February 18, 1997 and contends that the Committee's recommendation was appropriate in consideration of the numerous mitigating factors.

This matter was adjudicated by the Disciplinary Board at the meeting of March 5, 1997.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), 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 1954, was admitted to practice law in Pennsylvania in 1980, and resides at []. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent pleaded guilty on March 19, 1996 in the United States District Court for the [] District of Pennsylvania to one count of a five count indictment for willful failure to file a timely income tax return in 1989.

4. Respondent was sentenced to probation of one year with three months community confinement.

5. Respondent made arrangements with the Internal Revenue Service to pay his outstanding tax liability.

6. Respondent testified that factors existed during the time period 1989 through 1992 that eroded his ability to function. (N.T. 11)

7. These factors included the breakup of his relationship with his fiancée, his father's death, the breakup of his law partnership, and his secretary's absence for long periods of time. (N.T. 12-22)

8. Respondent received an Informal Admonition in 1992 based on his failure to keep his client informed about the status of litigation.

9. Respondent presented letters from members of his community attesting to his good reputation for honesty and integrity.

### III. CONCLUSIONS OF LAW

Respondent's conviction for willful failure to file income taxes constitutes a conviction of a serious crime and is a per se ground for discipline pursuant to Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement.

#### IV. DISCUSSION

Rule 214(e), Pa.R.D.E., specifies that a certificate of conviction of an attorney for a serious crime shall be conclusive evidence of that crime. When a disciplinary proceeding is commenced against an attorney based upon a criminal conviction, the Board does not engage in a retrial of the underlying facts of the crime. The Board's responsibility in this situation is to determine the appropriate measure of discipline relative to the seriousness of the crime. The focal issue in a criminal conviction situation is whether the attorney's character, as shown by his conduct, makes the attorney unfit to practice law. Office of Disciplinary Counsel v. Casety, 511 Pa. 177, 512 A.2d 607 (1986). This test balances a concern for the public with a respect for the substantial interest of an attorney in continuing his or her involvement in the practice of law. Office of Disciplinary Counsel v. Lewis, 493 Pa. 519, 426 A.2d 1138 (1981). It is appropriate for the Board to examine any aggravating or mitigating circumstances present in this matter.

Respondent was convicted of one count of a five count indictment of willful failure to file income tax returns for the tax years 1988 to 1992. Respondent was sentenced to one year probation with community confinement for three months. At the disciplinary hearing, Respondent presented evidence of numerous personal problems that he experienced during the time frame of his misconduct. Respondent testified that his problems included the breakup of his relationship with his fiancée, which he stated was very devastating to his emotional stability, the breakup of his law partnership, which was detrimental because his partner handled the filing of all tax returns, the absence of his secretary for long periods of time due to her spouse's illness, and the extended illness and death of Respondent's father, which required him to travel frequently to Arizona to be with his parents. Respondent testified that he began to use alcohol more frequently during this time frame, although he did not testify nor present expert testimony that he was an alcoholic. Respondent made

clear in his testimony that he was not seeking to escape responsibility for his misconduct but wanted the Committee and the Board to appreciate the underlying circumstances. Respondent has made arrangements with the IRS to pay his outstanding tax obligation.

Although Respondent received one Informal Admonition in the seventeen years he has practiced, he presented strong character letters from attorneys and other community members who noted Respondent's extensive community involvement and his reputation for integrity.

There are a significant number of prior cases addressing conviction for failure to file income taxes. In most of the cases, public discipline was imposed. In the case of In re Anonymous No. 91 DB 87, 49 Pa. D. & C. 3d 572 (1988), an attorney pleaded guilty to two counts of failure to file tax returns and was sentenced to thirty days in jail and six months probation. The Board considered that the attorney was an alcoholic and suffered through a failed marriage and suspended him for thirty days. In In re Anonymous No. 53 DB 81, 21 Pa. D. & C. 3d 673 (1982), an attorney pleaded guilty to three counts of failure to file taxes and served a short prison sentence. The Board considered that the attorney had marital problems at the time and recommended a three month suspension, which was imposed by the Supreme Court. In the case of In re Anonymous No. 68 DB 85, 41 Pa. D. & C. 3d 480 (1986), the Board recommended a private reprimand for an attorney who was convicted of failing to file taxes in light of his troubled marriage; however, the Court imposed a public censure.

In the case of In re Anonymous No. 67 DB 78, 14 Pa. D. & C. 3d 284 (1979), an attorney pleaded guilty to one count of failure to file income taxes and was sentenced to a one year suspended sentence, thirty days in jail and eleven months probation. He received a public censure.

In the case of In re Anonymous No. 15 DB 76, 4 Pa. D. & C. 3d 394 (1977), an attorney was convicted of three counts of failure to file income tax returns and received fifteen days probation.

The Supreme Court imposed a public censure.

The Hearing Committee in the instant case found that Respondent was very credible and sincere and recommended an Informal Admonition based on all of the mitigating factors.

Petitioner excepted to this recommendation as too lenient in consideration of the fact that Respondent was convicted of a federal crime. After review of the record, the Board must sustain Petitioner's exception. The Board considered Respondent's mitigating circumstances and is appreciative of Respondent's troubles; however, these circumstances are not weighty enough to warrant imposition of an Informal Admonition, which is the lightest form of discipline available. The cases cited above all have instances of mitigation, yet these cases resulted in some form of public discipline, usually Public Censure. Careful analysis of these cases and the instant case does not demonstrate a significant difference in the underlying facts or mitigating circumstances presented so as to warrant different discipline. For these reasons, the Board is persuaded that a Public Censure is the appropriate level of discipline.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be subjected to a Public Censure before the Supreme Court of Pennsylvania.

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: \_\_\_\_\_  
Duke George, Jr., Member

Date: June 10, 1997

Board Members Carson and Caroselli did not participate in the March 5, 1997 adjudication.



ORDER

PER CURIAM:

AND NOW, this 29th day of July, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 10, 1997, it is hereby

ORDERED that [RESPONDENT] be subjected to PUBLIC CENSURE by the Supreme Court.

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