

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 863, Disciplinary Docket No. 3
Petitioner	:	Supreme Court
	:	
	:	No. 186 DB 2003 – Disciplinary Board
v.	:	
	:	Attorney Registration No. 43105
JOSEPH R. D’ANDREA	:	
Respondent	:	(Lackawanna 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

On January 20, 2004, Office of Disciplinary Counsel filed a Petition for Discipline against Joseph R. D’Andrea, Respondent. The Petition charged Respondent with professional misconduct arising out of his conviction for willfully subscribing to a false 1995 Federal Income Tax Return.

A disciplinary hearing was held on December 17, 2004, before a District III Hearing Committee comprised of Chair Wayne M. Pecht, Esquire, and Members Ronald M. Katzman, Esquire, and Lindsay Dare Baird, Esquire. Respondent was represented by James F. Mundy, III, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 25, 2005, finding that Respondent engaged in professional misconduct and recommending that he be suspended for two years, retroactive to the date of Respondent's temporary suspension.

This matter was adjudicated by the Disciplinary Board at the meeting of July 16, 2005.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, 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, Joseph R. D'Andrea, was born in 1959 and was admitted to the practice of law in the Commonwealth of Pennsylvania in 1985. He maintains his office at 320 N. Blakely St., Dunmore PA 18512. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior history of discipline.

4. On March 21, 2003 Respondent entered into a Plea Agreement with the United States Attorney's Office. He agreed to plead guilty to a one count Information relating to his 1995 tax return, in exchange for which the United States Attorney agreed to bring no further criminal charges against him in connection with other tax-related conduct during 1995, 1996, and 1997.

5. By Information filed on March 25, 2003, Respondent was charged in the United States Middle District Court of Pennsylvania with a violation of Title 26, United States Code §7206(1). Specifically it was alleged that he had willfully made and subscribed a false and inaccurate 1995 Federal Income Tax Return.

6. On or about May 20, 2003, Respondent paid \$34,578 to the Internal Revenue Service on account of his substantial tax arrearages. Substantial amounts of interest and penalties remain due and owing, in that Respondent had underreported his income for 1995 in the amount of \$47,890, in 1996 in the amount of \$34,831, and in 1997 in the amount of \$17,100.

7. On June 5, 2003, Respondent entered a plea of guilty to the aforesaid charge, pursuant to the March plea agreement.

8. The Court immediately sentenced Respondent to one year probation, including six months of house arrest. He was directed to perform 50 hours of community service and was directed to pay a fine of \$10,000, together with various costs.

9. Following his sentence on June 5, 2003, Respondent made a series of statements that were quoted in the Scranton Times Newspaper, including the following:

a. "all I do now is work and come home, anyway,...all it means is that I'm not going to Italy this summer."

b. "let those who have filed a tax return that is completely true cast the first stone."

10. By Order dated November 24, 2003, the Supreme Court of Pennsylvania temporarily suspended Respondent and directed that his criminal conviction matter be referred to the Disciplinary Board.

11. Following his admission to the Pennsylvania Bar in 1985, Respondent worked as an Assistant District Attorney in Lackawanna County from 1985 until 1987.

12. Respondent opened his own office in 1987, with a practice concentrated on criminal defense work.

13. While engaged in the private practice of law, Respondent did so as a sole practitioner, with no associates and a support staff of one person.

14. The income which Respondent failed to report during the period 1995 to 1997 was from his law practice. A large percentage of this unreported income consisted of cash and checks received from clients.

15. Respondent's law office had no accounting system to record check receipts, cash receipts or disbursements.

16. The criminal charges to which Respondent pleaded guilty related to his filing of a false and inaccurate 1995 Federal Income Tax Return. However, pursuant to the plea agreement, Respondent agreed to repay back taxes for three tax years.

17. Respondent underreported his taxable income in years prior to 1995, and also acknowledged that the Pennsylvania Department of Revenue had sought to recover approximately \$3,000 in back taxes and /or interest and penalties for tax years 1999 and/or 2000.

18. Respondent paid the \$10,000 fine assessed by the United States District Court, by check on July 3, 2003.

19. Respondent fulfilled his community service requirements by volunteering at a homeless shelter.

20. On February 18, 2004, Respondent paid the Internal Revenue Service \$69,013.89 in connection with interest and penalties for tax years 1995, 1996, and 1997. Respondent was discharged from federal probation supervision on June 5, 2004.

21. Respondent fully complied with all rules and procedures for notifying the Office of Disciplinary Counsel regarding his criminal conviction.

22. Respondent complied with Rule 217, Pa.R.D.E., regarding notice to all clients indicating his temporary suspension from the practice of law.

23. In October 2003, Respondent was held in contempt of court in the Court of Common Pleas of Lackawanna County for failure to pay timely child support and failure to cooperate with the Court. Since November 2003 there have been no further citations or petitions filed by either party concerning support or custody.

24. In lieu of live testimony at the disciplinary hearing, Respondent produced letters from prominent members of the Lackawanna County Bar including the current and former District Attorney, and a former Chair of the Disciplinary Board.

25. These character letters confirm that Respondent is held in high regard in his community.

26. Respondent expressed remorse for his misconduct.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

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 a lawyer in other respects.

2. Respondent’s conviction for Willfully Subscribing to a False 1995 Federal Income Tax Return, in violation of 26 U.S.C. §7206(1), constitutes an independent basis for discipline pursuant to Pa.R.D.E. 203(b)(1).

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with violation of Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement arising out of his conviction of willfully subscribing to a false 1995 federal tax return. Respondent was sentenced to one year of probation, including six months of house arrest, and was fined \$10,000. As with all disciplinary matters predicated on a criminal conviction, the sole issue to be resolved is the extent of discipline to be imposed on Respondent. Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982). Consideration is to be given to any aggravating and mitigating circumstances. Office of Disciplinary Counsel v. Valentino 730 A.2d 479 (Pa. 1999).

Respondent violated federal law relating to filing his income tax return. Respondent admitted that he engaged in misconduct and cooperated with federal authorities and disciplinary authorities. He fulfilled his criminal sentence by timely paying restitution and engaging in community service at a homeless shelter, in addition to serving a one year probation. While Respondent's actions did not involve clients, this does not extinguish the need for disciplinary sanction. Office of Disciplinary Counsel v. Christie, 639 A.2d 782 (Pa. 1994).

In considering the circumstances of this matter, the Hearing Committee highlighted several comments made by Respondent to the media shortly after he was convicted. While Respondent's public comments were irresponsible and unprofessional, the Board does not find them compelling as to the question of discipline here. The Board

likewise does not find any actions of Respondent in his child custody and/or support matters that require consideration on the instant question of appropriate discipline in this case.

The Board has previously considered similar offenses by members of the Pennsylvania bar. Suspension has been imposed by the Supreme Court in cases such as In re Anonymous No. 99 DB 92, 24 Pa. D. & C. 4th 279 (1994), wherein the attorney was convicted of failing to report in excess of one million dollars of taxable income. The Court suspended this attorney for 30 months, retroactive to the date of the attorney's temporary suspension. In In re Anonymous No. 93 DB 89 17 Pa. D. & C. 4th 390 (1992), the attorney entered a no contest plea to an indictment charging one count of conspiracy and four counts of false income tax returns. He was suspended by the Court for three years, retroactive to his temporary suspension.

In the matter of In re Anonymous No. 38 DB 91, 18 Pa. D. & C. 4th 266 (1992), a Pennsylvania lawyer who practiced in New York State entered a plea admitting violation of two counts of New York law for his failure to file tax returns for a period of three years. The Supreme Court of Pennsylvania imposed a one year suspension.

Based on the totality of the circumstances and the prior sanctions imposed for similar misconduct, the Board recommends that a one year and one day suspension be imposed, retroactive to the date of Respondent's temporary suspension on November 24, 2003. This length of suspension strikes a fair balance between the longer suspensions imposed in the cases cited above, where there were more serious charges, and a shorter

suspension which is inadequate to address the serious nature of Respondent's crime. The Board is persuaded by the facts of the matter that Respondent should be required to petition for reinstatement and prove his fitness to practice law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Joseph R. D'Andrea, be suspended for a period of one year and one day retroactive to November 24, 2003

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Martin W. Sheerer, Board Member

Date: September 30, 2005

Board Members Gentile, Gephart and Pietragallo dissented and would recommend a one year suspension.

Board Member Saidis dissented and would recommend a two year suspension.

Board Member Raspanti recused

Board Member Nordenberg did not participate in the July 16, 2005 adjudication.

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DISSENTING OPINION

The Recommendation of the Disciplinary Board is that Respondent be suspended for one year and one day, retroactive to November 24, 2003. I am writing in dissent.

I disagree with the majority determination that Respondent’s misconduct warrants a suspension of one year and one day, which would require him to petition the Supreme Court for reinstatement before he is permitted to practice law in the future. Respondent has been on temporary suspension since November 24, 2003. He has been out of the practice of law for nearly two years and should not be forced to wait another year during the reinstatement process. It is my respectful opinion that Respondent’s misconduct, willfully subscribing to a false federal income tax return, does not render him so unfit to practice law as to require that he prove his fitness to the Court. The record of

these proceedings shows that Respondent may have run a sloppy practice but was not an incompetent lawyer. I wish to further add that Respondent's comments to the Scranton media should be given no weight whatsoever in the determination of Respondent's discipline. This would be patently unfair, as the statements were made in close proximity to Respondent's sentencing at the courthouse, certainly an emotional event for him. These statements should not be relied upon as reliable evidence of Respondent's character and fitness.

The facts of this case support a suspension for one year, retroactive to November 24, 2003.

Respectfully submitted,

By: _____
William A. Pietragallo, Board Member

Date: September 30, 2005

Board Vice-Chair Gentile and Board Member Gephart join in this dissent.

PER CURIAM:

AND NOW, this 29th day of November, 2005, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated September 30, 2005, it is hereby

ORDERED that Joseph R. D'Andrea be and he is suspended from the Bar of this Commonwealth for a period of one year, retroactive to November 24, 2003.

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