DAYTON BAR ASSOCIATION *v.* MILLONIG.

[Cite as *Dayton Bar Assn. v. Millonig* (1999), ___ Ohio St.3d ___.]

Attorneys at law — Misconduct — Public reprimand — Failing to file personal federal income tax returns.

(No. 98-1798 — Submitted October 28, 1998 — Decided January 20, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 97-80.

On August 11, 1997, relator, Dayton Bar Association, filed a complaint charging respondent, Arthur F. Millonig, Jr. of Centerville, Ohio, Attorney Registration No. 0006552, with violations of the Disciplinary Rules and the Rules for the Government of the Bar. Respondent filed an answer admitting the factual allegations of the complaint but denying that his conduct violated any of the cited rules. The parties then submitted joint stipulations, and the matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board").

The panel found that as a result of a plea agreement, respondent entered a guilty plea to a three-count information charging him with willful failure to file personal federal income tax returns for 1992, 1993, and 1994, in violation of Section 7203, Title 26, U.S.Code, a federal misdemeanor. In October 1996, the federal district court convicted him of the three counts of willfully failing to file federal income tax returns, fined him $3,000, ordered him to pay a $75 special assessment, and placed him on probation for three years.

In mitigation, the panel found that respondent voluntarily admitted his responsibility for the failure to file the tax returns and fully cooperated with the federal court and relator. It further found that respondent's failure to file income tax returns resulted in no financial loss to the government because respondent did

not owe any federal taxes for 1992, 1993, and 1994. Numerous witnesses offered testimony and letters noting respondent's exceptional character and professional reputation.

Relator withdrew the alleged Disciplinary Rule violations, and both parties stipulated that respondent had violated Gov.Bar R. V(6)(A)(1) (misconduct), with relator recommending that respondent receive a public reprimand. The panel concluded that Gov.Bar R. V(6)(A)(1) provided no independent authority to impose a sanction on respondent because the rule contemplates an underlying violation of another rule or order.[1] The panel, however, noted that Section 1(A) of the Rules and Regulations Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court provides that "[t]he panel and Board shall not be limited to the citation to the disciplinary rule(s) in finding violations based on all the evidence." It then concluded that respondent had violated DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), a violation which relator had originally charged in its complaint. The panel recommended that respondent be publicly reprimanded.

The board adopted the findings, conclusions, and recommendation of the panel.

Casper & Casper and *Patrick W. Allen*, for relator.

Arthur F. Millonig, Jr., pro se.

Per Curiam. We adopt the findings of the board and its conclusion that respondent violated DR 1-102(A)(4) by failing to file the tax returns.

Because respondent was originally charged with a violation of DR 1-102(A)(4) and had notice and an opportunity to make his defense, relator's subsequent withdrawal of the charge did not preclude the panel and the board from finding that respondent's stipulated misconduct violated this Disciplinary Rule. We consequently distinguish *Disciplinary Counsel v. Simecek* (1998), 83 Ohio St.3d 320, 699 N.E.2d 933, in which we held that after the record was closed, the board could not find disciplinary violations that were not originally charged.

We also agree with the board regarding the appropriate sanction. Unlike *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 190-191, 658 N.E.2d 237, 240, where we held that a violation of DR 1-102(A)(4) requires an actual suspension from the practice of law, there is no evidence in this case that respondent ever lied to his clients or any court. Accordingly, respondent is hereby publicly reprimanded. Costs taxed to respondent.

Judgment accordingly.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY and PFEIFER, JJ., concur.

COOK and LUNDBERG STRATTON, JJ., dissent.

FOOTNOTE:

1. Gov.Bar R. V(6)(A)(1) defines "[m]isconduct" as "any violation by a justice, judge, or an attorney of any provision of the oath of office taken upon admission to the practice of law in this state or any violation of the Code of Professional Responsibility or the Code of Judicial Conduct, disobedience of these rules or of the terms of an order imposing probation or a suspension from the practice of law, or the commission or conviction of a crime involving moral turpitude."

LUNDBERG STRATTON, J., dissenting. Failure to file income tax returns, whether or not tax is due, is a serious violation that deserves more than a public reprimand. Therefore, I would suspend respondent for one year, and would stay that suspension on the condition that during this stay no disciplinary complaints are certified to the board by a probable cause panel.

COOK, J., concurs in the foregoing dissenting opinion.