

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Christena Obregon
PRB File No. 2012.133

Decision No. 188

Disciplinary Counsel filed a Petition of Misconduct charging Respondent with violation of Rule 8.4(c) of the Vermont Rules of Professional Conduct for failing to file Vermont personal income tax returns for four separate tax years. Respondent filed an answer to the petition and later the parties filed a stipulation of facts, recommended conclusions of law and a recommendation for sanctions. In addition, Respondent waived certain procedural rights including the right to an evidentiary hearing.

The Panel accepts the recommendations and publicly reprimands Respondent for violation of Rule 8.4(c).

Facts

Based upon the stipulated facts, we find the following:

Respondent was admitted to practice in Vermont in 1994. She failed to timely file her Vermont tax returns for the years 2006, 2008, 2009 and 2010. Each return was due, with extension, in October of the succeeding year. Respondent received numerous letters from the Tax Department with respect to her failure to file each of these returns.

In addition, in January of 2013, Respondent was notified that \$119.00 from her “refund/rebate or property tax adjustment” was being applied to her 2006 tax liability and that, should she fail to resolve the issue, the debt would be submitted to the Treasury Offset Program whereby the federal government would reduce or withhold her federal income tax refunds to satisfy the obligation to the State of Vermont.

In December of 2008, the Department of Taxes sent Respondent a Notice of

Estimated Assessment for the year 2008, and in January of 2009, sent her a First Notice of Insufficient Payment for the 2006 tax year.

In December of 2011, Office of Disciplinary Counsel was notified that Respondent was delinquent in her Vermont taxes. In response to an inquiry from Disciplinary Counsel, Respondent disputed the allegation that she was not in good standing and contended that she had paid both her personal and business taxes to the State of Vermont, and that she had a plan in place for completing the returns which was satisfactory to the tax department.

In February of 2012, Disciplinary Counsel informed Respondent that she had contacted the Department of Taxes and learned that they did not agree that there was a satisfactory plan in place, and that they intended to file a collection action for back taxes.

In April of 2012, the Department of Taxes brought suit against Respondent for unremitted taxes in the amount of \$2388.55 for the years 2008 and 2009. In February of 2013, the Department of Taxes moved to dismiss the complaint and advised Disciplinary Counsel that arrangements had been made for payment of the outstanding tax liability, but that the Department still considered Respondent not in good standing.

The 2006 return was eventually filed in January of 2009; the 2008 and 2009 returns in September of 2012, and the 2010 return in September of 2013.

With respect to Respondent's mental state, the parties have stipulated that Respondent intentionally and/or knowingly failed to file timely Vermont tax returns for these four years. This failure caused potential injury to the public in that it involved conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on Respondent's fitness to practice law.

Respondent was injured in an automobile accident in January of 2011, and was required to take a medical leave of absence from work from April through June of 2011. This contributed in part to the delay in the filing of her 2006 and 2008 returns. Her failure to file her 2009 and 2010 returns was due in part to a series of computer viruses and software malfunctions as well as the medical issues. Respondent lost some of her financial information and records and, despite attempts to restore the information, much of it was lost. Respondent attempted to recreate the records with the help of an accountant.

For each of the years in question, Respondent did not owe any taxes, and in some years was entitled to a refund. Any monies paid were the result of penalties, late fees and interest on those fees and penalties.

The following mitigating factors are present: Respondent had personal problems and has expressed remorse. In aggravation, she has a prior disciplinary offense; substantial experience in the practice of law and the violation shows a pattern of misconduct.

Conclusion of Law

Rule 8.4(c) of the Rules of Professional Conduct provides that “[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” The comment to this rule makes is clear that failure to file income taxes is encompassed by this Rule. “Many kinds of misconduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. . . . Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate

lack of those characteristics relevant to law practice.” The comment goes on to note that “[a] pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.”

In addition, the Vermont Supreme Court has long held that failure to file income tax returns is a violation of the Rules of Professional Conduct. In *In re Massucco*, 159 Vt. 617 (1992), *In re Free*, 159 Vt. 625 (1992), In *In re Heald*, PRB Decision No. 67 (2004), *In re Calhoun*, 127 Vt. 220, 245 A.2d 560 (Vt. 1968).

Based upon the foregoing, we find that Respondent violated Rule 8.4(c).

Sanctions

In making our determination to accept the recommended sanction in this matter we have looked to both the ABA Standards for Imposing Lawyer Sanctions and Vermont case law. Under both, the choice is between suspension and public reprimand.

We turn first to the ABA Standards, which requires us to look at the duty violated, the lawyer’s mental state, the injury and the presence of aggravating and mitigating factors.

Lawyers owe duties both to their clients and to the public. “The most fundamental duty which a lawyer owed the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the courts is undermined when lawyers engage in illegal conduct. *ABA Standards* §5.0. We have found that Respondent violated her duty to maintain personal integrity by her failure to file tax returns.

We next look at the attorney’s mental state. The parties have stipulated that

Respondent's actions were knowing and or intentional. Knowledge under the ABA Standards knowing is defined as the "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." Disciplinary Counsel argues, and we concur, that Respondent's actions were knowing rather than intentional.

We look next to the injury caused by the misconduct. In this case, the injury is to the legal system and to the public perception of the bar. "It is not only a failure to perform a duty imposed by law on income-earning citizens generally, it is a breach of responsibility that tends to discredit the legal profession which the respondent, as a member of the bar, is obligated to uphold with strict fidelity." *In re Calhoun*, 127 Vt. 220, 245 A.2d 560 (Vt. 1968).

The presence or absence of aggravating and mitigating factors can affect the appropriate sanction. In this case there are several aggravating factors. Respondent has one prior disciplinary offense, *ABA Standards §9.22(a)*, she engaged in a pattern of misconduct, *ABA Standards §9.22(c)*, and she has substantial experience in the practice of law. *ABA Standards §9.22(i)*. In mitigation, she experienced personal problems in the loss of her computer files, *ABA Standards §9.32(c)*, she suffered from health and issues and a temporary disability, *ABA Standards §9.32(h)* and has expressed remorse, *ABA Standards §9.332(l)*.

The ABA Standards provide that "[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct . . . that seriously adversely reflects on the lawyer's fitness to practice law. §5.12.

Public reprimand is appropriate when a lawyer "knowingly engages in any other

conduct that involves dishonesty, fraud, deceit or misrepresentation and that adversely reflects on a lawyer's fitness to practice law." §5.13.

The primary difference between suspension and reprimand under the ABA Standards is the extent to which the conduct reflects on the attorney's fitness to practice law and whether or not the misconduct constitutes criminal activity. Though Respondent was not charged with a crime, failure to file a Vermont income tax return can result in criminal penalties, 32 VSA §5894(b).

There are a number of Vermont cases involving failure to file income tax returns. For the most part they have resulted in suspensions. In *In re Taft*, PCB File No. 32 (1992), Respondent was suspended for four months after pleading *nolo contendere* to two counts of failing to file his Vermont income tax returns. In *In re Free*, PCB File No. 35 (1992), Respondent pled guilty to three counts of failure to file Vermont returns and was suspended for six months. In *In re Massuco*, PCB File No. 31 (1992), Respondent was convicted of two counts of failure to file Vermont tax returns and was suspended for four months.

While the Vermont case law would seem to suggest that suspension is the appropriate sanction for failure to file tax returns, Disciplinary Counsel argues, and we agree, that reprimand is more appropriate in this case based primarily on the mitigating factors. Respondent experienced health problems during the period when she was to file her 2006 and 2008 returns and had serious computer problems that caused her to lose financial records needed for subsequent returns and has expressed remorse. The fact that Respondent did not owe any tax does not relieve her of her ethical obligation to file the return.

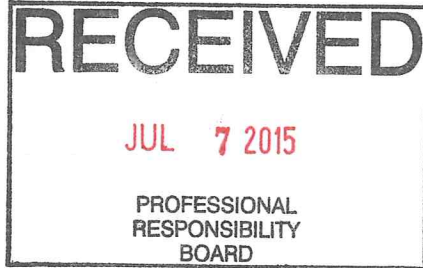
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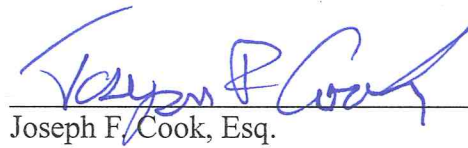
Based upon the foregoing, Respondent Christena Obregon is publicly
reprimanded for violation of 8.4(c) of the Vermont Rules of Professional Conduct.

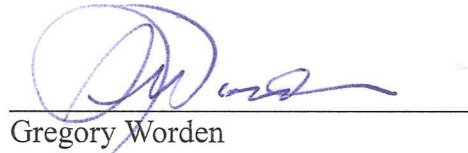
Dated: July 7, 2015

Hearing Panel No. 2


Jean Brewster Giddings, Esq., Chair




Joseph F. Cook, Esq.


Gregory Worden