

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner/Appellant,

v

William F. Klintworth, P 30993,

Respondent/Appellee.

92-112-GA

Issued: August 11, 1993

BOARD OPINION

In January 1991, the respondent was convicted in the United States District Court for the Eastern District of Michigan of one count of willful failure to file income tax return in violation of 16 U.S.C. 7206. That conviction resulted in the institution of disciplinary proceedings in accordance with MCR 9.120 and the entry of a hearing panel order suspending respondent's license to practice law in Michigan for a period of forty-five days effective September 14, 1991. (See Matter of William F. Klintworth, 91-87-JC).

The formal complaint filed by the Grievance Administrator in this matter on May 7, 1992 charged that the respondent engaged in further professional misconduct by failing to comply with the conditions of probation imposed by the district court at the time of his sentencing. The complaint specifically alleged that the respondent's failure to comply with the terms of probation resulted in the entry of an amended judgment by a U. S. Magistrate on October 11, 1991. In answer to that complaint, the respondent admitted that the magistrate's order of October 11, 1991 resulted in the revocation of his probation and his incarceration for seven days.

The hearing panel's Order of Dismissal was accompanied by its report. Noting that the respondent had admitted in his testimony that the allegations in the formal complaint were generally true and that he had violated the specified conditions of the U. S. District Court Probation Order, the panel declared that while the probation violation could support a finding of professional misconduct as charged in the complaint, the Grievance Administrator had presented no testimony or evidence in support of that position.

The Board has considered the arguments presented by the parties and has reviewed the record before the panel. We conclude that the panel's decision to grant the respondent's motion for involuntary dismissal under MCR 2.504(B)(2) was in error. The Grievance Administrator introduced sufficient evidence to support a finding of professional misconduct. The Order of Dismissal is therefore vacated. In lieu of a remand to the hearing panel for a hearing on discipline, the respondent is reprimanded.

In reiterating the appropriate standard of review to be followed by the Board, the Court stated in Grievance Administrator v Irving August, 438 Mich 296; 475 NW2d 256 (1991), that the Board must review the whole record for proper evidentiary support. At the same time, the Court noted, the Board possesses a measure of discretion with regard to the ultimate decision. In this case, the factual evidence is not in dispute. The respondent admits that he appeared before a U.S. Magistrate and offered a plea of guilty to charges that he failed to comply with an order of probation. We agree with the hearing panel that evidence of a probation violation, standing alone, does not necessarily constitute a per se violation of the Michigan Rules of Professional Conduct or automatic grounds for imposing discipline under MCR 9.104. However, we differ from the panel as to the ultimate decision in this case--whether or not the testimony and exhibits offered into evidence by the Grievance Administrator in this case was sufficient to establish professional misconduct.

We conclude that there was proper evidentiary support in the record for the allegation that the respondent's conduct exposes the legal profession to obloquy, contempt, censure or reproach in violation of MCR 9.104(2).

In reaching that conclusion, mention must be made of the transcript of the probation revocation hearing conducted before U. S. Magistrate Joseph Scoville on October 11, 1991. At the conclusion of that hearing, having heard the respondent's testimony as well as that of the probation officer and IRS agent assigned to review respondent's compliance with the probation order, the magistrate announced his finding that the respondent's failure to pay estimated quarterly payments as ordered was, in fact, a willful violation. The magistrate observed:

"As I look at the entire offense conduct before me, its quite serious. The defendant is a lawyer and is presumed to know better, paid no taxes from 1985 to the present, and the government accepted a plea of guilty to one count of willful failure to file income taxes for 1985.

The evidence indicates that there is some seventy thousand--sixty-nine thousand dollars in taxes owing. In essence, the defendant has made money and lived tax free since the year 1985, which is a serious offense to millions of people in this country that do pay their taxes.

...

The other condition was that from that day forward, defendant start taking seriously the obligation that we all have whether we are making a gross of ninety thousand a year or ten thousand a year, the obligation that we all have to pay our taxes, and I am now faced some nine months later with the situation where the defendant has not paid another cent to the IRS. So

looking at this, at the big picture, defendant didn't pay any taxes for five years, came into court, pleaded guilty, promised to pay and didn't do it.

...

The judgment of this court directed the defendant to file those quarterly returns, and if he didn't think he could do it he could have petitioned the court and made some explanation at the time. But its very clear to me that the defendant, no matter what pressures he's facing, decides that the easiest thing to do is not face creditors, not face your wife, not face your mother, not face everyone else who is relying on you but turn to the IRS and say 'you're not going to get paid until I have the money, and you're not going to get paid until I start getting some big chunks of cash where I can do it comfortably', and that's just not right." (Petitioner's Exh. 5, pages 64-66).

We adopt those sentiments of the magistrate as our own. As a lawyer, the respondent should have known better than to ignore certain terms of his probation. As an officer of the court, the respondent, like all licensed attorneys in Michigan, has a special continuing obligation to uphold the laws of Michigan and the United States. Review of the respondent's testimony to the magistrate only re-enforces the conclusion that the respondent's cavalier attitude toward that obligation could only expose the legal profession to the contempt and reproach of the vast majority of citizens who make an effort to declare and pay their taxes.

Having reviewed the entire record and having considered the positions expressed by counsel for the respective parties on the issue of discipline, we exercise our discretion to impose a reprimand in lieu of a remand of this matter to the hearing panel for a separate hearing on discipline.