IN THE MATTER OF ERNEST L. CITRON,
A Member of the State Bar of Michigan,
Respondent,
DP-22/81

Decided: April 1, 1982

OPINION OF THE BOARD

Respondent was charged with misconduct as a result of being convicted and sentenced for tax evasion. After the presentation of evidence in mitigation, Wayne Circuit Hearing Panel "I" suspended him for 1 year. Respondent moved for review on the basis that the discipline was excessive. We reduce the suspension to 180 days, the length of the criminal sentence imposed by the Federal Court.

Respondent was convicted following a bench trial in the United States District Court of three counts of wilful evasion of income tax, a felony under 26 USC 7201. Respondent's conviction was affirmed by the 6th Circuit Court of Appeals and his application for certiorari was denied by the U. S. Supreme Court. Citron v United States, cert den, 70 L Ed 2d 119 (1981). Respondent was initially sentenced to three concurrent, two-year prison terms, but the sentence was reduced to three concurrent six month terms.

Mr. Citron has been a member of the Bar since 1952 and has never been disciplined before. He had an unblemished record before his conviction. Letters from members of the bench vouching for Respondent's character and professional competence were presented to the panel. Respondent has nine children, seven of whom rely upon him for support. He will be required to pay the federal government a very substantial tax obligation for which he will rely upon the only means of livelihood available to him -- the practice of law. Other evidence in mitigation showed that Respondent has been active personally and as a fund-raiser in religious, educational and civic affairs. He has been characterized as an excellent father and husband for over 20 years and as a practitioner who has displayed conscientious concern for his client matters prior to his suspension and during the pendency of the criminal and disciplinary proceedings. In addition to these mitigating factors, and although this offense is a serious one, there is an absence of harm or prejudice to clients as a result of the misconduct; indeed, the complaint did not charge a breach of duty or trust to a client and did not involve transactions coming within the scope of the practice of law.

Again, the Board perceives the criminal offense in question as serious, and based upon a different record reflecting other circus stances, the discipline could be more severe. However, discipline is not intended to penalize but primarily for the protection of the public. Furthermore, the Board must consider every case individually as well as the nature and effect of the offense committed. While acting within the certain range of discipline, authorities responsible for the deprivation of liberties and privileges must exercise discretion in adjusting a sanction which is appropriate and constructive in consideration of individual facts and circumstances.

Another factor to examine following criminal convictions is whether the convicted attorney

will spend substantial time in prison or otherwise under the supervision of the Department of Corrections. If so, it may be appropriate to tie the length of the suspension to the anticipated correctional time Respondent will actually serve. Such linkage of suspension time to correctional time, however, is not automatic, and may vary with other collateral considerations. The Board specifically rejects the argument of counsel for the Grievance Administrator, that it "* * * serves our courts not at all * * *" to allow attorneys on probation the privilege of representing other public offenders. [Grievance Administrator's Reply Brief, filed November 25, 1981, at 3]. There seems to be no compelling reason why a disciplinary suspension should last at least as long as a concurrent criminal probation. An attorney-criminal probationer may be under the supervision of a court for reasons unrelated to his fitness or competence to undertake legal affairs of clients. Indeed, supervision by criminal authorities may serve to make a disciplinary respondent even more conscious of and sensitive to his general responsibilities as a citizen and as a practicing attorney. Again, the nature of the criminal offense and the limitations imposed by the criminal order of probation, may call for a more lengthy disciplinary suspension depending upon the facts and circumstances of each case.

Respondent is suspended for 180 days.

AFFIRMED AS MODIFIED.

CHAIRPERSON COTE', VICE-CHAIRPERSON LYNN SHECTER, AND BOARD MEMBERS FARHAT, KERN AND MCDEVITT CONCUR.

SECRETARY LEWIS AND BOARD MEMBER REAMON, DISSENT.

SECRETARY DAVID BAKER LEWIS & BOARD MEMBER WILLIAM G. REAMON

DISSENTING

The hearing panel order of suspension suspending Respondent for 1 year should be affirmed. Respondent was convicted of "wilfully and knowingly attempting to evade and defeat a large part of income tax due and owing by him" for the years 1970, 1971, and 1972. The indictment charged intentional under reporting of his total income over those years by $249,462, and intentional underpayment of income tax in the amount of $164,978. United States v Citron, No. 7-80926 (Eastern District of Michigan, 1980). The United States District Court, in an opinion, noted that the government's expert, an agent of the Internal Revenue Service, determined that Mr. Citron failed to report approximately $171,429 and owed an additional tax thereon in the amount of approximately $81,692.

Regardless of the number of years of unblemished practice or the judicial endorsements presented by a disciplinary Respondent, misconduct of this seriousness should draw a suspension longer than 180 days.

Significantly, at Respondent's sentencing in federal court, his own attorney commented that

Respondent,

> "has no career to go back to, functionally having been convicted of a felony, [and] it is probable that the Michigan Bar will disbar him. At the very least, *** a suspension would be forthcoming that would be many years ***" Tr of Sentencing Hearing at 4.

No doubt the Board's leniency today will surprise Respondent's former attorney and the entire Bar, as it should. We would affirm the hearing panel decision.