

IN THE MATTER OF JOSEPH FREED,  
A Member of the State Bar of Michigan,  
Respondent.  
No. 36487-A

Decided: July 3, 1980

OPINION OF THE BOARD

Respondent pled nolo contendere to three counts of failure to pay income taxes. The Grievance Administrator subsequently charged him with misconduct for violation of a federal criminal statute. A hearing panel suspended Respondent for one year; the suspension was to begin when Respondent started serving his three-year sentence on the federal conviction. Both parties appealed to this Board. Respondent, in a delayed Petition for Review, contested the findings of fact, the severity of discipline, and the panel's unwillingness to consider the substantive issues involved in his controversy with the government. The Grievance Administrator, in his Cross-Petition, asserted that the panel abused its discretion in suspending Respondent for only one year. We granted review of both Petitions, and now modify the discipline to a 120-day suspension. The Order of the panel is otherwise affirmed, and Respondent's suspension will begin at the time directed by the Order.

Respondent was charged with three counts of failure to pay federal income taxes for 1972-74. He pled nolo contendere to all counts and was sentenced to one year's imprisonment on each. The terms are to run concurrently. Respondent is to be released on parole after serving one-third of his sentence. He is appealing his conviction to the Sixth Circuit Court of Appeals.

At the panel hearing, counsel for the Grievance Administrator satisfied his burden of proof by introducing evidence of a final conviction. Respondent's counsel argued that his client's ability to pay the taxes, and the obligations themselves, are in dispute, but not Respondent's willingness to pay any amount he believes he actually owes the government. Counsel also explained that testimony and a psychiatrist's report would be entered in mitigation to show that Respondent can still practice competently.

Respondent called a number of former clients as witnesses. One testified that Respondent helped him "straighten out" his life after the witness returned from Vietnam suffering from combat fatigue and alcoholism. Panel Tr. at 32-37. Another witness said Respondent performed gratuitous legal services for a union. *Id.* 39-41. A third told the panel that Respondent probated an estate quickly and cheaply for him, and that Respondent has experienced financial problems. *Id.* 44-46. Respondent filed for bankruptcy several years ago.

After their hearing, the panel received the report of a psychiatrist. *See Report of the Hearing Panel, and Panel Tr. at 47-48.* The psychiatrist, associated with Recorder's Court, is a long-time acquaintance of Respondent. *Panel Tr. at 47.* His report stated that Respondent is a manic-depressive, did not have the criminal intent to rob the government, and feels a psychotic compulsion to litigate because of a long feud with the Internal Revenue Service. Respondent has

become contentious with the IRS and has tried to litigate every point they have raised with him. He is currently in litigation disputing that the taxes he failed to pay were actually owed. *Id.* at 64. There is also some question whether the tax obligations were discharged in bankruptcy. *Id.* at 64-65.

The hearing panel Order requires Respondent's suspension to begin "with the commencement of service of the sentence" imposed by the federal court. At the Discipline Board hearing, counsel for the Grievance Administrator pointed out the apparent inconsistency of this directive with GCR 964.10 (2), which specifies that an order of discipline is to take effect "20 days after it is served on the respondent unless the panel finds good cause for the order to earlier take effect."

In summary, the Grievance Administrator points to Respondent's conviction on three counts of a misdemeanor as evidence of misconduct and lack of fitness to practice law. Respondent was reprimanded in 1975 after a similar conviction, and the Grievance Administrator believes a one-year suspension is inadequate. Respondent, however, maintains that his clients have always been satisfied with his level of practice. He is appealing his latest conviction and contests its basis. He also thinks his emotional problems may have aggravated the tax quarrel, but does not believe his ability to represent clients has been diminished. The one-year suspension, Respondent avers, is excessive. We agree, and reduce his suspension to 120 days. Respondent's offense, together with the mitigating factors already mentioned, does not support a suspension of one year. The panel order is otherwise left undisturbed, and the suspension shall become effective upon the commencement of Respondent's sentence.

We need not consider the inconsistency of the panel Order with GCR 964.10(2). The Grievance Administrator's Petition for Cross-Review asked no modification of the form of the Order, and this issue was not raised until oral argument. GCR 967.1 directs that a motion for review "must set forth the reasons and the grounds on which review is sought." Sudden consideration of issues not raised in the Petition for Cross-Review may violate Respondent's due process right of notice. Opinions concerning notice of charges in the Formal Complaint are analogous. *In re Crane*, 400 Mich 484, 255 NW2d 624 (1977); *State Bar Grievance Administrator v Jackson*, 390 Mich 147, 211 NW2d 38 (1973); *State Bar Grievance Administrator v Fried*, 388 Mich 711, 202 NW2d 692 (1972). See also, *In re Ruffalo*, 390 US 544, 88 S Ct 1222, 20 L Ed 2d 117 (1968). For us to weigh an issue raised for the first time in oral argument would be contrary to the spirit of these decisions.

The Order of the hearing panel is affirmed, but discipline is reduced to a 120-day suspension.