

**BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO**

<b>In Re:</b>	:	<b>09-0041</b>
<b>Complaint against</b>	:	<b>Case No. 08-038</b>
<b>John Harold Large Attorney Reg. No.0068732</b>	:	<b>Findings of Fact, Conclusion of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio</b>
<b>Respondent</b>	:	
<b>Disciplinary Counsel</b>	:	
<b>Relator</b>	:	

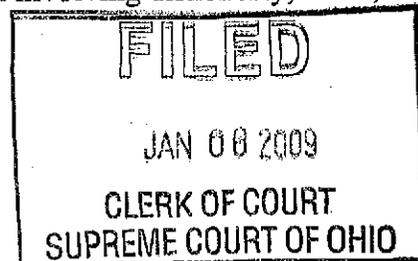
**INTRODUCTION**

A formal hearing was held in this matter on November 17, 2008 in Youngstown, Ohio, before a panel consisting of members, Lynn B. Jacobs, Judge John B. Street, and Roger S. Gates, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Respondent, John H. Large, was present at the hearing. Attorney Charles L. Richards represented Respondent. Robert R. Berger, Assistant Disciplinary Counsel, represented Relator.

**CHARGES**

Respondent was charged in a Complaint filed on June 9, 2008, with misconduct in violation of the following provisions of the Code of Professional Responsibility:

1. DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation];



2. DR 1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and
3. DR 1-102(A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law].

### **FINDINGS OF FACT**

1. Respondent, John Harold Large, was admitted to the practice of law in the state of Ohio on November 10, 1997. Respondent is subject to the Rules of Professional Conduct, the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.

2. Respondent graduated from Akron University Law School in 1997 and began employment with a small firm in northeastern Ohio. During law school, Respondent had worked for the Summit County Public Defender as an intern.

3. In October 1999, Respondent left employment with the law firm and began a solo general law practice in Trumbull County, Ohio. As a part of his practice, Respondent also sometimes filled-in for prosecutors in local municipal courts.

4. Upon opening his private practice, Respondent began a relationship with Henry Sforza, a certified public accountant, for the purpose of filing Respondent's income tax return for the 1999 tax year; the 1999 return was timely prepared and filed resulting in a refund to Respondent.

(T.28)

5. Prior to April 15, 2001, Respondent met with Mr. Sforza to discuss the preparation of his tax returns for the 2000 tax year. Mr. Sforza informed Respondent that he would need additional information from Respondent in order to prepare the returns, but estimated that Respondent's federal tax liability for 2000 would exceed \$10,000.00. Mr. Sforza filed an Application for an

Extension to file the returns, and filed an Application for an Additional Extension in August 2001. (T.65)

6. Respondent immediately realized that he did not have the funds, or access to funds, necessary to pay the taxes he would owe for the 2000 tax year. Respondent had failed to make estimated tax payments, as required by law, for the 2000 tax year.

7. Respondent was extremely embarrassed by his inability to meet his tax obligations and failed to timely provide Mr. Sforza with the additional information needed to prepare and to file his returns for the 2000 tax year. (T.67)

8. Prior to June 2002, Respondent provided Mr. Sforza with information necessary to finish his tax returns for the 2000 tax year, and to prepare his tax returns for the 2001 tax year. By June 18, 2002, Mr. Sforza prepared the federal tax returns for the 2000 tax year (which showed a balance due of \$11,099.00), and for the 2001 tax year (which showed a balance due of \$24,096.00).

9. Because he did not have the funds to pay his tax obligations, Respondent did not file the 2000 and 2001 tax returns prepared by Mr. Sforza, and did not pay the taxes due as shown on those returns. Respondent had failed to make estimated tax payments, as required by law, for the 2001 tax year. (T.67-68)

10. In October 2002, Respondent settled a personal injury claim for his client and received a fee of approximately \$72,000. Upon receipt of this fee, Respondent continued to refrain from filing his tax returns for 2000 and 2001 which were in his possession, nor did he pay the tax obligations shown on those returns. (T.88)

11. Near the time of the receipt of this fee, Respondent purchased a used Jaguar motor vehicle for \$17,000 and a used Chris-Craft motor boat for \$10,000. Respondent subsequently

sold the Jaguar for \$12,000. No portion of the proceeds from the sale of the Jaguar was applied to Respondent's tax liabilities. (T.57) Although he still owns the motor boat, it is inoperable, and Respondent has not had sufficient funds to make needed repairs to the boat.

12. Respondent failed to timely file his personal income tax returns for the 2002, 2003 and 2004 tax years, nor did he timely make any estimated tax payments for those tax years.

13. Although Respondent testified that he was extremely embarrassed by his inability to pay his taxes, he failed to seek advice from any tax professionals as to how he might deal with this problem. (T.92) He also refrained from discussing his tax situation with any of his friends, family members or business associates to attempt to resolve the situation. Respondent admitted that he had received more than one letter from the IRS during this period inquiring about his failure to file his tax returns. (T.62)

14. In 2004, Respondent became a member of a limited liability company and later a shareholder in a legal professional association with another attorney for the purpose of engaging in the practice of law. All business tax returns for these entities were timely filed.

15. In 2005, Respondent's partner decided to accept employment with the federal government and left the firm. Near the time of the partner's departure from the firm, Respondent finally discussed his tax situation with his partner who urged Respondent to take whatever steps were necessary to resolve Respondent's tax situation. (T.89-90)

16. In early 2006, Respondent contacted Mr. Sforza and provided him with information necessary to prepare Respondent's tax returns for the 2002, 2003 and 2004 tax years. Mr. Sforza completed federal returns for these years on or about March 7, 2006. The returns showed federal tax liabilities of \$44,862.00 for 2002, \$22,923.00 for 2003, and \$5,221.00 for 2004.

17. After receiving the 2002, 2003 and 2004 returns from Mr. Sforza, Respondent signed those returns, as well as his federal income tax returns for 2000 and 2001, and placed all of the returns in a box to be mailed to the IRS. (T.31)

18. Respondent timely filed his federal tax return for the 2005 tax year.

19. On the same day that his tax returns were waiting to be picked up with Respondent's office mail, IRS agents came to Respondent's house and confronted him about his failure to file his tax returns. After informing Respondent that he was in "a lot of trouble" and that he could go to jail for failing to file his tax returns, the IRS agents offered to refrain from filing criminal charges if he would provide them with information concerning official corruption in Trumbull and Mahoning Counties. (T.31-33)

20. After being confronted by the IRS agents, Respondent employed counsel concerning his tax situation. At a meeting with representatives of the U.S. Attorney and the FBI, Respondent indicated that he had no information to give them concerning individuals involved in official corruption in either Trumbull or Mahoning County. (T.36)

21. As the result of a plea bargain, Respondent appeared on June 14, 2007, in the United States District Court for the Northern District of Ohio, Eastern Division, and entered a plea of guilty in *United States v. Large*, Case No. 4:07MJ8006. He was convicted of four counts of violating 26 U.S.C. §7203, a misdemeanor offense, for knowingly failing to file federal personal income tax returns for tax years 2001, 2002, 2003 and 2004.

22. On August 24, 2007, Respondent was sentenced to four years of probation. The first six months of probation were ordered to be served at a community confinement center, followed by six months of electronically monitored home confinement. Respondent completed his periods of

community and home confinement without incident. Respondent continued his law practice during his periods of community and home confinement. (T.37)

23. The court further ordered respondent to pay \$88,077.00, as restitution to the Internal Revenue Service. As of the date of the hearing, Respondent had paid less than \$1,500.00 toward his delinquent tax obligations.

24. In August 2008, an IRS agent suggested that Respondent should submit an offer in compromise because it was unlikely that Respondent would ever be able to fully pay his taxes. Respondent completed an IRS worksheet concerning his assets and income, and based on that worksheet, Respondent submitted an offer in compromise in the amount of \$7,500.00. As of the date of the hearing, Respondent was still waiting for the IRS to respond to his offer. (T.57-58)

25. In addition to the conduct which resulted in his conviction in the federal court, Respondent also failed to file state personal income tax returns for tax years 2000 through 2004. No evidence was offered as to whether these returns were ever filed. (T.20)

26. Throughout his time as a solo practitioner until he was confronted by the IRS agents, Respondent paid wages to various employees by check, but failed to withhold from those paychecks or remit to the appropriate tax agencies any amounts for taxes and social security as required by law. Respondent further failed to file quarterly reports with the IRS concerning wages paid to his employees. He also failed to report to the IRS the income he paid to his various law office employees through the issuance of W-2 or 1099 forms as required by law.

27. Respondent testified that, at some time during the period for which he failed to file returns, he discussed with his employees whether they wanted him to withhold taxes from their paychecks and that the employees indicated they would rather continue to receive checks without deductions. (T.81)

28. When he filed his tax returns for 2000, 2001, 2002, 2003 and 2004, Respondent did not claim business expense deductions for the wages he had paid to his employees. Subsequent to his conviction, Respondent filed, at the suggestion an IRS agent, amended federal tax returns for 2000, 2001, 2002, 2003, and 2004 in which he claimed business expense deductions for the wages he had paid to his employees and thereby reduced his tax obligations as follows:

<u>Tax Year</u>	<u>Original Return</u>	<u>Amended Return</u>
2000	\$11,099	\$8,389
2001	\$24,096	\$16,858
2002	\$44,862	\$35,419
2003	\$22,923	\$13,317
2004	<u>\$ 5,221</u>	<u>\$ 2,756</u>
Total	\$108,201.00	\$76,739.00

Respondent has no knowledge as to whether the IRS has attempted to collect unpaid taxes from his former employees based upon their unreported income. (T.72)

29. After being confronted by the IRS agents, Respondent filed federal tax returns for the 2000, 2001, 2002, 2003 and 2004 tax years, fully cooperated with the IRS's investigation into his tax situation, caused his conviction to be self-reported to Disciplinary Counsel, and fully cooperated with Disciplinary Counsel in the investigation of this matter. Other than suggesting that he file amended returns to claim business expense deductions for wages paid to his employees, the IRS has made no adjustments or adverse findings concerning the accuracy of the returns, or amended returns, filed by Respondent for the 2000, 2001, 2002, 2003 and 2004 tax years.

### CONCLUSIONS OF LAW

1. Respondent engaged in misconduct in violation of DR 1-102(A)(4) and DR 1-102(A)(6) by reason of his conviction for violation of 26 U.S.C. §7203 based upon his knowing failure to file federal personal income tax returns for the tax years 2001 through 2004. See *Dayton Bar Assn. v. Millonig* (1999), 84 Ohio St.3d 403; *Toledo Bar Assn. v. Stichter* (1985), 17 Ohio St.3d

248, 249 (“The responsibility for properly filing one’s tax returns is a responsibility that should never be taken lightly by any citizen, especially one who is licensed as an officer of the court.”); *Ohio State Bar Assn. v. Loha* (1983), 4 Ohio St.3d 190. See, also, Rules of Professional Conduct 8.4, comment 2 (“Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return”). Respondent engaged in misconduct in violation of DR 1-102(A)(6) by knowingly failing to timely file federal personal income tax returns for the tax years 2000 through 2004.

2. Respondent engaged in misconduct in violation of DR 1-102(A)(6) by knowingly failing to timely file Ohio personal income tax returns for the tax years 2000 through 2004.

3. Respondent engaged in misconduct in violation of DR 1-102(A)(6) by failing to timely report to the IRS the amount of wages paid to his employees for the tax years 2000 through 2004. See, *Geauga Cty. Bar Assn. v. Bruner*, 98 Ohio St.3d 312, 2003-Ohio-736, ¶4 (Failure to report or pay amounts owed for secretary’s coverage by Ohio’s unemployment compensation system constitutes violation of DR 1-102(A)(6) ).

4. Relator has failed to prove by clear and convincing evidence that Respondent engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5). In its decision in *Cleveland Bar Assn. v. Cleary* (2001), 93 Ohio St.3d 191, 205, the Supreme Court rejected a judge’s claim that DR 1-102(A)(5) should be limited in its application to “truly extraordinary conduct that violates clear, well-established statutes or rules and directly impedes a court proceeding.” The Court stated:

Cleary correctly asserts that this court has not precisely defined "conduct prejudicial to the administration of justice" for purposes of DR 1-102(A)(5). As the Supreme Court of Minnesota has observed, however, DR 1-102(A)(5) is sufficiently well defined because it "do[es] no more than reflect the fundamental principle of professional responsibility that an attorney \* \* \* has a duty to deal fairly with the court and the client." *In re Charges of Unprofessional Conduct Against N.P.* (Minn.1985), 361 N.W.2d 386, 395; see, also, *State v. Nelson* (1972), 210 Kan. 637, 640, 504 P.2d 211, 214 ("It cannot be seriously contended that 'prejudicial' does not

sufficiently define the degree of conduct which is expected of an attorney"). As applied to our judiciary, we find it beyond dispute that a judge has a similar duty under DR 1-102(A)(5) to deal fairly with attorneys and litigants who come before the court. Accordingly, we hold that a judge acts in a manner "prejudicial to the administration of justice" within the meaning of DR 1-102(A)(5) when the judge engages in conduct that would appear to an objective observer to be unjudicial and prejudicial to the public esteem for the judicial office. See *Broadman v. Comm. on Judicial Performance* (1998), 18 Cal.4th 1079, 1092, 77 Cal.Rptr.2d 408, 415, 959 P.2d 715, 722; *In re Kelly* (1987), 225 Neb. 583, 591, 407 N.W.2d 182, 187; *In re Wright* (1985), 313 N.C. 495, 329 S.E.2d 668. Id. at 206.

See, also, *Cuyahoga Cty. Bar Assn. v. Hardiman*, 100 Ohio St.3d 260, 2003-Ohio-5596, ¶15

("We have previously held that an attorney violates this rule [DR 1-102(A)(5)] when he or she breaches his or her professional responsibility to deal fairly with the court and the client.").

Although Respondent's misconduct occurred prior to the effective date of the Rules of Professional Conduct, the language of Rule 8.4(d) is identical to the language of DR 1-102(A)(5). Comment 2 to Rule 8.4 states:

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. 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. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

Relator presented no evidence to establish that Respondent's misconduct in any way seriously interfered with the administration of justice. Rather, the evidence clearly establishes that Respondent fully cooperated with the IRS in its investigation and prosecution, and that he performed ethically in his practice with the exception of his failure to file his tax returns and pay his tax obligations, as described above. Since none of the alleged misconduct in the instant matter involved any court proceeding, nor were the interests of any of Respondent's clients prejudiced, the Panel concludes that Respondent's misconduct appropriately falls within DR 1-

102(A)(4) and (A)(6), but not (A)(5). Therefore, the Panel recommends that the allegation of a violation of DR 1-102(A)(5) be dismissed.

### SANCTION

“The primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public.” *Disciplinary Counsel v. O’Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, ¶53. Although a violation of DR 1-102(A)(4) “usually requires an actual suspension from the practice of law for an appropriate period of time,” *Disciplinary Counsel v. Fumich*, 116 Ohio St. 3d 257, 2007-Ohio-6040, ¶ 15, citing *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 190, “an abundance of mitigating evidence can justify a lesser sanction.” *Id.*, citing *Dayton Bar Ass’n v. Kinney* (2000), 89 Ohio St. 3d 77, 78. Although the typical sanction for failure to comply with income tax laws is a one-year suspension, each disciplinary case involves unique facts and circumstances and an abundance of mitigating factors may warrant a lesser sanction. *Toledo Bar Assn. v. Abood*, 104 Ohio St.3d 655, 2004-Ohio-7015, ¶¶15-18.

Based upon the evidence and the arguments of counsel, the Panel finds the following aggravating factors in this matter under BCGD Proc. Reg. 10(B)(1):

1. Respondent engaged in a pattern of misconduct which extended over approximately five years. Beginning in 2001, Respondent made a conscious decision to not file his tax returns solely because he lacked the funds to pay his tax obligations. Respondent also decided not to withhold taxes from his employees’ wages during this entire time period even though he discussed with his employees whether they wanted him to continue this practice.
2. Respondent’s misconduct was motivated by his selfish desire to avoid making arrangements to pay his taxes for as long as possible. Although Respondent could have

filed his returns without simultaneously paying the tax, the Panel concludes that Respondent decided not to file his returns with the hopes that it would delay collection efforts by taxing authorities.

3. Despite the requirement of his criminal sentence, Respondent has failed to diligently attempt to make restitution. Even though there is no evidence that his confinement under his criminal sentence hindered his ability to continue his law practice, Respondent has paid less than \$1,500.00 of his tax obligation (which exceeds \$75,000.00) and is now proposing to settle his remaining federal tax obligation for a one-time payment of \$7,500. Respondent also chose in 2002 to bypass an opportunity to rectify his misconduct when he had a large fee available from settling a personal injury case but chose not to contact the IRS and arrange to pay his taxes. The failure of the Respondent "to pay as much of his tax liability for as long as Respondent did is an aggravating factor." *Abood*, at ¶19. Based upon the evidence and the arguments of counsel, the Panel finds the following

mitigating factors in this matter under BCGD Proc. Reg. 10 (B)(2):

1. Respondent has no prior disciplinary record.
2. With the exception of the misconduct involved in this matter, the evidence establishes that Respondent is a person of good character and reputation. The character evidence submitted by Respondent demonstrates that he is an ethical practitioner, that he competently represents the interests of his clients and that he is respected in the legal community in which he practices. Despite his conviction, he has been offered a full-time position as a municipal court prosecutor.
3. Respondent pled guilty to federal criminal charges based on his misconduct and has fully acknowledged the wrongful nature of his conduct. Respondent showed contrition for his

misconduct, and the Panel believes that Respondent is unlikely to engage in this type of behavior in the future. Respondent fully cooperated with the IRS criminal investigation and with the criminal prosecution by the U.S. Attorney.

4. Respondent has served, without incident, the detention sanctions imposed by the federal district court, and with the exception of failing to make restitution by paying his taxes, Respondent has fully complied with the terms of his sentence.
5. Respondent self-reported his conviction to Disciplinary Counsel. Respondent has made full and free disclosure to the Board and has fully cooperated in these proceedings.
6. Respondent's misconduct in violating DR 1-102(A)(4) did not involve lying to a court or any client. *See Abood*, at ¶18.

Relator has recommended that Respondent's sanction for his misconduct be a one-year suspension with six months stayed. Respondent appears to accept that his conduct violated DR 1-102(A)(6) and has requested that any sanction be a stayed term suspension.

Based upon the aggravating and mitigating factors described above, the Panel recommends that the sanction for Respondent's misconduct be a one-year suspension, with the last six months stayed on the conditions that Respondent refrain from any violations of the Rules of Professional Conduct and that Respondent pay the costs of these disciplinary proceedings.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 5, 2008. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, John Harold Large, be suspended from the practice of law for one year with the last six months of the suspension stayed on the panel's conditions in the State

of Ohio. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**

A handwritten signature in black ink, appearing to read "Jonathan W. Marshall", is written over a horizontal line.

**JONATHAN W. MARSHALL, Secretary  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio**