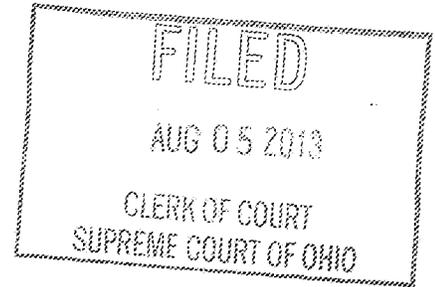


ORIGINAL

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



In re: :
Complaint against : **BOC Case No. 12-018**
 : **SCO Case No. 2012-1714**
 :
Robert Carl Schuler : **Findings of Fact,**
Attorney Reg. No. 0053140 : **Conclusions of Law, and**
 : **Recommendation of the**
Respondent : **Board of Commissioners on**
 : **Grievances and Discipline of**
Disciplinary Counsel : **the Supreme Court of Ohio**
 :
Relator :

OVERVIEW

{¶1} This matter was heard on May 15, 2013 in Columbus before a panel consisting of the Judge Robert P. Ringland, Lynn B. Jacobs, and Sanford E. Watson, chair. None of panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Respondent was present at the hearing and represented by Geoffrey Stern and Jason Beehler. Relator was represented by Donald M. Scheetz.

{¶3} The complaint in this matter arises from Respondent's felony conviction for filing a false tax return. Respondent failed to report \$360,000 in income in his 2002 tax return. The parties stipulated to the underlying facts and Respondent cooperated in the disciplinary process. Following a hearing, and based on several aggravating and mitigating factors, the panel recommends that Respondent receive an indefinite suspension with credit for time served.

{¶4} On October 6, 2011, Respondent received an interim felony suspension. On April 2, 2012, a single-count complaint was filed and alleged that Respondent's conduct violated the following: DR 1-102 (A)(4) and DR 1-102 (A)(6).

{¶5} Respondent filed a timely answer to the complaint admitting to the factual allegations, but denying the wrongfulness of his conduct. On May 14, 2012, the parties filed an agreement for consent to discipline. After a prehearing conference, the parties filed a joint motion to supplement consent to discipline agreement, and that motion was granted.

{¶6} The panel approved the consent to discipline as amended, the Board approved the recommendation of the panel, and the Report was certified to the Supreme Court of Ohio on October 9, 2012. *Disciplinary Counsel v. Schuler*, Supreme Court Case No. 2012-1714. The consent to discipline agreement included an 18-month suspension, with credit for time served under the interim felony suspension. In a February 15, 2013 order, the Supreme Court of Ohio rejected the recommended sanction and remanded the matter to the Board for further proceedings, including consideration of a more severe sanction. *Disciplinary Counsel v. Schuler*, 2013-Ohio-502.

{¶7} The parties filed agreed stipulations of fact and rule violations and jointly recommended a sanction. The panel convened a hearing to consider additional facts, aggravating and mitigating factors, and the appropriate sanction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶8} Respondent was admitted to the practice of law in the State of Ohio on May 20, 1991. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶9} On March 9, 2011, Respondent appeared before the Honorable Sandra S. Beckwith, in the United States District Court for the Southern District of Ohio.

{¶10} On that day, Respondent pled guilty to Count Seven of an indictment charging him with filing a false tax return, in violation of 26 U.S.C. §7206 (1), a felony. Counts Five and Eight, the remaining counts against Respondent, were dismissed.

{¶11} As a part of his plea, Respondent acknowledged that he made and signed his 2002 tax return under penalty of perjury. Respondent further acknowledged that at the time, he knew the tax return was not materially true and correct, in that he failed to report \$360,000 in business income.

{¶12} On September 20, 2011, Respondent was sentenced to one-year probation, to be served as home confinement, and a \$50,000 fine.

{¶13} On October 6, 2011, the Supreme Court suspended Respondent for an interim period pursuant to Gov. Bar R. V, Section 5 due to his felony conviction. *In re Schuler*, 2011-Ohio-5139.

{¶14} The panel accepted the parties' stipulated violations and finds by clear and convincing evidence that the above acts resulted in the following rule violations: DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law].

AGGRAVATION, MITIGATION AND SANCTION

{¶15} The panel accepts the parties' stipulation that Respondent's conduct had a dishonest motive. But the panel must also consider whether Respondent has fully acknowledged the wrongful nature of his conduct. Respondent ultimately took responsibility for signing the tax return that failed to report \$360,000 and he was remorseful for disappointing everyone, but

seemed to blame the error on others. Respondent pointed to “with whom you associate is critically important” as his greatest lesson learned from the matter. Hearing Tr. 36.

{¶16} The panel accepts the parties stipulated mitigating factors: (1) Respondent has no prior disciplinary record; (2) Respondent has cooperated in the disciplinary process; and (3) Respondent’s conviction and sentence constitutes another penalty and/or sanction imposed for this conduct.

{¶17} Respondent is currently paying the \$50,000 fine imposed by the criminal court in monthly payments of \$1,000 per month. It should also be noted that no restitution was ordered because during the course of the IRS investigation, Respondent paid the underlying tax due in the amount of approximately \$80,000.

{¶18} The panel also considered in mitigation reference letters from three attorneys, Respondent’s pastor, and two friends. Respondent’s Ex. A.

{¶19} The parties recommended a sanction of a 24-month suspension, with credit for time served under the felony conviction interim suspension. In support of their recommendation, the parties submitted more than a dozen cases involving felony convictions for a variety of reasons. The panel has considered those cases but further considered recent cases involving tax evasion felony convictions: *Disciplinary Counsel v. Bennett*, 124 Ohio St.3d 314, 2010-Ohio-313; (indefinite suspension, with credit for time served under felony-conviction interim suspension, where conviction was for structuring financial transactions to avoid federal reporting requirements, the Court required that Respondent complete his supervised release prior to petitioning for reinstatement); *Disciplinary Counsel v. Smith*, 128 Ohio St.3d 390, 2011-Ohio-957; (indefinite suspension, with credit for time served under felony-conviction interim suspension, where conviction was for four counts of making false tax returns, the Court required

Respondent complete his supervised release and enter into a final agreement for payment of restitution prior to petitioning for reinstatement); and *Columbus Bar Assn. v. Hunter*, 130 Ohio St.3d 355, 2011-Ohio-5788; (indefinite suspension, where conviction was for failing to report a cash payment to his law practice in excess of \$10,000, the Court required Respondent to complete his supervised release and pay restitution prior to petitioning for reinstatement).

{¶20} In all three of the foregoing recent tax evasion cases, the Supreme Court of Ohio found that an indefinite suspension was the appropriate sanction. In two of the cases, credit for time served was granted, and the third case was silent on the issue of credit. The primary condition in each of the three cases was that respondent completes his supervised release. In two cases, the respondent was required to pay or make suitable arrangements for restitution as well.

{¶21} Here, Respondent's felony conviction was based upon tax evasion and merits an indefinite suspension issued by the Supreme Court in recent similar cases. Further, there is no circumstance or compelling reason not to grant Respondent credit for time served under the interim felony suspension. Respondent has completed his supervised release and, at the time of hearing, was current with his monthly payments of the fine imposed in his criminal proceeding. Accordingly, the panel recommends a sanction consisting of an indefinite suspension with credit for time served from October 6, 2011, the date of his interim felony suspension.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on August 2, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Robert Carl Schuler, be indefinitely suspended from the practice of law in Ohio, with credit for time served under the interim felony suspension imposed on

October 6, 2011. The Board further recommends that the costs of these proceedings be taxed to 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 "Richard A. Dove", written over a horizontal line.

RICHARD A. DOVE, Secretary