

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In re:

Case No. 2014-111

Complaint against

**Ronald Lee Rosenfield
Attorney Reg. No. 0021093**

Respondent

Disciplinary Counsel

Relator

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

OVERVIEW

{¶1} This matter came before a panel consisting of David E. Tschantz, Patricia A. Wise, and Judge John W. Wise, chair. None of the members resides in the district from which the complaint arose.

{¶2} Respondent was represented by Timothy Bender. Scott Drexel appeared on behalf of Relator.

{¶3} Relator and Respondent filed a joint motion to waive the hearing and agreed to have the matter decided upon the agreed stipulations of fact, conclusions of law, aggravating and mitigating factors, exhibits, and joint recommended sanctions.

{¶4} As Respondent now lives in California and attendance at a hearing in Ohio would be a heavy financial burden, and there were no unresolved issues, the motion to waive the hearing was granted.

{¶5} This case involved Respondent's misconduct that arose from an Information filed against Respondent on January 24, 2014 in the United States District Court for the Northern

District of Ohio. Respondent was charged with a felony violation of 26 United States Code §7202 for his willful failure to truthfully account for and pay over to the Internal Revenue Service (“IRS”) federal income taxes and Federal Insurance Contribution Act (“FICA”) taxes that were due and owing for each calendar quarter from the calendar quarter ending on December 31, 2006 through the calendar quarter ending March 31, 2011.

{¶6} On August 5, 2014, the Supreme Court of Ohio suspended Respondent for an interim period based upon the felony conviction. *In re Rosenfield*, 140 Ohio St.3d 1232, 2014-Ohio-3365.

{¶7} Based upon the parties’ stipulations and evidence presented by way of exhibits, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedents, which are adequately set forth in the agreed stipulations, the panel recommends that Respondent be indefinitely suspended, with credit for time served under the interim felony suspension, and with reinstatement subject to specific conditions.

FINDING OF FACTS AND CONCLUSIONS OF LAW

{¶8} Respondent was admitted to the practice of law in the state of Ohio on November 7, 1970 and is subject to the Code of Professional Responsibility, the Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶9} On February 12, 2014, Respondent pled guilty to the Information pursuant to the terms of a plea agreement filed with the court on that date. Pursuant to the plea agreement, the court sentenced Respondent to six months of home detention and to probation for a period of five years. The court also ordered Respondent to make restitution to the IRS in the amount of \$523,253.33.

{¶10} As part of the plea agreement, Respondent stipulated to the facts set forth in ¶¶6-13 of the agreed stipulations. In summary, Respondent from some time prior to 1998 through 2011 set upon a course of conduct whereby he would not file business income tax returns for his law firm, nor include a Schedule C on his own personal income tax returns to report the continued existence and income expenses of his office. Initially, Respondent was a partner in a law practice referred to as S&R Co., LPA. In 1998, the State of Ohio revoked their corporate charter for nonpayment of state franchise taxes. Respondent failed to notify his partner of such revocation and continued to operate the practice under that corporate name. In approximately 2003, Respondent became the sole owner of the firm. Respondent changed the name to Ronald L. Rosenfield Co., LPA when his partner refused to allow him to continue to use the former firm name. Respondent took responsibility for the finances and taxes for both the former and new law practice, including payroll employment taxes. Respondent hired a payroll firm to provide payroll and employment tax return services for the law firm. Respondent would receive the checks and payroll reports from the payroll firm, but Respondent voided the checks and wrote other checks in the same amounts to his employees from the law firm's general operating account instead of funding a payroll account. When Respondent formed Ronald L. Rosenfield, Co., LPA, he did not obtain a new EIN or otherwise file any documents with the IRS to record its existence as a taxable entity. This somewhat poorly thought-out scheme caught up with Respondent, resulting in the charges filed in federal court.

{¶11} Although the statute of limitations had run on some of his tax evasion and he was not charged for that conduct, the court did include those periods when computing restitution.

{¶12} For deliberately failing to file federal employment tax returns and by failing to pay any of the employment tax owed by his firm to the IRS, in violation of his known duty to report

and pay those taxes and by falsely claiming a payment credit on his personal income tax returns for the income tax that had purportedly been withheld from his paycheck but had not actually been withheld, Respondent violated the following provisions of the Code of Professional Responsibility and the Rules of Professional Conduct:

- DR 1-102(A)(3) [an illegal act that involves moral turpitude];
- DR 1-102(A)(4) and Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and
- Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness].

{¶13} Further based upon the stipulations, the panel finds no violation of DR 1-102(A)(5) or Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice] and dismisses these alleged violations.

MITIGATION, AGGRAVATION, AND SANCTION

{¶14} The panel finds and agrees with the following stipulated aggravating factors.

{¶15} *A pattern of misconduct*—Respondent's repeated acts of misconduct occurred over a period of approximately 10 years.

{¶16} *A selfish or dishonest motive*—Respondent's failure to pay taxes and keeping the funds for personal gain evidences a selfish and dishonest motive. This was not a stipulated aggravating factor set forth in the agreed stipulations, but the panel nonetheless finds the factor in aggravation.

{¶17} The panel agrees with the following mitigating factors.

{¶18} *Absence of a prior disciplinary record*—Respondent has no prior record of discipline.

{¶19} *Full and free disclosure to the Board or cooperative attitude toward proceedings*—Respondent self-reported his conviction in this proceeding on July 10, 2014 and has cooperated with the Board and Relator throughout this proceeding. He has also fully and freely disclosed his misconduct to Relator.

{¶20} *Character or reputation*—Respondent submitted 19 letters from individuals attesting to his good character and competence as an attorney. Although these letters were prepared in connection with his sentencing in the criminal proceeding, inasmuch as this proceeding is based upon Respondent's criminal conviction, it is appropriate to consider them in connection with this proceeding as well.

{¶21} *Imposition of other penalties or sanctions*—as a result of his criminal conviction, Respondent was sentenced to home detention for a period of six months. In addition, the court imposed a restitution obligation upon Respondent in the amount of \$523,253.33. A portion of Respondent's Social Security income is garnished to pay towards this restitution; however, the amount garnished is insufficient to offset the accrued interest on the debt.

{¶22} *Cooperation with underlying criminal investigation and admission of wrongdoing*—Respondent cooperated with investigative and prosecutorial authorities throughout the criminal proceedings against him and admitted his guilt from the outset, thereby expediting the criminal proceeding and reducing time and resources required by the government to reach a full resolution of the matter.

{¶23} *Lack of harm to clients or employees*—although Respondent's misconduct related to the administration and oversight of the operation of his law firm, it did not involve the practice of law and no client was harmed or affected by the misconduct. Likewise, no

employee of Respondent's law firm was harmed by Respondent's failure to report and pay the employment taxes and unemployment taxes on behalf of his law firm.

{¶24} Due to its finding in aggravation that Respondent acted with a selfish and dishonest motive, the panel rejects the second stipulated mitigating factor regarding the absence of a selfish or dishonest motive. Stipulation ¶18.

{¶25} In determining the appropriate sanctions, the panel reviewed the cases set forth in the joint recommendations and find they provide appropriate guidance for imposition of sanctions. None of the cases is directly on point.

{¶26} The panel finds *Disciplinary Counsel v. Schuler*, 138 Ohio St.3d 346, 2014-Ohio-1127, somewhat distinguishable in that Schuler's conduct was somewhat more egregious. In addition to his tax violations, Schuler had been charged with conspiracy to commit mail and wire fraud and making false declarations before a grand jury, although these were dismissed as part of the plea bargain. Further, Schuler was found not to have appreciated the wrongfulness of his conduct and that he "seemed to blame others." By comparison, Respondent acknowledged his misconduct from the outset of the criminal proceedings and throughout the disciplinary process. The imposed sanction in *Schuler* was an indefinite suspension with credit for time served.

{¶27} *Disciplinary Counsel v. Smith*, 128 Ohio St.3d 390, 2011-Ohio-957, Smith was found guilty, following a jury trial, of one count of conspiracy to defraud the IRS, four counts of making false tax returns, and one count of corruptly endeavoring to obstruct and impede an IRS investigation. The Court found as aggravating factors that Smith acted with a selfish or dishonest motive and that he engaged in a pattern of misconduct. With reference to mitigating factors the Court found (a) his lack of prior disciplinary record, (b) his full and free disclosure of his misconduct and cooperative attitude during the proceedings, (c) evidence of good character and

reputation, and (d) the imposition of other penalties and sanctions. Other than the length of time over which the misconduct occurred, this matter is very comparable to the within matter. The sanction imposed in *Smith* was an indefinite suspension with credit for time served on Smith's interim felony conviction suspension. Although he was ordered to make restitution, it was not required that he complete it prior to reinstatement to the practice of law.

{¶28} The final case referenced is *Disciplinary Counsel v. Jacobs*, 140 Ohio St.3d 2, 2014-Ohio-2137. In *Jacobs*, the respondent was convicted by plea of one count of making and subscribing false tax returns in violation of 26 United States Code §7206(1). Jacobs, as did Respondent, failed to pay taxes to the IRS. The aggravating and mitigating circumstances parallel those of Respondent. The only apparent significant difference is that Jacobs paid all assessments and unpaid taxes within 30 days of his sentence. The Court concluded that the appropriate sanction was a two-year suspension with credit for the period of his interim felony conviction suspension.

{¶29} Upon review of the three referenced cases, an argument can be made for a two-year suspension with credit for time served, conditioned upon repayment of all delinquent taxes and assessments based upon the *Jacobs* case. However, as set forth in the stipulations on page 12, footnote 2, “* * * Respondent is currently 71 years of age and cannot find employment outside the practice of law that will provide sufficient income to permit him to make restitution in the amount ordered by the Court. Likewise, respondent does not have other available assets from which restitution can be made. * * *”

{¶30} Therefore the panel agrees with and adopts the joint recommendations regarding appropriate sanctions as set forth below.

{¶31} Based upon the foregoing stipulations, findings of fact and conclusions of law, aggravating and mitigating factors, and prior case law precedent, the panel finds the appropriate

sanction to be imposed upon Respondent is an indefinite suspension with credit for time served under the interim felony suspension imposed on August 5, 2014. In petitioning for reinstatement, Respondent must demonstrate compliance with the following conditions:

- Respondent must comply with the terms and conditions of his criminal probation;
- Respondent must make timely restitution payments in such amounts as are determined by the IRS to be appropriate in light of Respondent's income; and
- Following Respondent's reinstatement to the practice of law, Respondent shall serve a three-year period of monitored probation to ensure that Respondent has (a) properly filed and paid all employment taxes and unemployment taxes that may be due with respect to his law practice following reinstatement; and (b) made timely restitution payments to the IRS.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on October 2, 2015. The Board adopted the findings of fact and conclusions of law of the panel. After discussion, the Board amended the sanction recommended by the panel and recommends that Respondent, Ronald Lee Rosenfield, be indefinitely suspended from the practice of law in Ohio, with no credit for time served under the interim felony suspension imposed on August 5, 2014, and ordered to pay the costs of these proceedings. The Board further recommends that reinstatement be subject to the conditions set forth in ¶31 of this report.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.



RICHARD A. BOVE, Director