

IN THE SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member
of the Bar of the Supreme Court
of the State of Delaware:

ROBERT S. BRIA,

Respondent.

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No. 680, 2013

Board Case No. 108200-B

Submitted: February 26, 2014

Decided: February 27, 2014

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 27th day of February 2014, it appears to the Court that the Board on Professional Responsibility (the “Board”) has filed a Report on this matter pursuant to Rule 9(d) of the Delaware Lawyers’ Rules of Disciplinary Procedure. The Office of Disciplinary Counsel (“ODC”) approved the December 16, 2013 Report of the Board. Petitioner, through counsel, filed objections to the Board’s Report, and ODC has responded to those objections. The Court has reviewed the matter pursuant to Rule 9(e) of the Delaware Lawyers’ Rules of Disciplinary Procedure and approves the Board’s Report.

NOW, THEREFORE, IT IS ORDERED that the Report filed by the Board on Professional Responsibility on December 16, 2013 (copy attached) is hereby APPROVED.

IT IS FURTHER ORDERED that:

1) The Respondent shall be prohibited and suspended from engaging in the practice of law for a period of six months and one day, beginning March 4, 2014 and ending September 5, 2014;

2) During the suspension, the Respondent shall conduct no act directly or indirectly constituting the practice of law, including the sharing or receipt of any legal fees. The Respondent shall also be prohibited from having any contact with clients or prospective clients or witnesses or prospective witnesses when acting as a paralegal, legal assistant, or law clerk under the supervision of a member of the Delaware Bar, or otherwise;

3) The contents of the Board's report shall be made public;

4) The Office of Disciplinary Counsel shall apply to the Court of Chancery for the appointment of a receiver of the practice of the Petitioner pursuant to Procedural Rule 24;

5) The Respondent shall fully cooperate with the ODC in its efforts to monitor his compliance with this Order;

6) As reinstatement is not automatic, should Respondent apply for reinstatement, any such application must be made pursuant to Rule 22 of the Delaware Lawyers' Rules of Disciplinary Procedure following the suspension period;

7) This Order shall be disseminated by the ODC in accordance with Rule 14 of the Delaware Lawyers' Rules of Disciplinary Procedure;

8) The ODC is directed to file within ten days of the date of this Order the costs of the disciplinary proceedings. Thereafter, the Respondent is directed to have all costs paid within thirty days.

The matter is hereby **CLOSED**.

BY THE COURT:

/s/ Carolyn Berger
Justice

**BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF DELAWARE
REPORT AND RECOMMENDATION ON MISCONDUCT
AND SANCTIONS
DECEMBER 16, 2013**



BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF DELAWARE

In the Matter of a)
Member of the Bar of)
the Supreme Court of Delaware:) Board Case No.108200-B
ROBERT S. BRIA,)
Respondent.)

Report and Recommendation on Misconduct and Sanctions

On July 25, 2013, a panel of the Board on Professional Responsibility, consisting of Richmond L. Williams, Esquire, Chair, Theresa V. Brown-Edwards, Esquire and Nancy J. Shevock, conducted a hearing on the allegations of misconduct brought by the Office of Disciplinary Counsel against Respondent, Robert S. Bria. Jennifer-Kate Aaronson, Esquire appeared for ODC and Charles Slanina, Esquire appeared for the Respondent. The hearing was continued until September 24, 2013, to permit the submission of additional argument regarding the possible impact of the Supreme Court Opinion, *In re Lyle*, 2013 WL 4543284 (Del. Aug. 23, 2013), which was issued after the hearing. The date for filing of this Report and Recommendation has been extended, by order of the Court, until December 16, 2013.

In light of the pleadings, in which the allegations of misconduct were either admitted or withdrawn, ODC and Respondent requested that the Panel address both the allegations of misconduct and sanctions at the hearing. The Panel has consented to this approach. Mindful of the Court's guidance suggesting that the Panel should make its own independent determination, the Panel will first consider the allegations of misconduct before turning to sanctions.

Facts

Respondent was admitted in 1988 and, at all times relevant here, has been a member of the Bar of the Supreme Court of Delaware in private practice. Respondent is the managing partner for the Delaware Office of Scott G. Mayhart & Associates, LLC. (Petition and Answer, Paragraph 1).

In 2007, Respondent ceased being a contractor and/or employee in his practice and became a partner. (Bria, at 42-45).¹ The following year, in the spring of 2008, Respondent was unable to determine how to fill out his taxes using the software program "Turbotax" because he was unable to figure out how to enter his partnership income from his "K-1" form issued by the partnership. (*Id.*). He filed requests for extension of the filing date for his federal taxes in 2008 and subsequent years. (Bria 38). He testified that he did not file for state extensions because he erroneously believed that filing for federal extensions would automatically result in state extensions. (Bria 37-38). As of the date of the hearing, Respondent has filed and paid taxes for all tax years through 2011. (Bria 76). He was awaiting the form necessary to file his 2012 taxes. (*Id.*).

The Annual Registration Statement requires a response to the question "Have you filed your personal State and Federal income tax returns for all prior years?" It then requires an explanation, if the answer is "no." Respondent has admitted that "In his 2011 Delaware Supreme Court Annual Registration Statement, Respondent disclosed that he had not filed his State and Federal income tax returns for 2007-2009 ; however, Respondent asserted that he "[f]iled for extensions for each year." (Answer, Paragraph 2). In his 2012 Delaware Supreme Court Annual Registration Statement, Respondent disclosed that he had not filed his State and Federal income tax returns for 2007-2010; however, Respondent asserted that he "[f]iled for extensions for each year." (*Ibid.*). Respondent filed federal extension requests for tax years 2007-2011; however, Respondent never filed state extension requests for tax years 2007-2011. (*Id.*). For the tax years 2007 - 2011, Respondent

¹ References are to the transcript of the Hearing conducted on July 25, 2013, and shall be presented with the name of the witness and transcript page number(s).

failed to timely file his State and Federal personal tax returns and failed to timely pay his State and Federal tax obligations. (Petition and Answer, Paragraph 3).

For tax year 2007, Respondent failed to file a tax return or pay his state income tax in a timely manner. (Answer, Paragraph 4). He received a series of notices advising him of this delinquency beginning on September 3, 2010. (*Ibid*). His return was not filed for this tax year until March 14, 2013. (*Id.*). Similarly, for Respondent's Federal taxes for tax year 2007, he filed one timely extension but took no further action to extend his deadline for filing or paying taxes. (Answer, Paragraph 5). His return for this year was filed on March 14, 2013 and his outstanding tax liabilities were also paid on that date. (*Ibid*).

A similar pattern was followed for tax years 2008 through 2011. (Petition and Answer, Paragraphs 6-13). Starting in the Spring of 2012 and continuing through the Spring of 2013, there were a series of conversations and written communications between Respondent and representatives of the Delaware Division of Revenue about his tax delinquencies. He entered into a series of payment plans each subsequent one because of lack of compliance with the former one. (*See, generally, Answer, Paragraphs 14-27*).

After carefully reviewing the evidence on the record, the Panel finds that it supports the allegations and admissions regarding the status of Respondent's federal and state tax obligations for tax years 2007 through 2012 and his Certifications in his Annual Registration with the Supreme Court contained in the Petition and Answer. (Answer Paragraphs 1 through 27).

In addition to testimony regarding the allegations of misconduct, there was testimony to establish the existence of mitigating factors. A number of attorneys testified as to Respondent's good character and his good qualities as a lawyer. (See Sullivan at 109-110, Hill at 113-114, Jones at 117-123 and Landon at 163-173). He also called Carol Waldhauser of the Delaware Lawyer's Assistance Program (DLAP) and Alice O'Brien, a licensed psychological counselor to discuss the circumstances around

Respondent's admitted misconduct. Respondent came to DLAP at the recommendation of counsel in the instant proceeding. (Waldhauser at 166). He was referred by Ms. Waldhauser to Ms. Alice O'Brien, a licenced therapist. (Ibid.). She has monitored respondent since then. (*Id.* at 167). In addition to seeing Ms. O'Brien, Respondent voluntarily participated in a CLE program for procrastinators. (*Id.* at 167-169). He was a very active participant. (*Id.*).

Ms. O'Brien testified that Respondent was referred to her for his procrastination issues in late February 2013. (O'Brien at 124). Since then, he has attended 11 or 12 individual sessions and the 8 sessions of the CLE program for procrastinators. (O'Brien at 125). His procrastination is not a diagnosis, but is a feature of anxiety. (O'Brien at 131). Her view is that his procrastination on his personal tax obligations is a symptom of anxiety and the fear of failure. (O'Brien at 127-128). She believes that he is capable of overcoming this issue, by his understanding that his fear and anxiety caused him to "freeze" in the face of his tax obstacle. (O'Brien at 128-129). Mrs. O'Brien further testified that Respondent has made progress in dealing with this problem. (O'Brien at 128) and that he is committed to overcoming it. (O'Brien at 129). On cross examination, Mrs. O'Brien indicated that he would benefit from ongoing support. (O'Brien at 133). She testified that there was no indication that Respondent had an alcohol or substance abuse problem. (O'Brien at 145).

Allegations of Misconduct

At the hearing, ODC advised the Panel that it was withdrawing Count One, an allegation that by failing to pay his taxes, failed to deliver funds to a third party in violation of Rule 1.15(b). It advised that after review of the issue it agreed that Rule 1.15(b) did not apply to an attorney's failure to pay a personal obligation. While recognizing that the decision on what misconduct is determined is ultimately the decision of the Court, as it is a legal issue (a matter of interpretation of the scope of Rule 1.15(b)), the Panel concurs with the recommendation of ODC and Respondent that this provision should not be considered in his case. Indeed, if the rule solely applies to issues relating to the handling of third party funds, there is no evidence to support such

a finding in the record before the Panel.

The Respondent has admitted violations of the other standards charged in the Petition:

- (1) Rule 8.4(b), by willfully failing to file state and federal income tax returns. (Count 2).
- (2) Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation when he filed incomplete and misleading Certifications with his annual Supreme Court Registration Statements. (Count 3)
- (3) Rule 8.4(d) by engaging in conduct that is prejudicial to the administration of justice. (Count 4).

Rule 8.4(b) states that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." The Interpretive Guideline to Rule 8.4 states:

Criminal acts that reflect adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, as construed in these Rules, shall be deemed to include, but not limited to, the following: (1) Willful failure to make and file federal, state, or city income tax returns or estimated income tax returns, or to pay such estimated tax or taxes, or to supply information in connection therewith at the time or times required by law or regulation; (2) Willful attempt in any manner to evade any federal, state, or city income tax.

The record is clear that Respondent knew his obligations to file his state and federal tax returns and pay taxes owed in a timely manner. While he stated that he misunderstood how the system worked, he knew as a result of the series of communications from State and Federal tax authorities (beginning in September 2010 with the communication from the Delaware Division of Revenue), that these beliefs were incorrect. However, the failure to file and pay continued after and during those communications and can only be viewed as willful. Thus, the Panel finds that the allegations of misconduct contained in Count 2 are supported by clear and convincing evidence.

Rule 8.4(c) states that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The Respondent and ODC were granted leave to submit memoranda discussing the potential applicability of *In re Lyle*, 2013 WL 4543284 (Del. Aug 23, 2013), which was decided after the hearing in this matter. ODC argues that *Lyle* is distinguishable from the instant matter because *Lyle* did not involve the violation of 8.4(c) that is an element of this matter. Instead, ODC argues that *In re Doughty*, 832 A.2d 724 (Del. 2003) is directly on point. *Doughty* contains a helpful analysis of the distinction between negligent and intentional conduct in the context of certifications contained in a lawyer's annual registration statement and concludes that negligent misrepresentation is sufficient to establish a violation of Rules 8.4 (c) and (d).

Respondent's Certifications relating to his explanation in his registration statement regarding his tax returns for the years in question were false in that he had only filed an extension request for his federal tax return for each year, which he failed to further extend, and had not filed an extension request for his state tax return. Further, his explanation was incomplete and failed to fully inform the Court of the status of his personal income tax returns for each of the years. This is particularly true for his certifications in the Registration Statements for the years 2010 to date when he knew that the Delaware Division of Revenue had initiated administrative proceedings against him. Taking the Respondent's statement regarding his initial belief on faith, the question of whether Respondent was negligent might be relevant for the certifications made through the Winter of 2010. However, in the Fall of 2010, because of the notices he received from the Delaware Division of Revenue, he knew that his initial beliefs were not true. In the Panel's view, after that point, the Respondent's incomplete statements were knowingly misleading, at a minimum, and might be considered intentionally deceptive in the context of the purpose of the Certification and in light of what Respondent knew at that time. The Panel believes that the Supreme Court expects that members of the bar will complete the Registration Statement completely and with full candor. This is not the place for evasion or prevarication. Thus, the Panel finds that ODC has established Respondent's violation of Rule 8.4(c), as alleged in Count 3, by clear and convincing evidence.

Rule 8.4(d) states that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." The Petition alleges this standard is violated by Respondent's failure to pay his state and federal taxes in a timely manner. The Panel finds that Respondent failed to pay his taxes in a timely manner without having a reasonable basis to withhold them or having obtained consent of the relevant authorities. The Panel finds that this conduct was prejudicial to the administration of justice and, thus, has committed the misconduct alleged in Count 4 by failing to honor one his basic responsibilities as a citizen of this country.²

Sanctions Recommendation

The Court determines the appropriate sanctions for findings of misconduct. It asks the Panel, however, to make a recommendation after considering the applicable standards and precedent. The Court considers, but is not bound by the Panel's recommendation.

The Court, in determining the appropriate sanctions, is guided by the ABA Standards for Imposing Lawyer Discipline, approved in 1986 and amended in 1992 (hereinafter "the Standards"). In performing the analysis, the Court will answer the following questions:

1. What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?)
2. What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?)
3. What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?) and
4. Are there any aggravating or mitigating circumstances?

Based upon the answers to the first three questions, the Standards establish

² The Panel also notes that *Doughty* held that misleading statements in the certifications contained in annual Registration Statements also could be the basis of a finding of a violation of Rule 8.4(d).

presumptive sanctions. The existence of aggravating or mitigating circumstances may provide a basis for increasing or decreasing the nature and severity of the sanctions.

Duties violated

The Panel has found that Respondent violated Rules 8.4(b), (c) and (d). Rules 8.4 (b) and (c) are generally viewed as embodying duties to the public, while Rule 8.4(d) embodies duties to the legal system. The comments to the Standards state:

In addition to duties owed to clients, the lawyer also owes duties to the general public. Members of the public are entitled to be able to trust lawyers to protect their property, liberty, and their lives. The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice [Rules 8.2, 8.4(b)&(c)/DR 1-102(A)(3)(4)&(5), DR 8-101 through DR 8-103, DR 9-101(c)].

Lawyers also owe duties to the legal system. Lawyers are officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice. Lawyers must always operate within the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct [Rules 3.1 through 3.6, 3.9, 4.1 through 4.4, 8.2, 8.4(d)(e)&(f)/DR7-102 through DR7-110].

(Standards at 6). Thus the duties violated are both duties to the public and duties to the legal system.

State of Mind

Respondent has acknowledged that he knew his obligations to file and pay his taxes and his obligations to file and pay his taxes. He failed to fulfill his obligations in face of his knowledge of them.

Actual or Potential Injury

While no individual was harmed in connection with the misconduct, the Court held in *In re Tos*, 610 A.2d 1370, 1373 (Del. 1992) that failure to file or pay income taxes is misconduct that causes serious actual injury to the legal profession.

Presumptive Sanctions

The Standards set out criteria for determining presumptive sanctions based upon the findings for the first three criteria. Section 5 addresses violations of duties to the public, when a lawyer fails to maintain his personal integrity. Facts fitting under the criteria of Section 5.11 result in a presumptive sanction of disbarment. Facts meeting the criteria of Section 5.12 result in a presumptive sanction of suspension. Facts meeting the criteria of Section 5.13 result in a presumptive sanction of Public Reprimand. Facts meeting the criteria of Section 5.14 result in a presumptive sanction of an Admonition.

We do not understand there to be any argument for the applicability of Section 5.11 in this matter. The debate focuses on the applicability of Section 5.12 rather than Section 5.13, and, if Section 5.12 applies, the appropriate length of suspension. The sections in question state:

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

(Standards at 14). ODC argues that several decisions of the Court have established a precedent in which substantial suspensions were imposed for similar violations (failure to file and pay state and federal taxes). In so doing ODC points out that the conduct was knowing and this is criminal conduct which, through his disregard of his legal obligations, adversely reflects on his fitness to practice law. Respondent, through counsel, responded that the tax matter was never pursued criminally (unlike some cases in which suspensions were imposed) and that apart from this one issue, there is no evidence to question Respondent's fitness to practice law.

We have reviewed the applicable decisions that have been brought to our attention by the ODC and Respondent's counsel. We note that most of the suspension

cases cited to us and others we reviewed involving the failure to file and pay personal taxes also involved other serious violations or aggravating factors. Several involved books and records violations and violations of various duties to clients in addition to failure to file and pay personal taxes. See, e.g., *In re Autman*, 798 A.2d 1042 (Del. 2002), *In re Becker*, 208 WL 187942 (Del. Jan. 15, 2008), *In re Shamers*, 873 A.2d 1089 (Del. 2005), *In re Landis*, 850 A.2d 291 (Del. 2004), *In re Garrett*, 835 A.2d 514 (Del. 2003). In others, the respondent was criminally prosecuted and convicted of tax evasion. See, *In re Sandbach*, 546 A.2d 345 (Del. 1988), *In re Sanders*, 498 A.2d 148 (Del. 1985). In both *Sandbach* and *Sanders* an aggravating factor was willful criminal conduct by the respondent. Presumably, each case involved deliberate attempts to evade the responsibility to file and pay personal taxes. Although administrative proceedings were initiated by the Delaware Division of Revenue against Respondent, the instant case was never treated as a criminal matter by the Division of Revenue or the Attorney General's Office. The Panel concludes that the record does not support a finding of deliberate criminal tax evasion in the current matter as Respondent never denied responsibility or took actions to contest the findings of the relevant agencies; his problem with the tax authorities was lack of action not deceptive actions.

The Panel found a few cases in which failure to pay taxes in addition to other violations resulted in the sanctions of public reprimand and probation. See, eg., *In re Evans*, No. 678, 2002 (Del. Feb. 26, 2003) (failure to file payroll taxes and filing false certifications regarding his delinquent federal and state income taxes), *In re Hess*, No. 369, 2002 (Del. July 24, 2002) (neglect, mishandling client funds, failing to maintain books and records in addition to failure to timely pay state taxes).

In re Reardon, No. 100, 1997 (Del. 1997) was the only case we have found in which the misconduct was failure to pay taxes and false certification in the annual Registration Statement and there were no other significant factual differences with the present case. In *Reardon*, the respondent failed to pay state and federal income taxes for 3 years and owed over \$200,000 in combined taxes, interest and penalties. He also filed false certificates of compliance relating to his tax situation. In addition, as an aggravating factor he had a prior suspension for several violations including failure to

file and pay income taxes. Reardon's sanction was a public reprimand and 2 years probation.

The Panel has found that Respondent knowingly engaged in conduct that was a misrepresentation in his certifications contained in his Annual Registration statements. The disregard of a legal obligation over an extended period of time under the circumstances reflected in the record, in the Panel's view, does reflect on a lawyer's fitness to practice law. Thus, Section 5.13 of the Standards would apply. The primary differences between Sections 5.13 and 5.12 are that Section 5.12 also requires a finding that the lawyer "knowingly engaged in criminal conduct" and his misconduct "seriously adversely reflects on the lawyer's fitness to practice."

From the time of Al Capone, the failure to file and pay taxes has been a criminal matter. While prosecuted only in the extreme cases, knowing failure to file and pay taxes over an extended period of time, such as we have found here, should fairly be considered criminal conduct, whether it is charged or not. The question thus becomes whether it seriously adversely reflects on Respondent's fitness to practice. The record does not contain other evidence that Respondent's procrastination with respect to the filing and payment of his personal taxes adversely impacted his ability to practice law.

While there are no other indicia of impact on Respondent's ability to practice law, we find that the length and extent of Respondent's conscious failure to fulfill his basic legal obligations as a citizen are significant. He had extensive communications with the tax authorities. In them he repeatedly expressed his intention to meet his obligations to file and pay his personal taxes, yet he repeatedly failed to meet these commitments. He entered into two payment plans with the Delaware Division of Revenue and breached them. The Panel understands that Respondent has made required payment under the third plan, entered about the time that disciplinary proceedings were brought against him. The Panel finds that these circumstances meet the test of "seriously adversely" reflecting on his ability to practice, and, thus the Panel recommends that the presumptive sanction be a suspension.

Section 9.22 of the Standards provides:

9.22 Factors which may be considered in aggravation.

Aggravating factors include:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled substances.

In reviewing the applicability of the facts to these factors, the Panel finds that Respondent's failure to file or pay taxes and misrepresentations in his certification for multiple successive years to be a pattern of misconduct for the purpose of the Standards. We also find that Respondent has substantial experience in the practice of law. We also have found that he engaged in illegal conduct, which is subsumed in the one of the violations.

Section 9.32 of the Standards provides:

9.32 Factors which may be considered in mitigation.

Mitigating factors include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;

(g) character or reputation;

(h) physical disability;

(1) mental disability or chemical dependency including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;

(2) the chemical dependency or mental disability caused the misconduct;

(3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

(j) delay in disciplinary proceedings;

(k) imposition of other penalties or sanctions;

(l) remorse;

(m) remoteness of prior offenses.

We find that the following mitigating factors are applicable: Absence of a prior disciplinary record, personal or emotional problems (his procrastination problem discussed above), a cooperative attitude towards the proceedings, a good character and reputation in the bar and community in general and genuine remorse.

The Panel does not find that any factors would result in change in the presumptive sanction of suspension. However, the Panel does find that the mitigating factors weigh in favor of a suspension shorter than the 3 year suspension that was imposed upon lawyers who had other significant rules violations. (*See, e.g., Autman, Landis, Shamers*). The Panel notes that attorneys suspended for 6 months or less are automatically reinstated. (Delaware Rule of Disciplinary Procedure 22(a)). However, for suspensions of greater than 6 months, an attorney has to petition for reinstatement and demonstrate rehabilitation, including fitness to practice. (Delaware Rule of Disciplinary Procedure 22(g)).

The fitness to practice concern that underlies the Panel's recommendation of a suspension is based both upon the length of time that Respondent failed to file and pay taxes and what he has identified as his procrastination problem, in the face of extensive communications with the tax authorities. He has been undergoing therapy and making

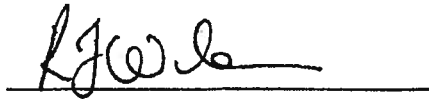
progress, according to his own testimony and that of Ms. O'Brien. The Panel feels that, upon the conclusion of his suspension, Respondent should demonstrate that these problems no longer raise significant concerns about his fitness to practice (*i.e.*, he has continued to work on this problem and, in the view of independent professionals, has reached a point that the procrastination problem is being managed appropriately and is not likely to cause a reoccurrence of this or similar problems). Accordingly the Panel recommends that the Court impose a suspension of six months and a day. This will allow another Panel and the Court to judge his fitness prior to resuming the practice of law, as well as impose any conditions on his practice as may be appropriate.

Conclusion and Signature Page follows.

Conclusion

For the reasons stated herein, the Panel recommends that the Respondent be found to have committed the violations indicated above and that the Court impose the sanction of a suspension of six months and a day.

Respectfully submitted,

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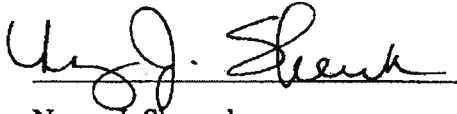
Richmond L. Williams, Esquire,

Panel Chair

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Theresa V. Brown-Edwards, Esquire

Panel Member

A handwritten signature in black ink, appearing to read 'Nancy J. Shevock', written over a horizontal line.

Nancy J. Shevock

Panel Member

Dated: December 16, 2013