

PCB 31

[01-May-1992]

ENTRY ORDER

SUPREME COURT DOCKET NO. 92-200

JUNE TERM, 1992

In re L. Raymond Massucco, Esq. }	Original Jurisdiction
}	
}	FROM
}	Professional Conduct Board
}	
}	DOCKET NO. 90-062

In the above entitled cause the Clerk will enter:

Pursuant to the recommendation of the Professional Conduct Board filed May 4, 1992, and approval thereof, it is hereby ordered that L. Raymond Massucco, Esq., be suspended for four months for the reasons set forth in the Board's findings of facts, conclusions of law, and recommended sanction attached hereto for publication as part of the order of this Court. A.O. 9, Rule 8E.

The period of suspension shall begin on August 1, 1992, and end on November 30, 1992.

BY THE COURT:

/s/  
Frederic W. Allen, Chief Justice

/s/  
Ernest W. Gibson III, Associate Justice

[x] Publish /s/  
John A. Dooley, Associate Justice

[ ] Do Not Publish /s/  
James L. Morse, Associate Justice

/s/  
Denise R. Johnson, Associate Justice

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PCB DECISION #31

STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

In re: L. Raymond Massucco, Esq., Respondent  
PCB File No. 90.62

REPORT OF THE HEARING PANEL

On May 1, 1992 the hearing panel convened for the purposes of reviewing the stipulation provided by the parties. Present were Bar Counsel, Wendy S. Collins, Respondent L. Raymond Massucco, Esq., his counsel Douglas Richards, Esq., and panel members Leslie G. Black, Chair, Deborah S. Banse, Esq., and Donald Marsh. Each of the participants addressed the panel.

Upon consideration of the stipulation and the statements made to the hearing panel during the hearing, the hearing panel hereby adopts the stipulation as its own and recommends to the Professional Conduct Board that it adopt the findings of fact, conclusions of law, and recommended sanction contained therein.

Dated May 1, 1992, Montpelier, Vermont.

APPROVED:

/s/  
Leslie G. Black, Esq.

/s/ Hamilton Davis

/s/  
Deborah S. Banse, Esq.

/s/ Christopher Davis

/s/  
Donald Marsh

/s/ Nancy Corsones

/s/ Anne K. Batten

/s/ Richard Brock

/s/ Joseph Cahill

/s/ J. Eric Anderson  
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STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

In re: Raymond Massucco, Esq., Respondent  
PCB File 90.62

STIPULATION

Now come bar counsel, Wendy S. Collins, Esq., and respondent, Raymond Massucco, Esq., by and through his attorney, Douglas Richards, Esq., and

stipulate to the following findings of fact, conclusions of law, and waiver of procedural rights.

#### FACTS

1. Respondent has been a member of the Vermont Bar since 1973.
2. On December 5, 1990, respondent was convicted of two counts of knowingly failing to file Vermont Income Tax Returns when due for 1987 and 1988, in violation of Section 5894(b) of 32 Vermont Statutes Annotated.
3. Respondent also failed to file Vermont income tax returns when due for the years 1982 through 1986. He was not prosecuted for those offenses.
4. Respondent also failed to file U.S. income tax returns with the Internal Revenue Service when due for the years 1984 through 1987.
5. Respondent knew of his obligation to file income tax returns for each of these years when he failed to file.
6. Respondent knew when he failed to file his income tax returns that such conduct was a violation of civil and criminal laws.
7. Since the criminal charges were filed against him, respondent has paid all back taxes due, including all penalties and interest, and has met all his current tax obligations under the laws of Vermont.

#### CONCLUSIONS OF LAW

Based upon the facts stipulated above, respondent and bar counsel agree that respondent's conduct violated:

DR 1-102(A) (7) (conduct adversely reflecting on respondent's fitness to practice law).

#### SANCTION

Respondent and bar counsel agree that the following mitigating factors are present:

1. absence of a prior disciplinary record;
2. expression of remorse;
3. full and free disclosure to bar counsel and co-operative attitude toward disciplinary proceedings;
4. good reputation;
5. imposition of other penalties.

Respondent and bar counsel also agree that the following aggravating factors are present:

1. selfish motive;
2. multiple offenses;
3. substantial experience in the practice of law.

Respondent acknowledges that the failure to file income tax returns "is not only a failure to perform a duty imposed by law on income-earning citizens

generally, it is a breach of responsibility that tends to discredit the legal

profession which the respondent, as a member of the bar, is obligated to uphold with strict fidelity." In re Calhoun, 127 Vt. 220 (1968).

Respondent

accepts full responsibility for this professional misconduct.

Respondent and bar counsel recommend that the appropriate sanction in this

matter is a four month suspension. See In re Knapp, 127 Vt. 222 (1968).

Respondent and bar counsel request that the period of suspension begin July 3, 1992.

Respondent also submits the following documents for the Board's and

Court's consideration: a letter from Rev. Thomas J. Ball (Exhibit A); a letter from District Judge Paul F. Hudson (Exhibit B); a letter from J. Paul Giuliani, Esq. (Exhibit C).

WAIVER OF PROCEDURAL RIGHTS

Respondent waives his procedural rights under Administrative Order 9, except that he reserves his right to appear before a hearing panel on Friday,

May 1, 1992. Otherwise, respondent requests that this stipulation be acted upon by the full Professional Conduct Board as soon as practicable and waives

his opportunity to brief this matter or to appear before the full Board. Respondent understands that, in imposing sanctions, neither the Board nor the

Court is obligated to follow the sanction recommended by respondent and bar counsel. In that event, the parties to this stipulation are still bound by its terms.

In all respects, this document shall remain confidential as required by Administrative Order 9.

Dated: Montpelier Vermont  
April 28, 1992

/s/ \_\_\_\_\_  
Wendy S. Collins, Bar Counsel

Dated: Springfield, Vermont  
April 30, 1993

/s/ \_\_\_\_\_  
Raymond Massucco, Esq.

Dated: Springfield, Vermont  
April 29, 1992

/s/ \_\_\_\_\_  
Douglas Richards, Esq.

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CATHEDRAL OF THE IMMACULATE CONCEPTION  
20 Pine Street  
Burlington, Vermont 05401  
802-658-4334  
802-658-4333

April 7, 1992

Attorney Douglas Richard  
P.O. Box 200  
Springfield, Vermont 05156

Dear Attorney Richard,

Re: Attorney Raymond Massucco

I would like to take this opportunity to write a letter of explicit recommendation for the above mentioned, Attorney Massucco. I came to know

Attorney Massucco twenty-six years ago when I was first assigned to St. Charles Parish in Bellows Falls. I have come to know Attorney Massucco as his pastor and as his spiritual director. I have come to know Attorney Massucco for his kindness to literally hundreds of people in all walks of life and all ages, who if gathered together in a financial settlement would be quite a staggering amount. Attorney Massucco has been a credit to his own parents, to his lovely wife and children, to the community of Bellows Falls and to St. Charles Parish. His professionalism in every situation and every decision has certainly been a strong compliment to the Bar Association who has held him in such esteem, respect and real honor.

Without expanding further, I, Fr. Thomas J. Ball, can only give to this man before God my own personal and deep admiration. Thanking you for your kind cooperation in this matter I remain

Respectfully yours,

/s/ Rev. Thomas J. Ball

Rev. Thomas J. Ball  
Pastor

Cathedral of the Immaculate Conception  
Burlington, Vermont

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Paul F. Hudson, District Judge  
7 Harvard Street  
Springfield, VT  
05156

(802) 885-3536

April 20, 1992

J. Eric Anderson, Esq., Chair  
Vermont Professional Conduct Committee  
109 State Street  
Montpelier, VT 05609-0703

Re: L. Raymond Massucco, Esquire

Dear Mr. Anderson:

I am completely at a loss to understand Ray Massucco's failure to file his tax returns, his conviction for the offense and while I most certainly do not

condone this type of conduct, I am writing on his behalf. While I cannot understand his conduct in that one respect, the nearly 20 years acquaintance I have had with Ray has impressed me with the great worthiness of this individual and the benefits he has brought to our profession above and beyond his duties to his clients.

I met Ray in my capacity as a member of the Windsor County State's Attorney's Office when he was beginning his practice and defending persons charged with criminal offenses. His legal skills and effectiveness were apparent but what was remarkable about Ray was the high ethical standard that he held for himself. He was one attorney whose word could be accepted and a confirming letter the next day was unnecessary. That laudable trait continued to be observed by me about him during my tenure in private practice in White River, during my stay at the Attorney General's Office and for the past 12 years as a Vermont District Judge. Ray has appeared frequently in my court, always been very well prepared and most courteous to litigants, witnesses, other counsel, the court staff and judge. He has been a delight to have practicing in front of my bench and certainly his sense of humor has brightened the dark spots in more than one case.

Ray has served Windham District Court as an acting judge primarily in small claims cases and acquitted himself favorably. I know he is well liked by litigants, his results seem to be well received because his appellate rate is correspondingly low. I realize he has served Bellows Falls as village attorney and has done a fine job in that capacity. One thing that has impressed me about Ray is his devotion to promoting civility in the courts, he has written to me on a number of occasions and forwarded articles of mutual interest. He has done a lot to improve our professional image. He has not only been very

J. Eric Anderson, Esquire  
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active in the community of Bellows Falls where he and his wife have raised a family of splendid children, he has assisted the YMCA in expanding its program and been one of the leaders in that effort.

I realize the severity that failure to honor governmental obligations, particularly taxes, presents to our profession. We can hardly be practitioners of the law without being its most visible exponents. However, this breach on Ray's part can be thoroughly investigated by our Committee, and I feel you will

find that it is grossly out of character for this man. While the temptation may be to punish, the enthusiasm for making an example out of Ray Massucco will be nothing short of bizarre in Southern Vermont. I am sure he will pay whatever penalty is meted out but the more onerous sanctions are unjustified because of the great potential this man has yet to reach as an attorney and citizen contributing to our region.

I hope you will give my comments serious consideration and, if I can provide further information, please do not hesitate to contact me. I will add that once Mr. Massucco's case resolution is completed, I will, without qualification, appoint him as an acting judge in any court where I preside.

Yours truly,

/s/ Paul F. Hudson

Paul F. Hudson  
District Judge

PFH/tmh/cb

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MCKEE, GIULIANI & CLEVELAND

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Alden Guild

Offices at:  
92 Main Street  
Montpelier, VT.

January 28, 1992

The Professional Conduct Board  
Vermont Supreme Court  
111 State Street  
Montpelier, VT 05602

Dear Ladies and Gentlemen:

I have known L. Raymond Massucco for close to 20 years. While most of my dealings with Ray over the years have been of a professional nature, I do count him as a friend.

Much of Ray's practice involves representation of municipalities in Windham County, and it is in that context that he and I have worked together. Without exception, I have found Ray to be an extremely effective counselor, advisor and representative of local units of government. He is attentive to detail, well-versed in the various aspects of municipal law, and an excellent communicator. I hold Ray in very high esteem.

I am acquainted with Ray's difficulties which bring him before the Board. The motivation behind the transgression is beyond my ability to comment, except to say that it is uncharacteristic and unexpected. Having known Ray for so many years, I can assure the Board that his expression of regret over this incident comes from the heart.

My purpose in writing is to urge the Board, in formulating its recommendations to the Supreme Court, to recognize that Ray Massucco is a valued member of the profession. Restitution and satisfaction of this error in judgment having been made, my hope is that the sanction imposed not be predicated upon grounds of making an example to others, but rather be tempered by an appreciation of the fact that human nature being what it is, there probably are very few who can say that their judgment has never been clouded.

The Professional Conduct Board  
January 28, 1 992  
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In assessing an appropriate sanction, please take into account Ray's embarrassment and remorse, as well as the disappointment experienced by his family, colleagues and clients. My earnest hope is that you will recommend that Ray return to a productive, professional life in the shortest possible time.

Very truly yours,

/s/ J. Paul Giuliani

J. Paul Giuliani

JPG:bl