

[28-Aug-1992]

ENTRY ORDER
SUPREME COURT DOCKET NO. 92-43
OCTOBER TERM, 1992

In re Edwin W. Free, Jr., Esq. } Original Jurisdiction
 }
 }
 FROM
 }
 Professional Conduct Board
 }
 Docket No. 92.16

In the above entitled cause the Clerk will enter:

Pursuant to the recommendation of the Professional Conduct Board filed August 31, 1992, and approval thereof, it is hereby ordered that Edwin W. Free, Jr., Esq., be suspended for six months for the reasons set forth in the Board's notice of decision and accompanying stipulation attached hereto for publication as part of the order of this Court. A.O. 9, Rule 8E.

The period of suspension shall begin on November 1, 1992, and end on April 30, 1993.

BY THE COURT:
/s/

Frederic W. Allen, Chief Justice
/s/

[x] Publish Ernest W. Gibson III, Associate Justice
/s/

[] Do Not Publish John A. Dooley, Associate Justice
/s/

James L. Morse, Associate Justice
/s/

Denise R. Johnson, Associate Justice

PCB No. 35

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: Edwin W. Free, Jr., Esq., Respondent
PCB File No. 92.16

NOTICE OF DECISION

Upon consideration of the stipulation submitted by bar counsel and respondent, the Professional Conduct Board finds that respondent violated DR 1-102(A)(3) (illegal conduct involving moral turpitude); DR 1-102(A)(5) (conduct prejudicial to the administration of justice); and DR 1-102(A)(7) (conduct adversely reflecting on a respondent's fitness to practice law). In recommending what sanction should be imposed, the Professional Conduct Board is mindful that the respondent made full and free disclosure to bar counsel and exhibited a cooperative attitude toward disciplinary proceedings. Other penalties for his criminal conduct have also been imposed through the judicial process. The Board also finds the following aggravating factors present: a disciplinary record, multiple offenses, and substantial experience in the practice of law.

Consistent with *In re Calhoun*, 127 Vt 220 (1968) and *In re Knapp*, 127 Vt 222 (1969), and mindful of the Supreme Court's actions in the recent decisions of *In re Massucco*, Supreme Court Docket No. 90-062 (July 14, 1992), and *In re Taft*, Supreme Court Docket No. 91-14 (July 14, 1992), the Board recommends to the Supreme Court that the following sanction be imposed in this case:

suspension from the practice of law for six months.

Dated in Montpelier, Vermont, this 28th day of August 1992.

PROFESSIONAL CONDUCT BOARD
/s/

J. Eric Anderson, Chairman

/s/

/s/

Nancy Foster

Christopher L. Davis, Esq.

/s/

/s/

Anne K. Batten

Shelley A. Hill, Esq.

Joseph F. Cahill, Jr., Esq.

Rosalyn L. Hunneman

Hamilton Davis

Karen Miller

/s/

/s/

Paul S. Ferber, Esq.

Edward Zuccaro, Esq.

DISSENT:

/s/

/s/

Nancy Corsones, Esq.

/s/

Deborah S. Banse, Esq.

Donald Marsh

/s/

Robert P. Keiner, Esq.

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: Edwin W. Free, Jr., Esq. - Respondent
PCB File 92.16

STIPULATION

Now come bar counsel and respondent, Edwin W. Free, Jr., Esq., appearing pro se, and hereby 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 1960.
2. On March 23, 1992, respondent pled guilty to three counts of knowingly failing to file Vermont Income Tax Returns when due for 1988, 1989, and 1990, in violation of Section 5894(b) of 32 Vermont Statutes Annotated. Respondent was fined \$500 for each count. He was sentenced thirty days for each count, to run concurrently. The sentences were suspended and respondent was placed on probation.
3. Respondent also failed to file Vermont income tax returns when due for the years 1984 through 1987. He was not prosecuted for those offenses.
4. Respondent knew of his obligation to file income tax returns for each of these years when he failed to file.
5. Respondent knew when he failed to file his income tax returns that such conduct was a violation of civil and criminal laws.
6. 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 the following provisions of the Code of Professional Responsibility:

DR 1-102(A)(3) (illegal conduct involving moral turpitude);

DR 1-102(A)(5) (conduct prejudicial to the administration of justice);
and

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. full and free disclosure to bar counsel and cooperative attitude toward disciplinary proceedings;
2. imposition of other penalties.

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

1. prior disciplinary record;
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 Vermont 220 (1968). Respondent accepts full responsibility for this professional misconduct.

Respondent and bar counsel recommend that a sanction of not less than four months' suspension be imposed in this case. See In re Knapp, 127 Vermont 222 (1968).

WAIVER OF PROCEDURAL RIGHTS

Respondent waives his procedural rights under Administrative Order 9, including the right to a hearing. 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. In the event the Board should recommend a sanction greater than four months, respondent reserves the right to appeal that recommendation to the Vermont Supreme Court.

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

Dated: Montpelier, Vermont
May 22, 1992

/s/

Wendy S. Collins, Bar Counsel

Dated: Barre, Vermont
June 2, 1992

/s/

Edwin W. Free, Jr., Respondent