

IN THE COURT OF APPEALS OF MARYLAND

MISC. DOCKET AG
NO. 53
SEPTEMBER TERM, 1996

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ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND

v.

ALAN FRANKLYN POST

—
Bell, C.J.
Eldridge
Rodowsky
Chasanow
Raker
Wilner
Karwacki, Robert L. (Retired,
Specially Assigned),

JJ.

—
Concurring opinion by Raker, J.

Filed: June 9, 1998

Raker, J., concurring:

I would overrule Respondent's exception to the conclusion of the hearing court that he violated Rule 8.4(b). The hearing court properly found that Respondent's wilful violation of the tax law adversely reflected on his fitness as a lawyer. Respondent has committed a criminal act that reflects on his fitness as a lawyer. Section 13-1007(c) of the Tax-General Article, Maryland Code (1988, 1997 Repl.Vol.), makes the wilful failure to pay taxes a crime. Respondent wilfully and repeatedly violated his legal obligation to file necessary tax forms and to remit taxes to the State and federal taxing authorities for a period of several years. He also failed to hold in trust those funds which should have been withheld from his employees and, instead, used those funds to operate his law practice.

Respondent acknowledged that he understood his filing and payment obligations and the legal requirement to withhold funds in trust for the State and federal governments. He also acknowledged that the withheld funds were not placed in a separate account. The excuse he proffered for these failures was that he suffered cash flow problems. Respondent's motive for using the money is no excuse. We rejected this excuse in *Attorney Griev. Comm. v. Boyd*, 333 Md. 298, 307, 635 A.2d 382, 386 (1994), stating that those monies must be held in trust for the State by the employer; those monies belong to the State and are not to be used by the employer. Judge McAuliffe, writing for the Court, stated: "The fact that respondent used them to support his business, and not his personal endeavors,

is of no consequence, and does not relieve him of responsibility for his failure to hold the funds in trust for the proper authority.” *Id.*

The repeated failure to timely file tax returns and to remit payments is a serious violation; when a lawyer fails to pay withholding taxes for the employees of his law office, that conduct reflects adversely on his or her fitness as a lawyer. The Minnesota Supreme Court observed that the failure to file tax returns or pay employee withholding taxes is “directly related to the operation of [a] law practice and may well reflect upon the seriousness with which [a lawyer] regards his professional obligation in handling other people’s money.” *Matter of Discipline of Johnson*, 414 N.W.2d 199, 202 (Minn. 1987). In addition, perhaps the most basic element of an attorney’s fitness to practice law is the ability to conduct that practice lawfully.

We said in *Attorney Griev. Comm. v. Walman*, 280 Md. 453, 465, 374 A.2d 354, 361 (1977), that “[b]y willfully failing to file his tax returns, a lawyer appears to the public to be placing himself above the law.” How can we say with confidence that Respondent is fit to give others proper legal advice when he chooses to make illegal “business” decisions in his own life? *See id.* at 471, 374 A.2d at 365 (Smith, J. dissenting) (reasoning that a failure to file income tax returns for three years demonstrates that the attorney is “not the type of person to whom we may in confidence entrust the handling the affairs of others”).