

# TAXES, PROFESSIONAL DEBT, CHILD SUPPORT, AND LAWYER DISCIPLINE

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As I write this column, income taxes are due. Did you file on time? If not, did you request an extension of the date on which to file? If you're also an employer, have you kept up with your quarterly employer withholding filing and payment obligations, both federal and state? If not, there may be professional responsibility issues to address in addition to issues raised by taxing authorities.

Since 1972, failure to file individual income tax returns is professional misconduct for lawyers warranting, in many instances, public discipline.<sup>1</sup> Although there is no specific ethics rule on this issue, the court has held:

[W]e hold that the failure to file income tax returns represents a violation of a lawyer's oath of office and further represents a violation of the [Rules of Professional Conduct], and that it will be the subject of disciplinary proceedings.... Lawyers in this state should henceforth understand clearly that the type of violation under consideration here is the proper subject of consideration by the Board of Professional Responsibility and this court, and that disciplinary proceedings are mandatory in all cases of failure to file income tax returns.<sup>2</sup>

Neither a criminal conviction nor a specific finding of willfulness is required. Rule 10(d), Rules on Lawyers Professional Responsibility (RLPR), authorizes a Lawyers Board panel to find probable cause for public discipline on a motion (that is, without any input from the respondent attorney) for certain serious misconduct, including "repeated non-filing of personal income tax returns." So it remains incumbent on all licensed attorneys to timely file their federal and state individual income tax returns or face potential disciplinary consequences.

The Court is generally less focused on failure to pay individual taxes (as long as timely filings are made), as the Court does not want the discipline system to serve as a collection unit of taxing authorities. Lawyers who serve as employers should take very seriously, however, their obligation to make required filings *and* timely pay employer withholdings.

In 1987, the Court extended its holding concerning failure to file tax returns to include em-

ployer withholding returns.<sup>3</sup> Additionally, the Court subsequently made clear that failure to remit withholdings is treated more seriously than failing to pay one's own taxes, as the lawyer "essentially converts to his own use temporarily money belonging to his employees which he withheld from paychecks and placed in his business checking account."<sup>4</sup>

Timely filing all tax returns and promptly paying employee withholdings are important professional obligations that should not be taken lightly.

## Professional debt

It is also misconduct for lawyers to fail to pay professionally incurred debt, such as court-reporter charges, interpretation services, or expert fees, to name a few. Where a judgment has been obtained against a lawyer, failure or refusal to pay the debt is considered conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d), MRPC.<sup>5</sup> The existence of a judgment is key, however. Absent a prior judgment, the Office will not investigate such debt—again so as not to become a collection agency. The Office also does not generally get involved in non-law, non-tax-related financial obligations (with one exception, noted below).

## Maintenance or child support obligations

Rule 30, Rules on Lawyers Professional Responsibility (RLPR), provides for an administrative suspension of an attorney's license upon notice that a lawyer is not in compliance with maintenance or child support obligations, where the attorney has not entered into and become compliant with a payment plan for such obligations. This does not happen frequently, but it does occur, and suspension is mandatory upon the necessary showing. This is in accord with legislation that mandates suspension of other professional licenses for the same conduct.

## Conclusion

Failure to promptly file tax returns, pay law-related judgments, and remain current with family support obligations can all lead to discipline (or an administrative suspension), as such conduct is viewed as contrary to professional obligations. While neither the Court nor this Office is interested in being overly involved in the financial lives of lawyers, there are certain financial obligations so closely tied to respect for the law and the administration of justice that discipline may be warranted. ▲

## NOTES

<sup>1</sup> *In re Bunker*, 199 N.W.2d 629 (Minn. 1972).

<sup>2</sup> *Id.* at 631-32. In general, the court has held that failure to file a tax return can constitute criminal conduct under Rule 8.4(b), Minnesota Rules of Professional Conduct (MRPC), or conduct prejudicial to the proper administration of justice under Rule 8.4(d), MRPC.

<sup>3</sup> *In re Johnson*, 414 N.W.2d 199 (Minn. 1987).

<sup>4</sup> *In re Gurstel*, 540 N.W.2d 838, 841 (Minn. 1995).

<sup>5</sup> *In re Stanbury*, 561 N.W.2d 507, 510 (Minn. 1997).