

ATTORNEYS AND TAX OBLIGATIONS

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The Commissioner [of the Department of Revenue] may provide to the Minnesota Supreme Court and the Board of Professional Responsibility information regarding the amount of any uncontested, delinquent taxes due under this chapter or a failure to file a return due under this chapter by an attorney admitted to practice law in this state under Chapter 481.

This 1986 amendment to Minn. Stat. §290.61 has led the Revenue Department to send to the director's office a number of notices regarding attorneys who have not filed their state tax return or not paid uncontested tax obligations. Eighteen notices of nonfiling have been received in September and October alone.

In 1972 the Minnesota Supreme Court notified Minnesota lawyers of its intention to impose severe discipline for nonfiling of income tax returns:

. . . For violations occurring hereafter, the discipline will consist of either suspension or disbarment. The alternative of granting probation is still reserved by the court in the future, but it will be allowed in only the most extreme, extenuating circumstances, and absent such extreme, extenuating circumstances, the only issue for consideration upon such disciplinary proceedings will be the determination whether to disbar or suspend a lawyer who is guilty of such a violation. *In re Bunker* 199 N.W.2d 628, 632 (Minn. 1972).

Since *Bunker*, the discipline for tax violations has tended to fall into four categories:

1. Indefinite suspension, for a minimum period of one year, for repeated, serious nonfiling.[Ftn 1](#)
2. Short suspension for isolated cases of nonfiling or nonfiling mitigated in some significant way.[Ftn 2](#)
3. Reprimand and probation for attorneys involved in *de minimus* tax violations or violations substantially mitigated by circumstance.[Ftn 3](#)
4. Disbarment for offenses including nonfiling of tax returns and other significant misconduct.[Ftn 4](#)

The Revenue Department has recently become considerably more aggressive about tax enforcement for all citizens, and particularly those with state licenses. The department has apparently referred more cases of nonfiling for criminal prosecution. Minn. Stat. §270.72, passed in 1984, provides for revocation of state licenses for those who do not pay income tax obligations. The statute has not been applied directly to attorneys, out of consideration for separation of powers and the inherent authority of the Minnesota Supreme Court to regulate attorney licensing. However, the department has begun reporting to the

director's office cases of alleged flagrant nonpayment of tax obligations and persistent refusal to respond to department notices.

Lawyers have not been disciplined professionally in Minnesota solely for nonpayment of tax obligations or other debts. If an attorney, without bad faith or ignoring judgment, is simply unable to pay debts incurred, discipline would not be appropriate. Bankruptcy protection is available to attorneys as well as other debtors. However, at least in a bar admission matter, the Court has indicated that the willful avoidance of unlawful debt obligations is inconsistent with being a licensed Minnesota attorney:

He was reasonably able to satisfy his legal and moral obligations to prepare for repayment and continue repayment of his student loans. His failure to do so demonstrates lack of good moral character and reflects adversely on his ability to perform the duties of a lawyer.

Application of Gahan, 279 N.W.2d 826, 831-2 (Minn. 1979).

The Revenue Department has also begun to report to the director's office the failure of attorneys to file employee withholding returns and to pay amounts due. Some authorities indicate that this may be regarded as analogous to failure to file income tax returns and misappropriation of trust funds.[Ftn 5](#)

Under the new reporting statute and practices of the Department of Revenue, the attorney professional responsibility system will be faced with a number of cases involving attorney noncompliance with tax laws. The question will have to be addressed whether an attorney's egregious failure to pay income tax obligations will evoke sanctions similar to those imposed on other state licensees. An attorney's oath requires maintaining respect for laws, including the state's income tax laws. For 15 years attorneys have been on notice that the Court takes its licensed attorneys' tax-filing obligations as a serious matter. The new reporting statute and this article are further notice that failure to meet such obligations may well result in Supreme Court discipline.

NOTES

¹ *In re Sax*, 321 N.W.2d 902 (Minn. 1982); *In re Lee*, 334 N.W.2d 163 (Minn. 1983).

² *In re Fitzgerald*, 366 N.W.2d 262 (Minn. 1985); *In re Southwell*, 373 N.W.2d 592.

³ *In re McCallum*, 289 N.W.2d 146 (Minn. 1980); *In re Kerr*, 287 N.W.2d 652 (Minn. 1979); *In re Anastas*, 368 N.W.2d 271 (Minn. 1985); *In re Piper*, 387 N.W.2d 882 (Minn. 1986).

⁴ *In re Serstock*, 316 N.W.2d 559 (Minn. 1982); *In re Larson*, 324 N.W.2d 656 (Minn. 1982); *In re Wackerbarth*, 287 N.W.2d 651 (Minn. 1979).

⁵ See *Grievance Administration v. Nickels*, 373 N.W.2d 528 (Mich. 1985) and *People v. Fenton*, 437 P.2d 35 (Colo. 1968).