

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2008-01486

OPINION & ORDER

In the Matter of Joseph Foglia,
admitted as Joseph A. Foglia,
a suspended attorney.

Grievance Committee for the Second,
Eleventh, and Thirteenth Judicial
Districts, petitioner;
Joseph Foglia, respondent.

(Attorney Registration No. 1524636)

DISCIPLINARY proceeding instituted by the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts. The respondent was admitted to the bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on December 18, 1968, under the name Joseph A. Foglia. By decision and order of this Court dated May 9, 2008, this Court suspended the respondent, pursuant to Judiciary Law § 90(4)(f), as a result of his plea of guilty in the United States District of Court, District of New Jersey, on November 27, 2007, to one count of tax evasion, in violation of 26 USC § 7201, and one count of making false statements, in violation of 18 USC §§ 1001 and 1002. On September 26, 2008, the respondent was sentenced to a term of incarceration of 12 months and one day on each of the two counts, with the terms to be served concurrently, to be followed by a two-year term of supervised release. In addition, the respondent

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was directed to pay a special assessment fee of \$200. By decision and order of this Court dated May 19, 2009, upon this Court's receipt of a certified copy of the judgment of conviction from the United States District Court, District of New Jersey, the Grievance Committee was authorized to institute and prosecute a disciplinary proceeding against the respondent based on his conviction of a serious crime. By decision and order of this Court dated December 24, 2009, the Grievance Committee's motion to hold the previously authorized disciplinary proceeding in abeyance and striking the respondent's name from the roll of attorneys based on his conviction under 18 USC § 1001, a federal felony, was denied.

Diana Maxfield Kearse, Brooklyn, N.Y. (Sharon Gursen Ades of counsel), for petitioner.

Scalise & Hamilton, LLP, Scarsdale, N.Y. (Deborah A. Scalise of counsel), for respondent.

PER CURIAM.

The Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts (hereinafter the Grievance Committee) served the respondent with a petition containing one charge of professional misconduct. After a preliminary conference and a hearing, the Special Referee sustained the charge. The Grievance Committee now moves to confirm the Special Referee's report and to impose such discipline upon the respondent as this Court deems just and appropriate. The respondent submitted a response indicating that he accepts the conclusion of the Special Referee. He contends that, based on the substantial mitigation advanced, the Court should impose a one-year suspension nunc pro tunc.

Charge one alleges that the respondent is guilty of professional misconduct in that he has been convicted of serious crimes, thus violating Code of Professional Responsibility DR 1-102(A)(3), (4), and (7) (22 NYCRR 1200.3[A][3], [4], [7]). On November 26, 2007, the respondent entered a plea of guilty in the United States District Court, District of New Jersey, to one count of attempt to evade or defeat tax, in violation of 26 USC § 7201, and one count of making false statements, in violation of 18 USC §§ 1001 and 1002. On September 26, 2008, the respondent was sentenced to a term of incarceration of 12 months and one day on each of the two counts, with the terms to be served concurrently, to be followed by a two-year term of supervised release. In addition,

the respondent was directed to pay a special assessment fee of \$200.

In view of the uncontroverted evidence, the Special Referee properly sustained the charge. Accordingly, the Grievance Committee's motion to confirm the report of the Special Referee is granted.

Notwithstanding the respondent's remorse, his unblemished record with a reputation for honesty and trustworthiness in the community, his cooperation with the Grievance Committee's investigation, and the fact that his conduct did not prejudice any clients or invade any escrow funds, the respondent committed serious professional misconduct inasmuch as he claimed business expenses on his personal tax returns, which were improper, and thereafter created false documentation in an attempt to conceal his improprieties.

We conclude that under the circumstances, the respondent is suspended from the practice of law for a period of three years, with credit for the time he has been under the interim suspension.

PRUDENTI, P.J., MASTRO, RIVERA, SKELOS and DICKERSON, JJ., concur.

ORDERED that the petitioner's motion to confirm the Special Referee's report is granted; and it is further,

ORDERED that the respondent, Joseph Foglia, admitted as Joseph A. Foglia, is suspended from the practice of law for a period of three years, commencing immediately, with credit for the time the respondent has been under an interim suspension, and continuing until further order of this Court. The respondent may apply for reinstatement at any time after entry of this opinion and order. In such application, the respondent shall furnish satisfactory proof that (1) during the said period, he refrained from practicing or attempting to practice law, (2) he has fully complied with this order and with the terms and provisions of the written rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10), (3) he has complied with the applicable continuing legal education requirements of 22 NYCRR 691.11(c), and (4) he has otherwise properly conducted himself; and it is further,

ORDERED that the respondent, Joseph Foglia, admitted as Joseph A. Foglia, shall promptly continue to comply with this Court's rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, during the period of suspension and until such further order of this Court, the respondent, Joseph Foglia, admitted as Joseph A. Foglia, shall continue to desist and refrain from (l) practicing law in any form, either as principal or as agent,

clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law.

ORDERED that if the respondent, Joseph Foglia, admitted as Joseph A. Foglia, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency, and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court