

Disciplinary Proceedings

Appellate Division, First Department

**In the Matter of Francis K. Decker
an attorney
and counselor-at-law**

*Tom, J.P.; Mazzarelli, Andrias,
Williams and Buckley, JI.*

Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department. Respondent, Francis K. Decker, was admitted to the Bar of the State of New York at a Term of the Appellate Division of the Supreme Court for the First Judicial Department on Dec. 16, 1963.

Thomas J. Cahill, Chief Counsel, Departmental Disciplinary Committee, New York (Raymond Vallejo, of counsel), for petitioner. Jonathan Marc Davidoff, of Davidoff Law Firm, for respondent.

Per curiam—Respondent was admitted to the practice of law in the State of New York by the First Judicial Department on Dec. 16, 1963 under the name Francis Keil Decker. At all times relevant herein, respondent maintained an office for the practice of law within this Department.

The Disciplinary Committee asks this Court to accept respondent's resignation from the practice of law and to strike his name from the roll of attorneys pursuant to 22 NYCRR 603.11. The Committee is satisfied that respondent's affidavit of resignation, sworn to May 22, 2007, conforms to the requirements set forth in 22 NYCRR 603.11 in that his resignation is voluntary, free from coercion or duress, and he is fully aware of the implications of submitting his resignation.

In his affidavit of resignation respondent states that in 2004, he retired from a law firm where he was a partner, that he notified OCA of his retirement, and he has not practiced law since then nor does he have any clients. On Jan. 5, 2007, pursuant to a plea agreement with the New York County District Attorney's Office, respondent pleaded guilty to two counts of a complaint filed in Crimi-

nal Court of the City of New York, New York County, that charged him with failure to file New York City or State tax returns for the tax years 2003 and 2004 in violation of Tax Law §1801(a), a class A misdemeanor. The plea agreement revealed that a grand jury had been investigating respondent's failure to file New York State and City resident income tax returns for the tax years 1999 through 2005.

On April 11, 2007, respondent was sentenced to 45 days of incarceration on each count, to run concurrently, and a conditional discharge on the count pertaining to tax year 2003. Respondent was also required to pay a total fine of \$20,000, to make restitution in the amount of \$1,499,757 to the New York State Department of Taxation and Finance, and to show proof that he was in compliance with his 2006 and estimated 2007 taxes. Respondent states that he has complied with all of the terms and conditions of the plea agreement.

In addition, respondent avers that he voluntarily notified the Disciplinary Committee of the criminal charges filed against him and admits that he did not file state or city income taxes for the taxable years 1999-2005. Respondent acknowledges that he cannot successfully defend himself on the merits against the charges that he failed to file state and city income taxes for past years, which is the basis of the disciplinary complaint. He states: "I feel that at this point in my life and career, it would be better if I resigned from the practice of law in the State of New York."

Finally, respondent's attorney has submitted a response dated June 20, 2007, wherein he requests, among other things, that this Court accept respondent's resignation.

Accordingly, inasmuch as respondent's affidavit of resignation from the practice of law satisfies the criteria of 22 NYCRR 603.11, the Committee's motion to accept respondent's resignation should be granted and his name stricken from the roll of attorneys, effective nunc pro tunc to May 22, 2007, the date of his affidavit of resignation.

All concur.

LETTERS

To the Editor

Process of Going to War Needs Review

On Aug. 9, 2007, the New York Law Journal published "The Illegal War" by Mario M. Cuomo and Alfred W. Blumrosen, which focused on the rights and obligations of Congress to vote on going to war, rather than giving the president unfettered discretion on this issue. In addition to separation of powers, there is another issue: The right of voters to representative government.

The Constitution, Art. 1, Sect. 8, requires voters' representatives in Congress to "declare" themselves by abstaining or voting "yay" or "nay"—before the country can go to war. The representative's recorded vote provides a clear issue on which the electorate can vote in the next election.

In 1776, Tom Paine's "Common Sense" said kings were dangerous because they conducted wars of personal ambition. The framers of the Constitution, who had endured the hazards of war for half of the 30 years preceding 1787, were afraid that the strong ambitions of presidents would similarly lead the country into war, for personal reasons. To channel this aspect of human nature, the Constitution purposefully took this royal power away from the executive and placed it in Congress; not in the belief that Congress would always be right, but that it would aggregate the views of the people.

During the Cold War, after 1946, when we viewed the Communist world as a threat to the West, we devised a way around the constitutional requirement that Congress declare war. The formula is simple. The president does not ask Congress to declare war; he asks it to let him decide whether to use military force. Congress does not declare war; it gives the president discretion to use military force. For convenience, this formula is called AUMF, Authorization for the Use of Military Force. Thus, the authorization effectively eliminates the major barrier to wars of personal ambition of presidents. This formula is bi-partisan, having been used in the Vietnam War's Gulf of Tonkin Resolution of 1964, in the 1991 war against Iraq, the post 9-11 resolution, and most recently in the 2002 resolution against Iraq.

The uncertainty created by the authorization to use force, and the president's promise of further diplomatic effort exercising his authority, allows the president to hold different meanings and leaves the issue uncertain. Members of Congress vote for the authorization of "the other guy" defense: "me—it was the president's decision to use force. So responsible."

Thus, the Authorization of Military Force destroys the ability of people to vote for candidates for re-election and the individual candidate's on going to war, prior to commencement. The right to this knowledge is guaranteed by the Constitutional requirement that Congress declare war, coupled with the provision for recording representatives' votes. The deprivation of this right is a denial of a principle under the Fifth Amendment.

There are three ways to restore this right. The first is to allow the office those who clearly understand the interpretation of the Constitution that gave the president war powers. The second is to challenge the constitutional question here with Congress before any president another authorizes. The third is to take this to the U.S. Supreme Court to prevent people from any future success and to restore to the people the right to a clear declaration of representative for or against.

The U.S. Supreme Court's decision on the validity of the authorization for the Use of Military Force Since the authorization concerning Iraq is still in force, this formula is likely to be used. It is timely now to challenge the constitutionality prospectively.

**Alfred W. B
Steven B**

The Blumrosens are authors of "White House Wars," "Nation: How Slavery Unleashed and Sparked the Revolution (2005), examining a period 1770-1790."

OBITUARY

Morton B. Silberman

Morton B. Silberman, a former Justice Silberman had served on the state Supreme Court, Justice of the Peace, and counsel to White Plains

ANNOUNCEMENTS

Professional Announcements