

The Supreme Court of the State of Louisiana

IN RE: CHRISTIAN DREW CHESSON

No.2020-B-00073

IN RE: Disciplinary Counsel - Applicant Other; Notice of Discipline in Another Jurisdiction Pursuant to Rule XIX, Section 21 and Motion to Initiate Reciprocal Discipline Proceedings;

May 01, 2020

No additional discipline imposed. See per curiam.

JDH

SJC

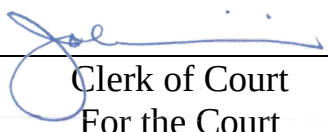
JTG

WJC

JHB

Weimer, J., dissents and assigns reasons.

Supreme Court of Louisiana
May 01, 2020


Clerk of Court
For the Court

05/01/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-0073

IN RE: CHRISTIAN DREW CHESSON

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Pursuant to Supreme Court Rule XIX, § 21, the Office of Disciplinary Counsel (“ODC”) has filed a petition seeking the imposition of reciprocal discipline against respondent, Christian Drew Chesson, an attorney licensed to practice law in Louisiana, based upon discipline imposed by the United States Bankruptcy Court for the Western District of Louisiana (“Bankruptcy Court”).

UNDERLYING FACTS AND PROCEDURAL HISTORY

The United States Trustee for Region 5 (“Trustee”) brought an action against respondent and his law firm. The Trustee alleged that respondent’s employees filed false Credit Counseling Verifications (“Verifications”) in at least eleven Chapter 13 cases that were filed in the Bankruptcy Court between July 2014 and April 2016. According to the Trustee, respondent’s staff impersonated the individual debtors during mandatory consumer credit counseling courses and then prepared and filed Verifications that falsely stated that the debtors had completed the courses prior to filing their cases.¹

Following a trial on the merits, United States Bankruptcy Judge Robert Summerhays found that respondent’s employees engaged in a pervasive scheme to

¹ A credit counseling course is a statutory prerequisite to filing for bankruptcy, and failure to take the course renders a debtor ineligible for bankruptcy.

circumvent the credit counseling requirements of the Bankruptcy Code by filing false Verifications using respondent's electronic signature. Judge Summerhays also determined that respondent had: (1) breached his professional duties of oversight of his paralegals; (2) failed to ensure the veracity of the pleadings filed under his electronic signature in the eleven cases at issue; and (3) acted in bad faith in failing to exercise his professional obligations to oversee his staff and ensure that the documents filed under his signature were true and accurate. Judge Summerhays found that respondent's conduct in failing to oversee his staff resulted not only in the filing of false pleadings in the eleven cases, but also in the filing of cases for debtors who were not eligible to file for relief under Chapter 13. Judge Summerhays concluded that respondent's conduct was "atypical" and "extraordinary" and displayed "dishonesty of belief, purpose or motive."

On August 29, 2018, Judge Summerhays entered an order suspending respondent from the practice of law before the Bankruptcy Court for a period of ninety days.² In addition, respondent was assessed a \$5,000 civil penalty, ordered to disgorge all fees and expenses collected in the eleven cases, ordered to take several remedial measures, and barred from filing new Chapter 13 cases until an approved remediation plan was in place. Judge Summerhays also referred respondent to the United States District Court for the Western District of Louisiana ("Western

² L.R. 83.2.10 for the United States District Court for the Western District of Louisiana provides:

A.1. Any judge of this Court including a Bankruptcy court judge may take limited action to initiate disciplinary proceedings in accordance with Section B.2.

* * *

B.2. For fines or suspensions of 90 days or less, the judge may take action without approval of the active judges of the court or the Chief Judge. For suspensions greater than 90 days or disbarments, the judge shall refer these proceedings for review to the Chief Judge of this court...

District”) for further disciplinary action. Judge Summerhays recommended that respondent be suspended from practice in the Western District for one year.

Following the referral from Judge Summerhays, United States Magistrate Judge Joseph H.L. Perez-Montes conducted an evidentiary hearing. At the hearing, respondent testified that he did not appeal Judge Summerhays’ ruling because he believed it was fair. However, he denied that he had any knowledge of the credit counseling scheme before the Trustee filed the complaint. He also testified that he had complied with Judge Summerhays’ orders and had put in place remedial measures to ensure that the situation will never happen again within his office.

On July 31, 2019, the magistrate judge issued his report and recommendation. The magistrate judge noted in his report that during the pendency of the matter, respondent had served the period of suspension initially imposed by Judge Summerhays along with a lengthy additional period of suspension.³ Respondent also satisfied other – and extensive – financial and remedial requirements. Finally, through these steps and his own representations, respondent offered assurance that he understood the gravity of his misconduct and the requirement to prevent any such misconduct in the future. Accordingly, the magistrate judge recommended that no additional sanctions be imposed upon respondent.

Neither respondent nor the Trustee objected to the magistrate judge’s report and recommendation. On October 18, 2019, Chief Judge S. Maurice Hicks, Jr. of the Western District issued an order adopting the magistrate judge’s findings.

After receiving notice of the Bankruptcy Court order of discipline, the ODC filed a petition to initiate reciprocal discipline proceedings, pursuant to Supreme

³ Respondent has not yet sought reinstatement to practice in Bankruptcy Court.

Court Rule XIX, § 21.⁴ A copy of the order issued by Judge Summerhays was attached to the petition, as well as the report and recommendation of the magistrate judge and the order issued by Judge Hicks. On January 10, 2020, this court rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline would be unwarranted.

Respondent timely filed a response in which he asserts that this court should not impose reciprocal discipline because he has already been harshly sanctioned by the Bankruptcy Court. Moreover, he points out that the Western District has already held a hearing in this matter and ruled that additional discipline was not warranted because the suspension, sanctions, and remedial measures imposed by the Bankruptcy Court were sufficient punishment and would prevent future misconduct. Respondent concludes that the ruling of the Western District, his satisfaction of all of the requirements of the Bankruptcy Court and the Trustee, and the lack of a nexus between his bankruptcy work and his day-to-day law practice are all “extraordinary circumstances” that should lead this court to reject reciprocal discipline of a ninety-day suspension.

DISCUSSION

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline ... unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

⁴ Previously, Supreme Court Rule XIX, § 21(A) was predicated upon the imposition of discipline “by another state disciplinary authority.” Effective May 15, 2019, the rule was amended to include discipline imposed “by another state **or federal** disciplinary authority...” [Emphasis added.]

- (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
- (4) The misconduct established warrants substantially different discipline in this state; ...

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

The record indicates that respondent has served the ninety-day suspension imposed by the Bankruptcy Court as well as a lengthy additional period of suspension. In addition, he has paid a substantial fine, disgorged all fees and expenses he collected in the eleven cases at issue, and implemented remedial measures designed to ensure compliance with the credit counseling requirements of the Bankruptcy Code. Finally, respondent has offered credible assurances that he will not engage in similar misconduct in the future. Considering these circumstances, the Western District determined that no additional discipline was necessary.

We agree and likewise find the imposition of additional discipline is not warranted. *See, e.g., In re: Hartley*, 03-2828 (La. 4/2/04), 869 So. 2d 799 (holding that not every violation of the Rules of Professional Conduct warrants the imposition of formal discipline). Accordingly, while we caution respondent to avoid similar professional lapses in the future, we decline to impose any additional discipline based on the unique facts presented in this matter.

DECREE

Considering the Petition to Initiate Reciprocal Discipline Proceedings filed by the Office of Disciplinary Counsel and the record filed herein, it is ordered that no additional discipline be imposed upon respondent.