

05/01/2020 "See News Release 015 for any Concurrences and/or Dissents."

The Supreme Court of the State of Louisiana

IN RE: OTHA CURTIS NELSON, SR.

No.2020-B-00140

IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

May 01, 2020

Suspension imposed. See per curiam.

JTG

JLW

SJC

WJC

JHB

Supreme Court of Louisiana
May 01, 2020



Clerk of Court
For the Court

05/01/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-0140

IN RE: OTHA CURTIS NELSON, SR.

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Otha Curtis Nelson, Sr., an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

15-DB-078

The following facts are not in dispute, having been stipulated to by respondent.

Respondent represented James Gray in a community property partition case captioned *James Gray v. Linda Atkins Gray*, No. 19121 in Division B of the 21st Judicial District Court. Judge Bruce Bennett presided over the case.

On September 9, 2011, respondent filed a motion to recuse Judge Bennett. In his motion, respondent claimed the judge was biased, impartial, and unfair due to his alleged political relationship with Linda Gray’s attorney, Robert Carter, and Mr. Carter’s father, Judge Burrell Carter, who at the time was Chief Judge of the First Circuit Court of Appeal.

On September 22, 2011, respondent filed a motion to recuse all First Circuit Court of Appeal judges and to appoint appellate judges to hear and decide the writ and appeal. Respondent alleged that the First Circuit judges appeared to be biased,

impartial, and unfair as a result of their daily relationship with Chief Judge Carter. On November 3, 2011, the First Circuit summarily dismissed respondent's motion.

A hearing on the motion to recuse Judge Bennett was scheduled for October 21, 2011 before Chief Judge Brenda Ricks of the 21st Judicial District Court. During the hearing, respondent filed a motion to recuse Chief Judge Ricks based on the same reasons alleged in the motion to recuse Judge Bennett. On December 9, 2011, respondent's motion to recuse Chief Judge Ricks was dismissed. On March 2, 2011, Chief Judge Ricks denied respondent's motion to recuse Judge Bennett.

On October 12, 2012, respondent filed another motion to recuse all First Circuit Court of Appeal judges. The motion was almost identical to the motion previously filed on September 22, 2011. On October 26, 2012, the First Circuit denied respondent's motion to recuse.

19-DB-015

The following facts are not in dispute, having been stipulated to by respondent.

On June 15, 2017, Varonica Franklin hired respondent to handle her divorce and paid him \$300. The next day, Ms. Franklin paid respondent the remaining \$500 balance and signed the petition for divorce and verification.

Having had no contact with respondent since hiring him, Ms. Franklin went to respondent's office three times in February 2018 to check the status of her divorce. Each time, respondent's secretary told Ms. Franklin respondent was out of the office and attempted to reach him on his cell phone. In March 2018, Ms. Franklin visited respondent's office three times to find out the status of her divorce, but respondent was never available. However, on two occasions, another attorney in the office attempted to contact respondent for her but was unsuccessful.

On March 21, 2018, Ms. Franklin finally spoke with respondent, who told her he had recently had eye surgery and requested until the end of the month to complete the divorce. On April 3, 2018, Ms. Franklin again contacted respondent, who told her he had not completed the divorce because his wife had been very ill.

According to the court's records, the petition for divorce and verification was filed on August 7, 2017. Ms. Franklin's husband was served with the petition on August 24, 2017. Nevertheless, respondent failed to finalize the divorce at that time.

In April 2018, Ms. Franklin filed a disciplinary complaint against respondent. After receiving notice of the complaint, respondent filed two motions for preliminary default in Ms. Franklin's divorce proceeding, one on July 25, 2018 and another on September 20, 2018. On September 28, 2018, he filed a judgment of divorce, which the judge signed on October 16, 2018. On November 2, 2018, the clerk's office mailed notice of the judgment to the parties.

DISCIPLINARY PROCEEDINGS

In January 2016, the ODC filed the formal charges in 15-DB-078, alleging that respondent violated Rules 3.1 (meritorious claims and contentions), 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct. Respondent answered the formal charges and denied any misconduct. In April 2019, the ODC filed the formal charges in 19-DB-015, alleging that respondent violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(a) (charging an unreasonable fee), 8.4(a), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct. Respondent answered the formal charges, admitting to the factual allegations contained therein, and agreed to refund "any and all fees" to which Ms. Franklin believes she is entitled. The two

sets of formal charges were consolidated before proceeding to a formal hearing on the merits.

Formal Hearing

The hearing committee conducted the formal hearing on August 20, 2019. During the hearing, respondent admitted to the factual allegations set forth in both sets of formal charges. Respondent did not admit to any of the alleged rule violations in 15-DB-078 but did admit to violating Rules 1.3 and 1.4 of the Rules of Professional Conduct with respect to 19-DB-015.¹

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee noted that respondent admitted to the factual allegations set forth in both sets of formal charges. Based on those facts, as well as the evidence submitted in support thereof, the committee determined that respondent violated the following provisions of the Rules of Professional Conduct: Rules 3.1, 8.4(a), and 8.4(d) in 15-DB-078 and Rules 1.3 and 1.4 in 19-DB-015. Regarding 15-DB-078, the committee further determined respondent did not present any basis or justification to support the assertions made against the judges he wanted recused; respondent's testimony also reflected that he does not understand the serious and improper nature of his assertions against the judges.

The committee determined that respondent knowingly violated duties owed to his clients, the legal system, and the legal profession. He caused actual harm in the form of delays in proceedings and burdens upon opposing counsel and courts. Furthermore, his attack on the integrity of the judicial system potentially undermined

¹ At the hearing, the ODC withdrew the alleged violation of Rule 1.5(a) in 19-DB-015 because respondent eventually completed Ms. Franklin's divorce.

the public trust and damaged the legal system in general. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction ranges from a public reprimand to suspension.

In aggravation, the committee noted respondent's prior disciplinary record and his substantial experience in the practice of law (admitted 1972). His prior disciplinary record consists of a three-year suspension from the practice of law, with all but one year deferred, followed by two years of supervised probation with conditions, for mishandling his trust account, collecting an excessive fee, failing to turn over property and funds belonging to third parties, failing to seek approval of his attorney's fees in a workers' compensation matter, failing to refund unearned fees, causing a mistrial by dismissing Caucasian jurors solely based on their race, and failing to cooperate with the ODC in its investigation. *In re: Nelson*, 13-2699 (La. 5/7/14), 146 So. 3d 176 ("*Nelson I*"). According to the committee, the sole mitigating factor is respondent's personal or emotional problems during his representation of Ms. Franklin.

After considering the totality of respondent's misconduct in light of his prior disciplinary record, the committee recommended he be suspended from the practice of law for one year and one day. The committee's lawyer member dissented and would recommend a public reprimand.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.²

² As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that "[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee's report to the court."

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The record of this matter supports a finding that respondent repeatedly filed frivolous motions to recuse judges, neglected a legal matter, and failed to communicate with a client. This misconduct amounts to a violation of the Rules of Professional Conduct as found by the hearing committee.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

We agree with the committee that respondent knowingly violated duties owed to his clients, the legal system, and the legal profession, causing both actual and potential harm. The record supports the committee's findings regarding aggravating

and mitigating factors. Additionally, the mitigating factor of a cooperative attitude toward the proceedings is present.

Turning to the issue of an appropriate sanction, our prior jurisprudence suggests that, if each count were taken separately, the baseline sanction would be a short suspension from the practice of law. Relative to the misconduct in 15-DB-078, in *In re: Parker*, 19-1007 (La. 10/15/19), 280 So. 3d 569, an attorney received a six-month suspension, with all but thirty days deferred, for filing frivolous and dilatory motions to recuse two judges and misusing the legal process in order to delay proceedings. Relative to the misconduct in 19-DB-015, in *In re: Hunter*, 18-0341 (La. 5/18/18), 242 So. 3d 1210, an attorney received a one year and one day suspension, with all but four months deferred, followed by two years of supervised probation with conditions, for neglecting two legal matters, failing to communicate with two clients, and failing to cooperate with the ODC in two investigations. Likewise, in *In re: Scott*, 09-1886 (La. 2/5/10), 31 So. 3d 978, an attorney received a fully deferred six-month suspension for neglecting a legal matter and failing to communicate with two clients. Relying on this case law, we find the baseline sanction for respondent's consolidated misconduct is a six-month suspension from the practice of law.

Nevertheless, in light of respondent's prior disciplinary history, we find an upward deviation is warranted. In *Nelson I*, among other things, respondent caused a mistrial by removing Caucasian jurors from a jury panel based solely on their race, which we determined was conduct prejudicial to the administration of justice in violation of Rule 8.4(d). In the instant matter, respondent engaged in similar conduct when he filed frivolous motions to recuse various judges. Therefore, we find respondent should, at a minimum, be suspended from the practice of law for one year and one day, which will require him to apply for reinstatement before being allowed to return to the practice of law.

Accordingly, we will accept the committee's recommendation and suspend respondent from the practice of law for one year and one day.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Otha Curtis Nelson, Sr., Louisiana Bar Roll number 9940, be and he hereby is suspended from the practice of law for a period of one year and one day. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.