

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **13th day of May, 2021** are as follows:

PER CURIAM:

[2020-B-01403](#)

[IN RE: DONALD R. DOBBINS](#)

SUSPENSION IMPOSED. SEE PER CURIAM.

05/13/21

SUPREME COURT OF LOUISIANA

NO. 2020-B-1403

IN RE: DONALD R. DOBBINS

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Donald R. Dobbins, an attorney licensed to practice law in Louisiana, but currently suspended from practice.

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. After being admitted to the practice of law in Louisiana in 1991, respondent’s first encounter with the disciplinary system occurred in April 1998, when he was admonished for failing to have a contingency fee agreement in a client matter. Less than a year later, in February 1999, respondent received a second admonition for failing to have contingency fee agreements in two client matters and failing to provide a client with an accounting in a case he handled in the early 1990’s. Respondent received a third admonition in 2001 for failing to comply with a provision of the Code of Judicial Conduct while a candidate for judicial office.

In January 2002, we suspended respondent from the practice of law for one year, with all but six months deferred, followed by one year of probation with conditions, for commingling and converting client funds. *In re: Dobbins*, 01-2022 (La. 1/15/02), 805 So. 2d 133.

In June 2005, we accepted a joint petition for consent discipline and publicly reprimanded respondent for engaging in conduct prejudicial to the administration of justice. Additionally, we ordered respondent to attend the next session of Ethics School offered by the Louisiana State Bar Association. *In re: Dobbins*, 05-1464 (La. 6/15/05), 903 So. 2d 1129.

Finally, in January 2020, we determined that respondent had failed to provide competent representation to clients, neglected legal matters, failed to communicate with clients, failed to refund unearned fees and unused costs, failed to properly supervise his non-lawyer staff, resulting in false affidavits being filed in the court record, failed to reduce a contingency fee agreement to writing, forged client signatures on settlement checks, and failed to place disputed funds in his trust account. For this misconduct, we suspended respondent from the practice of law for one year and one day. *In re: Dobbins*, 19-1346 (La. 1/29/20), __ So. 3d __. Respondent has not yet been reinstated from this suspension; thus, he remains suspended from the practice of law.

Against this backdrop, we now turn to a consideration of the misconduct at issue in the present proceeding.

UNDERLYING FACTS:

Count I

On September 18, 2016, respondent was arrested and charged with 1st offense driving while intoxicated (“DWI”), speeding, and reckless operation. Specifically, a police officer observed respondent driving 75 mph in a 45 mph zone and pulled him over. Another officer providing backup observed that respondent had glassy eyes, poor balance, slurred speech, and a very strong odor of alcohol about him. Respondent refused to take a field sobriety test, refused to take a Breathalyzer test, refused to submit to a blood test, and invoked his Fifth Amendment right to remain

silent. The criminal charges were dismissed on August 7, 2019 because one of the officers could not appear in court when he was scheduled to testify.

Following his 2016 arrest, respondent agreed to be evaluated through the Judges and Lawyers Assistance Program (“JLAP”). The results of the evaluation were inconclusive as to whether respondent could be diagnosed with a substance use disorder, and he was referred for an inpatient multi-disciplinary evaluation at a JLAP-approved facility. Respondent has refused to submit to the inpatient evaluation.

During its investigation, the ODC also discovered that respondent was arrested in November 2010 for DWI and reckless operation. Specifically, respondent entered a sobriety checkpoint, and the police officer observed him to have blood-shot, red, glassy eyes, slurred speech, and a strong odor of alcohol. Respondent refused to take a field sobriety test, refused to take a Breathalyzer test, refused to submit to a blood test, and invoked his Fifth Amendment right to remain silent. The prosecutor dismissed the criminal charges on August 28, 2014.

Upon further investigation, the ODC discovered that respondent has an extensive arrest record. In May 1981, respondent was arrested for DWI and pleaded guilty to the charge on July 24, 1981. In April 1992, he was arrested and charged with simple battery and criminal trespass. Respondent pleaded nolo contendere to the charges in September 1992, and his conviction was set aside pursuant to Article 894 of the Code of Criminal Procedure in March 1993. In May 1992, respondent was arrested for DWI and careless driving. In March 1993, respondent pleaded guilty to the careless driving charge, and the prosecutor dismissed the DWI charge. In April 2001, respondent was arrested for hit and run. The prosecutor dismissed the charge against respondent in September 2001.

Count II

In September 2017, Byron Norris hired respondent to institute an action to prove paternity after the death of his alleged biological father, paying respondent \$2,500. According to Mr. Norris, the \$2,500 was a flat fee. Respondent claimed the \$2,500 was a retainer to be billed at \$300 per hour. Although respondent produced a fee contract to this effect, Mr. Norris never signed the contract, and Mr. Norris claimed respondent never asked him to sign such a contract.

Mr. Norris informed respondent that the decedent would be buried on October 7, 2017, and his immediate action was necessary in order to preserve DNA evidence. Thereafter, respondent informed Mr. Norris that he had filed the necessary pleadings on September 28, 2017. Mr. Norris contacted the court on October 10, 2017 to check the status of the matter and discovered that respondent had actually fax-filed the pleadings on October 1, 2017. He further learned that the filing was incomplete because respondent failed to pay \$25 still due for the court costs and failed to deliver the original pleadings to the court within the time delay allowed. Additionally, the fax-filed pleadings submitted by respondent contained false information that was material to Mr. Norris' cause of action to establish paternity.

Upon learning about the deficiencies in the filing, Mr. Norris contacted respondent. According to Mr. Norris, respondent was dismissive and defensive, but he agreed to check on the matter. Mr. Norris also requested that respondent amend the pleading to correct the inaccurate information. Respondent initially told Mr. Norris the information did not matter but eventually agreed to amend the substantive errors along with correcting the multiple misspellings of Mr. Norris' first name.

After not hearing from respondent, Mr. Norris contacted the court again to determine if the deficiencies in the filing had been cured. Mr. Norris discovered that the status of the matter had not changed. Therefore, on October 12, 2017, Mr. Norris sent respondent a letter of termination, demanding the return of the \$2,500. On

November 2, 2017, respondent sent Mr. Norris an invoice charging him \$300 per hour and indicating that Mr. Norris owed him an additional \$343.32. The invoice also indicated that respondent worked on Mr. Norris' legal matter on three separate days after Mr. Norris notified him of his termination.

DISCIPLINARY PROCEEDINGS

In May 2019, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(a) (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5 (fee arrangements), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent filed an answer to the formal charges, denying any misconduct. The matter then proceeded to a formal hearing on the merits.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee made the following factual findings:

Count I – Based on the documentary evidence, respondent has been arrested sporadically since 1981 through 2016 for DWI. However, all criminal charges that were brought against respondent after his admission to the Louisiana Bar in 1991 have been disposed of by way of him either pleading to lesser charges or having the charges dismissed. Nevertheless, respondent, by way of his arrests for DWI, has engaged in activity of a criminal nature that reflects on his fitness to practice law.

Even though respondent's arrests have not resulted in convictions, the committee noted that a link between respondent's criminal charges and his consumption of alcohol appears to exist. Yet, according to Mr. Stockwell, respondent has refused further evaluations or further assistance from JLAP. Respondent himself made several statements during the hearing indicating his unwillingness to participate in additional JLAP evaluations. Despite respondent's reluctance, the committee opined that he should be assessed further to determine his fitness to practice law.

Count II – Mr. Norris testified that he issued a \$2,500 check to respondent via overnight mail, with the expectation that respondent would file a petition to establish paternity with the Orleans Parish Civil District Court on September 28, 2017. Mr. Norris testified, however, that the petition was not filed until October 1, 2017 and that the clerk's office informed him respondent had failed to submit the original copy of the petition and failed to pay \$25 in filing fees with the fax-filed submission of the petition. Respondent proffered into evidence a copy of a check dated October 4, 2017 in the amount of \$25 made payable to the Orleans Parish Clerk of Court to establish his payment of the filing fee. After becoming aware of the complications surrounding the filing of the petition, Mr. Norris terminated respondent's services via email sent on October 12, 2017. Mr. Norris testified that, after he terminated respondent, he received an invoice from respondent for services rendered. Respondent's act of issuing the invoice post-termination is the nucleus of Mr. Norris' complaint. Based upon Mr. Norris' testimony, he understood that the cost of respondent's representation would be a total of \$2,500 as opposed to the \$2,500 serving as a retainer fee for services provided.

According to the ODC, respondent failed to handle Mr. Norris' matter in a diligent manner by not correcting the pleadings that were fax-filed with the court and by not providing any original copies of the pleadings to the court. Secondly, the

ODC alleged respondent failed to effectively communicate with Mr. Norris in that (1) the fees and costs for representation were never placed in writing and (2) there was never any indication by respondent that the \$2,500 payment was to be regarded as a partial payment for any legal services rendered. In light of the above, the committee determined respondent shoulders the responsibility for the lack of communication and lack of diligence in this matter.

Based on these facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges. The committee then determined respondent's conduct in Count I has the potential to continue to harm the public and the legal profession if respondent continues to refuse help from JLAP. Respondent's conduct in Count II also resulted in harm. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension. The committee found no mitigating factors present but noted respondent's prior disciplinary record as an aggravating factor.

In light of the above, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee further recommended that respondent's reinstatement to the practice of law should be contingent upon his participation in the recommended JLAP inpatient evaluation. Finally, the committee recommended respondent be ordered to make restitution to Mr. Norris for any unearned fees.

Respondent filed an objection to the hearing committee's report. Specifically, he argued that he has not been convicted of any crimes and does not owe Mr. Norris any money. He also argued that the recommended sanction is too severe and that the charges should be dismissed or, at most, a public reprimand imposed.

Disciplinary Board Recommendation

After reviewing this matter, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and adopted same. Additionally, the board found that respondent's \$25 check, which he claimed to have sent to the clerk of court to pay the outstanding fee in Mr. Norris' case, does not prove the fee was paid because it does not show that the clerk's office negotiated the check. Based on these facts, the board determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The board then determined respondent knowingly violated duties owed to his client, the public, and the legal profession. With respect to harm, respondent's conduct in Count I tarnished the legal profession's reputation and had the potential to injure himself and others. As to Count II, respondent harmed Mr. Norris and has yet to provide Mr. Norris with an accounting or a refund of any unearned fees. The board agreed with the committee that the baseline sanction is suspension.

In aggravation, the board found a prior disciplinary record, a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the misconduct, vulnerability of the victim (Mr. Norris resided in California and was attempting to obtain legal relief in the short time between his father's death and burial), substantial experience in the practice of law (admitted 1991), and illegal conduct. The board found no mitigating factors present.

After further considering this court's prior jurisprudence addressing similar misconduct and noting the numerous aggravating factors present, the board recommended respondent be suspended from the practice of law for one year and one day, to run consecutively to respondent's current one year and one day suspension imposed by the court on January 29, 2020. The board further recommended respondent be ordered to provide Mr. Norris with an accounting and a refund of any unearned fees.

One board member dissented and would recommend the imposition of a longer period of suspension and the requirement that respondent participate in a full assessment and evaluation through JLAP prior to being allowed to return to the practice of law.

Respondent filed an objection to the disciplinary board's recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

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 in this matter supports a finding that respondent has been arrested for DWI on multiple occasions, failed to provide competent representation to a client, neglected a legal matter, failed to adequately communicate with a client, including failing to adequately explain the fee arrangement, and failed to account for and/or refund an unearned fee.

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).

Considering the facts of this case, we find a three-year suspension from the practice of law to be an appropriate sanction. Because respondent remains suspended by operation of our 2020 order, we will make the instant suspension retroactive to the date of that order. We further order respondent to make full restitution of all unearned fees. Before any application for reinstatement will be considered, respondent shall be required to show full compliance with all requirements of Supreme Court Rule XIX, §24, including a showing under subsection E(3) that any alcohol abuse issues have been addressed.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Donald R. Dobbins, Louisiana Bar Roll number 20537, be and he hereby is suspended from the practice of law for a period of three years, retroactive to the effective date of the suspension imposed by this court in *In re: Dobbins*, 19-1346 (La. 1/29/20), ___ So. 3d ___. Respondent is further ordered to make full restitution of all unearned fees. 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.