

The Supreme Court of the State of Louisiana

IN RE: JOSEPH B. MORTON, III

No. 2022-B-00029

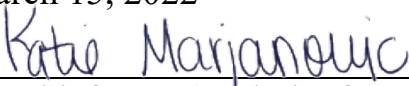
IN RE: Office of Disciplinary Counsel (ODC) - Applicant Other; Findings and
Recommendations (Formal Charges);

March 15, 2022

Suspension imposed. See per curiam.

JDH
JLW
SJC
WJC
JBM
PDG

Genovese, J., dissents.

Supreme Court of Louisiana
March 15, 2022


Chief Deputy Clerk of Court
For the Court

03/15/2022

SUPREME COURT OF LOUISIANA

NO. 2022-B-0029

IN RE: JOSEPH B. MORTON, III

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Joseph B. Morton, III, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

By way of background, respondent was formerly a partner of the Forman Watkins law firm in New Orleans, where his primary responsibility was the defense of Ingersoll Rand and its subsidiary, Trane, in asbestos claims matters. On October 1, 2015, several attorneys and staff departed Forman Watkins to join the Wilmington, Delaware law firm of Maron Marvel Bradley Anderson & Tardy, LLC (“MMBAT” or the “firm”). Respondent joined MMBAT as a salaried, non-equity partner on the date of the merger and was placed in charge of the day-to-day operations of MMBAT’s New Orleans office. In addition, respondent continued to represent Ingersoll Rand and Trane.

In October 2017, MMBAT filed a complaint against respondent with the ODC. The complaint alleged that on September 13, 2017, the firm learned that respondent had billed Ingersoll Rand and Trane for depositions that he either did not attend or that he attended by telephone but nonetheless billed for travel. The next day, when members of the firm met with respondent, he admitted that he may have billed for travel time and mileage when he took depositions by telephone, and that

he may have billed for depositions which he did not attend, but he claimed that any errors were caused by sloppy billing practices. MMBAT terminated respondent that day and began to investigate the matter further. It was ultimately determined that respondent had improperly billed \$10,316.27 in travel time and expenses for thirteen depositions. As of February 12, 2020, the date of the filing of the formal charges, respondent had not paid any restitution; however, on October 24, 2020, he mailed a check to MMBAT in the amount of \$2,116.27, representing repayment of improperly claimed travel expenses.

In his answer to the complaint, respondent admitted that, partially in response to managerial demands and to accommodate MMBAT's billing protocols, he had adopted a practice of "pre-billing" for depositions based on projected time for preparation and participation, and submitting reimbursement requests for anticipated travel expenses. Respondent indicated that he would sometimes be required to change his plans and attend a deposition by telephone due to staffing shortages or other work commitments that precluded travel, or his appearance at a deposition would be cancelled altogether. Nevertheless, respondent admitted that he had no process in place for reconciling his pre-billed time to account for such changes in circumstances, thereby leading to some overcharges of fees and travel expenses. Respondent conceded he exercised poor judgment in these instances but denied that he engaged in any intentional overbilling.

DISCIPLINARY PROCEEDINGS

The formal charges filed by the ODC against respondent allege that his conduct as set forth above violated Rules 1.5(a) (a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of

the Rules of Professional Conduct. Respondent timely answered the formal charges. Following the filing of respondent's answer, the matter was set for a formal hearing before the hearing committee.

Hearing Committee Report

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

1. Respondent submitted improper bills to a client that included attendance at depositions in which he did not participate and for mileage where he either did not participate or participated by phone, obviating the need for travel expense reimbursement.
2. On several occasions, respondent prepared his time and expense sheets in advance based on his upcoming calendared depositions. However, when some of the planned depositions were cancelled or changed to a telephone appearance, respondent failed to remove several of the depositions from his time and expense sheets.
3. Respondent had an opportunity to correct entries on his pre-bills before the final bills were submitted to the client, but due to his volume of work, he failed to recognize and remove the improper entries. As a result, the client was improperly billed for the entries.
4. MMBAT suffered actual harm, having reimbursed Ingersoll Rand \$35,529.71 as a result of respondent's improper time and expense entry practices. The firm took a broad approach in reimbursing Ingersoll Rand and appears to have reimbursed the client for several of respondent's billing entries that were not erroneous. It was later determined through discovery that respondent's improper billing totaled \$10,316.27, not \$35,529.71.

5. MMBAT also lost Ingersoll Rand as a client; however, it could not be determined whether this occurred strictly because of respondent's actions, as Ingersoll Rand moved its business from MMBAT's New Orleans office well before discovering any irregularities in respondent's billing practices.
6. Respondent acknowledged that he owed restitution to MMBAT. Respondent and the ODC established a due date of January 15, 2018 for respondent to pay \$2,116.27 in restitution for improperly billed travel expenses. As of October 23, 2020, the date of the hearing, respondent had not paid restitution. The committee found this troubling but took into consideration respondent's cooperation with the ODC and his inability to find gainful employment following his termination. Therefore, the committee agreed to keep the record open for two weeks to accept evidence of respondent's promised restitution payment. A payment of \$2,116.27 was made to MMBAT on October 24, 2020 and evidence of same is in the record.

Based on these findings, the committee determined respondent violated Rules 1.5(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct as charged.

The committee found that respondent violated duties owed to his clients, the firm, the legal system, and the legal profession. He acted negligently. Respondent's misconduct did not cause harm to his clients but did cause actual harm to MMBAT, which reimbursed the clients for his improper billing. The applicable baseline sanction is suspension.

The committee found the following aggravating factors are present: a pattern of misconduct, substantial experience in the practice of law (admitted 1988), and "delayed attempt to make restitution." The committee found the following mitigating factors are present: absence of a prior disciplinary record, a cooperative attitude toward the disciplinary proceedings, and remorse. The committee also noted that respondent "has finally remitted the restitution payment."

Turning to the issue of an appropriate sanction, the committee noted that prior cases suggest a one year and one day suspension would be appropriate for respondent's misconduct. In *In re: Moser*, 10-1777 (La. 9/24/10), 44 So. 3d 270, the respondent could not keep up with her firm's billable hour requirement because of significant medical issues. On one occasion, she was scheduled to attend an in-person pre-trial conference but she overslept due to her medical issues and missed the conference. For fear of losing her job, the respondent submitted time and expenses as though she had attended the conference. Her false submission was detected and the client was never billed. She was suspended for one year and one day, fully deferred, subject to a period of probation. Additionally, in *In re: Wallace*, 17-0525 (La. 9/22/17), 232 So. 3d 1216, the respondent submitted false and inflated billing records due to a lack of billable work in his practice area of his firm, and because he had ambitions to become the managing partner of the firm. The respondent intercepted the billings before they were sent to the client; nevertheless, the false and inflated entries were used for bonus incentives, causing the firm financial harm. The respondent was suspended for thirty months, with all but twelve months deferred.

The committee found that although these cases are factually similar to the instant matter, respondent did not act intentionally in billing time and expenses for the depositions he did not attend or attended by telephone, nor did he submit the bills for personal gain. Rather, respondent posted time and expense entries in advance of the calendared depositions. He then failed to delete them from the pre-bills when the depositions were cancelled or changed because he was overwhelmed with work and did not recognize the improper entries. Due to respondent's negligence in this regard, the committee concluded the appropriate sanction is a fully deferred six-month suspension.

Based on this reasoning, the committee recommended that respondent be suspended from the practice of law for six months, fully deferred, subject to a six-month period of probation. The committee also recommended that respondent be assessed with all costs of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report. Having received no objections, the disciplinary board submitted the committee's report directly to the court for consideration pursuant to Supreme Court Rule XIX, § 11(G). On April 27, 2021, we remanded the matter to the board for further review.

Disciplinary Board Recommendation

On remand, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and adopted same. The board also made its own factual findings, as follows:

1. Respondent submitted erroneous time and travel expense billing entries pertaining to thirteen deposition matters.
2. Respondent received a financial gain for his improper billing of travel expenses, for which he has paid restitution to the firm in the amount of \$2,116.27.
3. Respondent received no financial gain for his erroneous time entries.
4. As the resident partner in charge of the firm's New Orleans office, respondent was a salaried employee, and his compensation never depended upon hourly production. Moreover, he was not an equity partner nor did he share in an equity distribution at the end of the year based on the total billings of the firm for the year.

Based on the factual findings, the board agreed with the committee that respondent violated the Rules of Professional Conduct as charged. The board also determined that respondent does not owe any additional restitution to MMBAT.

The board determined that respondent violated duties owed to his clients, the firm, and the profession. He acted negligently. Respondent's conduct did not cause actual harm to his clients but did cause actual harm to the firm. Pursuant to the ABA's *Standards for Imposing Lawyer Sanctions*, the applicable baseline sanction is suspension.

In aggravation, the board found respondent engaged in a pattern of misconduct and has substantial experience in the practice of law. The board found the following mitigating factors are present: absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and remorse. The board noted that under the ABA Standards, respondent's payment of restitution after the hearing is neither an aggravating nor a mitigating factor.

Turning to the issue of an appropriate sanction, the board observed that prior cases demonstrate the sanction for improperly recording fees and/or expenses ranges from a brief suspension to permanent disbarment, depending upon various factors, including the mental element and the damage sustained. After reviewing similar cases that typically involved knowing or intentional misconduct, the board reiterated that respondent's conduct was negligent and was caused by his being overwhelmed with work at the firm. Given these facts, and the mitigating factors present, the board determined that the fully-deferred suspension recommended by the hearing committee is appropriate.

Accordingly, the board recommended that respondent be suspended from the practice of law for six months, fully deferred, subject to a six-month period of

probation. The board also recommended that respondent be assessed with all costs of this proceeding.

Neither respondent nor the ODC filed an objection to the disciplinary board's recommendation.

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.

Respondent violated Rules 1.5(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct by billing his clients for depositions he did not attend and billing travel and mileage expenses for depositions he took by telephone. Although this conduct occurred for approximately eighteen months after respondent joined MMBAT, he denies that his actions were intentional or that he acted for personal gain. Rather, respondent testified that he posted his time and expense entries in advance of the calendared depositions and, because he was overworked, he failed to delete them from the pre-bills when the depositions were cancelled or changed. The hearing committee made a finding that respondent's conduct was negligent and thus it appears his explanations in this regard were accepted as credible. We cannot say this finding is clearly wrong, given the record before the court. *See In re: Bolton*, 02-0257 (La. 6/21/02), 820 So. 2d 548 ("Although this court is the trier of fact in bar

disciplinary cases, we are not prepared to disregard the credibility evaluations made by those committee members who were present during respondent's testimony and who act as the eyes and ears of this court.'').

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).

Respondent violated duties owed to his clients and the legal profession. He caused actual harm to MMBAT, which reimbursed the clients for the improper billing. The applicable baseline sanction is suspension.

The record supports the following aggravating factors: a pattern of misconduct and substantial experience in the practice of law. The mitigating factors are the absence of a prior disciplinary record, a cooperative attitude toward the disciplinary proceedings, and remorse. The disciplinary board correctly noted that respondent's payment of restitution after the hearing is neither an aggravating nor a mitigating factor.

Turning to the issue of an appropriate sanction, we agree that a short period of suspension, fully deferred, is appropriate for respondent's misconduct. There is no evidence that respondent was engaged in any type of "scheme" in submitting the erroneous bills, or that he intended to obtain any personal gain thereby. To the extent that respondent did receive a financial gain for his improper billing of travel expenses, he has paid restitution to the firm.

Considering the facts of this case, as well as the absence of any objection by the ODC, we will adopt the board's recommendation and impose a six-month suspension, fully deferred, subject to a six-month period of probation.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, it is ordered that Joseph B. Morton, III, Louisiana Bar Roll number 19072, be and he hereby is suspended from the practice of law for a period of six months. This suspension shall be deferred in its entirety, subject to respondent's successful completion of a six-month period of probation governed by a probation plan. The probationary period shall commence from the date that respondent and the ODC execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate. 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.