

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **21st day of October, 2022** are as follows:

PER CURIAM:

[2022-B-00492](#)

[IN RE: JARVIS J. CLAIBORNE](#)

SUSPENSION IMPOSED. SEE PER CURIAM.

[Crichton, J., additionally concurs and assigns reasons.](#)

Genovese, J., dissents for the reasons assigned by Crain, J.

[Crain, J., dissents and assigns reasons.](#)

Griffin, J., dissents for the reasons assigned by Crain, J.

SUPREME COURT OF LOUISIANA

NO. 2022-B-0492

IN RE: JARVIS J. CLAIBORNE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

In 2009, Goldie Mae Jack hired respondent to handle her personal injury case on a contingency fee basis. During the course of the representation, respondent failed to respond to opposing counsel’s repeated written requests for discovery responses. He also failed to communicate with Ms. Jack regarding the status of her case.

On June 30, 2010, Ms. Jack gave a deposition in the case. Thereafter, respondent attempted to negotiate a settlement on Ms. Jack’s behalf, initially demanding \$290,475.27 on September 3, 2010. Negotiations continued until September 2012, when the adjuster for the defendant insurer sent respondent a final settlement offer in the amount of \$3,000. Respondent did not pursue the case further.

On January 30, 2014, the defendant filed an ex parte motion to dismiss the case due to abandonment. The judge signed an order dismissing the case on February 4, 2014, but respondent failed to inform Ms. Jack. Because she could not contact respondent, Ms. Jack learned of the dismissal when she checked the court record of her case.

In April 2014, Ms. Jack filed a disciplinary complaint against respondent, alleging he neglected her case and failed to communicate with her. In his response to the complaint, respondent informed the ODC that Ms. Jack provided false information during her June 2010 deposition. He claimed he told Ms. Jack after her deposition that her case was a “farce” and to pick up her file (implying he would no longer represent her). In fact, respondent never told Ms. Jack any such thing. Accordingly, Ms. Jack never retrieved her file from respondent but did continue to come to his office in an effort to speak with him. Respondent also continued to negotiate on Ms. Jack’s behalf after her deposition and never withdrew as her counsel of record.

During a December 27, 2018 sworn statement given to the ODC, respondent admitted he was served with a copy of the order dismissing the case due to abandonment but failed to notify Ms. Jack of the dismissal. Respondent also admitted he never advised Ms. Jack that she had a potential malpractice claim against him or that she should seek independent counsel to evaluate the malpractice claim.

DISCIPLINARY PROCEEDINGS

In May 2019, the ODC filed formal charges against respondent, alleging that he violated the following provisions of the Rules of Professional Conduct: Rules 1.2 (scope of the representation), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.7 (conflict of interest – current clients), 8.1(a) (a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent, through counsel, filed an answer to the formal charges, denying that he engaged in any misconduct. Accordingly, the matter 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 factual findings consistent with the underlying facts set forth above. In general, the committee found that respondent neglected Ms. Jack's legal matter, failed to communicate with her, failed to advise her that the case was abandoned, failed to advise her of the potential malpractice claim and that she should seek independent counsel for evaluation, and knowingly made a false statement of fact when responding to Ms. Jack's disciplinary complaint.

Additionally, the committee found that Ms. Jack, defense counsel, and the claims adjuster were credible in their descriptions of their unsuccessful attempts to contact respondent. While respondent testified that he makes his cell phone number available, the evidence is overwhelming that, in this case, he was generally unresponsive to his adversary and his client. The committee further found that, although respondent repeatedly indicated that another attorney in his office was handling Ms. Jack's case, he ultimately took responsibility for the abandonment of the case.

The committee also specifically found that respondent never told Ms. Jack her case was a "farce" and never instructed her to pick up her file; therefore, his response to Ms. Jack's disciplinary complaint contained two false statements, which he knowingly made. During his testimony, respondent retracted this written statement but also repeatedly indicated it would have been unethical for him to pursue the case based on the information obtained from Ms. Jack's deposition. Nevertheless, following Ms. Jack's deposition, respondent made at least three substantial settlement demands to the defendant insurer, all more than \$250,000. Given respondent's testimony, the committee found him to lack credibility with respect to the disputed facts of this matter.

Based on these facts, the committee determined respondent violated Rules 1.3, 1.4, 1.7, and 8.1(a) of the Rules of Professional Conduct, as alleged in the formal charges. However, the committee determined respondent did not violate Rules 1.2, 8.4(a), and 8.4(c). Regarding Rule 1.2, the committee found no testimony to support a finding that Ms. Jack was ever aware of the \$3,000 settlement offer and accepted the offer; thus, there is no evidence that respondent failed to abide by Ms. Jack's decision to accept the \$3,000 offer. Regarding Rules 8.4(a) and 8.4(c), the committee found that respondent's misconduct does not rise to the level of dishonesty, fraud, deceit, or misrepresentation as contemplated by Rule 8.4(c), or even an attempt to violate the rules as contemplated by Rule 8.4(a).

The committee then determined respondent violated duties owed to his client and the legal profession. He acted negligently in his representation of Ms. Jack, which led to her case being dismissed as abandoned. However, he acted knowingly when he made false statements in response to Ms. Jack's disciplinary complaint. His conduct caused actual harm to Ms. Jack by depriving her of the opportunity to settle her case for \$3,000. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found the submission of false evidence, false statements, or other deceptive practices during the disciplinary process and respondent's "testimony that another attorney in his office may have been responsible for the abandonment but that he is 'taking the lick.'" In mitigation, the committee found the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, character or reputation, and respondent's "acknowledgment that the abandonment of the case occurred on his watch."

After also considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for six months, with three months deferred. The committee also

recommended that respondent be ordered to make restitution to Ms. Jack in the amount of \$3,000.

Respondent filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and are supported by the record. Accordingly, the board adopted same. Based on these facts, the board determined respondent violated the Rules of Professional Conduct as found by the committee, with two exceptions. First, the board noted that the committee found respondent knowingly made false statements in his response to Ms. Jack's disciplinary complaint and continued to pursue significant settlement demands despite believing Ms. Jack's case was fraudulent. In light of these findings, the board determined respondent engaged in misrepresentation, which is a violation of Rule 8.4(c). Second, the board determined respondent violated Rule 8.4(a) by violating other Rules of Professional Conduct.

The board then determined respondent violated duties owed to his client and the legal profession. According to the board, his conduct was partly negligent and partly knowing. His conduct caused actual harm to his client and potential harm to the attorney disciplinary system. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board agreed with the committee that the baseline sanction is suspension.

The board found the following aggravating factors present: multiple offenses, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, and substantial experience in the practice of law (admitted 1984). In mitigation, the board found the absence of a dishonest or selfish motive and character or reputation. The board also noted that the absence of a prior

disciplinary record is not an appropriate mitigating factor because respondent participated in the attorney disciplinary system's diversion program in 2007.

After also considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for six months, with three months deferred. The board further recommended that any misconduct by respondent during the period of deferral may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate.¹

Respondent filed an objection to the 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 neglected a legal matter, resulting in the dismissal of a client's lawsuit due to abandonment, failed to

¹ The board declined to adopt the committee's recommendation that respondent be ordered to make restitution to Ms. Jack in the amount of \$3,000, reasoning that such an award amounts to monetary damages, which are not appropriate in a disciplinary proceeding.

communicate with the client and opposing counsel, failed to advise the client of the potential malpractice claim against him, and knowingly made a false statement of fact when responding to the client's disciplinary complaint. This conduct amounts to a violation of the Rules of Professional Conduct as found by the disciplinary board.

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 negligently and knowingly violated duties owed to his client and the legal profession. His conduct caused actual and potential harm.

Aggravating factors include a prior disciplinary record, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, and substantial experience in the practice of law. Mitigating factors are the absence of a dishonest or selfish motive and character or reputation.

The fact-specific nature of prior cases in this area makes it difficult to formulate a baseline sanction with any degree of precision. However, in general, it may be said we have typically imposed a period of suspension, which may be deferred in whole or in part, for misconduct similar to respondent's. *See, e.g., In re: Hickman*, 20-0292 (La. 6/3/20), 296 So. 3d 1036 (attorney suspended for one year and one day, with all but thirty days deferred, for neglecting two legal matters, failing

to communicate with two clients, and misrepresenting the status of a case to one client).

In determining a sanction in this matter, we must give consideration to the unexplained delay in the prosecution of these charges. The misconduct at issue occurred between 2009-2014, and the disciplinary complaint was filed in 2014. However, the ODC did not institute formal charges until 2019. We conclude this delay in the institution of disciplinary proceedings must be considered as an additional and substantial mitigating factor.

Considering all the circumstances of this case, we will suspend respondent from the practice of law for six months, with all but thirty days deferred. We will further order that any misconduct during the period of deferral may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate.

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 Jarvis J. Claiborne, Louisiana Bar Roll number 14148, be and he hereby is suspended from the practice of law for six months. It is further ordered that all but thirty days of the suspension shall be deferred. Any misconduct during the period of deferral 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.

SUPREME COURT OF LOUISIANA

No. 2022-B-00492

IN RE: JARVIS J. CLAIBORNE

Attorney Disciplinary Proceeding

CRICHTON, J., additionally concurs and assigns reasons:

I agree with the majority's imposition of a six month suspension with all but thirty days deferred. However, as Justice Crain noted in his dissent, the Office of Disciplinary's delay was unreasonable. As a result, but for that delay, I would be inclined to impose a harsher sanction that would include a substantially longer period of actual suspension. Not only does the record establish that respondent neglected a legal matter, causing his client's lawsuit to be dismissed due to abandonment, respondent knowingly made a false statement of fact and submitted false evidence during his disciplinary proceedings. Such a disregard for the sanctity of the disciplinary process, which is designed to protect the public and preserve the integrity of the profession, is shocking. *See In re Kelly*, 20-118 (La. 6/3/30), 298 So.3d 161, 165-6, citing *Louisiana State Bar Ass'n. v. Reis*, 513 So.2d 1173 (La. 1987) ("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."). As I have recently stated, the importance of truthfulness and accuracy in proceedings that directly affect the public's trust cannot be understated. *See Deal v. Perkins*, 22-1212 (La. 8/1/22), __So.3d__ (Crichton, J., dissenting, noting that allowing a certification of proven material false information listed on a notice of candidacy form, filed in the public record, belies the purpose of the form itself and is inconsistent with the integrity with which elections must be conducted). Accordingly, while I agree with the sanction

imposed by the majority in this matter, in my view, it is a result of the inordinate length of time between respondent's misconduct and the completion of the Office of Disciplinary's proceedings.

SUPREME COURT OF LOUISIANA

No. 2022-B-00492

IN RE: JARVIS J. CLAIBORNE

Attorney Disciplinary Proceeding

Crain, J., dissenting

The Office of Disciplinary Counsel first acted on this complaint in 2014. They now ask us to impose discipline in 2022, eight years after their investigation commenced. The charge was not complex. The persons involved cooperated. Thus, I find this delay on the part of the ODC unreasonable and fully mitigating. Suspending someone for even 30 days for these events that happened nearly a decade ago is unduly harsh. I dissent and would impose a six month suspension fully deferred.