

The Supreme Court of the State of Louisiana

IN RE: DANMINH QUY MUI

No. 2022-B-01305

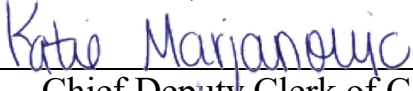
IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and
Recommendations (Formal Charges);

December 06, 2022

Discipline imposed. See per curiam.

SJC
JLW
JDH
WJC
JBM

Genovese, J., dissents and would accept the recommendation of the disciplinary
board.
Griffin, J., dissents and would accept the recommendation of the disciplinary
board.

Supreme Court of Louisiana
December 06, 2022


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1305

IN RE: DANMINH QUY MUI

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

FORMAL CHARGES

On September 16, 2018, respondent was arrested in Jefferson Parish for driving while intoxicated (“DWI”), failure to obey a traffic signal/red light, flight using a motor vehicle, and resisting an officer. When the ODC received notice of the arrest from the Jefferson Parish District Attorney’s Office, it mailed notice of the complaint to respondent at his primary and secondary bar registration addresses. However, both mailings were returned as undeliverable,¹ necessitating the issuance of a subpoena to obtain respondent’s sworn statement. Respondent appeared on May 7, 2019 for the sworn statement, during which the ODC requested that he contact the Judges and Lawyers Assistance Program (“JLAP”) for a substance abuse evaluation. Respondent failed to contact JLAP or otherwise address his possible impairment issues.

¹ Nevertheless, on April 22, 2019, respondent provided a written response to the ODC regarding his arrest. Copies of the returned mail referenced in the formal charges are not included in the record.

The ODC alleged that respondent's conduct violated Rules 8.1(c) (failure to cooperate with the ODC in its investigation) and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) of the Rules of Professional Conduct.

DISCIPLINARY PROCEEDINGS

The ODC filed formal charges, as set forth above, against respondent in January 2020. Respondent failed to answer the formal charges. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the committee's consideration.

Hearing Committee Report

After considering the ODC's submission on sanctions, the hearing committee adopted the deemed admitted factual allegations set forth in the formal charges. Based on the other evidence in the record, the committee additionally found the following:

At approximately 1:30 a.m. on September 16, 2018, a Harahan police officer on duty in his marked patrol car observed respondent's vehicle proceed through a red light at the intersection of Citrus Boulevard and Hickory Avenue in Harahan. The officer activated his overhead lights and siren in an effort to detain the vehicle. Respondent slowed to approximately 5 M.P.H., turned right onto an adjacent street, and stopped. However, when the officer got out of his patrol car to approach the vehicle, respondent drove off, turning onto another street and into the parking lot of an apartment complex at 2028 Walnut Creek Road.

After again pulling up behind respondent's vehicle, the officer emerged from his patrol car to approach the still moving vehicle, while loudly ordering the driver to place the vehicle in park. While attempting to remove respondent from his vehicle, the officer was struck in the groin by respondent's foot as respondent resisted being removed from his vehicle.

Backup officers arrived and assisted in administering a standard field sobriety test to respondent, who failed to perform virtually all of the field sobriety tests satisfactorily. Respondent later consented to and was administered a breath alcohol analysis, which recorded a .196 BAC (breath alcohol content), over twice the legal limit of intoxication.

Respondent was later arrested on numerous charges, including DWI first offense. He was offered and agreed to accept pre-trial diversion through the Jefferson Parish District Attorney's Office, which he later completed satisfactorily.²

After the ODC notified respondent of the disciplinary complaint filed against him, respondent gave a generally exculpatory written version of the events described above. However, he initially failed to respond to a request for sworn testimony, which necessitated the issuance of a subpoena to obtain his sworn statement. Ultimately, respondent complied and gave sworn testimony concerning his detention and arrest. He also agreed to submit to a JLAP evaluation. However, he failed to contact JLAP as promised following the sworn statement.

Based on these facts, the committee determined respondent violated the Rules of Professional Conduct as charged. The committee further determined that respondent violated duties owed to the public and the legal profession and that his criminal behavior reflected adversely on the profession. After reviewing the ABA's

² The ODC's exhibits include a July 3, 2019 letter from the Jefferson Parish District Attorney's Office indicating respondent completed the pre-trial DWI diversion program on June 27, 2019. The letter also indicated that the criminal charges against respondent would be dismissed.

Standards for Imposing Lawyer Sanctions, the committee determined the baseline sanction is suspension.

In aggravation, the committee found illegal conduct, including that involving the use of controlled substances. With respect to mitigating factors, the committee found the following: the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, and remorse.

In determining an appropriate sanction for respondent's misconduct, the committee took guidance from *In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 3d 941, wherein we stated:

We have imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, we tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.

In light of *Baer* and respondent's failure to contact JLAP for an evaluation, the committee recommended respondent be suspended from the practice of law for one year and one day.

Respondent filed an objection to the committee's June 3, 2021 report. Specifically, respondent objected to the recommended sanction. Respondent further indicated that he contacted JLAP and was scheduled for an evaluation on July 6, 2021.

JLAP Evaluation

JLAP-approved evaluator Melissa Dufrene, PsyD, ABPP, evaluated respondent on July 6, 2021. Following the evaluation, Dr. Dufrene's diagnostic impression of respondent was "Rule out alcohol use disorder" as he was at risk of

future problematic substance use. Accordingly, she recommended respondent participate in a multidisciplinary inpatient professional assessment.

Between October 4 and October 6, 2021, respondent participated in a multidisciplinary inpatient professional assessment at the Professionals' Wellness Evaluation Center ("PWEC"). PWEC's assessment determined that respondent meets the criteria for "History of Alcohol Use Disorder – Mild (2018)." Accordingly, PWEC recommended respondent enter into a two-year JLAP diagnostic monitoring agreement, which should include the requirements that respondent abstain from ingesting alcohol, cannabis, and all non-authorized mood-altering substances and submit to regular drug and alcohol testing for the duration of the monitoring agreement.

Respondent executed the recommended two-year diagnostic monitoring agreement with JLAP on January 4, 2022.

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's factual findings were not manifestly erroneous. However, the board made additional findings consistent with the facts set forth in respondent's JLAP evaluation discussed above. Based upon the entirety of the factual findings by both the board and the committee, the board determined that respondent violated Rule 8.4(b) of the Rules of Professional Conduct. The board declined to find a violation of Rule 8.1(c) based upon respondent's subsequent cooperation with JLAP.

The board then determined respondent knowingly violated duties owed to the public and the legal profession. Regarding harm, the board determined respondent's conduct reflects adversely on the profession and also caused potential harm to the public. The board agreed with the committee that the baseline sanction is suspension.

The board also agreed with the committee's determinations regarding aggravating and mitigating factors. In additional mitigation, the board found (1) full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings and (2) the imposition of other penalties or sanctions (respondent's criminal charges and participation in the pre-trial DWI diversion program).

Like the committee, the board took guidance from *Baer* in determining an appropriate sanction. The board also cited *In re: Kleinpeter*, 20-1125 (La. 1/20/21), 308 So. 3d 1147, a consent discipline case wherein an attorney self-reported his DWI arrest to the ODC, completed a thirty-day inpatient treatment program, and entered into a five-year JLAP recovery agreement. We accepted the petition for consent discipline and suspended the attorney from the practice of law for one year, fully deferred, subject to a period of probation coinciding with the attorney's JLAP agreement.

In accordance with *Kleinpeter*, the board recommended respondent be suspended from the practice of law for one year, fully deferred, subject to a period of probation coinciding with his two-year JLAP agreement.

Although neither respondent nor the ODC filed an objection to the board's recommendation, we issued an order directing the parties to submit written briefs addressing whether the sanction recommended by the board is appropriate. The ODC submitted a brief in response to the court's order. However, respondent did not.

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.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The evidence in the record of this deemed admitted matter supports a finding that respondent was arrested for DWI and other alcohol-related offenses. In light of his arrest, respondent has violated 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).

The record also supports a finding that respondent knowingly violated duties owed to the public and the legal profession, causing potential and actual harm. We

agree with the aggravating and mitigating factors found by the hearing committee. We also agree that the baseline sanction is suspension.

The issue of the appropriate sanction is more problematic, however. The board has justified its recommended sanction by citing a consent discipline case, which is inappropriate in this matter as it is not a consent discipline proceeding. We addressed the precedential value of consent discipline cases in *In re: Hernandez*, 00-1283 (10/6/00), 770 So. 2d 330, 331 at n. 4, stating, “Because the sanction in consent discipline proceedings is arrived at by mutual agreement between respondent and the ODC, and is not necessarily the sanction this court would impose under the facts, it has limited precedential value in future cases.”

The board’s recommended sanction is also not supported by our prior jurisprudence addressing similar misconduct in formal charge matters. For example, in *In re: Wilson*, 20-1488 (La. 5/13/21), 320 So. 3d 1064, an attorney with a prior disciplinary record was arrested for DWI. She self-reported her arrest to the ODC and participated in a JLAP evaluation and inpatient assessment. Because her issues of alcohol abuse were unresolved at the time we imposed discipline, we suspended the attorney from the practice of law for one year and one day, with all but ninety days deferred, subject to the condition that, before being reinstated from the active period of suspension, the attorney would be required to produce evidence that she was in compliance with all JLAP treatment recommendations and had entered into an appropriate JLAP agreement. Only upon compliance with this condition would the attorney be reinstated, subject to a period of probation coinciding with the length of her JLAP agreement. Even in DWI cases where a JLAP agreement was determined to not be necessary, we have still imposed a fully deferred suspension of one year and one day. For example, in *In re: Lamb*, 19-1460 (La. 11/19/19), 307 So. 3d 175, an attorney was arrested for DWI, marijuana possession, and traffic charges following a car accident. Following an evaluation, JLAP determined the

attorney did not have a substance use disorder and, therefore, did not recommend further testing or treatment. Under these circumstances, we suspended the attorney from the practice of law for one year and one day, fully deferred.

In light of this case law, we will reject the board's recommendation and, instead, suspend respondent from the practice of law for one year and one day, with all but thirty days deferred, followed by a period of probation coinciding with his JLAP agreement.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record and the brief filed by the ODC, it is ordered that DanMinh Quy Mui, Louisiana Bar Roll number 36104, be and he hereby is suspended from the practice of law for a period of one year and one day. It is further ordered that all but thirty days of this suspension shall be deferred. Following the completion of the active portion of his suspension, respondent shall be placed on probation for a period coinciding with his JLAP agreement. 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.