

The Supreme Court of the State of Louisiana

IN RE: JOSEPH HAROLD TURNER, JR.

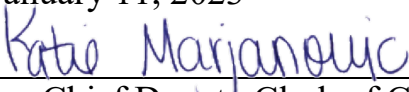
No. 2022-B-01402

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

January 11, 2023

Discipline imposed. See per curiam.

SJC
JLW
JDH
JTG
WJC
JBM
PDG

Supreme Court of Louisiana
January 11, 2023


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1402

IN RE: JOSEPH HAROLD TURNER, JR.

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Joseph Harold Turner, Jr., a disbarred attorney.

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 1999 and to the Georgia Bar in 1997.

On April 5, 2021, the Supreme Court of Georgia disbarred respondent for violating the Georgia Rules of Professional Conduct. The misconduct at issue included failure to disburse settlement funds to a client, failure to respond to a client’s requests for information, mishandling of a client trust account, and failure to respond to notice of a disciplinary investigation. After receiving notice of the Georgia order of discipline, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana based upon the discipline imposed in Georgia. In October 2021, we imposed reciprocal discipline and disbarred respondent. *In re: Turner*, 21-0786 (La. 10/1/21), 324 So. 3d 1038 (“*Turner I*”).

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

FORMAL CHARGES

On June 1, 2017, respondent was declared ineligible to practice law for failing to comply with mandatory continuing legal education requirements. On September 11, 2017, he was declared ineligible to practice for failing to pay bar dues and the disciplinary assessment. Respondent has never rectified his ineligibility.

Notwithstanding his ineligibility, respondent agreed to represent R.A. and M.A. following their arrest on narcotics-related charges. On July 8, 2019, he accepted \$2,500 to provide them with legal advice and representation in the criminal matter, which was pending in Jefferson and Plaquemines Parishes. Respondent was also hired to represent their interests in the signing of contracts wherein R.A. and M.A. agreed to work as confidential informants for the Jefferson Parish District Attorney's Office and the Jefferson Parish Sheriff's Office.

Pursuant to the representation, respondent engaged in communications on behalf of R.A. and M.A. In August 2019, he contacted and interacted with Assistant District Attorney Edward McGowan of the Plaquemines Parish District Attorney's Office and Assistant District Attorney Joan Benge of the Jefferson Parish District Attorney's Office. Also in August 2019, he interacted, both by telephone and in person, with a narcotics detective from the Jefferson Parish Sheriff's Office.

Notices of the associated disciplinary complaint were sent to respondent at two separate addresses, but the notices were left unclaimed and returned to the ODC. Notice was then sent to respondent at his registered email address. The email was not returned as undeliverable, but respondent did not reply to the complaint.

DISCIPLINARY PROCEEDINGS

In January 2020, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.1(b)(c) (failure to comply with annual professional

obligations), 1.5(f) (failure to refund an unearned fee), 5.5(a) (engaging in the unauthorized practice of law), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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 hearing committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee acknowledged that the factual allegations set forth in the formal charges were deemed admitted. Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as charged.

The committee determined respondent violated duties owed to his client and the legal profession. He acted knowingly, intentionally, and with disregard for the welfare of those who relied upon his word that he was eligible to practice law. He caused actual harm to those who trusted his representations. The committee added:

Respondent knew that his actions violated the Rules of Professional Conduct and proceeded therewith of actions involving members of the public who relied in good faith on Respondents [sic] representation that he was eligible to practice law in Louisiana. This misrepresentation is troubling and compounded by the fact that respondent refused to cooperate in the investigation of this matter forcing all involved to expend time, cost, and energy.

Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension. The sole aggravating

factor found by the committee is substantial experience in the practice of law. The committee found that the record does not support any mitigating factors.

Considering these findings, the committee recommended that respondent be suspended from the practice of law for a period of two years. The committee also recommended that respondent be ordered to pay restitution to his clients as well as all costs and expenses related to these proceedings.

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 this court for consideration pursuant to Supreme Court Rule XIX, § 11(G). On April 13, 2021, we remanded the matter to the board for further review. *In re: Turner*, 20-1413 (La. 4/13/21), 313 So. 3d 970. In the remand order, we stated:

IT IS ORDERED that this matter is remanded for further review by the disciplinary board pursuant to Supreme Court Rule XIX, § 11(G). The board is particularly directed to address in its report the issues of (1) an appropriate sanction in this matter, and (2) the applicability of this court's decision in *In re: Smothers*, 20-1412 (La. 3/16/21), 312 So.3d 577.

Disciplinary Board Recommendation

After review, the disciplinary board acknowledged that the factual allegations in the formal charges were deemed admitted and proven by clear and convincing evidence. The board determined that the legal conclusions of the hearing committee are supported by the factual allegations asserted in the formal charges and by the evidence in support of the allegations. The board concluded that respondent violated the Rules of Professional Conduct as charged.

The board determined respondent violated duties owed to his clients, the public, the legal system, and the legal profession. His conduct was knowing, if not intentional. By accepting representation and a fee while he was ineligible, he caused

actual harm to his clients. By engaging in the unauthorized practice of law while he was ineligible, he created the potential for further harm to his clients and the legal system as his misconduct could potentially affect the validity of the legal actions and proceedings in which he participated while ineligible. By failing to cooperate with the ODC's investigation of the complaint, he caused damage to the legal profession. Such conduct potentially causes the unnecessary expenditure of the limited resources of the disciplinary agency and delays the resolution of complaints, all of which does damage to the reputation of the legal profession. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

The board found that the following aggravating factors are present: multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law. The board determined that no proven mitigating factors are present.

As directed by the order of remand, the board considered the applicability of the decision in *In re: Smothers*, 20-1412 (La. 3/16/21), 312 So. 3d 577 ("*Smothers II*") to the instant matter. In *Smothers II*, an attorney practiced law while he was ineligible to do so. While the charges in *Smothers II* were pending, we issued a ruling in *In re: Smothers*, 20-0244 (La. 6/22/20), 297 So. 3d 743 ("*Smothers I*"), which also involved Mr. Smothers' practicing law while ineligible.

In *Smothers II*, we found that Mr. Smothers knowingly violated duties owed to his client, the public, the legal system, and the legal profession, causing both potential and actual harm. There were several aggravating factors present and no mitigating factors. Notably, the misconduct in *Smothers I* and *II* was identical, and Mr. Smothers continued to engage in similar misconduct well after formal charges were filed in *Smothers I*. Considering all these circumstances, we saw no reason to

deviate from the baseline sanction and suspended Mr. Smothers for one year and one day.

In light of *Smothers II*, the board determined that respondent's misconduct in this matter, standing alone, would warrant a suspension of one year and one day. However, the board noted that just prior to the panel argument in this matter, respondent was disbarred in the reciprocal discipline proceeding in *Turner I*. As a result, the board turned to a discussion of *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991), wherein we observed that when a second attorney disciplinary proceeding involves conduct that occurred during the same time period as the first proceeding, the overall discipline to be imposed should be determined as if both proceedings were before the court simultaneously.

The board observed that the misconduct at issue in this matter occurred in approximately July and August of 2019, but the timeframe of the misconduct in Georgia is unknown because the decision of the Georgia Supreme Court does not include that information. As such, the board noted that there was insufficient information to perform a full *Chatelain* analysis in the determination of an appropriate sanction in this matter. Nevertheless, based upon the available information and considering all of the circumstances presented, including the combined misconduct in Georgia and Louisiana as well as respondent's medical problems over the years,¹ the board concluded that no additional sanction is warranted at this time.

In conclusion, the board recommended that respondent be adjudged guilty of rule violations to be considered if and when he seeks readmission to the practice of

¹ In a motion for continuance filed with the board in July 2021, respondent advised that he was diagnosed with a brain tumor that "affected my mental capacity, my decision making, my ability to conduct a proper defense ... and ... physical ability to conduct normal day to day activities." In a second motion for continuance filed with the board in September 2021, he advised that the tumor had grown and that additional medical testing was required to determine the best course of action.

law in Louisiana. The board further recommended that respondent be ordered to pay restitution to his clients in the amount of \$2,500, and that he be assessed with the costs and expenses 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.

The evidence in the record of this deemed admitted matter supports a finding that respondent failed to comply with his professional obligations, engaged in negotiations with counsel and accepted a fee while he was ineligible to practice law, falsely stated to counsel that he was eligible to practice law, failed to return an unearned fee, and failed to cooperate with the ODC in its investigation. Based on these facts, respondent has violated the Rules of Professional Conduct as charged.

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, the public, the legal system, and the legal profession. His conduct was knowing, if not intentional, and caused both potential and actual harm. The applicable baseline sanction is suspension.

The aggravating factors found by the disciplinary board are supported by the record. The record supports the mitigating factor of personal or emotional problems.

On April 13, 2021, we remanded the instant matter for further review by the disciplinary board. Following remand, respondent was disbarred in *Turner I* pursuant to a reciprocal discipline proceeding. As noted by the board, the timeframe for the misconduct at issue in *Turner I* is unknown, and thus, there is insufficient information to perform a full *Chatelain* analysis. Under these circumstances, we agree that the instant misconduct should be considered if and when respondent applies for readmission.

Accordingly, we will adopt the board’s recommendation and adjudge respondent guilty of additional rule violations to be considered if and when he seeks readmission to the practice of law. We will also order respondent to pay restitution to his clients in the amount of \$2,500.

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 Harold Turner, Jr., Louisiana Bar Roll number 26134, be and he hereby is adjudged guilty of additional violations warranting disbarment, which shall be considered in the event he seeks readmission from our decree of disbarment in *In re: Turner*, 21-

0786 (La. 10/1/21), 324 So. 3d 1038, after becoming eligible to do so. Respondent is ordered to pay restitution to his clients R.A. and M.A. in the amount of \$2,500 plus legal interest. 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.