

The Supreme Court of the State of Louisiana

IN RE: TODD MICHAEL TYSON

No. 2022-B-01607

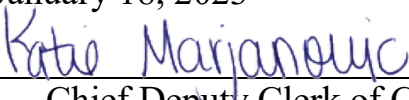
IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

January 18, 2023

Suspension imposed. See per curiam.

JDH
JLW
JTG
WJC
JBM
PDG

Crichton, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
January 18, 2023


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1607

IN RE: TODD MICHAEL TYSON

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Todd Michael Tyson, 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. Respondent was admitted to the practice of law in Louisiana in 2013.

On November 10, 2021, this court accepted a petition for consent discipline in which respondent stipulated that he had neglected a legal matter, failed to communicate with a client, failed to return the client’s file upon request, failed to refund an unearned fee, and failed to cooperate with the ODC in its investigation. For this misconduct, the court imposed a one year and one day suspension, with all but sixty days deferred, subject to a two-year period of probation with conditions. The court further ordered that, prior to being reinstated to the practice of law, respondent must submit to an appropriate evaluation by the Judges and Lawyers Assistance Program and comply with any recommendations for treatment and/or the execution of a monitoring agreement. *In re: Tyson*, 21-0990 (La. 11/10/21), 326 So. 3d 1230 (“*Tyson I*”). Respondent has not complied with the court’s order and therefore remains suspended from the practice of law.

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

FORMAL CHARGES

In July 2021, Angel Macedo hired respondent to represent Richard Briggs in a criminal matter. She paid respondent a \$1,500.00 fee as well as an additional \$1,500.00 that was earmarked for the purpose of paying a bail bond company upon the securing of a successful bond reduction for Mr. Briggs. Although the latter funds constitute an advance for costs, there is no evidence that respondent ever placed the funds into his client trust account.

Respondent misled Ms. Macedo into believing that he had or would secure a significant reduction in the bond. He provided no such service. Mr. Briggs remained incarcerated for weeks and could not return to work. Although Mr. Briggs bonded out after the bond was reduced from \$87,500.00 to \$27,500.00, the reduction was not obtained through any effort on the part of respondent but due to the fact that the district attorney independently decided not to pursue two of the original charges.

The funds entrusted to respondent were neither returned to Ms. Macedo nor used for the payment of bond. Ms. Macedo requested a refund of the attorney's fee and the bond payment. Respondent indicated that he would return the funds, but there is no evidence that he did so. Respondent also failed to return Ms. Macedo's phone calls.

On September 14, 2021, the ODC received a disciplinary complaint against respondent from Ms. Macedo. A copy of the complaint was forwarded to respondent as well as to the attorney who represented him in *Tyson I*. Despite the urgings of his former attorney, respondent did not provide an answer to the complaint.

DISCIPLINARY PROCEEDINGS

In April 2022, the ODC filed formal charges against respondent, alleging that his conduct, as set forth above, violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(f) (failure to refund an unearned fee), 8.1(c) (failure to cooperate with the ODC in its investigation), 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 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 found that respondent violated the Rules of Professional Conduct as charged.

The committee noted that respondent lacked appropriate diligence in violation of Rule 1.3; respondent failed to communicate on a fair, regular, or reasonable basis in violation of Rule 1.4; respondent failed to safeguard the funds entrusted to him by placing the advanced cost deposit into his trust account and he failed to refund either the unearned fee or the advanced cost deposit in violation of Rule 1.5(f); respondent continued to exercise dominion and control over the funds entrusted to him, thereby converting those funds to his own use in violation of Rule 8.4(c); respondent ignored

the complaint and refused to provide any response whatsoever to the concerns of the complainant in violation of his obligation to cooperate under Rule 8.1(c); and respondent violated or attempted to violate the Rules of Professional Conduct in violation of Rule 8.4(a).

The committee determined that respondent violated duties owed to his client, the legal system, and the legal profession. The committee further determined that his actions were intentional and caused actual harm to his client, who paid him for services that were not performed.¹ After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee found the following aggravating factors are present: a prior disciplinary record, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and substantial experience in the practice of law (admitted 2013). The committee found that the record does not support any mitigating factors.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended that respondent be suspended from the practice of law for one year and one day. The committee further recommended that respondent be assessed with all costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the committee's report. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.

¹ The ODC indicated in its submission on sanctions that respondent ultimately repaid the fee and advance cost deposit to Ms. Macedo, albeit after the disciplinary complaint was filed.

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 record in this deemed admitted matter supports a finding that respondent neglected a legal matter, failed to communicate with a client, failed to promptly refund 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).

The record supports a finding that respondent knowingly, if not intentionally, violated duties owed to his client, the legal system, and the legal profession, causing actual harm to the client. We agree with the hearing committee that the applicable baseline sanction is suspension. The record supports the aggravating factors found by the hearing committee. No mitigating factors are apparent from the record.

Turning to the issue of an appropriate sanction, we agree that a one year and one day suspension is appropriate for respondent’s misconduct. In *In re: Taylor*, 14-0646 (La. 5/23/14), 139 So. 3d 1004, an attorney collected a \$2,500.00 fee to pursue a post-conviction relief matter. He then failed to perform any substantive work on the matter, failed to communicate with the client, and failed to return the fee. He also failed to cooperate with the ODC’s investigation. Numerous aggravating factors were present, and the only mitigating factor present was the lack of a prior disciplinary record. For his misconduct, we imposed a one year and one day suspension from the practice of law and ordered the attorney to refund the unearned fee.

The *Taylor* case presented the court with a similar set of circumstances as is presented here. Based on this case law, we agree the committee’s recommended sanction is appropriate.

Accordingly, we will adopt the committee’s recommendation and suspend respondent from the practice of law for one year and one day.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Todd Michael Tyson, Louisiana Bar

Roll number 35407, be and he hereby is suspended from the practice of law for one year and one day. 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.