

The Supreme Court of the State of Louisiana

IN RE: RICHARD FORREST WHITE

No. 2022-B-01701

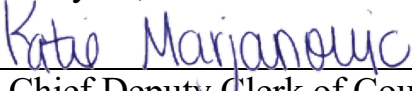
IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

February 24, 2023

Disbarment imposed. See per curiam.

JDH
JLW
JTG
WJC
PDG

Crichton, J., dissents and assigns reasons.
McCallum, J., dissents for reasons assigned by Justice Crichton.

Supreme Court of Louisiana
February 24, 2023


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1701

IN RE: RICHARD FORREST WHITE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Richard Forrest White, an attorney licensed to practice law in Louisiana but currently ineligible to practice.¹

PROCEDURAL HISTORY

In January 2021, the ODC filed formal charges against respondent under disciplinary board docket number 21-DB-006. In May 2021, the ODC filed formal charges against respondent under disciplinary board docket number 21-DB-031. Respondent failed to answer either set of 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).

The two sets of formal charges were considered by separate hearing committees. No formal hearings were held, but the parties were given an opportunity to file with the committees written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for either committee’s consideration.

¹ Respondent has been ineligible to practice law since June 18, 2021 for failing to comply with the mandatory continuing legal education requirements. Thereafter, he was declared ineligible for failing to pay his bar dues and the disciplinary assessment as well for failing to submit his trust account information. Respondent is also admitted to the practice of law in Missouri and Washington. However, he is ineligible to practice law in both jurisdictions for failing to pay fees.

Before being considered by the disciplinary board, the matters were consolidated. The board then filed a single recommendation in this court encompassing both sets of formal charges.

21-DB-006

FORMAL CHARGES

Count I – The LaFleur Matter

In August 2015, Jasmine LaFleur hired respondent to represent her with respect to a worker's compensation claim and a related lawsuit. Respondent never filed any pleadings on Ms. LaFleur's behalf, despite his repeated assurances to her that he had done so. According to Ms. LaFleur, on several occasions, respondent failed to respond to her inquiries regarding the status of her legal matter to any degree of satisfaction. Instead, he continued to make assurances to her that he had taken care of everything, when in fact he had not done so.

In January 2019, Ms. LaFleur filed a disciplinary complaint against respondent. Although respondent provided an initial response to the complaint, he failed to cooperate with the ODC's investigation thereafter, including failing to respond to the ODC's multiple emails and letters. Respondent also failed to appear for his sworn statement scheduled for August 24, 2020. More specifically, approximately thirty minutes before the sworn statement was to begin, respondent's son informed the ODC that respondent was hospitalized. Respondent did not respond to the ODC's August 31, 2020 letter requesting proof of the hospitalization.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 8.1(c) (failure to cooperate with the ODC in its investigation), 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).

Count II – The Criminal Conduct Matter

On May 22, 1995, respondent was scheduled to be arraigned on ten counts of obtaining controlled dangerous substances by fraud. However, he failed to appear in court, and on May 24, 1995, a bench warrant was issued for his arrest. The bench warrant remained active for more than five years before respondent finally appeared in court on January 5, 2001. At that time, he was found in contempt of court and sentenced to serve five days in jail, with credit for time served. On February 16, 2001, respondent pleaded guilty to the ten counts of obtaining controlled dangerous substances by fraud. He was placed on probation for two years, subject to certain conditions, and ordered to pay a fine.

On February 20, 2020, respondent was arrested on charges of felony possession of less than two grams of a Schedule II controlled dangerous substance and misdemeanor possession of drug paraphernalia. At this time, the matter is still pending.²

Respondent failed to cooperate with the ODC's investigation of these matters, which began in August 2020.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal), 8.1(c), 8.4(b) (commission of a criminal act

² On March 12, 2021, the assistant district attorney handling respondent's case informed the ODC that his "effort to contact Mr. White to offer him pre-trial diversion is still ongoing. I have reached out to other attorneys who know him and may have found a way to contact him through his son. However, if that does not prove to be fruitful, we will be filing a bill of information and moving forward with the prosecution of the case." He also informed the ODC that the substance in respondent's possession was tested and determined to be cocaine.

that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(d).

HEARING COMMITTEE REPORT

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

The committee then determined respondent knowingly, if not intentionally, violated duties owed to his client, the public, and the legal system, causing severe harm to Ms. LaFleur. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, deceptive practices during the disciplinary process, vulnerability of the victim, substantial experience in the practice of law (admitted 1994), and illegal conduct, including that involving the use of controlled substances. In mitigation, the committee found only the absence of a prior disciplinary record.

Specifically citing respondent's long history of criminal conduct and his lack of participation in this disciplinary proceeding, the committee recommended he be permanently disbarred. The ODC filed an objection to the hearing committee's report, arguing that the recommended sanction was overly harsh.

21-DB-031

FORMAL CHARGES

The Campbell Matter

In May 2018, respondent began representing Scott Campbell in a criminal matter. Respondent represented Mr. Campbell in the case through Mr. Campbell's plea of no contest to the charges and his sentencing, which occurred on December 18, 2019. Thereafter, Mr. Campbell made several written and verbal attempts to contact respondent to request his file in order to proceed with post-conviction relief. Despite his efforts, Mr. Campbell was neither able to communicate with respondent nor obtain his file.

In October 2020, Mr. Campbell filed a disciplinary complaint against respondent. Despite the ODC's numerous attempts to contact respondent and obtain his response to the complaint, respondent did not cooperate with the ODC's investigation.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.16(d) (obligations upon termination of the representation), 8.1(c), and 8.4(a) (violation of the Rules of Professional Conduct).

HEARING COMMITTEE REPORT

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

The committee then determined respondent knowingly, if not intentionally, violated duties owed to his client, the public, the legal system, and the legal profession. His conduct caused significant harm to his client. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found the following factors present: a pattern of misconduct, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, deceptive practices during the disciplinary process, vulnerability of the victim, and substantial experience in the practice of law. In mitigation, the committee found only the absence of a prior disciplinary record.

After further considering this court's prior case law addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day.

Neither respondent nor the ODC filed an objection to the hearing committee's report. Nevertheless, as stated above, this matter was consolidated with 21-DB-006, and both matters were reviewed by the disciplinary board.

21-DB-006 & 21-DB-031

DISCIPLINARY BOARD RECOMMENDATION

After review of the record and deemed admitted facts in both sets of formal charges, the disciplinary board agreed with the hearing committees that respondent violated the Rules of Professional Conduct as charged. The board then determined respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession.

According to the board, respondent's conduct caused serious actual harm to Ms. LaFleur and potential harm to Mr. Campbell. Respondent's criminal conduct caused actual harm to the public and to the legal profession's reputation. He also caused delays in the criminal justice system by evading criminal charges, and his failure to cooperate with the ODC's investigations damaged the legal profession and the disciplinary system.

Based upon the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction ranges from suspension to disbarment. The board found the following aggravating factors present: 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, substantial experience in the practice of law, and illegal conduct, including that involving the use of controlled substances. Like the committees, the board found the absence of a prior disciplinary record to be the sole mitigating factor present.

After further considering this court's prior case law addressing similar misconduct, the board recommended respondent be disbarred. The board further recommended respondent be ordered to return Mr. Campbell's file.

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.

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 records of these two deemed admitted matters support a finding that respondent neglected a legal matter and continuously misled the client about the status of the legal matter, engaged in criminal conduct involving illegal drugs, failed to appear for his arraignment and evaded a bench warrant for more than five years, ignored a client's multiple requests for the return of his file, and failed to cooperate with the ODC in three investigations. Based upon these facts, respondent has violated the Rules of Professional Conduct as follows:

1. He violated Rules 1.3 and 8.4(d) by neglecting Ms. LaFleur's legal matter;
2. He violated Rules 1.4 and 8.4(c) by continuously misleading Ms. LaFleur regarding the status of her legal matter;
3. He violated Rules 3.4(c) and 8.4(d) by failing to appear in court for his arraignment and then evading a bench warrant for more than five years;
4. He engaged in criminal conduct on multiple occasions, in violation of Rule 8.4(b);
5. He again violated Rule 1.4 by failing to communicate with Mr. Campbell regarding the return of his file;
6. He violated Rule 1.16(d) by failing to return Mr. Campbell's file despite numerous requests;
7. He failed to cooperate with the ODC in its three investigations, in violation of Rule 8.1(c); and
8. By violating the Rules of Professional Conduct as discussed above, he violated Rule 8.4(a).

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 knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. His conduct caused actual and potential harm. We agree with the disciplinary board that the baseline sanction is in the range of a suspension to disbarment. We also agree with the aggravating and mitigating factors found by the board.

Turning to the issue of an appropriate sanction, case law suggests that the baseline sanction for respondent's combined misconduct in the LaFleur and Campbell matters is a suspension from the practice of law for one year and one day. *See In re: Taylor*, 14-0646 (La. 5/23/14), 139 So. 3d 1004, in which we imposed a suspension for one year and one day upon an attorney who neglected a legal matter, failed to communicate with a client, failed to promptly return a client's file upon request, failed to refund an unearned fee, and failed to cooperate with the ODC in its investigation. With the exception of failing to refund an unearned fee, respondent's misconduct is identical, if not worse, than the misconduct in *Taylor*. Regarding respondent's criminal conduct, the case of *In re: Martin*, 18-0900 (La. 9/21/18), 252 So. 3d 867, is instructive. In *Martin*, an attorney possessed drug paraphernalia associated with heroin use, possessed cocaine, engaged in a sexual relationship with a client and introduced the client to drugs, represented the client

while she was ineligible to practice law, was involved in a motor vehicle accident while driving with a suspended driver's license, and was a fugitive from justice with multiple warrants issued for her arrest. For this misconduct, we imposed disbarment. Arguably, respondent's conduct is not as egregious as the misconduct in *Martin*, in that respondent did not engage in a sexual relationship with a client, did not get into an accident while driving with a suspended license, and did not represent any clients while he was ineligible to practice law. Nevertheless, we find the discipline imposed in *Taylor* and *Martin* supports disbarment as the overall sanction for the entirety of respondent's misconduct in both sets of formal charges.

Accordingly, we will adopt the board's recommendation and disbar respondent. We will further order respondent to return Mr. Campbell's file.

DECREE

Upon review of the findings and recommendations of the hearing committees and disciplinary board, and considering the record, it is ordered that Richard Forrest White, Louisiana Bar Roll number 22892, be and he hereby is disbarred. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. It is further ordered that respondent shall provide Scott Campbell with his client file. 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.