

The Supreme Court of the State of Louisiana

IN RE: TRISTAN PATRICK GILLEY

No. 2023-B-00989

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

December 05, 2023

Suspension imposed. See per curiam.

SJC
JLW
JDH
WJC
JBM
PDG

Genovese, J., dissents and assigns reasons.

Supreme Court of Louisiana
December 05, 2023

Katja Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-0989

IN RE: TRISTAN PATRICK GILLEY

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

FORMAL CHARGES

On March 22, 2018, Charles Smith retained respondent to pursue his parental rights as the father of a minor child. The child resided in Oklahoma with her mother, Ashley Durham. In late March 2018, respondent sent a letter to Ms. Durham in an attempt to resolve the matter without having to file suit. He also began drafting the initial pleadings. Ms. Durham did not respond to respondent’s letter.

In June 2018, Mr. Smith contacted respondent about the matter. Respondent and Mr. Smith decided to resend the March letter to Ms. Durham, with the understanding that if she failed to reply, respondent would file suit. Respondent resent the letter to Ms. Durham, and once again, she did not respond. Nevertheless, respondent failed to file suit in Louisiana or otherwise make any further efforts to pursue Mr. Smith’s parental rights.

On numerous occasions, Mr. Smith texted respondent for updates regarding the status of the matter. Mr. Smith states that respondent misled him about the status, including that suit had been filed and was progressing, which, in fact, was not true.

In late March 2019, upon discovering that respondent had taken no further action on his behalf since June 2018, Mr. Smith terminated respondent as his counsel.

In April 2020, Ms. Durham's live-in boyfriend initiated a legal proceeding in Oklahoma for step-parent adoption of the child. On March 19, 2021, respondent testified in the Oklahoma proceeding about his mishandling of the Louisiana case.¹

The court in the Oklahoma proceeding ruled against Mr. Smith. The court noted, in part:

It is unfortunate in your case, Mr. Smith, that your attorney in Louisiana did you a disservice in my opinion. ... [H]e didn't do what you hired him to do. He admitted that he didn't do it. ... And he acknowledged the fact that during the time that he was your attorney, you probably believed that he had filed those papers.

In May 2021, Mr. Smith filed a complaint against respondent with the ODC. The complaint was delivered to respondent on June 3, 2021, but he failed to respond

¹ During the hearing, respondent testified, in pertinent part:

Q. Did you ever tell Mr. Smith that you didn't file the paternity action?

A. Not until well after the [June 2018] letter.

* * *

Q. When Mr. Smith came to see you, one of the discussions that the two of you had was the time frame to keep it in Louisiana; correct?

A. Correct.

Q. And so you knew there was a deadline to file; correct?

A. Correct.

Q. Okay. But you didn't?

A. I did not.

Q. And you didn't tell [Mr. Smith] that you didn't either, did you?

A. Correct.

* * *

Q. ... When Mr. Smith received the petition for adoption filed in Pottawatomie County here in Oklahoma, was Mr. Smith still under the understanding that there was a paternity action pending in Louisiana?

A. I would believe so.

* * *

Q. And so after repeated conversations where Mr. Smith asked you how things were going, you led him to believe that the paternity action was moving along?

A. I allowed him to believe that the case was moving along when, in fact, it had fallen through the cracks.

to same. Three weeks later, the ODC sent a second notice to respondent at his registered email address. Although he submitted a written response to the complaint on July 13, 2021, respondent failed to respond to an additional email sent by the ODC. A subpoena was then issued to take his sworn statement.

Respondent provided a sworn statement on March 7, 2022. At that time, respondent acknowledged that he failed to properly annotate his actions in the case, admitting that Mr. Smith was “under the impression that I was gonna finalize the drafting[.]” Respondent further admitted that he made a “colossal mistake” not to file suit in Louisiana, where he knew there was a deadline. Respondent indicated that he “did not put a hard date at that time [on his calendar] and that was, again also my fault[.]” Respondent acknowledged that he did not do his due diligence for his client and did not communicate with Mr. Smith as much as he should have.

During the sworn statement, the ODC asked respondent to provide additional documents and information. Although respondent promised to immediately comply with the production request, he failed to do so. The ODC sent respondent a letter asking that he provide the requested documents and information by April 20, 2022. To date, respondent has not complied with the request.

DISCIPLINARY PROCEEDINGS

In February 2023, 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(a) (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 3.2 (failure to make reasonable efforts to expedite litigation), 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 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. On March 14, 2023, respondent sent the ODC the following letter:

This letter is in response to the formal charges filed in regards to my handling of the Charles Smith matter.

The charges alleged are substantially correct. I only wish that the following clarifications be taken into consideration.

At no point did I attempt to defraud Mr. Smith. My intent at all times was to get the biological mother of his child to the negotiating table to resolve custody issues. It was my belief that this would resolve his issues and the cost would be substantially less than litigation.

When Mr. Smith terminated my representation, I returned the full retainer.

When Mr. Smith asked me to testify in regards to my negligence, I complied without any reservation.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee determined that the factual allegations of the formal charges were deemed admitted and, thus, proven by clear and convincing evidence. Based on those facts, the committee determined respondent violated the Rules of Professional Conduct as charged.

The committee determined respondent violated duties owed to his client and the legal profession. While he was candid in his admission of his neglect and

failures, his failures directly contributed to damage to his client and were noted by the trial judge in the Oklahoma proceeding. This harm could have been prevented had he taken professional actions in Louisiana. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The only aggravating factor recognized by the committee is respondent's substantial experience in the practice of law (admitted 2011). In mitigation, the committee recognized the absence of a prior disciplinary record.

After further considering the court's prior case law addressing similar misconduct, the committee recommended that respondent be suspended from the practice of law for six months, with all but ninety days deferred, followed by one year of probation with the condition that he maintain legal malpractice insurance during the period of suspension and probation. The committee further recommended he be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.²

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

² As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that "[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee's report to the court."

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 failed to provide competent representation to a client, neglected a legal matter, failed to communicate with a client, failed to make reasonable efforts to expedite litigation, failed to cooperate with the ODC in its investigation, misled a client about the status of his matter, and engaged in conduct prejudicial to the administration of justice. This conduct amounts to a violation of 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 further supports a finding that respondent violated duties owed to his client, the legal system, and the legal profession. His conduct was negligent in part, but knowing inasmuch as he misled Mr. Smith about the status of his matter. The record reflects that respondent refunded the fees paid to him by Mr. Smith, but that refund does not alleviate all of the actual harm he caused to Mr. Smith. In addition to losing his parental rights in the Oklahoma proceeding, Mr. Smith had to pay travel fees, attorney's fees, and court costs associated with that proceeding. The applicable baseline sanction is suspension. The record supports the aggravating and mitigating factors found by the committee.

Of the cases cited by the committee, *In re: Dirks*, 17-0067 (La. 6/29/17), 224 So. 3d 346, is the most instructive. In *Dirks*, we suspended an attorney for sixty days for failing to inform a client that her case was dismissed on summary judgment. The client had contacted the attorney on numerous occasions to check on the status of her case, and the attorney repeatedly advised that he had not heard anything from the court. The attorney also lied to the ODC in his initial written response to the complaint when he stated that he was unaware the case had been dismissed. The attorney later acknowledged receiving notice of the dismissal from the court and admitted that he did not want to tell the client because he "didn't want to deal with it."

Based on this case law, we find the sanction recommended by the hearing committee is appropriate to address respondent's misconduct. Accordingly, we will adopt the committee's recommendation and suspend respondent from the practice of law for six months, with all but ninety days deferred, followed by one year of probation.³

³ Although the committee recommended respondent maintain malpractice insurance during the period of his suspension and probation, there is no requirement that a lawyer licensed in Louisiana must maintain malpractice insurance. Accordingly, we decline to adopt this portion of the committee's recommendation.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Tristan Patrick Gilley, Louisiana Bar Roll number 33854, be and he hereby is suspended from the practice of law for a period of six months. It is further ordered that all but ninety 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 of one year. The probationary period shall commence from the date respondent and the ODC execute a formal probation plan. 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 portion of the 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.