

SUPREME COURT OF LOUISIANA

No. 17-B-1930

IN RE: PAUL E. BROWN

ATTORNEY DISCIPLINARY PROCEEDING

CRICHTON, J., would grant rehearing and assigns reasons.

The United States Supreme Court has characterized lawyer discipline cases as “adversary proceedings of a quasi-criminal nature” with the lawyer “accordingly entitled to procedural due process” - including an opportunity afforded for explanation and defense. *In Re Ruffalo*, 390 U.S. 544, 550-51 (1968). *See also Selling v Radford*, 243 U.S. 46, 51 (1917) (the Court finding that it should give deference to the ruling of a state court in a disciplinary proceeding unless (among other conditions) “the state procedure, from want of notice or opportunity to be heard, was wanting in due process.”)

Respondent has been a respected member of the Louisiana State Bar Association for over 35 years with no prior disciplinary record. However, in 2012, he violated R.S. 14:98 and ROPC Articles 8.4(a) and 8.4(b) by driving a vehicle while under the influence of prescription medication. Undoubtedly, he should receive discipline and, based on the record prior to oral arguments in the case, substance abuse counseling and monitoring.

Following oral arguments, however, he was ordered to undergo an “updated substance abuse evaluation” which, according to the written report, proved positive for opiate consumption. At the post-oral argument stage, he was not allowed the opportunity to confront and cross examine the lab technician as to the methodology involved in the testing and analysis or the opinions expressed within the

Professionals' Wellness Evaluation Center report. Moreover, he was not allowed the opportunity to provide testimony under oath but instead afforded only the opportunity "to file supplemental briefs addressing the report." In this disciplinary proceeding, referenced by the U.S. Supreme Court as quasi-criminal, respondent is entitled to the procedural due process including an opportunity afforded for cross-examination and defense.

Accordingly, for these reasons – and those set forth by Justice Weimer - I would grant rehearing, vacate the suspension, and remand this matter for an evidentiary hearing.