

The Supreme Court of the State of Louisiana

IN RE: ROBERT M. WATERWALL

No. 2021-B-01443

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

December 21, 2021

Suspension imposed. See per curiam.

JLW

JDH

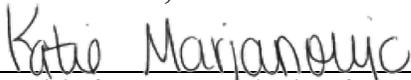
WJC

PDG

Crichton, J., dissents and would reject discipline as too lenient.
Genovese, J., dissents and would reject discipline as too lenient.
McCallum, J., dissents and would reject discipline as too lenient.

Supreme Court of Louisiana

December 21, 2021



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2021-B-1443

IN RE: ROBERT M. WATERWALL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

FORMAL CHARGES

Count I

On August 13, 2019, the ODC received information from the Louisiana State Bar Association (“LSBA”) that respondent had abandoned his law office located in Ruston, Louisiana. He failed to pay his rent, failed to provide a forwarding address, and left his client files in his office.

On August 30, 2019, the ODC’s investigator located and spoke with respondent via telephone. Respondent informed the investigator that he was staying with friends in Gretna, Louisiana but would return to his office in Ruston around September 7, 2019. He further indicated that, at that time, he would make arrangements to recover his client files. Nevertheless, he failed to do so. On June 15, 2020, the ODC’s investigator went to respondent’s office in Ruston, met with the property manager, and verified that respondent had left client files, including medical records, in the office.

In October 2019, the ODC opened a formal complaint against respondent. Between October 28, 2019 and May 14, 2020, the ODC mailed notice of the

complaint to respondent via certified mail and regular mail to three addresses he had registered with the LSBA. All three notices were returned to the ODC as unclaimed or undeliverable. On May 13, 2020, the ODC sent respondent an email to three separate email addresses, one of which respondent had registered with the LSBA. Respondent did not respond to any of the emails. Finally, on May 15, 2020, the ODC mailed respondent notice of the complaint via regular mail to the address in Gretna he had previously provided to the ODC's investigator. This notice was not returned to the ODC, indicating receipt. Nevertheless, respondent did not respond to the complaint.

The ODC then issued a subpoena for respondent to provide a sworn statement on August 13, 2020. The ODC's investigator was unable to locate respondent to personally serve him with the subpoena. Therefore, the ODC sent the subpoena to the Jefferson Parish Sheriff's Office for service. The sheriff's office tried five times to serve respondent at the Gretna address but was unsuccessful.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(c) (failure to pay bar dues, failure to pay the disciplinary assessment, failure to timely provide change of address information, or failure to submit trust account information), 1.6 (confidentiality of information), 1.16(d) (obligations upon termination of the representation), and 8.1(c) (failure to cooperate with the ODC in its investigation).

Count II

Respondent has been ineligible to practice law since September 16, 2019 for failing to pay his bar dues, failing to pay the disciplinary assessment, and for failing to submit his trust account disclosure statement. As of June 1, 2020, respondent is also ineligible for failing to comply with mandatory continuing legal education requirements.

On October 17, 2019, the Pandit Law Firm, LLC hired respondent as an independent contractor to prepare and defend plaintiff's depositions for cases Pandit was litigating in the United States District Court for the Middle District of Louisiana. Respondent has never been admitted to practice law in the Middle District. The original contract ended on December 31, 2019 but was extended through February 7, 2020. During his time working for Pandit, respondent participated in approximately fourteen depositions in nine separate civil cases.

On January 31, 2020, attorney John Carter of Pandit learned that respondent had been ineligible to practice law since September 16, 2019. Mr. Carter attempted to contact respondent via telephone but received no response. Mr. Carter then terminated respondent's contract via email that same day but, again, received no response.

In February 2020, Mr. Carter filed a disciplinary complaint against respondent. Between March 3, 2020 and April 24, 2020, the ODC sent respondent notice of the complaint via certified mail to two addresses respondent had registered with the LSBA. Both notices were returned to the ODC. The ODC then issued a subpoena for respondent to provide a sworn statement on August 13, 2020. The ODC's investigator was unable to locate respondent to personally serve him with the subpoena. Therefore, the ODC sent the subpoena to the Jefferson Parish Sheriff's Office for service. The sheriff's office tried five times to serve respondent at an address in Gretna, Louisiana he had previously provided to the ODC. However, the sheriff's office was unsuccessful.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(c), 5.5 (engaging in the unauthorized practice of law), 8.1(c), 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).

DISCIPLINARY PROCEEDINGS

In November 2020, the ODC filed formal charges against respondent as set forth above. 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 committee's consideration.

Hearing Committee Report

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

The committee then determined respondent knowingly and intentionally violated duties owed to his clients, the public, and the legal system. In Count I, respondent caused actual harm to his clients in that he failed to take reasonable steps to protect their interests and violated their confidentiality by abandoning and refusing to retrieve their client files. In Count II, respondent caused actual and potential harm to Pandit, Pandit's clients, and the legal system when he accepted money from Pandit in exchange for providing legal services knowing that he was engaging in the unauthorized practice of law. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is

suspension. In aggravation, the committee found a dishonest or selfish motive, a pattern of misconduct, and multiple offenses. The committee determined that no mitigating factors are present.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee also recommended respondent be ordered to make restitution to his clients.

Neither respondent nor the ODC filed an objection to the hearing 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.

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 practiced law while ineligible to do so and abandoned his law practice and client files. This conduct amounts to a violation of the Rules of Professional Conduct as alleged in the formal charges.

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 legal system, and the legal profession. Respondent's conduct caused actual harm and the potential to cause significant harm. Therefore, the baseline sanction in this matter is suspension.

Aggravating factors include a dishonest or selfish motive, a pattern of misconduct, multiple offenses, and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency. The sole mitigating factor present is the absence of a prior disciplinary record.

Case law further supports the imposition of a suspension. Regarding respondent's unauthorized practice of law while ineligible, we find *In re: Gbalazeh*, 17-1704 (La. 12/5/17), 231 So. 3d 21, to be instructive. In *Gbalazeh*, an attorney practiced law after being declared ineligible to do so. She then failed to cooperate with the ODC's investigation. For this misconduct, we suspended the attorney from

the practice of law for one year and one day. Regarding respondent's abandonment of his law practice, we find *In re: Gaharan*, 08-2829 (La. 4/2/09), 6 So. 3d 745, to be instructive. In *Gaharan*, an attorney abandoned his law practice, which harmed at least one client, and then failed to cooperate with the ODC's investigation. For this misconduct, we suspended the attorney from the practice of law for one year and one day.

Under these circumstances, we will accept 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 recommendation of the hearing committee, and considering the record, it is ordered that Robert M. Waterwall, Louisiana Bar Roll number 35370, 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.