

# Supreme Court of Louisiana

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NEWS RELEASE #023

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 13th day of May, 2022 are as follows:

**PER CURIAM:**

*2021-B-01487*

*IN RE: MICHAEL D. COX*

DISBARMENT IMPOSED. SEE PER CURIAM.

SUPREME COURT OF LOUISIANA

NO. 2021-B-1487

IN RE: MICHAEL D. COX

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Michael D. Cox, an attorney licensed to practice law in Louisiana but currently on interim suspension for threat of harm to the public. *In re: Cox*, 18-0059 (La. 1/24/18), 234 So. 3d 887.

**UNDERLYING FACTS**

*Count I*

Respondent represented Andrew Davisson in a divorce and custody case. Leigh Ann O’Brien, a licensed clinical social worker, was appointed by the trial court to evaluate the parents and their son and advise the court in the custody case.

In January 2011, respondent filed a defamation lawsuit against Ms. O’Brien on Andrew’s behalf, claiming that she defamed Andrew in her communications and recommendations to the trial court. In December 2011, the trial court granted Ms. O’Brien’s motion for summary judgment. Respondent filed an appeal with the Second Circuit Court of Appeal, which affirmed the ruling. In its August 8, 2012 opinion, the Second Circuit stated:

This appeal is indeed frivolous and has certainly been handled in an unprofessional and unduly confrontational manner. Andrew and his attorney have made this litigation painful and venomous. The residual scorched-earth aftermath has done nothing constructive.

We cannot ignore the reprehensible tactics and conduct of Andrew's attorney in these proceedings. This was a frivolous and hurtful appeal. Accordingly, we assess \$2,500 in attorney fees, and all costs, *in solido*, against Andrew and his lawyer.

In September 2012, respondent filed a petition for action of nullity, requesting that the trial court annul the Second Circuit's award of attorney's fees in the *Davisson v. O'Brien* case. Respondent alleged the Second Circuit did not have subject matter or personal jurisdiction to sanction him because he was not a party to the *Davisson v. O'Brien* litigation. The trial court granted summary judgment in Ms. O'Brien's favor and dismissed respondent's nullity action. Respondent filed a notice of appeal. However, he did not timely pay the costs of the appeal, and the appeal was dismissed in June 2013.

In July 2013, respondent filed a second petition for action of nullity, again requesting that the trial court annul the Second Circuit's award of attorney's fees against him in *Davisson v. O'Brien*. Respondent again argued that the Second Circuit did not have subject matter or personal jurisdiction over him because he was not a party to *Davisson v. O'Brien*. In August 2013, Ms. O'Brien filed an exception of res judicata. Following a hearing, the trial court granted the exception of res judicata and dismissed respondent's second nullity action. In a November 18, 2013 judgment, the trial court also sanctioned respondent \$2,500 for "filing an Action of Nullity for an improper purpose and/or asserting an Action of Nullity which is not warranted by existing law."

Respondent appealed the November 18, 2013 judgment. Although the Second Circuit held that the trial court erred in maintaining the exception of res judicata, it also held that respondent failed to state a cause of action. Therefore, the Second Circuit dismissed respondent's appeal. The Second Circuit also found the appeal to be frivolous, concluding that respondent's actions continued to force Ms. O'Brien

and her attorney into court for an issue that should have been resolved in 2012. The Second Circuit awarded an additional \$1,000 in attorney's fees against respondent.

When respondent failed to pay the monetary sanctions, totaling approximately \$6,000, Ms. O'Brien filed a motion for contempt. Respondent was held in contempt and jailed. After spending approximately six hours in jail, respondent paid \$3,000 in sanctions. In February 2015, he paid the remaining \$3,000.

### *Count II*

On July 7, 1997, respondent pleaded guilty to the felony charge of obtaining a controlled substance by fraud.<sup>1</sup> He was sentenced to serve three years at hard labor, suspended, and placed on probation for five years. One condition of respondent's probation required him to refrain from practicing law for one year and to notify "the bar" regarding this voluntary surrender of his law license. However, respondent did not notify the ODC about the criminal matter, and the ODC did not become aware of his guilty plea until 2015.

### *Count III*

In August 2015, the ODC received information that respondent routinely notarized documents even though he has never been commissioned as a notary public in the State of Louisiana. Respondent acknowledged this fact and contended he made an honest mistake. He stated that he believed he was a licensed notary by virtue of the fact that he was an attorney and that he notarized documents for many years.

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<sup>1</sup> On July 26, 1995, respondent posed as a Shreveport doctor and phoned in a prescription for 15 Lorcet pills to a Shreveport pharmacy. The pharmacist contacted the police, who were waiting outside the pharmacy when respondent and his accomplice picked up the prescription. When respondent and his accomplice drove off, the police stopped them, located the Lorcet pills in their possession, and arrested them.

Between September 16, 2013 and May 23, 2016, the Bossier City District Attorney's office charged respondent with sixteen counts of unlawful exercise of notarial powers. On March 6, 2018, respondent was tried and convicted of three counts of unlawful exercise of notarial powers. The judge sentenced respondent to serve two years in prison on each count, suspended, to run consecutively. The judge placed respondent on two years of active probation on each count, to run concurrently, and fined him \$500 on each count. Finally, the judge ordered the transfer of respondent's \$160,000 cash bond to the district attorney's office for the payment of restitution to Jordon Davisson (see Count IV) in the amount of \$150,000 and the payment of the remaining \$10,000 to the district attorney for the cost of prosecution.

#### *Count IV*

Respondent and his wife, Sharon Cox, became acquainted with Andrew Davisson through Andrew's mother, Benny Davisson. Respondent represented Benny in numerous legal matters until her death on February 28, 2012. In the days and weeks after Benny's death, respondent assisted Andrew with the probate of the wills of his mother and his maternal grandparents. Respondent also represented Andrew in several other legal matters.

On March 7, 2012, only eight days after his mother's death, Andrew went to respondent's home and executed an olographic will, leaving all of his possessions to respondent's wife and disinheriting his only heir, his son Jordon Davisson, who was a minor at the time. Respondent notarized this will on Andrew's behalf.

On February 16, 2014, Andrew passed away. On February 28, 2014, respondent's wife filed a petition to open Andrew's succession and to probate his will. The record of the proceedings noted that the petition was originally filed by respondent, as his wife's attorney. However, the court issued an order on May 12,

2014 disqualifying respondent from serving as his wife's counsel after Andrew's former spouse contested the succession on behalf of their minor son, Jordon.

After a trial on the merits, Judge Jeff Cox (no relation to respondent) ruled that the olographic will executed by Andrew in March 2012 was the product of undue influence by respondent and/or respondent's wife. Judge Cox also found that Andrew lacked the mental or physical capacity to execute the will. Judge Cox stated that respondent either "constructively or actually drafted [Andrew's] olographic will, an inapposite act in violation of the Rules of Professional Conduct for Attorneys in Louisiana." Judge Cox also noticed that respondent was never licensed as a notary in this state, which affected the transfer of two pieces of immovable property.

Judge Cox ultimately declared Andrew's olographic will to be null and void and held that Jordon Davisson was a forced heir and entitled to receive the entirety of Andrew's estate. Judge Cox further found that the cash sale and deeds by which respondent's wife allegedly purchased two homes from Andrew for a total of \$200 were null and void.

Following the release of Judge Cox's opinion, on November 12, 2015, respondent and his wife were arrested and charged with felony theft, money laundering, and filing and maintaining false public records. On May 8, 2018, respondent pleaded guilty to the amended charge of attempted felony theft. He was sentenced to serve six months in jail, suspended, and placed on active probation for one year.

Respondent and his wife then sued Andrew's son, Jordon Davisson, alleging breach of contract and unjust enrichment. The trial court sustained Jordon's exceptions and dismissed respondent's claims with prejudice. The Second Circuit affirmed the dismissal on May 23, 2018.

### *Count V*

In December 2016, Judge Jeff Cox filed a complaint against respondent with the ODC. Judge Cox's complaint arose from a petition for defamation filed by respondent in Caddo Parish against Christopher Broussard. Mr. Broussard was opposing counsel in the Succession of Andrew Davisson matter, and Judge Cox was the presiding judge.

In the defamation lawsuit against Mr. Broussard, respondent made several allegations about Judge Cox regarding his handling of the succession that Judge Cox felt were frivolous and questioned his integrity as a judge. For example, respondent alleged that Judge Cox told "numerous lies ... to fabricate ongoing false criminal charges of crimes that never happened without witnesses and without evidence" against respondent and his wife. Respondent further alleged that, at the time he and his wife were arrested, Judge Cox was running for a seat on the Second Circuit Court of Appeal and that the arrests "were made to silence both Sharon Cox and Michael Cox" because they "represented a threat to the election chances of the said judge."

In his response to the complaint, respondent stated that the complaint itself supported the statements made in his petition about Judge Cox. He maintained that the petition was truthful and accurate.

### **DISCIPLINARY PROCEEDINGS**

In September 2019, the ODC filed formal charges against respondent, alleging that he violated the following provisions of the Rules of Professional Conduct: Rules 3.1 (meritorious claims and contentions), 3.4(c) (knowing disobedience of an obligation under the rules of the tribunal), 8.2(a) (a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects

adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), 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 filed an answer in which he essentially denied engaging in any misconduct. Accordingly, the matter was set for a formal hearing on the merits.

Prior to the hearing, respondent filed a motion to dismiss the formal charges for lack of subject matter jurisdiction because (1) his name was spelled with all capital letters in the caption of the pleadings filed with the disciplinary board; and (2) Louisiana courthouses display fringed flags, which represent admiralty, maritime, or military jurisdiction. Respondent also argued that the judges and district attorney of the 26<sup>th</sup> JDC have engaged in misconduct and, upon respondent's complaints about such misconduct, worked with the Louisiana State Bar Association ("LSBA") to have his law license interimly suspended. The hearing committee chair denied this motion on September 17, 2020, and the matter proceeded to hearing.

#### *Hearing Committee Report*

After considering the testimony and evidence presented at the hearing, the hearing committee determined respondent had no remorse for any of his conduct. The committee also concluded that respondent will do anything to win, whether it is filing frivolous and harassing lawsuits under the guise of being a zealous advocate for his clients or being nonchalant about not being licensed as a notary public. Although respondent admitted to not completing the necessary documents to become a notary, he testified that none of his former clients had complained about his lack of proper registration. The committee further concluded that respondent has a habit of operating and holding himself above the law. Based on these findings, the committee determined respondent violated the Rules of Professional Conduct as charged.



The committee then determined respondent intentionally violated duties owed to the public. Respondent's conduct caused actual harm to several people who incurred thousands of dollars in legal fees to defend themselves against his frivolous lawsuits. He also caused actual harm to Judge Cox by falsely alleging that Judge Cox was trying to silence him while campaigning for a seat on the Second Circuit. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

In aggravation, the committee found the following factors present: a prior disciplinary record,<sup>2</sup> a pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted 1990). The committee did not mention the presence of any mitigating factors.

Under these circumstances, the committee recommended respondent be permanently disbarred.

Respondent filed an objection to the hearing committee's report.

#### *Disciplinary Board Recommendation*

Prior to oral argument before the disciplinary board, respondent filed an exception of lack of subject matter jurisdiction, again complaining about the spelling of his name in all capital letters and the display of fringed flags in Louisiana courthouses. He also argued that this court has exclusive original jurisdiction in attorney disciplinary matters pursuant to the Louisiana Constitution; however, this court gave that jurisdiction over to the LSBA through the ODC, the hearing committee, and the disciplinary board. The disciplinary board's adjudicative committee chair denied respondent's exception on March 9, 2021.

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<sup>2</sup> In 2007, the disciplinary board admonished respondent and ordered him to attend Trust Accounting School for commingling client and personal funds. In 2008, the board admonished respondent for engaging in a conflict of interest.

On the merits, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and are supported by the record. The board adopted the committee's findings and made additional findings consistent with the underlying facts set forth above in Counts I, III, and IV. Based on these factual findings, the board determined that respondent violated the Rules of Professional Conduct as follows: (1) Rule 3.1 in Counts I, IV, and V by filing frivolous pleadings; (2) Rule 3.4(c) in Count I by knowingly disobeying court orders to pay attorney's fees to Ms. O'Brien; (3) Rule 8.2(a) in Count V by making statements about Judge Cox's integrity with reckless disregard as to their truth or falsity; (4) Rule 8.4(b) in Counts II, III, and IV by engaging in criminal conduct; (5) Rules 8.4(c) and 8.4(d) in all five counts by making frivolous allegations and engaging in criminal conduct, which is conduct involving dishonesty, fraud, deceit, or misrepresentation and conduct prejudicial to the administration of justice; and (6) Rule 8.4(a) by violating the other Rules of Professional Conduct.

The board then determined respondent intentionally violated duties owed to the public, the legal system, and the legal profession. His conduct caused actual harm to Ms. O'Brien and her professional liability insurer, to Jordon Davisson and his mother, and to Judge Cox. The board agreed with the committee that disbarment is the baseline sanction.

In aggravation, the board found the following: a prior disciplinary record, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and illegal conduct. The board determined the sole mitigating factor is the imposition of other penalties or sanctions.

Based on these findings, and in light of the severity of the misconduct, the board recommended respondent be permanently disbarred.

The board filed its recommendation with the court on October 15, 2021. Thereafter, respondent filed a pleading styled as “Respondent’s Exception of Lack of Original Subject Matter Jurisdiction and Lack of Standing on the Part of the British Accreditation Registry (A.K.A. Louisiana State Bar Association) and Exception of Lack of Original Subject Matter Jurisdiction on the Part of the 26<sup>th</sup> Judicial District Court.” In this pleading, respondent made essentially the same arguments he made to the board prior to oral argument. Additionally, respondent argued that his conviction of three counts of unlawful exercise of notarial powers was improper because the 26<sup>th</sup> JDC does not have jurisdiction to discipline attorneys. After consideration, we determined that respondent’s exceptions should be treated as a timely objection to the board’s recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

## **DISCUSSION**

Respondent has filed various pleadings in this court in which he raises arguments concerning jurisdiction and the constitutionality of Rule XIX. These include “Respondent’s Exception of Lack of Original Subject Matter Jurisdiction and Lack of Standing on the Part of the British Accreditation Registry (A.K.A. Louisiana State Bar Association) and Exception of Lack of Original Subject Matter Jurisdiction on the Part of the 26<sup>th</sup> Judicial District Court”; “Exception of Lack of Subject Matter Jurisdiction and Standing”; “Respondent’s Motion to Strike All Pleadings Filed by the British Accreditation Registry (A.K.A. Louisiana State Bar Association or Office of Disciplinary Counsel) For Failure to Affirmatively Establish Original Jurisdiction and for Failure to Affirmatively Establish Standing AND Respondent’s Motion to Dismiss the British Accreditation Registry (A.K.A. Louisiana State Bar Association or Office of Disciplinary Counsel) With Prejudice for Failure to Affirmatively Establish Original Jurisdiction and for Failure to

Affirmatively Establish Standing Herein”; “Respondent’s Final Brief Concerning His Exception as to the Lack of Exclusive Original Jurisdiction Relative to Attorney Discipline Which Has Been Unlawfully Asserted by the British Accreditation Registry (A.K.A. Louisiana State Bar Association – A Legal Fiction) In Violation of Article V Sections 5A & 5B of the Louisiana Constitution of 1974”; and “Respondent’s Post-Hearing Motion Supporting Respondent’s Prior Motions to Strike All Pleadings Filed by the British Accreditation Registry Herein (A.K.A. Louisiana State Bar Association or Office of Disciplinary Counsel) for Failure to Affirmatively Establish Original Jurisdiction and for Failure to Affirmatively Establish Standing.” Respondent’s exceptions and motions can be summarized as follows: (1) a lack of original subject matter jurisdiction exists because this court has inappropriately reassigned its constitutionally-mandated exclusive original jurisdiction over attorney disciplinary matters to the LSBA, the ODC, the hearing committee, and the disciplinary board; and (2) a lack of subject matter jurisdiction exists because respondent’s unlawful notary criminal case was tried as an attorney disciplinary case in the 26<sup>th</sup> JDC, which does not have subject matter jurisdiction over attorney discipline.

Regarding respondent’s first exception, despite his arguments to the contrary, the LSBA is not a party to this attorney disciplinary proceeding. Nor has it asserted any jurisdiction over respondent in this proceeding. Furthermore, the ODC, the hearing committee, and the disciplinary board are not employees of the LSBA. Pursuant to Supreme Court Rule XIX, § 2(A), the ODC, the committee, and the board are all agencies of the Louisiana Supreme Court, and their involvement in attorney disciplinary matters is not a violation of the Louisiana Constitution. See *In re: Laudumiey*, 03-0234 (La. 6/27/03), 849 So. 2d 515, wherein we held:

...Supreme Court Rule XIX does not delegate our original jurisdiction over disciplinary proceedings to the hearing committees and the disciplinary board. Regardless of the

recommendation of the disciplinary board, “it is the ultimate duty of this court to determine under the broad discretion vested in it what action, if any is to be taken against an attorney charged with misconduct...” *Louisiana State Bar Ass’n v. Wheeler*, 243 La. 618, 145 So. 2d 774, 777 (1962). When we consider a disciplinary case, 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: Quaid*, 94-1316 (La. 11/30/94), 646 So. 2d 343, 348; *Louisiana State Bar Ass’n v. Boutall*, 597 So. 2d 444, 445 (La. 1992). Accordingly, we find nothing in Supreme Court Rule XIX which contradicts the constitutional grant of original jurisdiction in bar disciplinary cases to this court.

Therefore, contrary to respondent’s arguments, it was proper for the ODC to file formal charges against respondent and for the committee and the board to consider the matter.

Regarding respondent’s second exception, his unlawful exercise of notarial powers is not solely attorney misconduct; it is also a criminal offense under La. R.S. 35:601.<sup>3</sup> While respondent is correct that the Louisiana Supreme Court has original

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<sup>3</sup> La. R.S. 35:601 provides:

A. A person, who has not first been duly authorized to exercise notarial powers in this state or whose authority to exercise notarial powers in this state has been judicially revoked, shall not perform any of the following actions:

- (1) Exercise or purport to exercise any notarial function.
- (2) Hold himself out to the public as being entitled to exercise notarial functions.
- (3) Render or furnish notarial services.
- (4) Take any acknowledgment, administer any oath, or execute any instrument purportedly as a notary public or as a person purportedly authorized to exercise notarial power and authority.
- (5) Assume to be a notary public or to be authorized to exercise notarial functions.
- (6) Assume, use, or advertise the title of notary public or ex officio notary or equivalent terms in any language, or any similar title in such a manner as to convey the impression that he is authorized to exercise notarial powers.

B. (1) Any person who violates any provision of this Section shall be fined not more than one thousand dollars or imprisoned for not more than two years, or both.

(2) In addition to the penalties provided by Paragraph (1) of this Subsection, the person shall be required to make full restitution for all costs required to authenticate, confirm, or ratify any instruments that fail to qualify as notarial acts due to the lack of proper authority of the notary or purported notary, including all costs of recordation and all damages each affected party may suffer.

jurisdiction over attorney disciplinary proceedings, it does not have original jurisdiction over criminal matters. Therefore, the 26<sup>th</sup> JDC was the proper venue in which to prosecute respondent for his criminal conduct.

Based on this reasoning, we will deny each of respondent's exceptions and motions.

Turning to the merits of this matter, the record supports a finding that respondent's misconduct is very serious. He filed meritless and frivolous pleadings on numerous occasions, pleaded guilty to the felony charge of obtaining a controlled substance by fraud, was tried and convicted of three counts of unlawful exercise of notarial powers, pleaded guilty to attempted felony theft, and made statements about a judge that were frivolous and questioned the judge's integrity. Based on these facts, respondent has violated the Rules of Professional Conduct as found by the disciplinary board.

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 intentionally violated duties owed to his clients, the public, the legal system, and the legal profession, causing significant actual harm. We agree with the hearing committee and the board that the baseline sanction is disbarment. We also agree with the board's determination of aggravating and mitigating factors.

Notwithstanding the seriousness of respondent's conduct, we do not find that the record establishes respondent has a fundamental lack of moral character and fitness which would warrant his permanent exclusion from the profession. Therefore, we find the recommendation of permanent disbarment is not appropriate, and we will instead impose ordinary disbarment. In doing so, however, we caution respondent that we will scrutinize any application for readmission with a careful eye to determine if he has taken genuine steps to reform his conduct.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Michael D. Cox, Louisiana Bar Roll number 20453, be and he hereby is disbarred, retroactive to January 24, 2018, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. 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.