

The Supreme Court of the State of Louisiana

IN RE: GREGORY SWAFFORD

No. 2023-B-01497

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

February 06, 2024

Suspension imposed. See per curiam.

JLW

JDH

SJC

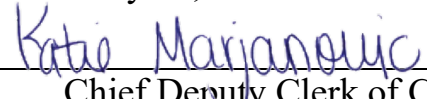
JTG

WJC

JBM

Supreme Court of Louisiana

February 06, 2024



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-1497

IN RE: GREGORY SWAFFORD

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 1993. In 2021, we suspended respondent from the practice of law for six months, with three months deferred, followed by one year of probation with conditions. *In re: Swafford*, 17-2154 (La. 3/23/18), 238 So. 3d 957 (“*Swafford I*”). The misconduct involved respondent’s neglect of a succession matter, failure to respond to the client’s requests for information, and failure to timely inform the client that he would not complete the representation.

Against this backdrop, we now turn to a consideration of the misconduct at issue in the instant proceeding.

¹ Respondent, a New Orleans attorney, is 61 years of age and was admitted to the practice of law in Louisiana in 1993.

UNDERLYING FACTS

Approximately seven years ago, Suzanne Bouligny met respondent through a mutual friend, who advised Ms. Bouligny that respondent purchased, remodeled, and flipped houses for profit. According to Ms. Bouligny, she spoke with respondent in December 2019 and told him that she was interested in investing in his next project. Ms. Bouligny stated that respondent then called her and informed her “about the property located at 700-702 Caffin Avenue, New Orleans, La. which he owned and would like me to invest in.”

On January 5, 2020, respondent sent Ms. Bouligny an email message in which he described her potential involvement in the project as an investor as follows:

The proposal is that in exchange for the \$50k investment – the investor will receive the return of the investment funds advanced plus a 50% return on the amount invested. The funds advanced are returned at the completion and sale of each project.

On January 13, 2020, respondent went to Ms. Bouligny’s home to execute a Real Estate Joint Venture Agreement (“Agreement”). The Agreement confirmed that she would invest \$50,000 to renovate the Caffin property. Paragraph 9 of the Agreement stated that the anticipated listing price upon completion of the renovation would be \$150,000. Paragraph 10 stated that distributions for the project would be as follows:

(A) Upon the sale of the subject property, proceeds will first be used to repay capital invested by Suzanne Bouligny in the amount of fifty thousand (\$50,000.00) dollars. In addition, Suzanne Bouligny shall simultaneously receive the sum of twenty-five thousand (\$25,000.00) dollars which represents the profit earned for providing the investment capital.

On that same day, respondent sent Ms. Bouligny a text message providing his bank account and routing numbers to facilitate the transfer of funds. On January 14, 2020, she transferred the funds into his bank account.

Upon receipt of the funds, respondent began renovating the Caffin property. Respondent initially kept Ms. Bouligny informed of his progress, but in March 2020, he informed her that the renovations were halted due to the COVID-19 pandemic.

On August 31, 2020, Ms. Bouligny sent respondent a text message requesting an update. The next day, he sent her the following text message: "I will call you tomorrow. Everything is good." Respondent did not call her as promised.

On September 17, 2020, respondent met with Ms. Bouligny at her house. Ms. Bouligny indicated that the meeting concluded "with me saying to [respondent] I would like my investment (\$50,000) returned to me and I would forgo the profit." She added that "[h]e agreed to repaying my initial investment."

The following day, respondent sent Ms. Bouligny a text message in which he promised to "complete our transaction on or before October 31." Respondent did not return her investment capital as promised.

In late January 2021, Ms. Bouligny went to respondent's home to recoup her investment. She described the meeting as follows: "[W]e had a conversation outside his home. He informed that he now needed to wait on a death certificate so that title company would allow him to sell the property."

On February 3, 2021, Ms. Bouligny met with respondent at her house. Prior to that meeting, she accessed the website of the Orleans Parish Assessor's Office and learned that the Caffin property was sold by respondent's company, Holding Renaissance Property, LLC, for \$100,000 on June 26, 2020. When she confronted respondent, he promised to return her investment after the sale of his "General Pershing" property, which was to occur at the end of the month.

On February 4, 2021, respondent called Ms. Bouligny to assure her that the \$50,000 would be returned by the end of February 2021.

On February 23, 2021, Ms. Bouligny sent respondent a text message, stating:

I trusted you with a deal that u never completed. Now I sit here and wait, wait, wait for the money u took from me and listen to all your excuses. The fact u sold the property and never mention it baffles me. At that point you could have given me the \$50,000. Anyone with a decent soul and righteous heart would not have done what u did regarding this deal.

In response, respondent sent Ms. Boulogny a text message, stating: “I’m going to pay this week.” Nevertheless, he failed to return to her any portion of the \$50,000 investment and failed to pay her the profit due to her under the Agreement.

In March 2021, the ODC received a complaint from Ms. Boulogny against respondent. He requested and received an extension of time to provide a response to the complaint, but he did not respond by the extended deadline, necessitating the issuance of a subpoena to obtain his sworn statement. The subpoena ordered respondent to produce specific documents and written communications, including his response to the complaint. More than six months later, respondent still has not complied with the production directive.

On August 9, 2021, the ODC attempted to take respondent’s sworn statement, but respondent invoked his Fifth Amendment right against self-incrimination and refused to answer any substantive questions regarding the complaint allegations.

DISCIPLINARY PROCEEDINGS

In February 2022, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 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

answered the formal charges, essentially denying that he engaged in any misconduct. Accordingly, the matter proceeded to a formal hearing on the merits.

Formal Hearing

The hearing committee conducted the hearing on October 3, 2022. Both parties introduced documentary evidence. The ODC called Ms. Bouigny to testify before the committee. Respondent did not call any witnesses. He also invoked the Fifth Amendment privilege against self-incrimination and declined to testify at the hearing.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the committee made the following findings:

Respondent and Ms. Bouigny entered a contract in which she was to provide respondent with \$50,000 for his use to purchase, renovate, and sell a property located at 700 Caffin Street. The Caffin property was the sole basis of their contract. Ms. Bouigny testified that she only learned about the sale of the property when accessing the assessor's website herself in February 2021. Until then, Ms. Bouigny was in communication with respondent. There is no direct evidence as to when respondent informed Ms. Bouigny of the sale of the Caffin property.

Respondent's failure to inform Ms. Bouigny about the Caffin property sale was egregious. On cross-examination, respondent asked her about a "substitution" of properties, essentially asserting that she was advised that a property located on S. Johnson Street was substituted for the Caffin property. Ms. Bouigny testified that she did not recall the conversation and did not believe there was ever a substitution.

Text messages from November 2021 clearly show Ms. Bouigny was aware of the need to get a death certificate to clear title on a property for sale, but it is not

clear which property is being discussed. Ms. Bouigny testified that she learned of respondent's need to sell another property to repay her, but neither the messages nor her testimony proves that a "substitution" occurred. There is no document – formal or informal – to support the assertion that was a substitution of properties. There is no evidence that the contract was changed by mutual agreement.

Respondent has not repaid Ms. Bouigny any of her investment. This money was not a gift, but to be repaid following the sale of the Caffin property. Respondent insinuated that the money from the sale was not enough to repay Ms. Bouigny, but most importantly, there is no evidence to show she was kept informed. Ms. Bouigny specifically denied that respondent advised her about the sale.

Respondent provided documents showing the property located on S. Johnson Street had sold for \$110,000 on September 28, 2021. Therefore, even if there was a substitution of properties, it is egregious that respondent has not repaid Ms. Bouigny from these or other proceeds.

During the cross-examination of Ms. Bouigny, an affidavit was admitted for the purpose of impeaching her credibility, but the information contained therein does not entirely discredit her testimony. Indeed, the documents in evidence corroborate her testimony that the parties had entered a contract for a specific property, that the property was sold, and that she was not repaid her investment.

Regarding respondent's refusal to testify at the hearing, the committee stated:

... While the committee is not aware of any potential criminal prosecution, we did not take a negative inference of Respondent's refusal to testify, as he may reasonably believe he could face criminal prosecution at a later date. While the ODC and the committee did not get to ask Respondent questions, the committee did consider the evidence and testimony that he entered via cross-examination of Ms. Bouigny, despite his taking the fifth.

Based on these findings, the committee determined respondent violated Rules 8.1(b), 8.1(c), 8.4(a), and 8.4(c) of the Rules of Professional Conduct but declined

to find a violation of Rule 8.4(d). With respect to Rule 8.1, the committee noted that respondent failed to send a substantive formal response to the letter and complaint, although he clearly got the letter, and failed to comply with a request for records, but his failure to cooperate is somewhat mitigated by his participation at the hearing, where he offered documentary evidence and some facts via his cross-examination of Ms. Bouligny. With respect to Rule 8.4, the committee noted the many instances in which respondent expressed his intention to return the money to Ms. Bouligny, but never did, and then misrepresented when she would be repaid her investment. While his failure to inform her about the sale of the Caffin property or give her any money from the sale was both dishonest and deceitful, there is no evidence of fraud.

The committee determined respondent violated duties owed to the public and the legal profession. His actions were knowing and intentional. His misconduct caused actual harm to Ms. Bouligny, who lost her \$50,000 investment and expended additional funds trying to recoup that investment. Ms. Bouligny described the harm caused by respondent's misconduct as follows:

I trusted Mr. Swafford due to our long-term friendship ...
I relied on him and never had a doubt he would act in bad faith.

Mr. Swafford informed me on multiple occasions in January and February 2021 he would return my investment. Despite this promise, Mr. Swafford has not repaid the funds as required by the contract. What really concerns me is that Mr. Swafford was seemingly untruthful with me on February 3, 2021 before I informed him I knew about the sale of the property on Caffin. In my opinion, this is an attorney who did not perform his contractual obligations in good faith and may well have been blatantly dishonest. ... By not returning my investment as promised, Mr. Swafford has disgraced the Louisiana Bar Association. It is unethical as well as criminal and he has continued to lead me on as if the investment would be paid. To this date, the money has not been returned to me.

Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is suspension.

The committee determined the following aggravating factors are present: a prior disciplinary record, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution. The committee did not mention mitigating factors.

The committee found that respondent's overall conduct did not rise to the level of disbarment, which is the sanction recommended by the ODC.² The committee found no evidence of an ongoing pattern of misconduct in his dealings with the public and no evidence of an attorney-client relationship. While he was dishonest with Ms. Boulogny, a dishonest or selfish motive is not clear, and although he did not comply with some rules and orders of the ODC, respondent did cooperate in the end with the hearing. Finally, the committee found no clear evidence of bad faith.

After further considering the prior jurisprudence of this court in similar cases, the dishonest nature of his dealings with Ms. Boulogny, his lack of remorse, and his failure to repay her, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee also recommended he be ordered to pay restitution to Ms. Boulogny and repay her any funds she expended in seeking repayment of her investment, including all costs and fees. The committee also recommended respondent be assessed with all costs and expenses of this matter.

Both respondent and the ODC filed objections to the hearing committee's report.

Disciplinary Board Recommendation

After review, the board determined the hearing committee's factual findings are not manifestly erroneous and adopted same, with one clarification. The board

² See *In re: Sharp*, 09-0207 (La. 6/26/09), 16 So. 3d 343 (disbarment for lawyer's conversion of \$50,000 in attorney's fees and expenses due to his law firm upon settlement of a personal injury matter); *In re: Bernstein*, 07-1049 (La. 10/16/07), 966 So. 2d 537 (while a partner in two law firms, a lawyer created "off the books" billing statements and collected fees from clients for legal services totaling approximately \$30,000 which he then converted to his own use; disbarment imposed).

clarified that the testimony of Ms. Boulogny and her complaint, *not a text message*, show she was aware of the need to get a death certificate to clear title on a property for sale. While that property appears to be the S. Johnson property and not the Caffin property, neither her testimony nor the complaint is clear as to the specific property. Nevertheless, this clarification does not affect the committee's determination that the evidence does not prove that a "substitution" of the S. Johnson property for the Caffin property was ever made in connection with the Agreement. Based on these facts, the board determined respondent violated the Rules of Professional Conduct as found by the committee.

The board found no reasonable basis for respondent's assertion of the Fifth Amendment privilege, either at his sworn statement or the hearing.³ Ms. Boulogny spoke with the district attorney's office as well as a police officer about respondent's failure to repay her investment and was advised that the matter was civil; no criminal investigation was opened. However, the board declined to find that the committee erred in failing to draw a negative inference from respondent's refusal to testify.⁴

³ In *In re: Holliday*, 09-0116 (La. 6/26/09), 15 So. 3d 82, the court noted:

The Self-Incrimination Clause of the Fifth Amendment, as incorporated in the Fourteenth Amendment, extends to disciplinary proceedings. *Spevack v. Klein*, 385 U.S. 511 (1967). However, there must be a reasonable basis for the assertion of the privilege. As the Court explained in *Hoffman v. United States*, 341 U.S. 479, 486 (1951), "[t]he witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself – his say-so does not of itself establish the hazard of incrimination." Rather, the protection of the Fifth Amendment must be confined to instances where the witness has reasonable cause to apprehend danger from a direct answer. *Id.*

⁴ The board noted that while a negative inference cannot be drawn against a defendant in a criminal matter, the Fifth Amendment does not preclude a negative inference against a party who refuses to testify in response to probative evidence against him in a civil matter. *See, e.g.* 19 La. Civ. L. Treatise, *Evidence and Proof*, Section 8.4, fn. 3 (2d ed.). The board then explained that attorney disciplinary proceedings in Louisiana "are neither civil nor criminal but are *sui generis*." Rule XIX, Section 18(A); *see also Louisiana State Bar Ass'n v. Chatelain*, 513 So. 2d 1178, 1182 (La. 1987) ("A bar member in a disciplinary proceeding is not entitled to all the protections that a criminal defendant enjoys.").

The board determined respondent violated duties owed to the public and the legal profession. His conduct was knowing and intentional. He caused serious and actual harm to Ms. Bouligny. In addition to losing her \$50,000 investment, she expended money in legal fees and costs trying to recoup the investment. Respondent also caused actual harm to the disciplinary system. Funds had to be expended to subpoena respondent's records and his appearance at the sworn statement, during which he answered only a few questions and failed to produce the requested records. The board agreed with the committee that the baseline sanction is suspension.

In addition to the aggravating factors found by the committee, the board found a dishonest or selfish motive and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency. The board found no mitigating factors present.

After further considering the court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day. The board also recommended he be ordered to pay \$50,000 in restitution to Ms. Bouligny.⁵ The board further recommended he be assessed with costs and expenses of this matter.

Neither respondent nor the ODC filed a timely objection to the disciplinary board's recommendation.⁶

⁵ Citing its report in *In re: Lapeyrouse*, 22-0571 (La. 10/21/22), 352 So. 3d 59, the board indicated that while requiring restitution in the amount of \$50,000 (the amount Ms. Bouligny paid to respondent as investment capital for the project), reimbursement of attorney's fees and court costs incurred by Ms. Bouligny in a civil suit against respondent constitute civil damages which should not be included in the recommended restitution.

⁶ Although respondent attempted to file an objection, the objection was untimely. Supreme Court Rule XIX, § 11(G)(1) provides, "[t]he respondent and disciplinary counsel may file objections to the disciplinary board's report **within twenty days** from the date of notification by the court that the report has been filed." [emphasis added]. The parties were notified of the filing of the board's report on November 13, 2023, making any objections due in this court no later than Monday, December 4, 2023. Respondent's objection was U.S. postmarked on Tuesday, December 5, 2023. Because this objection was filed outside of the twenty-day limit, it is untimely and therefore will not be considered.

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.

The record in this matter supports a finding that respondent entered into a joint venture agreement for the renovation of property, received \$50,000 from an investor, failed to inform the investor that he sold the property, failed to repay the investor the amount of her investment, and failed to pay the investor a profit in accordance with the terms of the agreement. Based on these facts, respondent has violated the Rules of Professional Conduct as found by the hearing committee and adopted 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).

The record also supports a finding that respondent violated duties owed to the public and the legal profession. His conduct was knowing, intentional, and caused actual harm. The record supports the aggravating factors found by the disciplinary board, and no mitigating factors are present. The baseline sanction is suspension.

For respondent's misconduct, both the hearing committee and the disciplinary board have recommended that respondent be suspended from the practice of law for one year and one day. Of the cases cited in support of this sanction, the case of *In re: Parks*, 08-3006 (La. 4/24/09), 9 So. 3d 106, is instructive. In *Parks*, an attorney rear-ended another driver, convinced the driver not to involve police, and provided the driver with expired automobile insurance information. Following the filing of a disciplinary complaint, the attorney failed to cooperate with the ODC's investigation and provided several false statements to the ODC. For her misconduct, we suspended the attorney from the practice of law for one year and one day and ordered the attorney to make restitution to the Louisiana State Bar Association's Client Assistance Fund, which paid the driver's \$613.18 claim for damages to her vehicle.

By comparison, we note the complaints in *Parks* and the instant matter arose from conduct that occurred outside of the practice of law. Like the instant case, the attorney's conduct in *Parks* violated Rules 8.1 and 8.4, although the violations were based on the attorney's failure to respond to the complaint and misrepresentations to the ODC. As in this case, numerous aggravating factors were present, but unlike respondent, the attorney in *Parks* did not have a prior disciplinary record.

Based on this jurisprudence, we agree that a one year and one day suspension is an appropriate sanction for this matter. With this sanction, respondent will have to formally file for reinstatement, at which time he will have to demonstrate to this court that he has paid full restitution to Ms. Bouligny.

Accordingly, we will adopt the recommendation of the hearing committee and the disciplinary board and suspend respondent from the practice of law for one year and one day. We will also order respondent to pay \$50,000 in restitution to Ms. Bouligny.

DECREE

Upon review of the findings and recommendation of the hearing committee and the disciplinary board, and considering the record, it is ordered that Gregory Swafford, Louisiana Bar Roll number 22165, be and he hereby is suspended from the practice of law for a period of one year and one day. It is further ordered that respondent shall make restitution in the amount of \$50,000, with legal interest, to Suzanne Bouligny. 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.