

The Supreme Court of the State of Louisiana

IN RE: MICHAEL THOMAS JOSEPH, JR.

No. 2024-B-01404

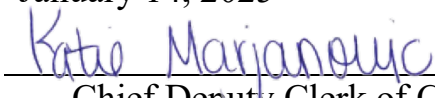
IN RE: Office of Disciplinary Counsel - Applicant Other; Rule to Revoke Probation;

January 14, 2025

Motion to revoke probation granted. Deferred portion of the suspension imposed.
See per curiam.

WJC
JLW
JDH
JTK
JBM
JMG

Supreme Court of Louisiana
January 14, 2025



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2024-B-1404

IN RE: MICHAEL THOMAS JOSEPH, JR.

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

The instant disciplinary proceeding arises from a motion to revoke probation and make deferred suspension executory filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Michael Thomas Joseph, Jr., for his alleged failure to comply with the conditions of probation imposed in *In re: Joseph*, 22-1279 (La. 10/4/22), 347 So. 3d 853 (“*Joseph I*”).

UNDERLYING FACTS AND PROCEDURAL HISTORY

In *Joseph I*, respondent mishandled his client trust account, resulting in multiple instances of commingling and conversion of client funds, failed to abide by a disciplinary board order to attend the Louisiana State Bar Association’s Trust Accounting School, failed to reduce contingency fee agreements to writing, and failed to cooperate with the ODC in its investigation. For this misconduct, the court accepted a petition for consent discipline and suspended respondent from the practice of law for eighteen months, with six months deferred, followed by a one-year period of supervised probation with conditions. The court’s order also provided that 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.

Respondent was reinstated to the practice of law effective October 5, 2023. On October 27, 2023, respondent executed his probation agreement. As part of the probation agreement, respondent was required to, in pertinent part: (1) promptly respond to all requests by and make himself available for conferences with the ODC; (2) register and maintain his trust account in accordance with Rule XIX; (3) on a quarterly basis, submit his client trust account to audits by an ODC-approved CPA and provide the ODC with written audit reports and supporting documentation in a form and manner approved by the ODC no later than 5:00 p.m. on the thirtieth day of April, July, October, and January; and (4) acknowledge that any violation of the Rules of Professional Conduct or the probation agreement may result in summary revocation of his probation and making his deferred suspension executory and/or result in additional discipline.

On October 10, 2024, the ODC filed the instant “Motion to Revoke Probation Pursuant to Rule XIX, Appendix C, Rule 6C, and Impose Previously Deferred Suspension” with the disciplinary board, submitting that sufficient evidence existed that respondent has failed to comply with his probation conditions. Specifically, the ODC alleged that respondent failed to produce a single trust account audit during the term of his probation, failed to timely respond to a subpoena duces tecum, failed to respond to the ODC’s requests for information, and failed to timely pay third-party providers following settlement of his clients’ claims.

Hearing on Revocation of Probation

This matter proceeded to a hearing before an adjudicative panel of the disciplinary board on November 7, 2024. The ODC introduced documentary evidence and called Deputy Disciplinary Counsel Brianne Hemmans to testify at the hearing. Ms. Hemmans, an attorney employed by the ODC, investigates and

prosecutes disciplinary complaints, drafts probation agreements, and monitors attorney compliance with probation agreements.

Ms. Hemmans testified to respondent's probation conditions, which include quarterly audits. Ms. Hemmans sent a letter to respondent including the probation agreement and instructions to properly complete, including due dates for the determined audit periods. Respondent did not contact Ms. Hemmans with any questions or concerns regarding his probation. Ms. Hemmans explained that after respondent missed his first audit report deadline, she sent him correspondence reminding him that the audit report was overdue and requesting that he provide her with a status of the audit and an extra three days to complete. Respondent replied, explaining that he only had one transaction in his client trust account which was a mistaken online payment sent to him by his father. Nonetheless, he stated that he would complete the report by the end of the week. Respondent did not submit the report. Moreover, Ms. Hemmans testified that respondent failed to submit any of the four required reports.

A subpoena duces tecum was issued for respondent to appear for a sworn statement and produce a trust account audit report with supporting documentation for the period of time from January through June in 2024. Respondent failed to appear for the sworn statement. In a reply message to Ms. Hemmans, respondent claimed he was held up in court and would attach "everything" to an email by the next day. Respondent provided some documents; however, the documents did not bring respondent into compliance with his probation conditions.

Ms. Hemmans continued to contact respondent throughout the audit period notifying him of his due dates and failure to comply. She cautioned respondent that his continued failure to respond to the ODC may result in disciplinary action being taken. Respondent failed to comply. Ms. Hemmans testified that during respondent's entire probationary period, he only sent in one trust account form to the

ODC, which Ms. Hemmans described as “woefully inadequate” and not completed by a CPA as required.

In October 2024, respondent appeared for a sworn statement. Respondent admitted that he failed to produce trust account audits in compliance with his probation requirements, failed to timely respond to the ODC’s subpoena, failed to timely respond to Ms. Hemmans’ requests for information, and failed to timely pay third-party providers from his clients’ settlements. Ultimately, respondent stated that there was no reason that his probation should not be revoked.

Brittany Richardson, the ODC forensic auditor, was accepted as an expert in forensic auditing and testified that she was tasked with conducting an audit of respondent’s trust account, but she was unable to do so because the ODC did not have all of the necessary documentation.

Respondent also testified at the hearing and confirmed that he did not meet any of the four due dates for his audit reports despite repeated correspondence from the ODC requesting same. Respondent testified about an alleged April 2024 phishing incident which resulted in the loss of a significant amount of money. He also explained that he has been experiencing significant financial problems since his suspension from the practice of law, and he is unable to provide the type of audit required by his probation agreement.

Disciplinary Board Recommendation

After considering the evidence and testimony presented at the hearing, the record, and the applicable law, the disciplinary board found that the ODC presented sufficient evidence to demonstrate that respondent failed to comply with the terms and conditions of his probation. On November 18, 2024, the disciplinary board filed its report with this court, recommending that the ODC’s motion be granted.

The board found that respondent violated his probation agreement by failing to timely or sufficiently respond to the ODC's requests for information. Respondent failed to appear for a sworn statement despite being personally served with a subpoena for same. Respondent also failed to perform required, quarterly reconciliations of his client trust account and failed to submit written audit reports as required by his probation agreement. The evidence revealed that respondent never submitted an audit report or requested bank records during the entire year of his probation.

Further, the board found that respondent's conduct also violated several of the Rules of Professional Conduct. Respondent failed to perform reconciliations in violation of Rule 1.15(f), and he failed to cooperate with the ODC and respond to its requests, in violation of Rules 8.1(b) and 8.1(c).

The board's recommendation also noted that the afternoon prior to the scheduled hearing date, respondent filed a motion to continue, arguing he had recently requested various documents and information from his bank regarding an alleged phishing incident, and that he could not properly defend himself until such information had been obtained. Respondent also raised this issue at the hearing. After noting respondent's failure to request any information about the alleged April incident until shortly before the hearing, the board found that even "[a]ssuming the alleged phishing incident to be true, any documentation which might be produced by the bank regarding the incident which occurred on only one day would not affect the Board's determination of the probation and rule violations discussed above." The board concluded its recommendation by stating, "it is particularly significant that Respondent's probation and rule violations include the same type of misconduct involving his trust account and failure to cooperate with ODC for which he has been previously sanctioned."

Accordingly, the board recommended that respondent's probation be revoked and that the deferred portion of his eighteen-month suspension in *Joseph I* be made executory. The board also recommended that he be assessed with all costs and expenses of these proceedings.

DISCUSSION

A review of the record reveals that respondent has not complied with the requirements set forth in his probation agreement. He has violated his probation agreement and the Rules of Professional Conduct by failing to perform required reconciliations and audit reports. He has failed to respond to the ODC's requests for information, including a subpoena duces tecum that was personally served upon him. Under the circumstances, we feel it is necessary to revoke respondent's probation and impose the previously-deferred suspension.

Accordingly, we will accept the disciplinary board's recommendation and grant the motion to revoke respondent's probation, making the deferred portion of the eighteenth-month suspension imposed in *Joseph I* immediately executory.

DECREE

For the reasons assigned, respondent's probation is revoked and the deferred portion of the suspension imposed in *In re: Joseph*, 22-1279 (La. 10/4/22), 347 So. 3d 853, is hereby made immediately executory. All costs and expenses in the matter are assessed against respondent, Michael Thomas Joseph, Jr., Louisiana Bar Roll number 32880, 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.