ORIGINAL

Louisiana Attorney Disciplinary Board

FILED by: Dona P. Burges

Docket#

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12-DB-040

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DEBRA L. CASSIBRY DOCKET NO. 12-DB-040

REPORT OF THE HEARING COMMITTEE NO. 12

INTRODUCTION

This attorney disciplinary matter arises out of one set of formal charges consisting of a total of two counts filed by the Office of Disciplinary Counsel ("ODC") against Debra L. Cassibry ("Respondent"). The formal charges allege that Respondent is guilty of violating the following Rules of Professional Conduct ("Rule(s)"): Rule 8.1(c) (failure to cooperate with ODC in its investigation); Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); and Rule 8.4(b) (committing a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Office of Disciplinary Counsel sought to have Respondent interimly suspended for threat of harm pursuant to the provisions of Rule XIX, section 19.2. On the 2nd day of May 2012, the Supreme Court granted ODC's petition and interimly suspended the Respondent. *See* Supreme Court Docket No. 2012-B-0931.

² RULE 8.1, BAR ADMISSION AND DISCIPLINARY MATTERS

PROCEDURAL HISTORY

The formal charges were filed on June 14, 2012. By letters dated June 15, 2012, the formal charges were mailed, via certified mail, to Respondent's primary registration address, and other last known address. The mailing to Respondent's primary registration address was returned by the Post Office marked "unclaimed and unable to forward." The mailing to Respondent's other last known address was signed by "Emily Walker" on June 21, 2012; however, upon return of the green card, it was noticed that the delivery address to Respondent was incorrect. By letter dated August 6, 2012, another attempt was made to deliver the formal charges to Respondent. The mailing to Respondent's other last known address was returned by the Post Office marked "unclaimed" and "final notice" on September 19, 2012. Respondent failed to file a response to the formal charges and on September 24, 2012, ODC filed a Motion to Declare Factual Allegations Deemed Admitted. On October 15, 2012, an order was signed by the hearing committee chair finding the factual allegations to have been deemed admitted and proven by clear and convincing evidence pursuant to Louisiana Supreme Court Rule XIX, Section 11(E)(3). Respondent was allowed twenty days from the date of mailing to move to

Respondent's primary registration address is 911 Veterans Blvd., Suite 203, Metairie, LA 70005.

Respondent's other last known address is P.O. Box 24807, New Orleans, LA 70184.

Rule XIX, Section 11(E)(3) provides, in pertinent part:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13(b). Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair

recall the order and the parties were allowed to submit documentary evidence and written arguments on the issue of sanctions.⁶ Respondent did not move to recall the order nor did she make a submission on the issue of sanctions. ODC filed its submission on sanctions on December 13, 2012.

FORMAL CHARGES

12-DB-040

The formal charges read, in pertinent part:

COUNT I- (2011 Conviction for DWI)-

In January of 2011, ODC received a complaint filed against Respondent by her former tenant/roommate, Michael Durham. The matter was assigned Investigative File No. 0027625 and is summarized as follows.

Mr. Durham reported to ODC that Respondent was arrested for DWI in 2009. ODC investigated these allegations and found in fact that Respondent had been arrested for DWI on July 2, 2009. ODC obtained records of Respondent's arrest and conviction which document the following events.

On July 2, 2009, Respondent was arrested by the Louisiana State Police and charged with DWI and Reckless Operation.

On July 2, 2009, Respondent led law enforcement officers on a high-speed chase from Mississippi into Louisiana. As police units followed Respondent with lights and sirens on, she traveled in and out of traffic at speeds up to 80 miles per hour and ran other vehicles off the road. Respondent finally stopped at a Rest Area and was ordered to get on the ground. She refused and was then handcuffed. Respondent's speech was slurred and she could not keep her balance. The handcuffs were removed and field sobriety tests were administered. Based on the results of field sobriety tests, Respondent was arrested and transported to the Slidell Police Department. Respondent was then administered the Intoxilyzer 5000 breath test which documented her blood alcohol content at 0.000g %. Because the arresting officer suspected drug use, he asked Respondent to submit a urine sample for analysis, which she refused. Respondent was then booked in the Slidell Jail for DWI (first offense) and Reckless Operation.

to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

The order was mailed to respondent at her primary, secondary and other known registration address by letter dated October 16, 2012.

On March 23, 2011, Respondent entered a guilty plea to DWI in the matter of *State of Louisiana versus Debra L. Cassibry*, Docket No. 09KS5023, City Court of Slidell, Louisiana. Respondent was then sentenced to six months in jail, deferred; and was placed on one year supervised probation, fined, and ordered to perform four eight-hour days of community service and abstain from alcohol.

Respondent has since violated the conditions of her probation. On September 1, 2011, a warrant was issued for her arrest. The warrant remains outstanding at this time. According to the Affidavit for Arrest, Respondent violated the following conditions of her probation:

Failure to refrain from criminal activity

Failure to report truthfully

Failure to perform community service

Failure to complete driver improvement classes

Failure to complete substance abuse classes

Failure to complete supervision payments

Failure to complete fine payments

Respondent's conduct and conviction present a violation of Rules 8.4(b) (commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and 8.4(a) (violate or attempt to violate the Rules of Professional Conduct).

COUNT II- (Failure to Cooperate)-

On February 21, 2011, ODC forwarded notice of the complaint to Respondent by certified mail, return receipt number 7196 9979 7490 0023 8295, addressed to her primary Bar registration address at 911 Veteran's Blvd., Ste. 203, Metairie, Louisiana 70005. The complaint was returned to ODC undelivered on March 10, 2011 stamped, "Return to Sender, Not Deliverable as Addressed, Unable to Forward".

On April 12, 2011, ODC Staff Investigator Brooke Hebert located and contacted Respondent who provided the following current contact information: home address, 800 10th Ave., Lumberton, Mississippi 39455; and preferred mailing address, P.O. Box 24574, New Orleans, Louisiana 70124.

On April 18, 2011, ODC forwarded notice of the complaint to Respondent by certified mail, return receipt number 7196 9979 7490 0024 1400, addressed to her current home address at 800 10th Ave., Lumberton, Mississippi 39455. The complaint was returned to ODC undelivered on June 13, 2011 stamped, "Return to Sender, Unclaimed, Unable to Forward".

On April 19, 2011, ODC forwarded notice of the complaint to Respondent by certified mail, return receipt number 7196 9979 7490 0024 1547, addressed to her preferred mailing address at P.O. Box 24574, New Orleans, Louisiana 70124. This time the complaint was received and signed for by a Mary Cassibry on April 25, 2011. Respondent subsequently provided a written response and ODC's investigation continued forward.

On December 9, 2011, ODC wrote to Respondent by regular mail sent to her preferred mailing address at P.O. Box 24574, New Orleans, Louisiana 70124; and instructed Respondent to contact Joseph E. "Buddy" Stockwell, III, Executive Director of the Lawyers Assistance Program, within 10 days to arrange for an independent substance abuse evaluation, and to follow all LAP recommendations. ODC further informed Respondent that if she failed to meet with and follow the recommendations of LAP, ODC would bring this matter to the attention of the Louisiana Supreme Court by way of a petition for interim suspension [FN2]. ODC received no response to this request.

FN2 Respondent obviously received this correspondence as it was later revealed she had contacted LAP and participated in a substance abuse evaluation.

On December 28, 2011, ODC forwarded a follow-up request to Respondent, this time by certified mail, return receipt number 7196 9979 7490 0025 6534, sent to her preferred mailing address, and instructed Respondent to contact LAP within 10 days and to submit for an independent substance abuse evaluation and follow all LAP recommendations. This letter was returned to ODC undelivered and stamped "Return to Sender, No Such Number, Unable to Forward".

On March 15, 2012, LAP Executive Director Buddy Stockwell provided the following update to ODC.

I contacted Dr. Barry Pilson on March 15, 2012, the LAP-approved evaluator in this case, and Dr. Pilson indicated that Ms. Cassibry has in fact come in and participated in the LAP recommended evaluation.

I have not received any type of report, however, because at this particular time Ms. Cassibry has not elected to execute a release with Dr. Pilson for either LAP or the Office of the Disciplinary

Counsel. As such, until such time that Ms. Cassibry agrees to reveal the results of the evaluation, I can make no further recommendations in this case.

On March 21, 2012, ODC wrote to Respondent by certified mail, return receipt number 7196 9979 7490 0026 2023, sent to her preferred mailing address. Respondent was instructed to contact Dr. Pilson and/or Buddy Stockwell immediately, and to take whatever steps necessary to authorize Dr. Pilson to share his evaluation report with LAP and ODC. Respondent was also advised that if she failed to comply, ODC would be forced to bring this matter to the attention of the Louisiana Supreme Court by way of a petition for interim suspension. The letter was subsequently returned to ODC undelivered and stamped "Unclaimed" and "Return to Sender".

Following the Louisiana Supreme Court's Order of interim suspension, Respondent contacted ODC for clarification. Respondent was again orally instructed to authorize the release of Dr. Pilson's evaluation to LAP and ODC. Respondent has failed to cooperate with ODC, and has failed to authorize Dr. Pilson to release her substance abuse evaluation to ODC or LAP. Respondent's conduct presents a violation of Rule 8.1(c) (failed to cooperate with ODC in its investigation).

FINDINGS OF FACT

The Committee has deemed admitted all facts set forth in the Formal Charges. The facts are undisputed and accepted as true and correct

RULES VIOLATED

The Committee finds that Respondent violated Rule 8.1(c), 8.4(a), and 8.4(b).

SANCTION

1. <u>In General</u>

Louisiana Supreme Court Rule XIX, Section 10(C) states that in imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors:

- 1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- 2. whether the lawyer acted intentionally, knowingly, or negligently;
- 3. the amount of actual or potential injury caused by the lawyer's misconduct; and
- 4. the existence of any aggravating or mitigating factors.

The Louisiana Supreme Court also relies on the *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards") to determine the baseline sanction.

- a) The Duties Violated Respondent violated a duty owed to the public by engaging in criminal conduct. She also violated a duty owed to the profession by failing to cooperate with ODC in its investigation of lawyer misconduct.
- b) The Mental Element Involved in Respondent's Misconduct The ABA Standards for Imposing Lawyer Sanctions define "intent" as "the conscious objective or purpose to accomplish a particular result." The ABA Standards define "knowledge" as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result."

Respondent knowingly operated a motor vehicle while under the influence. She also knowingly, if not intentionally, failed to cooperate with ODC during its investigation of this matter.

- c) The Actual or Potential Injury Caused by Respondent's Misconduct There is a great potential for harm when one operates a motor vehicle under the influence of alcohol or drugs. The police report describes a situation involving Respondent that caused a great risk of harm to other drivers. Furthermore, by failing to cooperate with ODC, Respondent delayed the investigation and withheld documentation and information pertinent to this matter.
- d) <u>Presence of Aggravating and Mitigating Factors</u> Pursuant to Standards 9.22 and 9.32 of the ABA Standards for Imposing Lawyer Sanctions, the following aggravating and mitigating factors are present:

AGGRAVATING FACTORS:

(a) Refusal to acknowledge wrongful nature of conduct; and,

(b) Substantial experience in the practice of law. (Respondent was admitted to practice law in 1985.)

MITIGATING FACTORS:

- (a) No prior disciplinary record; and,
- (b) Imposition of other penalties or sanctions through the criminal justice system.

 (Respondent, however, has since been accused of violating the terms of her probation, and a warrant for her arrest remains outstanding at this time.)

2. Baseline Sanction

Further resort to the ABA Standards suggests that suspension is the baseline suction for Respondent's misconduct. Standard 5.12 states that "suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice."

3. Jurisprudence

The Louisiana Supreme Court offers jurisprudential guidance in addressing this type of misconduct.

In the matter of *In re: Baer*, 09-1795 (La. 11/2009), 21 So. 3d 941, the Court suspended a lawyer for one year and one day, retroactive to the date of her interim suspension, for having twice operated a motor vehicle under the influence of alcohol. The Court explained its decision:

We have imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, we tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, as well as in cases in which the DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved. Both of these concerns are implicated in the instant case. Therefore, we find it is appropriate to impose a one year and one day suspension, with no portion of the suspension deferred. Should respondent wish to resume the

practice of law in the future, she will be required to go through the reinstatement process set forth in Supreme Court Rule XIX, § 24 and demonstrate to our satisfaction that she is healthy enough to resume the representation of her clients in a competent fashion.

(Internal footnote omitted.)

In *In re: Lafont*, 04-2064 (La. 04/01/2005), 898 So. 2d 339, the Court suspended a lawyer for 90 days for lack of communication and one misdemeanor conviction for DWI. Regarding DWI, the Court stated:

Although this was a misdemeanor conviction, it does not reflect well on respondent's trustworthiness or fitness to practice law, especially in light of the fact that his drinking problem may have contributed to his other misconduct.

In *In re: Deshotels*, 98-1349 (La. 10/09/1998), 719 So. 2d 402, the Court suspended a lawyer for six months, with all but sixty days deferred, followed by two years of probation with conditions, for two DWI convictions and failing to properly terminate the representation of a client.

Baer is most instructive here. In Baer, the Court noted that actual suspensions are handed down where the DWI stems from a substance abuse problem that appears to remain unresolved. Here, although the breath test revealed no alcohol in Respondent's system, she refused prior to her arrest to submit to a urine analysis to detect the presence of other substances, and ultimately pleaded guilty to DWI. In connection with the disciplinary investigation, Respondent submitted to a substance abuse evaluation; however, she failed and/or refused to release the results to LAP or ODC. Respondent thus has prevented the disciplinary system from discovering the existence and extent of any substance abuse problem. She also has withheld the records that would show whether or not any such issue remains unresolved.

4. Recommendation

Based on these facts, an actual suspension is warranted. The Committee recommends a suspension from the practice of law of one year and one day. This will require Respondent to complete the reinstatement process satisfactorily before resuming the practice of law, specifically including without limitation those provisions of Rule XIX, § 24(E)(3) pursuant to which Respondent will have to establish her pursuit of rehabilitative treatment, abstention from the use of drugs or alcohol for at least one year, and the likelihood of continued abstention. The Committee further recommends that before reinstatement, Respondent authorize release to LAP and ODC of her substance abuse evaluation. Finally, the Committee recommends that prior to reinstatement, Respondent satisfy all obligations owed to the court, including satisfying the court regarding the accusation of violating the conditions of her probation and the warrant for her arrest.

CONCLUSION

Respondent was convicted of DWI (first offense) for which she received a suspended sentence and was placed on probation. She has since been accused of violating the conditions of her probation, and a warrant for her arrest has been outstanding since September 1, 2011. Respondent underwent a substance abuse evaluation but has failed and/or refused to release the results to LAP or ODC. As a result, the Louisiana Supreme Court interimly suspended Respondent for threat of harm to the public.

The Committee recommends that Respondent be suspended from the practice of law for one year and one day, and that no portion of the suspension should be deferred. Respondent also should be assessed all costs and expenses associated with these proceedings.

New Orleans, Louisiana, this	15	_day of_	February	, 2013.
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Louisiana Attorney Disciplinary Board Hearing Committee #12

Stephen H. Kupperman, Committee Chair Raymond A. Osborn, Jr., Lawyer Member Robert P. Ventura, Public Member

STEPHEN H. KUPPERMAN, COMMITTEE CHAIR FOR THE COMMITTEE