

ORIGINAL

Louisiana Attorney Disciplinary Board

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11-DB-116

11/14/2014

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: WILLIAM J. JEFFERSON

(Bar Roll No. 07251)

File Number: 25967

Docket Number: 11- DB-116

RECOMMENDATION OF HEARING COMMITTEE NO. 22

These disciplinary proceedings were initiated by the filing of formal charges by the Office of Disciplinary Counsel on December 28, 2011 against the Respondent, William J. Jefferson, Bar Roll No. 07251, following Respondent's indictment and conviction of several criminal violations of the United States Code.

FORMAL CHARGES

The formal charges by the Office of Disciplinary Counsel included the alleged violation of four of the Rules of Professional Conduct as follows:

Rule 8.4(a) – A lawyer shall not violate or attempt to violate the Rules of Professional Conduct;

Rule 8.4 (b) - A lawyer shall not commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

Rule 8.4(c) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; and

Rule 8.4(d) – A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

PROCEDURAL AND FACTUAL HISTORY

The Respondent was indicted by a Federal Grand Jury on June 4, 2007, alleging violation of sixteen counts, generally corruption, all of which were felony offenses. A jury trial was held and on August 5, 2009 a jury found Respondent guilty of eleven of the sixteen counts. Thereafter, on September 22, 2009, the Office of Disciplinary Counsel filed a petition to transfer Respondent to an interim suspension status. On October 4, 2009 the Louisiana Supreme Court ordered that Respondent be suspended from the practice of law on an interim basis, pending further orders.

Respondent appealed his conviction to the United States Court of Appeals for the Fourth Circuit, which issued its published Decision and Order on March 26, 2012, affirming in part, vacating in part, and remanding the matter to the Trial Court for appropriate proceedings as to Count 10. Following the District Court's entering of an amending Judgment, Respondent, on July 25, 2012, filed an application for Writ of Certiorari with the United States Supreme Court. That application was denied on November 26, 2012, thus bringing Respondent's criminal conviction to final closure.

Respondent requested a delay for the service of the formal charges during the pendency of his criminal proceedings, which delay was granted, with an attempt to serve formal charges being made on May 10, 2012. Response to the formal charges was not timely submitted and the formal charges were deemed admitted by order of this Committee on April 3, 2013. Thereafter a motion for an extension of time was filed on behalf of Respondent, which motion was granted, allowing Respondent the opportunity

to submit responsive pleadings. A pleading styled “MEMORADNUM IN SUPPORT OF MITIGATION OF THE SANCTIONS TO BE IMPOSED AGAINST RESPONDENT” was filed on August 22, 2014, and was accepted as a response to the formal charges, request to be heard in mitigation, and as Respondent’s Pre-Hearing Memorandum. The Committee notes that according to Rule 19, Section 19 E., evidence of the conviction for a felony offense is conclusive evidence of Respondent’s guilt and the sole issue to be determined at the hearing shall be whether the crime(s) warrant discipline and, if so, the extent thereof.

A Pre-Hearing Conference was held on October 20, 2014 and a Formal Hearing was conducted on October 27, 2014, at which time certain exhibits numbered ODC 1 through 5 were admitted without objection. Respondent offered no exhibits, nor were any witnesses called to testify. The matter submitted to the Committee on the record and memoranda of the parties.

FINDINGS OF FACT

The Committee discussed the earlier order deeming the charges admitted and the effect the later granting of a motion for additional time for Respondent to submit his response to the formal charges might have on that earlier order. Respondent’s counsel acknowledged the earlier order deeming the charges admitted and offered no rebuttal to the factual basis. The Committee therefore finds that Respondent did in fact engage in the criminal conduct as outlined in the Special Verdict Form, admitted as ODC 1, that Respondent’s appeal of that conviction was affirmed in part and reversed in part by the United States Court of Appeal for the Fourth Circuit, as stated in the Decision and Order of that honorable court, admitted as ODC 3 and ODC 4, and that Respondent’s

application for Writ of Certiorari to the United States Supreme Court was denied, as evidenced by ODC 5.

DISCUSSION

A. Rules at Issue

The specific rules at issue in this matter are as follows:

Rule 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or to do so through the acts of another.

Rule 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

Rule 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

B. Louisiana Jurisprudence

In this case, Respondent has been convicted of a number of crimes, all of which are felonies and for which Respondent is now in the custody of the United States Department of Corrections. According to Rule 19, Section E., the sole issue to be considered at this time is whether or not Respondent's particular crimes warrant discipline and the extent of that discipline. *In Re: Meese, 08-2980 (La. 4/13/2009), 6 So. 3d 751; In Re: Boudreau, 02-0007 (La. 4/12/2002), 815 So. 2d 76; Louisiana State Bar Ass'n v. Wilkinson, 562 So. 2d 902 (La. 1990).* The Supreme Court has also held that an attorney who occupies a position of public trust, such as the Respondent here, is held to a higher standard of conduct than an ordinary attorney who hold no such public position. *In Re: Fahrenholtz, 09-0748 (La. 10/02/2009), 18 So. 3d 741; In Re: Bankston,*

01-2780 (La. 3/8/2002), 810 so. 2d. 1113; In re: Naccari, 97-1546 (La. 12/19/1997), 705 So. 2d 734; In Re: Huckaby, 96-2643 (La. 5/20/1997), 694 So. 2d 906.

Rule 10(c) further provides for the basic considerations for imposing a sanction for lawyer misconduct includes (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system or to the profession as a whole; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors.

Several of the American Bar Association's Standards for Imposing Lawyer Sanctions are also appropriate for guidance in the imposition of sanctions involving a lawyer's serious criminal conduct. ABA Standard 5.11(a) suggests that disbarment is the appropriate sanction when a lawyer "engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft. Standard 5.11(b) refers to a lawyer who "...engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. Standard 5.2 is more specifically appropriate in that "...a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or the integrity of the legal process.

As it appears the baseline sanction appropriate to Respondent's criminal conviction is disbarment, the Committee must also consider the implications of Guideline

7 as contained within Appendix E of Rule XIX. That guideline, while not indicated to represent a mandatory application, nonetheless warrants consideration of the upward deviation to permanent disbarment where the Respondent's conduct consists of malfeasance in his public office, which resulted in his felony convictions and which involved fraudulent conduct.

The remaining considerations in the imposition of an appropriate sanction are the absence of any prior disciplinary complaints against Respondent, the criminal penalties assessed against him, and the other mitigating factors as asserted by Respondent.

APPROPRIATE SANCTION

The Committee, after due consideration and review of the appropriate rules and jurisprudence, concludes that disbarment is the necessary sanction in this case. The question then presented is whether or not the upward deviation to permanent disbarment is also the appropriate sanction. Of particular importance in this determination is the application of Guideline 7 or Appendix E of Rule XIX. That guideline provides specifically that malfeasance in office which results in a felony conviction, and which involves fraud, warrants the upward deviation to permanent disbarment. It seems rather obvious that Respondent's activities leading to his multiple convictions, despite his pleas in the defense of the criminal complaints which assert otherwise, his activities were indeed carried out from or in his position a United States Congressman. The Committee feels that permanent disbarment is the appropriate sanction.

The Committee has also carefully considered the eight mitigation factors as set forth in Respondent's memo. We agree that Respondent, during his long tenure as a member of the bar had not previously been subject to any disciplinary actions. That

exemplary history might have some bearing, should the present formal charges against him be of some lesser degree.

Respondent's second mitigation factor is considered to be somewhat disingenuous. It is unlikely that Respondent will ever again be placed in position to provide him with an opportunity to commit the same criminal conduct. This alleged mitigation factor was not received by the Committee as being with merit.

Respondent's third mitigation factor alleging that Respondent's actions did not involve significant injury to the public completely seeks to completely obfuscate the rationale and meaning of Rules 8.4(a) and (b). Whether the damages to the private individual or private company are minor or severe, the injury to the public, and more particularly to the profession as a whole by these "intangible losses" were extremely severe and long lasting. The public coverage and scrutiny of Respondent's conduct and the ensuing media carnival have caused incalculable damage to our profession. Any attempt to downplay or lessen the effects of Respondent's conduct would be further detrimental to our profession.

The Committee does not dignify Respondent's contention that his conduct was undertaken in good faith with a response. The Jury Verdict is an adequate response of its own.

The Committee moreover cannot give any substance to mitigation points 5. and 6. The nature of the conduct for which Respondent was eventually convicted bear the indelible mark of an attorney, even an extremely knowledgeable and experienced attorney. Nor can Respondent deny that he was a member of the Louisiana State Bar

Association at all time material to his conduct. Whether his status was active or inactive is of no import to his standing before the court of public opinion.

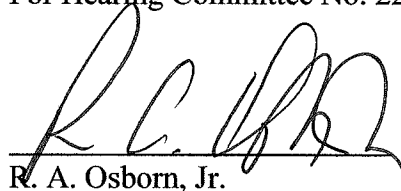
Finally, Respondent's long history as a member of the bar, his obvious intelligence, success as a practicing attorney, his election and re-election by his constituents twelve times, and his distinction as both an attorney and public servant was an unparalleled success story for an African American, all as noted by Respondent in mitigation point 7. His failure to adhere to his own personal accomplishments, maintain his reputation, the damage occasioned upon his constituents, as well as our profession, has resulted in immeasurable damage, destruction, and division among us all.

CONCLUSION

For the reasons stated in the foregoing discussion, and in accordance with the Rules of Professional Conduct and the American Bar Association Standards for Imposing Lawyer Sanctions, and the Louisiana jurisprudence cited herein, Committee No. 22 recommends that Respondent, William J. Jefferson, Bar Roll No. 07251, be permanently disbarred.

This recommendation is the unanimous decision of the members of this Committee and the undersigned Committee Chair is authorized to execute and submit this recommendation on behalf of the Committee.

For Hearing Committee No. 22



R. A. Osborn, Jr.
Bar No. 10258

Arita M. Bohannon, Lawyer Member
Robert P. Ventura, Public Member