

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: ARTHUR GILMORE, JR.

DOCKET NO. 15-DB-034

REPORT OF HEARING COMMITTEE #35

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Arthur Gilmore, Jr. (“Respondent”), bar roll number 01059. The formal charges consist of two counts. In the charges, ODC alleges that Respondent violated Louisiana Supreme Court Rule XIX, §19 (conviction of a serious criminal offense).¹

PROCEDURAL HISTORY

The formal charges were filed on July 29, 2015. Respondent filed an answer to the charges on September 30, 2015, through counsel J. Rodney Pierre. The hearing of this matter was held on December 9, 2015. Deputy Disciplinary Counsel Robert S. Kennedy, Jr., appeared on behalf of ODC. Respondent appeared with counsel, J. Rodney Pierre.

For the following reasons, the hearing committee finds that Respondent committed a “serious crime” under Louisiana Supreme Court Rule XIX, Section 19. The Respondent’s conduct also violated Rule 8.4(b), (c), (d), and (e).

FORMAL CHARGES

The formal charges read, in pertinent part:

On June 23, 2010, the respondent was indicted by a federal grand jury in the Western District of Louisiana and charged with one count each of violations of 18 U.S.C. §1951 (RICO) and § 1962 (c) (Hobbs Act). The facts as alleged in the indictment charge the respondent with misusing his official position as a Monroe City Councilman by soliciting and receiving bribes in the form of money in exchange for influencing his conduct in his official capacity. Specifically, the respondent was charged with agreeing to use his official position to influence the

¹ See the attached Appendix for the text of this Rule.

outcome and to affect certain zoning issues before the Monroe City Council in exchange for payment(s) of money.

After being indicted, the respondent entered a plea of not guilty to all charges, and the case was thereafter fixed for trial. On April 27, 2011, jury selection began in Monroe before U.S. district judge Robert G. James, with the trial proceeding through May 10, 2011. On May 10, 2011, the jury rendered a unanimous verdict finding the respondent, Arthur Gilmore, Jr., guilty as charged on both counts of the indictment. Sentencing was thereafter fixed for August 15, 2011 before Judge James.

Based on the conviction of the defendant by a jury of his peers, ODC filed a "Petition for Interim Suspension on June 29, 2011. On July 19, 2011, the Louisiana Supreme Court granted ODC's request and ordered the respondent intermily suspended from the practice of law.

Prior to sentencing, counsel for the respondent excepted to the jury's verdict by filing a Motion for Judgment of Acquittal /Motion for New Trial. On September 14, 2011, the court denied the Motion for Judgment of Acquittal but granted the defendant's Motion for New Trial.

Thereafter, the government filed a "Motion to Reconsider" on October 26, 2011 seeking to recall the federal court's prior order granting the defendant a new trial. The Court granted the government's Motion to reconsider and reinstated the defendant's conviction on March 29, 2012.

Thereafter, the defendant filed a "Motion for a New Trial" based on the government's alleged failure to disclose exculpatory evidence involving the government's asserted prosecutorial misconduct; a motion with which the government concurred. Accordingly, on March 4, 2013, the trial court granted the defendant a new trial.

The respondent was subsequently retried before a jury in U.S. District Court on May 13, 2013 and was found guilty of violating the Racketeering and Corrupt Influences Act (RICO) under 18 U.S. C. § 1962(c) on May 16, 2013. On September 26, 2013, the respondent was sentenced to 24 months for violating 18 U.S.C. § 1962(c).

On November 13, 2014, the U.S. Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court.

By his actions, the respondent has violated Supreme Court Rule XIX, Section 19 (Conviction of a serious criminal offense).

EVIDENCE

A. The Office of Disciplinary Counsel

The Office of Disciplinary Counsel did not offer any witnesses or live testimony. The Office of Disciplinary Counsel, however, offered the following exhibits:

ODC-1 Bill of Indictment dated 06/23/10 in re: "*USA v. Arthur Gilmore*",
Docket No. 10-CR-00200, Western District of Louisiana;

- ODC-2 Petition for Interim Suspension following Conviction of a Serious Crime Pursuant to La. Rule XIX. § 19C filed on 6/4/13;
- ODC-3 6/19/13 Louisiana Supreme Court Order of In re: Arthur Gilmore, Jr., Docket No. 13-B-1284;
- ODC-4 9/26/13 Minutes from Western District of Louisiana: “*USA v. Arthur Gilmore*”, Docket No. 10-cr-00200;
- ODC-5 9/30/2013 Judgment in re: “*USA v. Arthur Gilmore*”, Docket No. 10-cr-00200;
- ODC-6 11/13/14 U.S. Court of Appeals, 5th Circuit Judgment in re: “*USA v. Arthur Gilmore*”, Docket No. 13-31064;
- ODC-7 Respondent’s prior discipline.

The exhibits by the ODC were admitted into evidence.

Office of Disciplinary Counsel Exhibit ODC-5 entitled “United States of America v. Arthur Gilmore, Jr.” was a final judgment certifying that Respondent had been found guilty of violating 18 U.S.C. Section 1962(c) [Racketeer Influence and Corrupt Organization Act (RICO)] signed by the Honorable Donald E. Walter, United States District Judge on September 27, 2013. ODC-6 was a judgment entitled “United States of America v. Arthur Gilmore, Jr.” affirming the judgment of the United States District Court filed on November 13, 2014.

ODC’s exhibits 5 and 6 are “conclusive evidence of the Respondent’s guilt of the crime for which he has been convicted.” Rule XIX, Section 19(e).

In accordance with the Louisiana Attorney Disciplinary Board Formal Hearing Practice Guide, III. The Hearing, C. Conduct During the Hearing, 3. Mitigation Hearings: Stipulations, Deemed Admitted Matters, and Criminal Convictions, paragraph 3 reads, “Third. if a Respondent is convicted of a crime, the Certificate of Conviction constitutes ‘conclusive evidence of the Respondent’s guilt of the crime for which he has been convicted.’” Rule XIX, Section 19(F). **The only issue for determination by the Hearing Committee is whether the crime warrants**

discipline and, if so, to what extent. *Id.* Accordingly, at the hearing, the Respondent may not offer evidence that is contrary to the criminal conviction. The Respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime.

B. Respondent, Arthur Gilmore, Jr., Witnesses:

1. Honorable Robert C. Johnson, Judge, Fourth Judicial District Court, Ouachita Parish, Louisiana.

Judge Johnson testified that Respondent was smart, compassionate, had compassion to help people, was a good and decent man, a man of integrity, generous, cared for his constituents and the people of this community, especially those who were elderly and young people. He believed Respondent was a family man who kept his promises, his word was his bond, and did not believe Respondent should be disbarred.

On cross-examination, Deputy Disciplinary Counsel, Robert S. Kennedy, Jr., reminded Judge Johnson of Rule of Professional Conduct 8.4(b) and the Louisiana Supreme Court opinion in *Bankston*. Judge Johnson conceded that he had no disagreement with either the Rules of Professional Conduct or the Louisiana Supreme Court's holding in *In Re: Bankston*.

2. Ms. Valerie Rowley testified that she had been a neighbor of Respondent for many years and that Respondent was a caring individual, he cared about his neighbors, he was an honest man, generous, a man of his word, trustworthy, a deacon in his church, and was particularly helpful to the elderly.

3. Ellen Hill who is a committee member of the Planning and Zoning Commission for the City of Monroe and is employed with Louisiana Delta Community College, testified that Respondent was a professional person who was concerned and committed.

4. Rev. Sam Moore, III. believed that Respondent was a man of principle, a man of his word, honest, compassionate, generous, and would keep his promises.

5. The Honorable Jamie Mayo, the Mayor of the City of Monroe, testified that he served on the Monroe City Council with Respondent and that Respondent was concerned about his constituents, was of the highest integrity, had a strong work ethic, was dependable, helpful, generous, a man of his word, religious, cared about his constituents.

6. Mr. David Creed, Executive Director of North Delta Planning and Development, testified that Arthur Gilmore was a member of North Delta Planning and Development's board, that Respondent upheld his duties, was a Vice President, and he rated Respondent highly for honesty.

7. Rev. James Earl Jackson testified that he had known Arthur Gilmore since 1966, that Respondent had a love for God, was a deacon at his church, a generous giver to the church, had a strong work ethic, a concern for the community, was honest, kept his promises, and was not materialistic.

Rev. Jackson testified further that he served with Arthur Gilmore on the Board of New Vision Learning Academy, that Respondent helped underprivileged young people, kept his promises, and that Respondent was still trusted in his community.

8. Ibra January testified that he serves on the Ouachita Multi-Purposes Community Action Program as its Executive Director and that Arthur Gilmore served on the board with Mr. January. Mr. January testified that he had known Arthur Gilmore since 2002, that Respondent tried to help people in need in Ouachita Parish, that he had a passion for the poor, he was trustworthy, honest, committed to his church, and "knew the Word."

9. Stipulation: The Office of Disciplinary Counsel and Respondent's counsel stipulated that if Rebecca Benjamin, Regina Gaines, Verberlyn Washington, and Tom Atteberry were called they would testify substantially similar to that which had previously been presented by Respondent.

10. Respondent. Arthur Gilmore, Jr., testified that he was licensed to practice law in 1993 and elected to the Monroe City Council in 1996, re-elected in 2000, re-elected in 2004, and re-elected in 2008.

Respondent testified that he had served as an Assistant District Attorney in the Child Support Section under District Attorneys, Johnny Carl Parkerson, James Norris, and current District Attorney, Jerry Jones from 1995 - 2010.

Respondent testified that following law school he returned to Monroe to live and work in the section of Monroe where he had grown up (Booker T Community) so that he could get into politics to give the poor and elderly a voice.

Respondent testified that he was a Christian, a generous giver, a church deacon, Chairman of the Board of Deacons, Superintendent of Education in the Sunday school, and that he believed in giving of his money, time, and talent to the church.

Respondent testified that through an African-American fraternity he worked with African-American men as an advisor and that he has participated with them in doing manual labor work in various communities in Monroe.

Respondent testified that honesty is important to him and that he has used his personal money to help his constituents.

Respondent testified that he felt remorse in putting his family "through this" and for having used "bad judgment." He believes that he has a good reputation in his community.

Respondent testified that of the 24 months of his sentence, he served 18.5 months.

Respondent concluded his testimony by telling the committee that he was not aware of the high standard a lawyer is held to as a public official.

C. Respondent's Exhibits

Respondent offered Exhibit A, Opinion for the U. S. Court of Appeals, Fifth Circuit,

Exhibit B, Sentencing Transcript of proceedings held on September 26, 2013, before the Honorable Donald E. Walter, United States Senior District Judge, Western District of Louisiana.

Exhibit C, Candidate's Report – 2008 Re-election for Monroe City Council.

Exhibit D, Attorney Ansel Martin Stroud's Affidavit.

The testimony of the witnesses and the exhibits offered by the Respondent were admitted into evidence.

FINDINGS OF FACT

The Office of Disciplinary Counsel proved by clear and convincing evidence by Exhibits ODC-1 through 7 that Respondent was convicted of a "serious criminal offense." The conviction was admitted to by Respondent in his formal answer; thus, the conviction was not in dispute. The violations of 18 U.S.C. Section 1951 (RICO) and Section 1962(c) (Hobbs Act) by an attorney serving in a public office is serious misconduct requiring sanction. The committee has determined that Respondent's conduct, as a public official, was intentional. Respondent acted knowingly and willfully in accepting money to use his official position to influence the outcome and to affect certain zoning issues before the Monroe City Council. Respondent has violated a duty owed to the public, to the legal system, and to the legal profession. Respondent has caused an injury to the public trust and to the legal profession.

RULES VIOLATED

The committee found that Respondent violated Rule 8.4(b), 8.4(c), 8.4(d), and 8.4(e). Rule 8.4 Misconduct reads as follows:

“It is professional misconduct for a lawyer to:

. . . (b) commit a criminal act especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the rules of professional conduct or other law;
...”

SANCTIONS

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:

The committee finds that Respondent has violated the duty owed to the public, to the legal system, and to the profession.

2. whether the lawyer acted intentionally, knowingly, or negligently:

The committee finds that Respondent acted intentionally.

3. the amount of actual or potential injury caused by the lawyer's misconduct:

The committee finds that Respondent caused actual injury to the public trust and to the legal profession.

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 the following were considered:

A. ABA Standards Section 5.21 – Disbarment is generally appropriate when a lawyer in an official or government 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 to the integrity of the legal process.

The committee considered both the aggravating factors and the mitigating factors.

1. Factors which were considered in aggravation:
 - (a) Prior disciplinary offense
 - (b) Dishonest or selfish motive
 - (i) Substantial experience in the practice of law
2. Factors which were considered in mitigation:
 - (c) Full and free disclosure to Disciplinary Board or cooperative attitude toward proceedings
 - (g) Character or reputation
 - (k) Imposition of other penalties or sanctions (Respondent was sentenced to 24 months in a federal detention facility in North Dakota and served 18.5 months of the sentence.)
 - (m) Remoteness of prior offense

In arriving at the recommended sanction for Respondent's commission of a "serious crime," the committee read each exhibit presented by ODC and Respondent. Rule of Professional Conduct 8.4, the ABA Standards for Imposing Lawyer Sanctions. Supreme Court of Louisiana cases entitled *In Re: Mark Steven Smith*, 2009-2523 (La. 3/12/2010) 29 So.3d 484; *In Re: Flichter R. Bell*, 2011-1330 (La. 10/07/2011) 72 So.3d 825; and *In Re: Edwin E. Burks*, 2007-0637 (La. 8/31/07), 964 So.2d 298. The committee listened closely and carefully to the live testimony from Respondent's witnesses.

The sentencing transcript of the Honorable Donald E. Walter at the sentencing of Respondent stated ". . . I'm faced with the fact that you are, at the very best, a corrupted public official, someone who violated his oath of office." (Respondent's Exhibit B, page 5, lines 1-3)

On appeal, the United States Court of Appeals for the Fifth Circuit thoroughly analyzed the trial record, and, in a 24-page opinion said, "In this direct appeal, we are asked two questions: (1) Was Gilmore entitled to a jury instruction on entrapment, and (2) Was there sufficient evidence to support his conviction under RICO?

We answer, "No" to the first, "Yes" to the second, and AFFIRM Gilmore's conviction."

Yet, the Honorable Donald E. Walter, United States Senior District Judge, Western District of Louisiana, departed from the applicable guideline range based on sentencing guidelines for the Federal Court and said that he was doing so because, "In this case, the government's main witness engaged in an ongoing program of planned enticement to provoke the defendant (Gilmore) into agreeing to bribes in exchange for perceived favors from your position with the Monroe City Council. Because of that, the guidelines, in my opinion, **may overstate the relative seriousness of your actions and the application of an equitable sentence.**" (Respondent's Exhibit B, page 5, lines 17-23)

The Respondent's character and reputation witnesses included a former District Attorney and currently sitting Fourth Judicial District Judge, a prominent attorney practicing in Caddo Parish, pastors, executive directors of public entities, the Mayor of the City of Monroe, constituents, friends, and neighbors. The Respondent's witnesses were the people that know him best. They all testified that he was good, decent, honest, compassionate, generous, Christian, hardworking, ethical, kept his word and his promises, caring, helpful, especially to the poor, elderly, children, and that he should not be disbarred. The live testimony was compelling to the committee in that Respondent's witnesses all believed that he had been punished enough and that if he were disbarred and prevented from ever practicing law again would be exceedingly severe and that permanent disbarment should be reserved for a more egregious offense.

The committee also takes into account Supreme Court of Louisiana Rule 19, Appendix E. Guidelines Depicting Conduct which might warrant permanent disbarment, Guideline No. 7 which reads:

“Malfeasance in office which results in a felony conviction, and which involves fraud.”

Because of the evidence presented, Rules of Professional Conduct, ABA Standards, and in particular, Supreme Court Rule XIX and cases decided by the Supreme Court of Louisiana, the committee is required to recommend disbarment, but not permanent disbarment.

CONCLUSION


Based upon the above findings, the members of Hearing Committee No. 35 recommend that Respondent be disbarred, but not permanently, allowing Respondent to reapply for reinstatement of his license to practice law upon completion of the required disbarment period of five (5) years, giving Respondent credit for each day that he has been interimly suspended on two (2) prior occasions before the third interim suspension began on June 19, 2013 (1,826 days). (Supreme Court Rule XIX, Section 24(A). Respondent is to be allowed to petition for reinstatement on May 15, 2017.

Ruston, Louisiana, this 7th day of January, 2016.

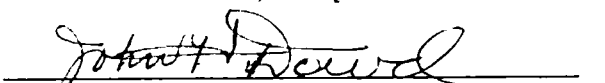
Respectfully submitted,

**Louisiana Attorney Disciplinary Board
Hearing Committee #35**

**Richard R. Storms, Committee Chair
Pamela A. Stewart, Lawyer Member
John H. Dowd, Public Member**

BY: 
Richard R. Storms, Committee Chair for
Hearing Committee #35

BY: 
Pamela A. Stewart, Lawyer Member

BY: 
John H. Dowd, Public Member

APPENDIX

Section 19. Lawyers Convicted of a Crime.

A. Determination of Conviction. Upon learning that an attorney has been convicted of a crime, whether the conviction results from a plea of guilty or nolo contendere or a verdict after trial, disciplinary counsel shall secure a certificate of such conviction from the applicable clerk of court. Clerks of court and district court judges should assist in the prompt identification of such attorneys by notifying the Office of Disciplinary Counsel immediately following an attorney's criminal conviction.

B. Definition of "Serious Crime." The term "serious crime" means a felony or any other crime, the necessary element of which as determined by the statute defining such crime, reflects upon the attorney's moral fitness to practice law.

C. Procedure When Conviction Not Final. Disciplinary counsel shall initially make a determination whether or not the crime of which the attorney has been convicted constitutes a serious crime. In determining whether or not the crime constitutes a serious crime, disciplinary counsel shall study the statute defining the crime, particularly if the crime involves violation of a statute of the Federal Government or any other state or jurisdiction.

If disciplinary counsel concludes that the crime of which the attorney has been convicted is not a serious crime, he/she shall process the case in accordance with Section 11 of these rules. If disciplinary counsel determines that the crime is a "serious crime," he/she shall prepare an order for interim suspension and forward it to the court and to the respondent with a certificate of the conviction. Within fifteen (15) days of the mailing of the motion for the order of interim suspension, the lawyer may, by filing an appropriate pleading with the clerk of this court, assert any jurisdictional deficiency that establishes that the suspension may not properly be ordered, such as that the crime did not constitute a "serious crime" or that the lawyer is not the individual convicted. If this court determines that the crime is not serious, the matter will be referred back to the agency for processing in the same manner as any other information coming to the attention of the agency.

If this court deems it advisable, it may order that a hearing be held before a hearing committee to determine any such jurisdictional issues. If a hearing is so ordered, evidence relevant to the issue(s) to be decided may be introduced in the same fashion as other hearings conducted under these rules. Subsequent to this hearing, the hearing committee shall promptly submit its findings on the issue(s) to be decided to this court.

If, without having ordered a hearing, or after the matter has been processed as noted in the preceding paragraph, this court concurs with disciplinary counsel or with the opinion of the hearing committee that the crime of which the attorney has been convicted constitutes a serious crime, this court may suspend the respondent from the practice of law and order that necessary disciplinary proceedings be instituted in accordance with Section 11 of these rules, provided, however, that the disciplinary proceedings so instituted will not, unless requested by the accused, be brought to a hearing until all appeals from the conviction are concluded. If the hearing committee convened to

hear the jurisdictional issue(s), or this court concludes, subsequent to the hearing, that the crime of which the attorney has been convicted is not a serious crime, the matter will be referred back to the agency for processing in accordance with Section 11 of these rules.

D. Automatic Reinstatement from Interim Suspension upon Reversal of Conviction. An attorney will be reinstated immediately on the reversal of his conviction for a serious crime that has resulted in his suspension, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney.

E. Procedure After Final Conviction. After the conviction has become final, that is, all appeals have been concluded or exhausted, disciplinary counsel may, in the event the respondent has for any reason not already been suspended, institute or reinstitute proceedings for interim suspension as provided for in subpart (C) of this Section.

Additionally, the matter may otherwise be processed in the same manner as any other information coming to the attention of the agency.

At the hearing before a hearing committee, the certificate of the conviction of the respondent shall be conclusive evidence of his/her guilt of the crime for which he/she has been convicted. The sole issue to be determined at the hearing shall be whether the crime warrants discipline and, if so, the extent thereof. At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he/she was convicted as determined by the statute defining the crime.

F. Procedure to be Used. Except as provided hereinabove in this Section, the procedure with respect to proceedings based on a conviction of a crime, shall be conducted in the same manner as in ordinary disciplinary proceedings.

Section 24. Reinstatement and Readmission

A. Generally. A disbarred lawyer or a suspended lawyer who has served a suspension period of more than one year, exclusive of any waivers or periods of deferral, shall be reinstated or readmitted only upon order of the court. No lawyer may petition for reinstatement until six months before the period of suspension has expired. No lawyer may petition for readmission until five years after the effective date of disbarment. A lawyer who has been placed on interim suspension and is then disbarred for the same misconduct that was the ground for the interim suspension may petition for readmission at the expiration of five years from the time of the effective date of the interim suspension. In matters where a lawyer who has been placed on interim suspension and is then suspended for the same misconduct that was the ground for the interim suspension, at the court's discretion, the lawyer's term of suspension may be applied retroactively to the effective date of the interim suspension. The court retains the discretion, in accordance with Section 10A of this rule, to permanently disbar a lawyer and permanently prohibit any such lawyer from being readmitted to the practice of law. **[Amended effective June 15, 2005]**, see Appendix E. Guidelines Depicting Conduct Which Might Warrant Permanent Disbarment, Suggested by The Committee to Study Permanent Disbarment and Commentary of the Court to accompany Order dated July 19, 2001 amending Rule XIX