

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: PAUL E. BROWN

NUMBER: 14-DB-039

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This is a disciplinary matter based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Paul E. Brown (“Respondent”), Louisiana Bar Roll Number 01736.¹ The charges, which consist of one count, allege violations of Rules of Professional Conduct 8.4(b) and 8.4(a).² Respondent stipulated to the Rule violations and agrees with the sanction recommended by ODC – a one year and one day suspension, fully deferred. The sole issue before the Committee was whether a condition of Respondent’s suspension should be the execution of and compliance with a recovery agreement with the Judges and Lawyers Assistance Program (“JLAP”). The Hearing Committee concluded that Respondent violated the Rules as charged and recommended that he be suspended for one year and one day, fully deferred, conditioned on his execution of a five-year JLAP agreement.

For the following reasons, the Board adopts the Committee’s conclusions regarding the Rules of Professional Conduct. However, the Board finds that several of the Committee’s factual findings are manifestly erroneous. The Board adopts the sanction recommended by the Committee with one minor adjustment to the conditions of the sanction.

¹ Respondent is eligible to practice law.

² Rule 8.4 states, in pertinent part: “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; (b) Commit a criminal act especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;...”

PROCEDURAL HISTORY

ODC filed the formal charges on September 5, 2014. The charges state, in pertinent part:

Respondent, Paul E. Brown, is a Louisiana licensed attorney, Bar No. 01736, admitted to practice law in the State of Louisiana on October 07, 2013 and is currently eligible to practice law.

Respondent has been convicted of criminal conduct, for on August 30, 2013, in the 32nd Judicial District Court, Respondent pled No Contest to first offense operating a vehicle while intoxicated, careless operation of a motor vehicle, and vehicular negligent injuring. Respondent was sentenced to six months, credit for time served, sentence suspended, and unsupervised probation with conditions. By his demonstrated acts and failures to act, Respondent has violated Rules of Professional Conduct 8.4(b) - commission of a criminal act and 8.4(a) - violate or attempt to violate the RPC.

Respondent filed an answer to the charges on November 3, 2014. On that same date, Bryan K. Jefferson enrolled as counsel for Respondent. By order signed February 18, 2015, this matter was stayed pursuant to a motion filed by ODC. The stay was lifted by order of the Committee on August 27, 2015, pursuant to a motion filed by ODC. After allowing a long period for discovery, the hearing of this matter was held on non-consecutive days – August 5 and November 17, 2016 – before Hearing Committee Number 27.³ Deputy Disciplinary Counsel Eric R. McClendon appeared on behalf of ODC. Respondent was represented by Leslie J. Schiff and Bryan K. Jefferson. The Committee heard testimony from Respondent and the following character & fact witnesses: Tara E. Bergeron, Craig H. Stewart, Henry Washington, and Harold Lamy. The Committee also admitted into evidence ODC Exhibits 1-4 and Respondent Exhibits 1-6.

The Committee issued its report on May 18, 2017. The Committee concluded that Respondent violated the Rules as charged. With regard to the appropriate sanction and conditions, the Committee made the following findings:

... In the case at hand, Mr. Brown failed to report his violations of the Code of Conduct until well after they occurred and this was troubling to the committee.

³ The Committee was composed of Brent E. Kinchen (Chair), Patricia W. Hicks (Lawyer Member), and Vallan B. Corbett (Public Member).

Additionally, Mr. Brown seems to have had extended periods of time wherein he was dependent, if not addicted, to opiates and sedatives and had developed a high tolerance for these medications. He was experiencing periods wherein he was unable to sleep and this compounded his need for medications coupled with a series of untimely deaths in his family including his mother and several brothers. His addiction was such that he had developed withdrawal from these meds, but more concerning was his increased use of the medications over the years resulting in dizziness and other symptoms which ultimately caused him to be arrested for DUI twice in the period from 2003 to 2013. The committee had grave concerns that these issues presented themselves as far back as 1996 starting with neck injuries sustained in an automobile accident and possibly further back as Mr. Brown has had at least 4 reported auto accidents in the period from 1986 to present.

Mr. Brown did present himself most favorably in the two hearings before the panel and vast improvement was seen in Mr. Brown's behavior, alertness, and general ability to answer questions in the second panel hearing. It seemed clear to the panel that vast improvements had been made by Mr. Brown in limiting his prescription drug usage. Mr. Brown explained that he had received shots to his neck which had greatly improved his quality of life and his dependence on the medications prescribed to him allowing him to reduce the consumption of those medications and reported to the panel that he had not had prescription pain meds for many weeks prior to the second hearing. Additional mitigating factors observed by the panel included the fact that there were no prior disciplinary actions against Mr. Brown prior to the institution of this matter. Mr. Brown made full disclosure of his medical treatments, volunteered to and had sought treatment and evaluation for his use of medications and was actively working a program to systematically wean himself of these medications. Mr. Brown was fully cooperative with the Office of Disciplinary Counsel and appeared to this panel to not be dishonest, selfish, or have any motive thereof which would indicate his failure to recognize the extreme damage his medications had had on his ability to function and maintain a practice. There were no reports of any clients being damaged by his inability to handle files in a timely fashion with the only injuries potentially being those parties involved in the reported "minor automobile accidents" involving Mr. Brown. Mr. Brown has had a series of personal hardships which only served to fuel his need for medications to aid in pain control and sleep as well as blood pressure issues. Mr. Brown clearly expressed remorse for these omissions in judgment and has taken positive steps to correct these lapses in judgment.

Hearing Committee Report, pp. 3-5. Based upon these findings, the Committee recommended that Respondent be suspended for one year and one day, fully deferred, subject to the execution of a five-year JLAP agreement that includes an agreement to "taper off all medications." *Id.* at 5.

On June 5, 2017, Respondent filed an objection to the sanction and conditions recommended by the Committee. ODC filed its brief on July 10, 2017, in which it agreed with the sanction recommended by the Committee.

Oral argument of this matter was scheduled for August 10, 2017, before Board Panel “C”. However, oral argument was continued to September 21, 2017, before Board Panel “A” pursuant to the motion of Respondent.⁴ At oral argument, Deputy Disciplinary Counsel Susan C. Kalmbach appeared on behalf of ODC. Leslie J. Schiff appeared on behalf of Respondent. Respondent was also present.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is “to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations.” Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of “manifest error.” *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee’s application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

⁴ Board Panel “A” was composed of Anderson O. Dotson, III (Chair), Linda G. Bizzarro (Lawyer Member), and Charles H. Williamson, Jr. (Public Member).

A. The Manifest Error Inquiry

As stated above, the Committee made the following findings:

...Mr. Brown seems to have had extended periods of time wherein he was dependent, if not addicted, to opiates and sedatives and had developed a high tolerance for these medications. He was experiencing periods wherein he was unable to sleep and this compounded his need for medications coupled with a series of untimely deaths in his family 4 including his mother and several brothers. His addiction was such that he had developed withdrawal from these meds, but more concerning was his increased use of the medications over the years from years resulting in dizziness and other symptoms which ultimately caused him to be arrested for DUI twice in the period from 2003 to 2013. The committee had grave concerns that these issues presented themselves as far back as 1996 starting with neck injuries sustained in an automobile accident and possibly further back as Mr. Brown has had at least 4 reported auto accidents in the period from 1986 to present.

Hearing Committee Report, pp. 3-4. Two of the Committee's factual findings appear to be manifestly erroneous. First, the Committee concluded that Respondent has experienced withdrawal symptoms when he stopped using pain medication. Presumably, this finding is based upon the reports of Dr. Casalino and Dr. Weiss, which state that Respondent experienced withdrawal symptoms. Respondent Exhibits 5 & 6. However, in his testimony, Respondent denied experiencing withdrawal symptoms when he stopped using pain medication. Hearing Transcript (August 5, 2016), pp. 32-34. This is corroborated by Dr. Michael Marcello, who has treated Respondent for his chronic pain for several years and prescribed the pain medication. Respondent Exhibit 3. Given that Dr. Marcello has treated Respondent for several years and prescribed the medication in question, he is in a better position to know whether Respondent experienced withdrawal symptoms. Based upon this conflicting evidence, there is no clear and convincing evidence that Respondent has experienced withdrawal when he stopped using pain medication. Additionally, the record indicates that Respondent stopped using pain medication several months before the hearing of this matter and has had success with alternative treatment to manage his pain. Respondent Exhibits 2 & 4 (letters from Dr. Todd Arcement and Dr. Marcello).

Second, the Committee findings suggest that the four automobile accidents disclosed by Respondent are indicative of his addiction. At the hearing, when discussing his history with pain, Respondent disclosed several accidents that caused and/or aggravated his chronic pain.⁵ Hearing Transcript (11/17/16), pp. 55-58. Respondent testified that he was the victim in these accidents, most of them being rear-end collisions. The only evidence of these accidents is Respondent's testimony. There is no evidence in the record that associates these accidents to Respondent's alleged addiction.

Third, the Committee's finding that "several" of Respondent's "brothers" have died is erroneous. Dr. Casalino's report references the death of close relatives. Respondent testified at the second day of hearing that one of his brothers had recently passed away. Thus, while this finding is not relevant to the outcome in this matter, the finding should be corrected for the record.

B. *De Novo* Review

The Committee correctly concluded that Respondent violated Rules 8.4(b) and 8.4(a) by virtue of pleading no contest to DUI in 2013. ODC submitted evidence of a 2003 DUI arrest. ODC Exhibit 4. However, ODC did not charge Respondent with misconduct related to that arrest. Thus, that arrest was not considered by the Board with regard to the Rule violations in this matter.

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, §10(C) states that when 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.

⁵ The accident that led to Respondent's DUI arrest is not included in this number.

Here, Respondent negligently violated his duty to the public by operating a vehicle in an impaired state. His conduct does not appear to have resulted in any actual harm, but the potential for harm to the others on the road was great.⁶

The following mitigating factors are supported by the record: absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems (related to the deaths of several family members), full and free disclosure to disciplinary board or cooperative attitude toward proceedings, character and reputation, remorse, and imposition of other penalties. Furthermore, as found by the Committee, Respondent has made significant efforts to discontinue his use of pain medication and to seek alternative therapies. There are no aggravating factors supported by the record.

B. The Case Law

The Court has provided guidance on sanctions for attorneys who are guilty of DUI. In *In re Baer*, the Court held:

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 stems from a substance abuse problem that appears to remain unresolved. [Internal footnote omitted.]

In re Baer, 2009-1795 (La. 11/20/09); 21 So.3d 941, 944. In *Baer*, the Court suspended the respondent (“Ms. Baer”) for one year and one day for two instances of driving while intoxicated that occurred within two months. In the first incident, Ms. Baer was involved in a minor car accident in her office parking lot. After investigation by the police, Ms. Baer was arrested and

⁶ Although Respondent was charged with “Vehicular Negligent Injuring,” there is no evidence or testimony in the record indicating that the accident caused injury to another person other than the allegation in the charging document. See ODC Exhibit 2.

charged with driving while intoxicated. In the second incident, Ms. Baer was involved in an accident in a casino parking lot. After investigation by the police, she was arrested and charged with driving while intoxicated and driving with a suspended license. Ms. Baer allowed the formal charges to become and remain deemed admitted. The Court concluded that Ms. Baer violated Rules 8.4(a) and 8.4(b). The following aggravating factors were present: pattern of misconduct and substantial experience in the practice of law. The following mitigating factors were present: absence of a prior disciplinary record, absence of a dishonest or selfish motive, and chemical dependency.

Here, Respondent pled no contest to a single DUI in 2013, as opposed to multiple DUIs.⁷ However, as found by the Committee, the record demonstrates that Respondent has, or had, a problem with the use of opiates. Nonetheless, to the extent that Respondent's DUI was related to the medication he was taking, he has made significant efforts to eliminating his need for that medication. Thus, pursuant to *Baer*, a fully deferred suspension appears to be warranted as long as appropriate conditions are followed.⁸

The issue at contention in this matter is whether the deferred suspension should be conditioned on Respondent's execution of a recovery agreement with JLAP. For the following reasons, the Board finds that Respondent should undergo another substance abuse evaluation and follow whatever recommendations are made pursuant to that evaluation. Respondent's last evaluation for substance abuse was conducted over two years ago. He was evaluated at Palmetto Addiction Recovery Center between April 28-30, 2015. Respondent Exhibit 6. Since that time,

⁷ As noted above, Respondent's 2003 DUI arrest is not appropriately before the Board because it was not included in the formal charges.

⁸ ODC and the Committee recommended a fully deferred one year and one day suspension, to which Respondent has agreed.

Respondent has pursued alternative treatments for his chronic pain and claims to be free of using opiates. Given these intervening circumstances, the Board finds that that an updated substance abuse evaluation is warranted.

CONCLUSION

The Board adopts the Committee's factual findings with the exceptions discussed above. The Board also adopts the Committee's legal conclusions. As a sanction, the Board recommends that Respondent be suspended for one year and one day, fully deferred, subject to a two-year period supervised probation based upon the following conditions: Respondent undergo a substance abuse evaluation at a JLAP-approved facility, other than Palmetto Addiction Recovery Center; and Respondent comply with whatever conditions are recommended pursuant to that evaluation. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

RECOMMENDATION

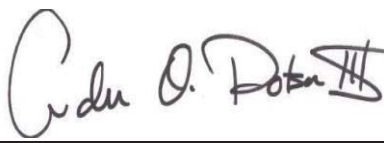
The Board recommends that Respondent, Paul E. Brown, be suspended from the practice of law for one year and one day. The Board also recommends that the suspension be fully deferred subject to a two-year period supervised probation based upon the following conditions:

- 1) Respondent undergo a substance abuse evaluation at a JLAP-approved facility, other than Palmetto Addiction Recovery Center; and
- 2) Respondent comply with whatever conditions are recommended pursuant to that evaluation.

The probationary period should commence on the date Respondent and ODC execute the probation agreement, which would be after Respondent undergoes the substance abuse evaluation. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

- Linda G. Bizzarro**
- Pamela W. Carter**
- Sheila E. O’Leary**
- Danna E. Schwab**
- Evans C. Spiceland, Jr.**
- Melissa L. Theriot**
- Walter D. White**
- Charles H. Williamson, Jr.**

BY:  _____

Anderson O. Dotson III
FOR THE ADJUDICATIVE COMMITTEE