

ORIGINAL

Louisiana Attorney Disciplinary Board

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18-DB-074

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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: WILLIAM FRANCIS HENDERSON

DOCKET NO. 18-DB-074

REPORT OF THE HEARING COMMITTEE #6

This is a proceeding based upon a filing of a petition and application for readmission to the practice of law following the disbarment of William Francis Henderson, Louisiana Bar Roll Number 21291.

INTRODUCTION AND PROCEDURAL HISTORY

On August 30, 2013, the Louisiana Supreme Court disbarred Mr. Henderson by consent. *In re Henderson*, 2013-1301 (8/30/13), 123 So.3d 160. The effective date of the disbarment was made retroactive to the date of Mr. Henderson's interim suspension, March 31, 2010.

Mr. Henderson filed a petition and application for readmission to the practice of law on October 15, 2018. On December 21, 2018, the Office of Disciplinary Counsel ("ODC") filed its response to the petition. The hearing was held on April 3, 2019. Mr. Henderson appeared *pro se*. Deputy Disciplinary Counsel Robert S. Kennedy, Jr., appeared on behalf of ODC.

RESPONSE OF ODC

ODC opposes Mr. Henderson's petition for readmission, which requires a hearing of the matter pursuant to Louisiana Supreme Court Rule XIX, §24(F).

EVIDENCE

Mr. Henderson introduced Exhibits R1-R28 into the record. ODC introduced ODC1-ODC7 into the record. All were admitted into the record. There were no proffers.

LAW AND FINDINGS OF FACT

Readmission following disbarment is governed by Louisiana Supreme Court Rule XIX, Section 24. Section 24(E) establishes the substantive criteria for readmission, which are as follows:

- E1. “The lawyer has fully complied with the terms and conditions of all prior discipline orders, except to the extent that they are abated under section 25.”**
- E2. “The lawyer has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment.”**
- E3. “If the lawyer was suffering under a physical or mental disability or infirmity at the time of the suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed. Where alcohol or other drug abuse was a causative factor in the lawyer’s misconduct, the lawyer shall not be reinstated or readmitted unless:**
- a) the lawyer has pursued appropriate rehabilitative treatment;**
 - b) the lawyer has abstained from the use of alcohol or other drugs for at least one year; and**
 - c) the lawyer is likely to continue to abstain from alcohol or other drugs.”**
- E4. “The lawyer recognizes the wrongfulness and seriousness of his conduct for which the lawyer was suspended or disbarred.”**
- E5. “The lawyer has not engaged in any other professional misconduct since suspension or disbarment.”**
- E6. “Notwithstanding the conduct for which the lawyer was disciplined, the lawyer has the requisite, honesty and integrity to practice law.”**
- E7. “The lawyer has kept informed about recent developments in the law and is competent to practice and has satisfied MCLE requirements for the year of reinstatement or readmission.”**
- E8. “The lawyer has paid to the Louisiana State Bar Association currently owed bar dues.”**
- E9. “The lawyer has paid all filing fees owed to the Clerk of Court and all disciplinary costs to the Disciplinary Board.”**
- E10. “The lawyer has paid to the Disciplinary Board currently owed disciplinary administration and enforcement fees required under Section 8 (A) of this rule and has filed the registration statement required under Section 8 (c) of this rule.”**

E11. “The lawyer shall obtain a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the lawyer’s clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the lawyer shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund.”

RECOMMENDATION

The issue confronting this Committee is whether or not William Francis Henderson (“Applicant”) has met the stringent test set forth by the Supreme Court of our state for readmission. The Committee is most focused on whether he “has not engaged in any other professional misconduct since suspension or disbarment.” The committee clarified with Applicant that it is his belief that his period of satisfaction of this should only be since the September 6, 2016, Order of the Supreme Court and not the original suspension and later disbarment. This Committee has chosen not to take a position on this, but instead merely notes that a majority of the Court granted him the opportunity to seek re-admission again despite Justice Crichton’s concurring opinion which raised this issue. Instead, the Committee focuses on what is possibly a new and ongoing violation of the Rules.

Specifically, Rule 5.4 (b) states “A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.” This Committee interprets the precedents of the Court to require Applicant to prove that he has not violated this provision. The Committee finds that he has not satisfied this burden. ODC has raised a significant issue regarding a possible violation of this Rule. Specifically, the Committee found 1) that Applicant and his ex-wife, Gay Coleman, were partners in a legal practice run through Coleman and Henderson, LLC’s; 2) that in 2010 when Applicant was disbarred, instead of either dissolving the LLC or having Ms. Coleman buy Applicant’s interest in the company, Applicant merely had his name taken off the account and Ms. Coleman changed the name on the checks but left the

underlying ownership of the account with the Coleman and Henderson, LLC, which is owned 50/50 by Applicant and Ms. Coleman. The deposit slips introduced by ODC show deposits into the account, which Applicant testified was still under the Tax ID of the LLC. Ms. Coleman's deposition clearly states that she earns a few thousand dollars in legal fees while she works full time for the Ninth Judicial District Court.

The Committee is of the opinion that Applicant has not intentionally or maliciously violated this Rule, but has more likely negligently violated the Rule. This negligence is, however, in the opinion of the Committee fatal to his request for readmission. The Committee readily admits that this is unlikely to be the reason that the Supreme Court modified the standard ABA rules to create this Louisiana specific Rule, but likewise the Committee finds there is no doubt that Applicant and Ms. Coleman have violated the Rule.¹

Additionally, assuming that Applicant must prove that he has not violated any of the Rules, another issue arises from the testimony. While not sufficient had the burden been on ODC, the fact that Applicant could not answer questions regarding the tax status and receipt of appropriate tax documents regarding the LLC which he owes 50% of and which has taxable income annually raises concerns about whether he is violating federal and state income tax laws. Such a violation of law would in turn be a violation of the Rules. While this is not the deciding factor in the opinion of the Committee, it was deemed worthy of bringing to the attention of the Board and Court.

While the Committee is of the opinion that it is unlikely that Applicant has received remuneration from attorneys except for work performed by him for them (the two instances dealt with in the previous application) such a requirement is not necessary for a violation of the clear

¹ The Committee would also like to point out that as ODC is aware of the possible additional violation by Ms. Coleman no attorney involved in this matter need bring such to the attention of ODC as the requirements of the Rules to report a possible violation have already been satisfied.

text of Rule 5.4 (b). The Committee joins the ODC and Applicant in their belief that this is a “first impression” case and urges both the Board and Court to provide clarity regarding the application of the Rule in these situations.

For the foregoing reasons the Committee recommends that the application be denied.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Zebulon M. Winstead, to sign on their behalf.

Alexandria, Louisiana, this 24th day of ~~June~~^{May}, 2019.

**Louisiana Attorney Disciplinary Board
Hearing Committee #6**

**Bradley J. Gadel, Committee Chair
Zebulon M. Winstead, Lawyer Member
Amy R. Bruce, Public Member**


BY: _____
Zebulon M. Winstead, Lawyer Member
FOR THE COMMITTEE