

The Supreme Court of the State of Louisiana

IN RE: CRAIG J. FONTENOT

No. 2023-B-00759

IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and
Recommendations (Formal Charges);

September 19, 2023

Suspension imposed. See per curiam.

JTG

JLW

SJC

WJC

JBM

Hughes, J., dissents and would impose a lesser sanction.

Griffin, J., dissents and would impose a lesser sanction.

Supreme Court of Louisiana

September 19, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-0759

IN RE: CRAIG J. FONTENOT

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Craig J. Fontenot, an attorney licensed to practice law in Louisiana.¹

FORMAL CHARGES

On November 22, 2017, at approximately 6:49 p.m., officers from the Baton Rouge Police Department responded to a hit-and-run vehicle crash on LA Highway 73. The victim had followed respondent’s vehicle to his home address and waited for police to arrive. As detailed in the police report and confirmed through videos taken by officers, respondent initially lied to the investigating officer about the accident and the extent of his alcohol consumption.

Approximately two hours after officers had arrived, respondent volunteered to give a breath sample. The test result showed that his blood alcohol concentration was .238%. Respondent was arrested for first offense DWI, hit and run, and failure to maintain control.

On April 6, 2021, respondent appeared in court with counsel. The charge of hit-and-run driving was dismissed. On the DWI charge, respondent withdrew his plea of not guilty and entered a plea of nolo contendere.

¹ Respondent’s status with the Louisiana State Bar Association has been inactive since December 2, 2022.

DISCIPLINARY PROCEEDINGS

In October 2022, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent failed to answer the formal charges. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee determined the factual allegations of the formal charges were deemed admitted, and thus, proven by clear and convincing evidence. Based on those facts, the committee determined respondent violated Rules 8.4(b) and 8.4(c) of the Rules of Professional Conduct.

The committee then determined respondent violated duties owed to the public and the legal profession. He acted knowingly and intentionally in committing the criminal act of operating a vehicle while intoxicated. He was also dishonest when confronted by law enforcement and misrepresented his actions on the day of his arrest. His misconduct caused actual harm to the driver of the other vehicle and potential harm to all others he encountered on the roadways prior to the accident. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the applicable baseline sanction is suspension.

The committee found the following aggravating factors present: a dishonest or selfish motive, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge wrongful nature of conduct, substantial experience in the practice of law (admitted 1996), and illegal conduct. The committee found the absence of a prior disciplinary record to be the only mitigating factor present.

After further considering the prior jurisprudence of this court, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee also recommended respondent be assessed with all costs and expenses associated with this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts,

additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The evidence in the record of this deemed admitted matter supports a finding that respondent was arrested for first offense DWI, hit and run, and failure to maintain control. He also lied to the investigating officer about the accident and the extent of his alcohol consumption. This conduct amounts to a violation of the Rules of Professional Conduct as charged.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

The record supports a finding that respondent knowingly and intentionally violated duties owed to the public and the legal profession. Both actual and potential harm are present. We agree with the hearing committee that the applicable baseline sanction is suspension. The record supports the aggravating and mitigating factors found by the committee.

Turning to the issue of an appropriate sanction, we find guidance from the case of *In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 2d 941. In *Baer* the court stated the following with respect to appropriate sanctions for DWI offenses:

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.

Respondent committed a single DWI offense. However, due to his lack of cooperation with the disciplinary investigation, we do not know whether he suffers from a substance abuse problem. An actual suspension is therefore warranted. The sanction of a one year and one day suspension means respondent will have to file a formal application for reinstatement in the event he wishes to return to the practice of law. Prior to being reinstated, respondent will have to address the question of whether he has a substance abuse disorder, and, if so, show an effort at recovery.

Accordingly, we will adopt the committee's recommendation and suspend respondent from the practice of law for one year and one day.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Craig J. Fontenot, Louisiana Bar Roll number 24415, be and he hereby is suspended from the practice of law for a period of one year and one day. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.