

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JONATHAN WAYNE BROWN

DOCKET NO. 23-DB-057

REPORT OF HEARING COMMITTEE # 22

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel (“ODC”) against Jonathan Wayne Brown (“Respondent”), Louisiana Bar Roll Number 33746.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4(a)(3), 1.5(f)(5), 8.1(c), 8.4(a).²

PROCEDURAL HISTORY

The formal charges against Mr. Brown were filed on August 29, 2023. By letters dated August 31, 2023, the formal charges were sent via certified mail to Respondent’s primary and secondary registration addresses.³ According to USPS tracking, delivery of those mailings could not be confirmed. Out of an abundance of caution, on November 3, 2023, the ODC had its Staff Investigator personally serve Respondent with a certified copy of the formal charges. Respondent thereafter failed to file an answer to the formal charges. Accordingly, on December 13, 2023, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ By order signed December 19, 2023, the factual allegations contained in

¹ Respondent was admitted to the practice of law in Louisiana on October 20, 2011. At the time of submission of this matter to this Committee, Respondent was eligible to practice law in Louisiana. However, effective March 14, 2024, Respondent was placed on interim suspension by the Louisiana Supreme Court as part of disciplinary matter 2024-B-0318 (citation not available).

² See the attached Appendix for the text of these Rules.

³ The addresses were Respondent’s LSBA registered primary address at 1025 Mill Street, Lake Charles, Louisiana 70601, and secondary address at 1650 P E Daigle Road, Iowa, Louisiana 70647.

⁴ This rule states:

the formal charges were deemed admitted. On February 16, 2024, ODC filed its submission on sanction. Respondent filed no opposing documents.

For the following reasons, the Committee finds that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4(a)(3), 1.5(f)(5), 8.1(c), 8.4(a)

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I

The Office of Disciplinary Counsel ("ODC") received the instant Complaint from Complainant, Alexis Currie, on August 8, 2022. Complainant hired Respondent to represent her in a custody dispute. Complainant moved to Texas and needed to have the custody Order amended to allow her to take the daughter into Texas. Complainant states she paid Respondent \$3,000.00 to amend the custody Order because she had her daughter full-time. Complainant states that Respondent did send correspondence to the child's father informing him that Complainant had taken the child to Texas to live. Complainant alleges she has never gotten a court date the entire time Respondent has represented her. Complainant sent correspondence to Respondent requesting that he return the \$3,000.00 fee she paid to him. Complainant states she has not heard from Respondent, so she filed the instant complaint.

Respondent failed to submit a written response to the complaint, so he was subpoenaed for a sworn statement. He admitted that he had not performed all the work for which Complainant hired him and committed to return the unearned portion of the fee to Complainant within two weeks. Respondent's sworn statement was on March 14, 2023, and to date, he has not returned the unearned fee to Complainant.

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

Respondent's actions in this matter constitute the following violations of the Rules of Professional Conduct: failing to act with reasonable diligence and promptness in representing a client, in violation of Rule 1.3; failing to keep the client reasonably informed about the status of the matter, in violation of Rule 1.4(a)(3); failing to return the unearned portion of a fixed fee, in violation of Rule 1.5(f)(5); failing to cooperate in a disciplinary investigation, in violation of Rule 8.1(c); and violating or attempting to violate the Rules of Professional Conduct, in violation of Rule 8.4(a).

EVIDENCE

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1-8 as follows:

- ODC-1 Respondent's current registration information with the LSBA.
- ODC-2 Complaint received by ODC on August 8, 2022.
- ODC-3 August 17, 2022, ODC letter to Respondent and related service documents.
- ODC-4 September 14, 2022, ODC letter to Respondent.
- ODC-5 October 18, 2022, ODC email to Respondent.
- ODC-6 January 31, 2023, ODC subpoena to Respondent.
- ODC-7 Transcript of Respondent's March 14, 2023, sworn statement.
- ODC-8 May 26, 2023, ODC interoffice email re: phone call with Ms. Currie.

Respondent did not submit evidence or argument for the Committee's consideration, nor did he request to be heard in mitigation pursuant to Rule XIX, §11(E)(4).

DEEMED ADMITTED FINDINGS OF FACT

Respondent was born in 1984. Respondent was admitted to practice law in Louisiana on October 20, 2011, under Louisiana Bar Roll Number 33746. At the time of submission of this matter to this Committee, Respondent was eligible to practice law in Louisiana. However, effective March 14, 2024, Respondent was placed on interim suspension by the Louisiana Supreme Court as part of disciplinary matter 2024-B-0318.

A. General Background and Respondent's Failure to Cooperate

On August 8, 2022, the ODC received a complaint from Alexis Currie ("Ms. Currie") regarding Respondent.⁵ The complaint was opened for investigation as ODC 40268. On August 17, 2022, the ODC sent the complaint to Respondent by certified mail to his LSBA-registered primary/preferred address.⁶ On August 22, 2022, delivery of the same was accepted on Respondent's behalf.⁷ Respondent's written response to the complaint was due within fifteen (15) days from receipt of the same.⁸ Respondent failed to provide a written response to the complaint by that deadline.

On September 14, 2022, the ODC granted Respondent an extension of time until September 23, 2022, to provide a written response to the complaint.⁹ Respondent failed to do so by that extended deadline. On October 18, 2022, the ODC sent an email to Respondent granting a final extension until October 23, 2022, to provide a written response to the complaint.¹⁰ Respondent failed to do so by that final extended deadline. As a result of Respondent's failure to cooperate with the ODC's investigation of the complaint, a subpoena was issued to take his sworn statement.¹¹

On March 14, 2023, the ODC took Respondent's sworn statement.¹² Therein, when asked why he had failed to cooperate with the ODC's investigation, Respondent testified, in pertinent part: "I guess the, the best way to put it, it's like if I don't respond at all, it's like it's not happening, you know. But I, I know that's just not true[.]"¹³ During his sworn statement, Respondent promised to return the unearned portion of the \$3,000.00 fixed

⁵ ODC- 2

⁶ ODC-3 at 008; *see also* ODC-1.

⁷ ODC-3 at 010.

⁸ *Id.* at 008.

⁹ ODC-4

¹⁰ ODC-5.

¹¹ ODC-6

¹² ODC-7.

¹³ *Id.* at 053 (p. 39:1-5).

fee paid by Ms. Currie, which unearned portion Respondent estimated to be \$1,500.00, within two weeks.¹⁴ Respondent failed to do so by or after that promised date.¹⁵

B. Respondent's Conduct Within The Currie Matter

In October 2020, Ms. Currie retained Respondent to represent her in a custody dispute.¹⁶ Ms. Currie had moved to Texas and needed to have a custody order modified to allow her to take her minor daughter to Texas.¹⁷ Ms. Currie paid Respondent a \$3,000.00 fixed fee for services to be rendered.¹⁸ Respondent sent an initial letter to the father of Ms. Currie's daughter to notify him of Ms. Currie and their daughter's relocation to Texas.¹⁹ Respondent thereafter failed to file any pleadings on Ms. Currie's behalf to request modification of the custody order.²⁰ As confirmed by Ms. Currie in the complaint:

Its [sic] been two years and I never received a court date for custody Years has [sic] gone by and the only thing he did was send out a letter to my childs [sic] father stating that I live in Tx. now.. .. He also said that he was going to change the order because I have my daughter full time and again nothing. I know I didn't pay \$3,000 to just get a letter sent to my childs [sic] father.... Its [sic] been well over two years and nothing.²¹

On March 30, 2022, frustrated by Respondent's inaction and failure to keep her reasonably informed about the status of her matter, Ms. Currie sent Respondent a letter to terminate his services and to request a refund of the unearned portion of the fixed fee paid to him.²² That letter stated, in pertinent part:

¹⁴ ODC-7 at 046-047 (pp. 32-33: 13-6) and 048 (p. 34:6-15).

¹⁵ *See, e.g.*, ODC-8.

¹⁶ ODC-2 at 002; ODC-7 at 029 (p. 15:1-7) and 032-033 (pp. 18:24-25).

¹⁷ ODC-2 at 002; ODC-7 at 025 (p. 11:23-25) and 031 (p. 17:7-24).

¹⁸ ODC-2 at 003; ODC-7 at 024-025 (pp. 10-11:20-9).

¹⁹ ODC-2 at 003; ODC-7 at 032 (p. 18:3-12) and 038 (p. 24:2-4).

²⁰ ODC-2 at 003; ODC-7 at 038 (p. 24:17-23).

²¹ ODC-2 at 003.

²² *Id.* at 003 and 005-006

I am writing you to officially notify you that I'm terminating your services immediately. The reason is you have had my case for two years and I haven't not [sic] gotten as much as a court date. Everything that you told me you were going to do I got nothing.... I'm very disappointed on how you have handled my case and I cannot go anymore without returned phone calls, promises to update my case [with] very ... little response (your secretary), and telling me I should receive a court date after the first of the year and still nothing.

For two years you have been my attorney and I have seen very little progress. I paid you three thousand dollars to go back to court to get custody changed and no results. You keep telling me that you are going to make the necessary changes and still no result. Every time I call to speak to you I have to speak to your secretary ...[,] but you do not have the effort to call back. Per the last conversation that we had in November 2021 I was told to call back at the begging [sic] of the year 2022 which I did to get a court date and again still nothing. You never return my phone calls and I feel as if you are uninvolved in my case. The last time I spoke to you was in November where you told me that you would update my case in the court system and that I was going to receive that paperwork for being able to stay in Katy and again still nothing.

* * * * *
It has been two years and the only result on my case is the letter you sent to the other party.... I am also asking for a refund within reason so I could close this chapter. The saddest thing about this situation is I told you how important this was to get this handled and you took my money and strung me along for two years.... I'm very disappointed.... I just want to resolve this matter quickly and fairly because enough is enough!!²³

During his sworn statement, Respondent admitted that he charged Ms. Currie a \$3,000 fixed fee for services to be rendered;²⁴ failed to file the custody modification request;²⁵ and received Ms. Currie's termination letter, but failed to respond to her request for a refund.²⁶

RULES VIOLATED

²³ ODC-2 at 005-006.

²⁴ ODC-7 at 024-025 (pp. 10-11:20-9).

²⁵ *Id.* at 038 (p. 24:17-23).

²⁶ *Id.* at 036-037 (pp. 22-23:8-7).

This Committee finds that, in light of the deemed admitted facts recited above, ODC has proven by clear and convincing evidence that Respondent has violated the following Rules of Professional Conduct:

Rule 1.3- A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4(a)(3)- A lawyer shall keep the client reasonably informed about the status of the matter.

Rule 1.5(f)(5)- Payment of fees in advance of service shall be subject to the following rules:

(5) when the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advance deposit, and a fee dispute arises between the lawyer and the client, either during the course of representation or at the termination of representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and a lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee disputes, the lawyer shall suggest a means for prompt resolution such as mediation or arbitration including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Rule 8.1(c)- An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of constitutional privilege.

Rule 8.4(a)- 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.

Mr. Brown clearly neglected Ms. Currie's file and failed to repay or otherwise resolve issues regarding unearned fees despite ample opportunity and promise to do so.

While Mr. Brown did cooperate in giving a sworn statement, his only responses in this matter have come when served with a subpoena to appear. In the recent disciplinary matter of *In re Aucoin* (2023-B-01513), the Supreme Court upheld a finding of a violation of Rule 8.1(c) where Aucoin appeared for a sworn statement after subpoena, but did not otherwise cooperate in the process. As such, this committee does not find that Mr. Brown's partial cooperation absolves him of a violation of Rule 8.1.

SANCTION ANALYSIS

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee 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 the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Duties Violated

The Committee finds that, in violating the above-referenced Rules, Respondent violated duties owed to his client, the legal system, and the legal profession.²⁷

Respondent's Mental State

The Committee finds that Respondent's violation of the above-referenced Rules was knowing.

Actual or Potential Injury Caused by Respondent

²⁷ *In re: Clark*, 22-1332 (La. 1118/22), 349 So.3d 564, 568; *see also* Standards 4.0, 5.0 and 7.0 of the ABA Standards.

The Committee finds that Respondent caused actual harm to Ms. Currie. By failing to file the custody modification request, Respondent needlessly delayed Ms. Currie's ability to obtain that relief. Respondent also failed to return the unearned portion of the \$3,000.00 fixed fee paid by Ms. Currie, which unearned portion Respondent estimated to be \$1,500.00.

The Committee further finds that Respondent's failure to cooperate with the ODC's investigation also caused actual harm to the disciplinary system.

Aggravating or Mitigating Factors

The Committee finds the following 3 aggravating factors present as set forth in Standard 9.22 of the ABA Standards:

1. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency;
2. Substantial experience in the practice of law (admitted 2011); and
3. Indifference to making restitution.

The Committee **does not** find the following aggravating factors suggested by ODC to be present as to Respondent: selfish motive; a pattern of misconduct; multiple offenses. Despite the failure to repay the unearned fees, Respondent's misconduct appears to be more in the line of perpetual poor practice management than a selfishly motivated choice. His failure to cooperate in the proceedings is concerning and unacceptable, but the Committee does not find the circumstances to rise to being "a pattern of misconduct" or "multiple offenses."

The Committee finds only one mitigating factor is present, namely absence of a prior disciplinary record.

Baseline Sanction

The baseline sanction for Respondent's misconduct is suspension. Standard 4.42 of the ABA Standards states: "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

Louisiana Jurisprudence

In *In re: Clark*, 22-1332 (La. 11/8/22), 349 So.3d 564, 568, the deemed-admitted record supported a finding that Clark "neglected a legal matter, failed to communicate with a client, and failed to cooperate with the ODC in its investigation." Clark's misconduct was knowing, if not intentional, and violated Rules 1.1(a), 1.3, 1.4, 8.1(c), and 8.4(c) and (d).²⁸ There were three aggravating factors (a pattern of misconduct, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law) and one mitigating factor (absence of a prior disciplinary record) present.²⁹ After a review of its recent jurisprudence, the Court determined that an actual suspension of one year and one day was appropriate discipline for Clark's misconduct.

In the instant matter, Respondent similarly failed to act with reasonable diligence and promptness in representing Ms. Currie, failed to keep Ms. Currie reasonably informed about the status of her matter, and partially failed to cooperate with the ODC's investigation of the complaint. As in *Clark*, Respondent's misconduct was knowing. As in *Clark*, the aggravating factors outweigh the sole mitigating factor present. In addition, Respondent failed to refund the unearned portion of the fixed fee paid by Ms. Currie.

²⁸ *Id.* at 566-567.

²⁹ *Id.* at 568.

Below, this Committee recommends a sanction of suspension with some portion deferred. The Committee finds this deviation from the suspension imposed in *Clark* to be appropriate considering that *Clark* involved multiple neglected cases, she fully abandoned a client without letting the client know, and her neglect caused the loss of appeal rights in one of the matters she was handling. This Committee considers this behavior to be more egregious than that demonstrated by Mr. Brown.

CONCLUSION

This Committee finds that, in light of the deemed admitted facts recited above, ODC has proven by clear and convincing evidence that Respondent has violated the following Rules of Professional Conduct: Rules 1.3, 1.4(a)(3), 1.5(f)(5), 8.1(c), and 8.4(a)

This Committee recommends that Respondent be suspended for one year and one day with all but 90 days of the suspension deferred, followed by a one-year period of probation consisting of Respondent participating in the LSBA Practice Assistance and Improvement Program including working with a Practice Assistance Counsel and abiding by any plan set forth. Any failure of Respondent to comply with the conditions of probation, or any misconduct during the probationary period should be grounds for making the deferred portion of the suspension executory.

Respondent should also be ordered to pay all costs and expenses associated with this disciplinary proceeding and to make full restitution to Ms. Currie and/or the Client Assistance Fund, as appropriate, within 90 days. Any failure of Respondent to pay restitution and costs within 90 days should be grounds for making the deferred portion of the suspension executory.

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

Lafayette, Louisiana, this 22nd day of March, 2024.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 22**

**Brandon Wallace, Committee Chair
Jennifer Frederick, Lawyer Member
Bradley Pellegrin, Public Member**



BY:

**Brandon Wallace, Committee Chair
For the Committee**

APPENDIX

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication

(a) A lawyer shall:

* * * *

(3) keep the client reasonably informed about the status of the matter[.]

Rule 1.5 Fees

* * * *

(f) Payment of fees in advance of services shall be subject to the following rules:

* * * *

(5) When the client pays the lawyer a fixed fee ..., and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee....

Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

* * * *

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

Rule 8.4 Misconduct

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[.]