

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MARK G. SIMMONS

DOCKET NO. 18-DB-062

REPORT OF HEARING COMMITTEE # 27

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel (“ODC”) against Mark G. Simmons (“Respondent”), Louisiana Bar Roll Number 19995.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 5.5(a) and 8.4(a).²

PROCEDURAL HISTORY

The formal charges were filed on August 27, 2018. By letter dated August 30, 2018, the formal charges were sent via certified mail to Respondent’s primary registration address.³ The charges were received at that address on September 1, 2018. Respondent failed to file an answer to the charges. Accordingly, on October 2, 2018, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ By order

¹ Respondent was admitted to the practice of law in Louisiana on April 27, 1990. Respondent is currently eligible to practice law in Louisiana.

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

³ 334 Saint Joseph St., Baton Rouge, LA 70802.

⁴ This rule states:

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

signed October 22, 2018, the factual allegations contained in the formal charges were deemed admitted.

On November 19, 2018, Respondent filed a motion to recall the deemed admitted order and a request to be heard in mitigation. By order signed November 29, 2018, Respondent's motion to recall the deemed admitted order was denied for a failure to demonstrate good cause. However, the Committee granted Respondent's request to be heard in mitigation. The mitigation hearing was held on March 1, 2019. Deputy Disciplinary Counsel Yolanda Cezar appeared on behalf of ODC. Respondent did not appear.

For the following reasons, the Committee finds that Respondent's failure to participate in the proceedings and the evidence presented by the ODC warrant a sanction of permanent disbarment.

FORMAL CHARGES

The formal charges read, in pertinent part:

Respondent was suspended from the practice of law in Louisiana effective October 31, 2017 – February 23, 2018. During this period Respondent represented the plaintiff in the matter of *Shellie Marie Castille v. Douglas Courreges*, 193,601, Div.:”C” 19th J.D.C., Family Court regarding a Qualified Domestic Relations Order (QDRO). The matter was filed on November 6, 2017, and the judgment signed in chambers on November 14, 2017. During the period of his suspension, Respondent communicated with opposing party as well as a representative from his client's employer in an effort to resolve issues regarding the QDRO.

Respondent also appeared on January 29, 2018, in the 19th J.D.C., in a matter where he represented the defendant, Darius Slan, on charges of Domestic Abuse Battery and Resisting an Officer. On January 30, 2018, Respondent was present in court in the 19th J.D.C., with his client, Kevin Aguillard, who had been charged with Negligent Homicide. Respondent appeared in the 19th J.D.C., with his client, Devin D. Morris, on January 24, 2018, for sentencing related to the charge of Simple Robbery. Respondent appeared with his client Lawrence

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.

Roberts on November 7, 2017, and again on January 19, 2018. During both appearances, Respondent requested a continuance, which was granted in both instances. Respondent appeared with his client Lawrence Roberts on November 7, 2017, and again on January 19, 2018, to address Mr. Roberts' charge of Illegal Carrying of Weapons with CDS. On December 27, 2017, Respondent filed a Motion for Dismissal with Prejudice on behalf of this client, Mable Hadley.

Respondent has violated the following Rules of Professional Conduct: [5.5(a) and 8.4(a)]

EVIDENCE

The following exhibits were admitted into evidence by the ODC at the hearing in mitigation:

ODC 1 Ethical Complaint
ODC 2 East Baton Rouge Clerk of Court Docket Report for the matter entitled Shellie Marie Castille. Douglass Courreges
ODC 3 East Baton Rouge Clerk of Court Docket Report for the matter entitled State v. Darius Slan
ODC 4 Motion for Dismissal with Prejudice
ODC 5 East Baton Rouge Clerk of Court Docket Report for the matter entitled State v. Kevin M. Aguilard
ODC 6 East Baton Rouge Clerk of Court Docket Report for the matter entitled State v. Devin D. Morris
ODC 7 East Baton Rouge Clerk of Court Docket Report for the matter entitled State v. Devin D. Morris Devin Devin Morris
ODC 8 East Baton Rouge Clerk of Court Docket Report for the matter entitled State V. Lawrence LaDarris Roberts
ODC 9 Correspondence for Division of Administrative Law

While at the hearing ODC attempted to contact the respondent with the contact telephone numbers that were on file with no success. The record was held open at the end of the hearing until March 8, 2019 for the submission of two affidavits concerning the ODC's efforts to serve pleadings on or contact Mark G. Simmons in relation to this hearing. On March 8, 2019 the ODC filed the Affidavits of Kimberly Sibley concerning her telephone attempts to reach Respondent and Investigator Robert Harrison concerning his efforts to serve the ODC's prehearing memo on Respondent.

FINDINGS OF FACT

This hearing was a hearing in mitigation held at the request of Respondent. However, Respondent failed to make an appearance or file any response in the record, other than the request for the hearing in mitigation. Respondent failed to participate in any pre-hearing telephone conference calls or to submit any prehearing pleadings. During the hearing the ODC attempted to contact Respondent for him to appear at the hearing, but were unable to contact him at the telephone numbers that were on file for him.

The committee noted that the address used by the Louisiana Disciplinary Board and the Office of Disciplinary Counsel was 334 St. Joseph Street, Baton Rouge, Louisiana 70802. This address was the address on the letterhead of Respondent's correspondence requesting the hearing in mitigation and the address on file with the LADB for Respondent.

No evidence of mitigation was presented on behalf of Respondent. Respondent did not appear, nor was he able to be contacted by telephone. Therefore, after waiting for Respondent to appear for 15 minutes the Hearing Committee concluded the hearing.

RULES VIOLATED

The ODC met its burden of proving that Respondent violated Rule 5.5(a) in that he practices law while he was ineligible to practice, and 8.4(a) in that he engaged in conduct prejudicial to the administration of justice. Respondent represented himself as a licensed attorney, made appearances in court holding himself out as a practicing attorney, and filed pleadings while his license to practice law was suspended.

SANCTION

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.

Here, Respondent violated duties owed to the public, the legal system and the profession. He acted knowingly and intentionally. Respondent's misconduct appears not to have caused actual harm to the clients he represented while ineligible. However, his failure to participate in the disciplinary process caused actual harm to the disciplinary system in that Respondent wasted the time and effort of the ODC counsel and hearing committee by his blatant disregard of the disciplinary system. Respondent requested the hearing in mitigation, then he failed to appear or participate in the pre-hearing process or the hearing itself. His actions evidenced that he does not respect the disciplinary system or the profession in that he continued to practice law while under suspension, then he refused to participate in the disciplinary hearing in mitigation that he requested.

Absent aggravating or mitigating circumstances, the following sanctions are generally appropriate in cases involving conduct prejudicial to the administration of justice, dishonesty, fraud, deceit, or misrepresentation to a court, or violation of the terms of prior discipline:

11. 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
12. 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

8.1 Disbarment is generally appropriate when a lawyer:

(a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or

(b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

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 *ABA Standards for Imposing Lawyer Sanctions* suggest that disbarment is the baseline sanction for Respondent's misconduct because Respondent knowingly violated the disciplinary order that suspended him from the practice of law, yet while under that period of suspension he continued to appear in court and provide legal counsel in the courtroom and by filing pleadings with the Clerk of Court.

Respondent failed to appear or present any mitigating evidence on his behalf at the hearing in mitigation that he himself requested in this matter. His absence was strong evidence of his disregard for the profession and the efforts that were being made to uphold the profession by holding the hearing. His failure to participate in the prehearing activities or the hearing itself showed his disregard for his peers, and the public member serving in the hearing committee. Other aggravating factors include his prior disciplinary offenses, multiple offenses, and his experience in the practice of law prior to his initial suspension.

The respondent in *In re: Turnage*, 12-2008 (11/16/12), 104 So. 3d 397 continued to practice law for over five years after being disbarred. In that disciplinary case the baseline sanction of disbarment was imposed, and no mitigating factors were found. While the facts of

Turnage are a bit more extreme due to the amount of time Turnage continued to practice, in this case Respondent also continued to practice law and no mitigating factors were found. In addition, the hearing committee finds it compelling that Respondent failed to participate in the proceedings. Respondent's failure to participate seemed to indicate his willingness to give up his license, since he did not even attempt to speak on his own behalf to save or protect that license.

The Hearing Committee recommends that Respondent be disbarred from the practice of law.

CONCLUSION

The facts of the complaint were deemed admitted due to Respondent's failure to respond. Based on the evidence presented by the ODC and Respondent's failure to appear at the hearing in mitigation that he requested, the Hearing Committee recommends that Respondent be disbarred from the practice of law in the State of Louisiana.

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

Baton Rouge, Louisiana, this 2nd day of April, 2019.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 27**

**Edythe L. Koonce, Committee Chair
Manard M. Lagasse, Jr., Lawyer Member
Vallan B. Corbett, Public Member**

**BY: *s/ Edythe L. Koonce*
Edythe L. Koonce, Committee Chair
For the Committee**

APPENDIX

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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;
