

The Supreme Court of the State of Louisiana

IN RE: MYLES JULIAN JOHNSON

No. 2021-B-01558

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IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations  
(Formal Charges);  
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January 26, 2022

Suspension imposed. See per curiam.

JLW

JDH

SJC

JTG

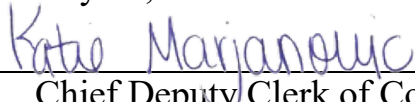
WJC

JBM

PDG

Supreme Court of Louisiana

January 26, 2022



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Chief Deputy Clerk of Court  
For the Court

SUPREME COURT OF LOUISIANA

NO. 2021-B-1558

IN RE: MYLES JULIAN JOHNSON

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Myles Julian Johnson, an attorney licensed to practice law in Louisiana. He is currently ineligible to practice in Louisiana for failing to pay his bar dues and the disciplinary assessment and for failing to comply with mandatory continuing legal education (“MCLE”) requirements. Respondent is also licensed to practice law in the State of Washington.

**UNDERLYING FACTS**

Latracus Henry hired respondent to represent him in a criminal matter involving a second degree murder charge and a felon in possession of a firearm charge. Respondent charged a \$10,000 fee for the representation. According to Mr. Henry’s mother, she paid respondent’s \$10,000 fee in full over time. Respondent provided her with a receipt, indicating she had paid \$3,400 toward the \$10,000 as of March 29, 2014. However, Mr. Henry’s mother had no other receipts or evidence of any additional payments.

In August 2015, the district attorney’s office nolle prosecuted the second degree murder charge. Thereafter, Mr. Henry was tried and convicted of being a felon in possession of a firearm. In November 2015, his conviction and sentence

were overturned on appeal. On March 24, 2016, this court remanded Mr. Henry's criminal matter to the trial court for an evidentiary hearing.

Respondent appeared on Mr. Henry's behalf for the evidentiary hearing on July 14, 2016, September 26, 2016, and March 23, 2017. On August 22, 2017, the trial judge set a deadline of October 2, 2017 for Mr. Henry to file a post-hearing brief after respondent requested leave to file said brief.

In the meantime, on August 7, 2017, the Louisiana State Bar Association ("LSBA") mailed a notice of delinquency to respondent at his LSBA-registered primary address, 10105 NE 125<sup>th</sup> Drive, Apartment 4, Kirkland, Washington 98034 ("the Apartment 4 address"). The notice cited respondent's failure to pay his 2017-2018 LSBA bar dues and the Louisiana Attorney Disciplinary Board's disciplinary assessment, as well as his failure to submit his attorney registration statement.

On September 15, 2017, the LSBA mailed a certification of ineligibility to respondent at his LSBA-registered primary address, which was still the Apartment 4 address. The certification included notice that the LSBA was required to certify to this court that respondent was "ineligible to practice law in Louisiana effective September 11, 2017." On September 19, 2017, this court issued to respondent a certification of ineligibility effective September 11, 2017, which was also sent to the Apartment 4 address.

Respondent did not notify Mr. Henry, his mother, or the trial court of his ineligibility. Respondent also did not file the post-hearing brief on Mr. Henry's behalf. On October 17, 2017, the trial judge issued his ruling with written reasons, which ruling was unfavorable to Mr. Henry. Because the trial court did not know respondent was ineligible, it sent the ruling to respondent and not Mr. Henry. Mr. Henry and his mother were unaware of the ruling, and Mr. Henry did not seek review.

In April 2019, Mr. Henry filed a disciplinary complaint against respondent, complaining that respondent abandoned his case without informing him. The ODC made numerous attempts to notify respondent of the complaint so he could respond. Initially, the ODC was unable to deliver notice of the complaint to respondent because he failed to update his address with the LSBA. Eventually, the ODC located respondent at his State of Washington law office located at 1105 Tacoma Avenue South, Tacoma, Washington 98402, and sent notice of the complaint to that address on May 16, 2019, June 10, 2019, and June 27, 2019. On August 28, 2019, respondent contacted the ODC to confirm his response would be forthcoming within a week. Nevertheless, respondent did not submit a response to the complaint. On October 23, 2019, respondent changed his primary address registered with the LSBA to his law office address in Tacoma, Washington.

### **DISCIPLINARY PROCEEDINGS**

In September 2019, the ODC filed formal charges against respondent, alleging that he violated the following provisions of the Rules of Professional Conduct: Rules 1.1(b) (failure to comply with MCLE requirements), 1.1(c) (failure to pay bar dues or the disciplinary assessment, failure to provide timely change of address information, or failure to submit trust account information), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.16(d) (obligations upon termination of the representation), 8.1(b) (knowing failure to respond to a lawful demand for information from the disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a) (violation of the Rules of Professional Conduct). Respondent, through counsel, filed an answer to the formal charges, denying that he violated or attempted to violate the Rules of Professional Conduct. Accordingly, the matter proceeded to a formal hearing on the merits.

## *Hearing Committee Report*

Following the hearing, the hearing committee summarized the relevant testimony as follows:

Respondent – Respondent testified that he was admitted to the practice of law in Louisiana in 2005 and in the State of Washington in 2014. He stated that he has moved several times and that there may have been problems notifying the LSBA of his address changes due to “user error.” Since the summer of 2018, he has had an office in Tacoma, Washington, and his law office website lists this address. He goes to the office once or twice a week and receives mail there. Respondent further testified that the notice of delinquency letter was sent to a prior primary LSBA-registration address in Kirkland, Washington (the Apartment 4 address). This was his residence for three or four years, but he did not recall receiving the notice of delinquency.

Regarding his representation of Mr. Henry, respondent was adamant that he represented Mr. Henry in a proper and competent manner. Respondent testified that he participated in all status conferences leading up to the evidentiary hearing, and he appeared at all of the evidentiary hearings. He also testified that he appeared each time a lawyer’s presence was required, including at motions, meetings with the prosecutors, arguments, and other hearings. After the conclusion of the evidentiary hearings, respondent indicated he met with Mr. Henry and his mother and clearly told them that, “I see no way forward” and “I don’t believe there is anything else I can do.” He told Mr. Henry and his mother they needed to seek help from the Innocence Project or a similar organization. He repeatedly testified that he made it clear to them that he was going to do no further work. In fact, he testified that he had no good faith basis to argue anything else and that he felt it would be a violation of his ethical obligations if he did. As such, he asserted that he fully complied with withdrawal requirements.

However, respondent had no explanation for why he asked to file a brief following the conclusion of the evidentiary hearings. He did not notify Mr. Henry about the order allowing the brief or about the due date of the brief. He also acknowledged that he did not file the brief and did not file a motion to withdraw.

He denied that Mr. Henry's mother paid him \$10,000; instead, he claimed he only received \$3,400. He also claimed he expended a large amount of time and money on the representation, indicating that he personally financed Mr. Henry's appeal.

Regarding the various notices of Mr. Henry's complaint the ODC sent him, respondent testified that he does not recall receiving all of the notices because he moved so many times. However, he did recall receiving at least two of the notices sent to his law office address in Tacoma, Washington and acknowledged that he did not timely respond to the complaint.

Latracus Henry – Mr. Henry testified that the last time he talked to respondent was after the final evidentiary hearing when respondent told him to “be cool” because he was going to take care of everything. He also believed respondent was going to file a brief on his behalf. Respondent never told him that he would not complete the representation, never complained about not being paid the full fee, and never told him that he was ineligible to practice law in Louisiana. Mr. Henry further claimed he tried to call respondent several times after the final evidentiary hearing. He also wrote to respondent, but the letters were returned. Mr. Henry learned of the adverse ruling when he wrote to the trial court on May 25, 2019 and asked what was going on.

Sandra Henry – Mr. Henry's mother testified that she did not have receipts for the full \$10,000 she claimed she paid. Instead, she kept track of her cash payments on a calendar; however, she was unable to find the calendar.

Based on the above testimony and the other evidence presented at the hearing, the committee made factual findings consistent with the underlying facts sets forth above. Additionally, the committee found that respondent was hired on March 29, 2014 to represent Mr. Henry in a pending criminal matter for \$10,000 but was only paid \$3,400. Between April 21, 2016 and February 2, 2017, the trial court held various status conferences concerning the evidentiary hearing, some of which were via telephone. Respondent participated in all of these conferences. Respondent also participated in the evidentiary hearing on the three dates it was held.

The committee further found that, on August 7, 2017, respondent's LSBA-registered primary, secondary, and preferred mailing address was the Apartment 4 address in Kirkland, Washington. The LSBA's August 7, 2017 notice of delinquency letter was sent to respondent at the Apartment 4 address. The LSBA's September 15, 2017 letter to respondent notifying him of his ineligibility effective September 11, 2017 was sent to the Apartment 4 address. On September 19, 2017, this court's certificate of ineligibility was also sent to respondent at the Apartment 4 address. On May 8, 2019, the ODC sent notice of Mr. Henry's complaint to the Apartment 4 address, but the correspondence was returned undelivered on May 16, 2019. On May 16, 2019, the ODC resent the letter to respondent at his law office address in Tacoma, Washington. This correspondence was delivered on May 20, 2019. On October 23, 2019, respondent changed his LSBA-registered primary address to his law office address in Tacoma, Washington. On that date, respondent also changed his LSBA-registered secondary and preferred mailing addresses to 11934 NE 162<sup>nd</sup> Place, Bothell, Washington 90811.

The committee then specifically found that respondent effectively communicated his withdrawal to Mr. Henry. However, after asking for leave to file a post-hearing brief, respondent failed to complete his withdrawal obligations by filing a formal motion to withdraw and providing the court, the LSBA, or Mr. Henry

(in the absence of another attorney representing Mr. Henry) with his address so the ruling on the motion to file a post-hearing brief and briefing schedule could be sent to the appropriate person and place. As a result, Mr. Henry did not know about the briefing schedule, and no brief was filed. Since respondent had requested the opportunity to file a post-hearing brief, he had an ethical obligation to file a motion to withdraw, to determine if his request to file the brief had been granted and whatever deadlines for briefing were set, and to communicate this information to Mr. Henry or an attorney hired by Mr. Henry to continue the representation.

Based on these facts, the committee determined respondent violated Rules 1.4, 1.16(d), and 8.1(b) of the Rules of Professional Conduct. Regarding the Rule 1.4 violation, the committee specifically determined that respondent failed to communicate “only insofar as notifying the LSBA of address changes promptly.” Regarding the Rule 1.16(d) violation, the committee specifically determined that respondent failed to fulfill his obligations upon termination “only insofar as his post withdrawal obligations are concerned and failing to file a Motion to Withdraw with the court.”

The committee then determined respondent negligently violated duties owed to his client and the legal system. Respondent’s failure to cooperate with the ODC caused a minimal, unnecessary expenditure of the ODC’s resources, and the potential for harm to Mr. Henry existed. In aggravation, the committee noted the vulnerability of the victim and respondent’s substantial experience in the practice of law (admitted 2005). In mitigation, the committee found the absence of a prior disciplinary record, personal or emotional problems (divorce and his father’s illness), full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings, and remorse. In additional mitigation, the committee noted that respondent obtained a dismissal of the second degree murder charge against Mr.

Henry, he collected a reduced fee for the services rendered, and he provided honest and forthcoming testimony.

Under these circumstances, the committee recommended respondent be suspended from the practice of law for six months, fully deferred. The committee also recommended that any finding of an ethical violation during the six-month deferral period should result in the deferred suspension being made executory.

The ODC filed an objection to the committee's report and recommendation.

#### *Disciplinary Board Recommendation*

After review, the disciplinary board generally accepted the hearing committee's factual findings. However, the board clarified that respondent acknowledged living at the Apartment 4 address from 2015 through 2018, and this address was respondent's LSBA-registered address from August 7, 2017 to October 23, 2019. The trial court mailed the August 22, 2017 post-hearing briefing schedule to respondent at the Apartment 4 address, and respondent acknowledged being aware of the briefing schedule. Respondent also indicated that he probably received the trial court's October 17, 2017 ruling with written reasons, which were mailed to the Apartment 4 address.

Based on these facts and the other evidence in the record, the board determined respondent violated the Rules of Professional Conduct as charged. Regarding Rule 1.1(b), the board noted that respondent admitted he was MCLE ineligible in 2017, 2018, 2019, and 2020. Regarding Rule 1.1(c), the board noted that, even after the formal charges were filed, respondent did not correct his LSBA-registration address until a month later in October 2019, and he did not correct his bar dues, disciplinary assessment, and registration statement delinquencies until shortly before the formal hearing in January 2020. Regarding Rule 1.3, the board noted that respondent, in the very last stage of Mr. Henry's legal matter, did not act

diligently because he failed to promptly file a motion to withdraw as counsel, failed to advise Mr. Henry of the August 2017 post-hearing brief scheduling order, failed to submit a brief or explicitly inform Mr. Henry and the court that he would not be filing said brief after requesting that he be allowed to do so, and failed to provide Mr. Henry with a copy of the court's October 2017 ruling with written reasons. Regarding Rule 1.4, the board noted that respondent failed to advise Mr. Henry of the briefing order issued in August 2017, failed to communicate to Mr. Henry that he did not intend to file a post-hearing brief in accordance with that order, and failed to advise Mr. Henry of the trial court's ultimate ruling. Respondent also failed to communicate his ineligibility to Mr. Henry, and Mr. Henry and his mother both testified to their repeated attempts to contact respondent to no avail. Regarding Rule 1.16(d), the board noted that, while respondent may have told Mr. Henry and his mother there was nothing more he could do after the final evidentiary hearing, he did not take the required steps to withdraw as counsel. Even if respondent believed he had verbally ended the representation, he remained obligated to provide Mr. Henry with the briefing order and the ruling with written reasons when he received them. Regarding Rules 8.1(b) and 8.1(c), the board noted that respondent failed to provide a response to Mr. Henry's complaint despite the numerous notices of the complaint and requests for a response sent to him by ODC over a period of several months. Finally, regarding Rule 8.4(a), the board noted that respondent's multiple rule violations, as discussed above, established this derivative rule violation.

The board then determined respondent violated duties owed to his client, the legal system, and the legal profession. According to the board, his conduct was knowing and perhaps, in part, negligent. His conduct caused potential harm to Mr. Henry. His conduct also caused a delay in the ODC's investigation and caused the ODC to expend some additional resources. Moreover, respondent's failure to fulfill his professional obligations harmed the legal profession. After considering the

ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

The board further determined that the following aggravating factors are present: multiple offenses, vulnerability of the victim, and substantial experience in the practice of law. In mitigation, the board found the absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings, and remorse.

After also considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for six months.

Neither respondent nor the ODC filed an objection to the board's report or recommendation.

## 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. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The record in this matter supports a finding that respondent neglected a legal matter, failed to communicate with a client, failed to properly withdraw from a representation, failed to fulfill his professional obligations, and failed to cooperate

with the ODC in its investigation. This conduct amounts to a violation of the Rules of Professional Conduct as found by the disciplinary board.

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).

Respondent knowingly violated duties owed to his client, the legal system, and the legal profession, causing actual and potential harm. We agree with the board that suspension is the baseline sanction. We also agree with the board's determination of aggravating and mitigating factors.

Turning to the issue of an appropriate sanction, we find guidance from two cases cited by the board, *In re: Gaharan*, 08-2829 (La. 4/2/09), 6 So. 3d 745, and *In re: Swafford*, 17-2154 (La. 3/23/18), 238 So. 3d 957. In *Gaharan*, an attorney withdrew from the representation of a bankruptcy client when he assumed inactive status but failed to communicate that fact to the client. The attorney also failed to file a motion to withdraw with the bankruptcy court. As a result, the client was unaware he was without counsel while his creditors were attempting to collect their debts and foreclose on his home. When the client complained to the ODC, the attorney failed to cooperate with the ODC's investigation, going so far as to inform the ODC he did not want to be bothered by them again. For this knowing and intentional misconduct, we imposed a suspension from the practice of law for one year and one day. The board determined that the misconduct in *Gaharan* was more

egregious than respondent's misconduct; thus respondent should receive a lesser sanction. We agree. In *Swafford*, an attorney failed to complete a succession for a client, failed to respond to the client's several requests for information, and failed to timely inform the client that he would not complete the representation. For this knowing misconduct, we imposed a suspension from the practice of law for six months, with three months deferred, followed by one year of probation with the condition that the attorney attend the LSBA's Ethics School. Given that the attorney in *Swafford* fully cooperated with the ODC's investigation, we find respondent's misconduct was more egregious; thus respondent should receive a harsher sanction.

Under these circumstances, we will accept the board's recommendation and suspend respondent from the practice of law for six months.

#### **DECREE**

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, it is ordered that Myles Julian Johnson, Louisiana Bar Roll number 29921, be and he hereby is suspended from the practice of law for six months. 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.