ORIGINAL

Louisiana Attorney Disciplinary Board
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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JOSEPH HAROLD TURNER, JR.

NUMBER: 20-DB-003

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

INTRODUCTION

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel ("ODC") against Joseph Harold Turner, Jr. ("Respondent"), Louisiana Bar Roll Number 26134.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.1(b) (competence -- failure to comply with the minimum requirements of continuing legal education), 1.1(c) (competence -- failure to comply with Supreme Court's rules regarding annual registration, including payment of Bar dues and disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein), 1.5(f) (failure to return an unearned fee), 5.5(a) (unauthorized practice of law); 8.1(c) (failure to cooperate with ODC investigation); 8.4(a) (violate or attempt to violate the Rules of Professional Conduct); 8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engage in conduct that is prejudicial to the administration of justice).[2] On motion of ODC, the formal charges were deemed admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).[3] The hearing committee ("Committee") assigned to this

[1] Respondent was admitted to the Louisiana Bar on April 23, 1999. His primary and secondary registration address is 580 Cliftwood Ct. NE, Atlanta, GA 30328. Respondent was admitted to the Georgia Bar on November 20, 1997. Respondent is currently disbarred in Louisiana and Georgia. Prior to disbarment, Respondent had been ineligible to practice law in Louisiana for several years for failing to fulfill mandatory continuing legal education requirements, failing to pay bar dues and the disciplinary assessment, and failing to file a trust account disclosure statement. Respondent also has a history of several additional prior periods of ineligibility for failure to comply with professional administrative requirements. *See* Ex. ODC-2 to ODC's Documentary Evidence and Written Argument.

[2] *See* attached Appendix for full text of the Rules.

[3] 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

matter concluded Respondent violated the Rules as charged and recommended that he be suspended for two years and that he be ordered to make restitution to his clients.

For the following reasons, the Board adopts the Committee's factual findings and concludes that Respondent violated Rules 1.1(b), 1.1(c), 1.5(f), 5.5(a), 8.1(c), 8.4(a), 8.4(c), and 8.4(d) as charged. The Board recommends that these rule violations be considered if and when Respondent, who is currently disbarred, seeks readmission to the practice of law in Louisiana. The Board further recommends that Respondent be ordered to pay restitution to his clients in the amount of $2,500.00. Additionally, the Board recommends that Respondent be assessed with the costs and expenses of this matter in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

PROCEDURAL HISTORY

ODC filed formal charges in the instant matter on January 6, 2020. The charges state, in pertinent part:

> II.
>
> Respondent is currently ineligible to practice law in the State of Louisiana for the following reasons: (1) ineligible as of June 1, 2017 for non-compliance with mandatory continuing legal education requirements; (2) ineligible as of September 11, 2017 for the non-payment of the LSBA membership dues; (3) ineligible as of September 11, 2017 for the non-payment of LADB assessment fee; and (4) ineligible as of September 17, 2018 for non-compliance with the Trust Account Disclosure Form.
>
> Respondent is also a licensed attorney in the State of Georgia where he was admitted to the practice of law on November 20, 1997, under Bar Roll Number

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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 or electronic transmission 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.

719482. Respondent was ineligible in the state of Georgia for the following reasons: (1) ineligible from April 26, 2019 through November 25, 2019 for [n]on-compliance with continuing legal education requirements; and (2) ineligible from September 1, 2019 through November 25, 2019, for the non-payment of annual fees.

III.

Despite Respondent's ineligible status, on July 8, 2019, Respondent accepted $2,500 to provide legal representation to two clients, R.A. and M.A., ("clients") who were recently arrested on narcotics related charges. The clients hired Respondent to provide legal advice and representation pertaining to pending criminal charges in Jefferson and Plaquemines Parish, as well as representation involving their signing of contracts to work as confidential informants for the Jefferson Parish Sheriff's Office and the District Attorney's office.

In approximately August of 2019, Respondent contacted and interacted with Assistant District Attorney, Edward McGowan, of the Plaquemines Parish District Attorney's Office and Assistant District Attorney, Joan Benge, with the Jefferson Parish District Attorney's Office on behalf of his clients. Furthermore, in approximately August of 2019, Respondent interacted with a Jefferson Parish Sheriff's Office Narcotics Detective both in person and via telephone, on behalf of his clients.

On August 19, 2019, the Office of the Disciplinary Counsel ("ODC") received information pertaining to Respondent practicing law while ineligible. The ODC forwarded Respondent notice of the complaint on August 27, 2019, via certified return receipt, to 580 Cliftwood Ct NE, Atlanta Georgia, 30328 (which is the primary, secondary and also the preferred mailing address the Respondent registered with the LSBA); however, according to the United States Postal Service Tracking, the notice was left unclaimed and returned to the ODC. The ODC obtained the address Respondent currently had registered with the State Bar of Georgia [(]4964-B Lavista Road, Tucker, Georgia, 30084) and on September 17, 2019, the ODC forwarded a notice of the complaint, via certified return receipt mail, to that address; however, according to the United States Postal Service Tracking, the notice was left unclaimed and returned to the ODC. On September 17, 2017, ODC Investigator Chris Gwynn forwarded Respondent both notices of the complaints via email to Respondent's email address: jhtlaw@comcast.net, which is the email address that Respondent registered with both the Louisiana State Bar Association and the State Bar of Georgia. Investigator Gwynn also included a request that Respondent reply and confirm receipt of the email and complaints. The email was not rejected and returned as undeliverable; however, Respondent has not replied.

IV.

There is clear and convincing evidence that the actions of Respondent in this matter constitute violations of Rule 1.1(b) [(]failure to comply with the minimum requirements of continuing legal education), Rule 1.1(c) failure to comply with Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of disciplinary assessment, timely notification of changes of address and proper disclosure of trust account information or any

changes therein, Rule 1.5(f) failing to return an unearned fee, Rule 5.5(a) engaging in the unauthorized practice of law, Rule 8.1(c) failing to cooperate with the Office of the Disciplinary Counsel, Rule 8.4(a) violating or attempting to violate the Rules of Professional Conduct, Rule 8.4(c) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and Rule 8.4(d) engaging in conduct that is prejudicial to the administration of justice.

By letter dated January 9, 2020, the formal charges were mailed via USPS certified mail to Respondent's primary and secondary registration address. The mailing to Respondent's primary and secondary registration address was returned undelivered (stamped "return to sender/unclaimed/unable to forward") in February, 2020.[4,5] On March 19, 2020, Christopher N. Gwynn, a staff investigator with ODC, forwarded a copy of the formal charges to Respondent at Respondent's registered email address and Respondent replied to the email confirming receipt. Ex. C to ODC's Motion to Declare Factual Allegations Deemed Proven.

Respondent failed to file an answer to the formal charges. Accordingly, on July 10, 2020, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). By order signed July 21, 2020, the factual allegations contained in the formal charges were deemed admitted and Respondent was given twenty days from the mailing of the order to show good cause why imposition of the order would be improper or result in a miscarriage of justice.

[4] The charges were also mailed to another address in Georgia pursuant to ODC's service instructions. It appears that ODC was attempting to have the charges sent to Respondent's registered address with the State Bar of Georgia. However, there is a typographical error in the street number in ODC's service instructions. This mailing was also returned undelivered.

[5] Louisiana Supreme Court Rule XIX, §13(A) provides that "service upon the respondent of the petition in any disciplinary or disability proceeding shall be made by … or by mailing the petition by registered or certified mail to the primary address shown in the registration statement filed by respondent pursuant to Section 8C or other last known address." Rule XIX, §8(C) provides that "service or proof of attempted service at the lawyer's primary registration statement address shall constitute adequate notice for purposes of these disciplinary rules." It is further noted that Rule XIX, §8(C) also provides that both the primary and secondary registration addresses "shall each be a physical address and not a post office box."

On September 17, 2020, ODC filed its Documentary Evidence and Written Argument on sanctions in which ODC recommended that Respondent be suspended for one year and one day and ordered to pay restitution. ODC's submission included fifteen exhibits (ODC-1 through ODC-15).

Hearing Committee No. 31 filed its report on October 26, 2020.[6] The Committee concluded that Respondent violated Rules 1.1(b), 1.1(c), 1.5(f), 5.5(a), 8.1(c), 8.4(a), 8.4(c), and 8.4(d) as charged. In recommending a sanction, the committee provided the following analysis:

> Here, Respondent violated duties owed to his clients and the legal profession. He acted knowingly, intentionally and with disregard to the welfare of those who relied upon his word that he was eligible to practice. Respondent's misconduct caused actual [h]arm to those who placed trust in his misrepresentations. This misrepresentation amounts to fraud and deceit and violates the most sacred of standards that [keep] the legal community held to the high standard it requires- a lawyer[']s word is his bond and when unsuspecting person[s] are misled by representations, strong repercussions must be considered.
>
> The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. Standard 4.62 of the guidelines provides: "Suspension is generally appropriate when a lawyer knowingly deceives a client, [and] causes injury or potential injury to a client." Here we have Respondent knowingly misleading not only his clients but also law enforcement as to his eligibility to practice law. Respondent took $2,500.00 for legal representation while knowing he was ineligible to practice law in the [sic] Louisiana.
>
> The committee finds that aggravating circumstances exist in this matter. Respondent has practiced law since 1999 and has sufficient experience with the guidelines of compliance. The committee has reviewed no facts that would glean of mitigating factors related to this matter.
>
> The committee has considered the similar case of *In re: Krake*, 2014-1760 (La. 10/24/2014)[,] 149 So. 3d 1223, and the Disciplinary Counsel recommendation of suspension for one year and a day as sanctions. This committee respectfully disagrees to follow said recommendation and would order sanctions as follows:
>
> 1. Suspension from the practice of law for two (2) years; &
> 2. Respondent should also be ordered to pay restitution to his clients and all cost/expenses related to these proceedings.

Committee Report, pp. 5-6.

[6] Hearing Committee No. 31 was comprised of Craig R. Hill (Committee Chair), Pamela L. Courtney (Lawyer Member), and R. Reed Mendelson, Jr. (Public Member).

No objections were filed to the Committee's recommendation. Having received no objections, pursuant to Rule XIX, §11(G), the Board submitted the Committee's report directly to the Louisiana Supreme Court on December 9, 2020. In its discretion pursuant to Rule XIX, §11(G), on April 13, 2021, the Court remanded the matter for further review by the Board. *In re Turner*, 2020-01413 (La. 4/13/21), 313 So.3d 970. In its remand order, the Court stated:

> The board is particularly directed to address in its report the issues of (1) an appropriate sanction in this matter, and (2) the applicability of this court's decision in *In re: Smothers*, 20-1412 (La. 3/16/21), [312 So.3d 577].

Id.

Upon remand, the matter was scheduled for oral argument before the Board on July 15, 2021. On June 14, 2021, ODC filed its pre-argument brief in support of the Committee's recommendation.

On July 14, 2021, Respondent filed a motion to continue oral argument which was opposed by ODC. Respondent asserted in his motion that he had been diagnosed with a brain tumor/lesion; that he was undergoing medical care; that he had retained Georgia counsel to handle issues related to a Georgia matter, but his ability to assist in his defense was compromised; that he had been unable to retain Louisiana counsel prior to that time; and that he was not practicing law in Louisiana during the pendency of this matter. The motion to continue was granted and the matter was rescheduled for argument on October 7, 2021.

On September 28, 2021, Respondent submitted a motion to continue argument stating the same bases which were included in his first motion to continue and also stating that he had encountered additional difficulty retaining Louisiana counsel to assist him in this matter due to issues related to Hurricane Ida. ODC filed an opposition to the motion to continue on September 29, 2021. ODC argued that Respondent had not provided any recent or relevant documentation

regarding his medical condition. ODC explained that the only medical information produced by Respondent consisted of documentation of medical tests performed in February of 2020 and e-mail communications with physicians in June of 2020, over one year before the scheduled Board arguments. ODC also pointed out that approximately six weeks had elapsed between the continuance granted in July 2021 and the arrival of Hurricane Ida in Louisiana which was ample time for Respondent to have obtained Louisiana counsel.

On October 1, 2021, the Louisiana Supreme Court issued a decision imposing on Respondent reciprocal discipline of disbarment resulting from Respondent's disbarment in Georgia. *In re Turner*, 2021-00786 (La. 10/1/2021), 324 So.3d 1038. Prior to the issuance of the Court's decision, neither party had informed the Board in this matter of Respondent's disbarment in Georgia in April 2021 or of ODC's pending petition for reciprocal discipline which had been filed with the Court.

On October 4, 2021, the Board issued an order denying Respondent's motion to continue and directing the parties to be prepared to address at oral argument the effect, if any, of the Court's October 1, 2021 decision on this matter or any sanction which may be recommended in this matter.

Oral argument of this matter was conducted via Zoom on October 7, 2021, before Board Panel "A."[7] Deputy Disciplinary Counsel Robin K. Mitchell appeared on behalf of ODC. Respondent appeared pro se.

Respondent stated at oral argument that his medical problems were first detected in 2019. His psychologist and psychiatrist suggested that his problem may be caused by something organic. Respondent stated that further medical consultations have resulted in differences in medical opinions regarding his medical condition, but his medical issues are ongoing. Respondent did not

[7] Board Panel "A" is composed of Melissa L. Theriot (Chair), Erica J. Rose (substituting for Alfreda Sellers Diamond) (Lawyer Member), and Susan P. DesOrmeaux (Public Member).

provide any updated medical records to the Board. Regarding the charges of misconduct, he stated that, while he understood that the factual allegations had been deemed admitted, he did not actually get paid from the clients involved, he obtained other counsel for the clients, and he felt the situation had been resolved based upon discussions at that time.

ODC asserted at oral argument that, in light of the Court's recent decision disbarring Respondent in Louisiana, the Board should recommend that the additional misconduct made the basis of this proceeding be taken into consideration if and when the Respondent applies for readmission.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a), states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law and recommendations of hearing committees with respect to formal charges, and petitions for reinstatement and readmission, and prepare and forward to the court its own findings, if any, and recommendations ..." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

A. The Manifest Error Inquiry

The Board sympathizes with the medical issues Respondent described to the panel and appreciates that Respondent did ultimately appear for the panel argument. However, the Board must make its decision based upon the record before it in this matter. The factual allegations in

the formal charges have been deemed admitted and proven pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).

B. *De Novo* Review

The Committee's legal conclusions that Respondent violated 1.1(b), 1.1(c), 1.5(f), 5.5(a), 8.1(c), 8.4(a), 8.4(c), and 8.4(d) as charged are supported by the factual allegations asserted in the formal charges and by the evidence in support of the allegations. *See In re Donnan*, 2001-3058 (La. 1/10/03), 838 So.2d 715.

Respondent failed to comply with the minimum requirements of continuing legal education in violation of Rule 1.1(b). He also failed to comply with the requirements regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, and proper disclosure of trust account information or any changes therein in violation of Rule 1.1(c).

Respondent accepted a $2,500.00 fee to perform legal services when he was ineligible to practice law and has failed to return this unearned fee in violation of Rule 1.5(f). Respondent also engaged in the unauthorized practice of law in violation of Rule 5.5(a) by engaging in negotiations with assistant district attorneys from two parishes and members of the Jefferson Parish Sheriff's Office as the attorney for criminal defendants while Respondent was ineligible to practice. By accepting a fee to perform legal services and negotiating on behalf of the criminal defendants when he was ineligible to practice law and by specifically stating to the Jefferson Parish Assistant District Attorney that he was eligible to practice law, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d).

Respondent failed to cooperate with ODC's investigation in violation of Rule 8.1(c) by failing to provide any response to the complaint asserted against him.[8]

Finally, the violations of Rules 1.1(b), 1.1(c), 1.5(f), 5.5(a), 8.1(c), 8.4(c), and 8.4(d) establish the derivative violation of Rule 8.4(a) which provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct.

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

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

Here, Respondent violated duties to his clients, the legal system, the profession, and the public. Respondent's conduct was knowing, if not intentional. Respondent's accepting representation and a fee while he was ineligible caused actual harm to his clients. Respondent's engaging in the unauthorized practice of law while ineligible created potential for further harm to his clients and the legal system as his misconduct could potentially affect the validity of the legal actions and proceedings in which he participated while ineligible. Finally, Respondent has caused damage to the profession by his misconduct in failing to respond to or cooperate in any way with the ODC in the investigation of the complaint giving rise to this proceeding. Such conduct

[8] The Board recognizes that the two notices of complaint which were mailed to Respondent's primary registered address were returned undelivered. Exs. ODC-3 through ODC-5. The notice of complaint was subsequently emailed to Respondent at his registered email address. Ex. ODC-10. Although ODC received no reply to the email, it is clear this was a valid email address for Respondent as Respondent replied to the email sent to the same address forwarding the formal charges in this matter. Ex. C to ODC's Motion to Declare Factual Allegations Deemed Proven.

potentially causes the unnecessary expenditure of the limited resources of the disciplinary agency and delays the resolution of complaints, all of which does damage to the reputation of the profession.

Aggravating factors include multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, and substantial experience in the practice of law. There are no proven mitigating factors present.

B. The ABA Standards and Case Law

The following ABA *Standards for Imposing Lawyer Sanctions* are instructive in considering the sanction to be imposed for Respondent's misconduct in this proceeding:

> 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.
>
> 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.[9]
>
> 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Considering the misconduct at issue in this proceeding alone, the above standards suggest that the baseline sanction for Respondent's misconduct is suspension. As previously mentioned, in remanding this matter to the Board, the Court particularly directed the Board to address an appropriate sanction in this matter and the applicability of the Court's decision in *In re Smothers*,

[9] Standard 5.11 provides: Disbarment is generally appropriate when:
(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
Standard 5.12 provides: Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice law.

2020-01412 (La. 3/16/21), 312 So.3d 577 (hereinafter "*Smothers II*"). In *Smothers II*, the Court reiterated its prior statement that in cases involving the practice of law by attorneys who are ineligible to do so, the Court has generally set a baseline sanction of a one-year and one-day suspension. *Id.* at 580, *citing In re Hardy*, 2003-0443 (La. 5/2/03), 848 So.2d 511.[10]

In *Smothers II*, the Court suspended the respondent for one year and one day. Mr. Smothers was ineligible to practice law from May 31, 2014 to January 28, 2019, for failure to comply with his annual professional obligations. During this period of ineligibility, he provided legal services to Smothers Academy Preparatory School ("the Academy"). He submitted numerous invoices for legal services to the Academy. In a letter to a board member he referred to himself as a legal advisor and in an email to board members he referred to himself as the attorney for the Academy and provided legal advice. Mr. Smothers responded to the disciplinary complaint and appeared for a sworn statement to the ODC. Respondent, however, failed to answer the formal charges filed in February 2020 and the factual allegations were deemed admitted. Subsequently while the charges in *Smothers II* were still pending, the Court issued a ruling in the previously filed matter of *In re Smothers*, 2020-0244 (La. 6/22/20), 297 So.3d 743 (hereinafter "*Smothers I*"). The Court suspended the respondent for six months, with all but thirty days deferred, subject to two years of probation with conditions, for practicing law while ineligible.[11]

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[10] In *Hardy*, the Court recognized:

> In cases in which an attorney has engaged in the practice of law while ineligible to do so for failing to pay bar dues or failing to comply with the mandatory continuing legal education requirements, this court has imposed suspensions to disbarment, with the baseline sanction generally being a one year and one day suspension from the practice of law.

848 So.2d 511, 515.

[11] In *Smothers I*, approximately two months before becoming ineligible, the respondent had entered into a contract with a different client for providing general legal counsel and transactional/contract advice. He continued to perform services pursuant to the contract after he became ineligible and was paid $707.50 for fees and expenses incurred when he was ineligible. The respondent had a history of periods of ineligibility to practice prior to the events giving rise to the formal charges. Aggravating factors included substantial experience in the practice of law and refusal to acknowledge the wrongful nature of the conduct. The only mitigating factor present was the absence of a prior disciplinary record.

In determining the sanction to be imposed in *Smothers II*, the Court found that the respondent knowingly violated duties owed to his client, the public, the legal system, and the profession, causing potential and actual harm. There were no mitigating factors present. Aggravating factors included 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, substantial experience in the practice of law, and refusal to acknowledge the wrongful nature of the conduct. The Court further recognized that the misconduct in *Smothers II* was identical to the misconduct at issue in *Smothers I*, and respondent continued to engage in the same type of misconduct well after formal charges had been filed in *Smothers I*. Considering all of the circumstances, the Court saw no reason to deviate from the baseline sanction of suspension for one year and one day.

Considering the circumstances presented here and the Court's decision in *Smothers II*, Respondent's misconduct in this matter, standing alone, would warrant a suspension of one year and one day. *See also In re Goudeau*, 2018-0638 (08/31/18), 251 So.3d 393 (attorney suspended for one year and one day after accepting a legal fee from a client while ineligible to practice law, in addition to failing to complete MCLE requirements, failing to pay bar dues, charging an unreasonable fee, and failing to comply with the disciplinary proceedings); and *In re Gbalazeh*, 2017-1704 (La. 12/5/17), 231 So.3d 21 (attorney suspended for one year and one day for practicing law on two occasions by seeking to enroll as counsel on behalf of immigration clients while she was ineligible to practice law and failing to cooperate with the ODC in two investigations).

As previously indicated, however, the Louisiana Supreme Court disbarred Respondent in a reciprocal discipline proceeding just prior to the argument before the Board panel in this matter. *In re Turner*, 2021-00786 (La. 10/1/2021), 324 So.3d 1038. The reciprocal discipline was based

on Respondent's disbarment in Georgia on April 5, 2021. *Matter of Turner*, 857 S.E.2d 197 (Ga. 2021). The Georgia proceeding involved two notices of discipline. In the first count, Respondent settled a civil matter on behalf of a client and his client executed a release. When Respondent subsequently received the settlement check, he deposited the check but did not disburse any of the settlement funds to his client. He also failed to respond to requests for information from his client and the State Bar's Office of General Counsel. In the second count, the State Bar received notice of an overdraft on Respondent's client trust account. Thereafter, Respondent failed to respond to inquiries regarding the overdraft from the Bar's Overdraft Notification Coordinator or to the Bar's notice of investigation. The Georgia Supreme Court disbarred Respondent for this combined misconduct.

Upon notice of Respondent's disbarment in Georgia and receipt of ODC's petition for reciprocal discipline, the Louisiana Supreme Court disbarred Respondent on October 1, 2021. The Court found no evidence of infirmities in the Georgia proceeding and that no extraordinary circumstances existed which would warrant deviation from the sanction imposed in Georgia. *See* La. Supreme Court Rule XIX, §21(D).

The misconduct at issue in this matter occurred in approximately July and August of 2019. The Georgia Supreme Court's decision disbarring Respondent in 2021 does not include any information regarding when the misconduct in Georgia took place. Therefore, the Board possesses insufficient information to perform a full *Chatelain* analysis in connection with the determination of a sanction in this matter.[12] However, based upon the available information and considering all

[12] In *LSBA v. Chatelain*, 573 So.2d 470 (La. 1991), the Court determined that it is generally inappropriate to impose additional discipline upon an attorney for misconduct that occurred before or concurrently with the violations which resulted in a prior disciplinary sanction. Rather, the overall discipline to be imposed should be determined as if both proceedings were before the Court simultaneously. Imposition of additional discipline is generally considered if the misconduct at issue occurred after the violations which resulted in a prior disciplinary sanction.

of the circumstances presented here, including the combined misconduct in Georgia and Louisiana and Respondent's statements at oral argument regarding his medical problems over the past several years, the Board concludes that no additional sanction is warranted at this time other than the requirement that Respondent pay restitution to his clients in the amount of the $2,500.00 unearned fee. The Board further recommends that the rule violations determined herein should be considered when and if Respondent applies for readmission to the practice of law in Louisiana.

CONCLUSION

Considering all of the above, the Board adopts the Committee's factual findings and concludes that Respondent violated Rules 1.1(b), 1.1(c), 1.5(f), 5.5(a), 8.1(c), 8.4(a), 8.4(c), and 8.4(d) as charged. The Board recommends that Respondent pay restitution to his clients in the amount of $2,500.00. The Board further recommends that Respondent be adjudged guilty of the aforementioned rule violations to be considered if and when he seeks readmission to the practice of law in Louisiana. The Board additionally recommends that Respondent be assessed with the costs and expenses of this proceeding in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

RECOMMENDATION

The Board recommends that Joseph Harold Turner, Jr. be adjudged guilty of additional misconduct, specifically, violations of Rules 1.1(b), 1.1(c), 1.5(f), 5.5(a), 8.1(c), 8.4(a), 8.4(c), and 8.4(d), as charged in this proceeding, and that these violations be considered if and when he seeks readmission to the practice of law in Louisiana. The Board further recommends that Respondent be ordered to pay restitution to his clients in the amount of $2,500.00. The Board additionally recommends that Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

R. Alan Breithaupt
Todd S. Clemons
Valerie S. Fields
Brian D. Landry
M. Todd Richard
Erica J. Rose
Melissa L. Theriot
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By DocuSigned by: Susan P. DesOrmeaux B3891CC91F... **Susan P. DesOrmeaux**
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 1.1. Competence

…
(b) A lawyer is required to comply with the minimum requirements of continuing legal education as prescribed by Louisiana Supreme Court rule.
(c) A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

Rule 1.5. Fees

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

(1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances

(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, 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, 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 the 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 dispute, the lawyer should suggest a means for prompt resolution such as mediation or

arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

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 8.1. 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;
…
(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) Engage in conduct that is prejudicial to the administration of justice;
…