

ORIGINAL

Louisiana Attorney Disciplinary Board

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Docket#

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10-DB-038 c/w 11-DB-057

8/20/2013

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: GEORGE A. BLAIR III

NUMBER: 10-DB-038 c/w 11-DB-057

RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

INTRODUCTION

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This is a discipline matter based on the filing of two sets of formal charges by the Office of Disciplinary Counsel (“ODC”) against George A. Blair, III (“Respondent”), Louisiana Bar Roll Number 03138. The formal charges bearing docket number 10-DB-038 allege violations of Rules of Professional Conduct (“Rule(s)”) 1.3 (lack of diligence); 3.2 (failure to expedite litigation); 8.4(a) (violate or attempt to violate the Rules); 8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(d) (engage in conduct prejudicial to the administration of justice). The formal charges bearing docket number 11-DB-057 allege violations of Rules 8.1(b) (failure to respond to a lawful demand for information from disciplinary counsel); 8.1(c) (failure to cooperate with disciplinary counsel in an investigation); and 8.4(a) (violate or attempt to violate the Rules).<sup>1</sup> The Hearing Committee assigned to this matter concluded that Respondent did not violate the Rules as charged in 10-DB-038 and also concluded that Respondent only violated Rule 8.1(c) in 11-DB-057. As a sanction, two members of the Committee recommended that Respondent be suspended from the practice of law for three months. One member of the Committee recommended that the three month suspension be entirely deferred.

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<sup>1</sup> The text of the Rules is contained in the attached Appendix.

For the following reasons, the Board adopts the findings and conclusions of the Hearing Committee. Accordingly, the Board orders that the 10-DB-038 charges be dismissed. However, with regard to the recommended sanction for the 11-DB-057 charges, the Board rejects the Hearing Committee's recommendation as too harsh. Rather, the Board orders that Respondent receive a public reprimand.

### **PROCEDURAL HISTORY**

The 10-DB-038 formal charges were filed on June 28, 2010, and state, in pertinent part:

Respondent, George A. Blair, III, was suspended for three months from practice before the United States District Court, Eastern District of Louisiana, by order of court dated April 1, 2008.<sup>2</sup> The facts upon which the suspension was based, detailed by United States District Judge Stanwood R. Duval, Jr. in his Recommendation and Complaint to the Court En Banc, are that Respondent failed to appear for pre-trial conferences, failed to appear for sentencing of his clients, misrepresented to the court that motions to continue were not opposed when in fact they were, arrived late at his own sanction hearing, failed to provide adequate explanations for his absences and provided explanations that were not credible, and failed to notify the court of his termination by his client.

By his demonstrated acts and failure to act, the respondent has violated Rules of Professional Conduct 1.3 - failure to act diligently; 3.2 - failure to expedite litigation; 8.4(a) - violate or attempt to violate the RPC; 8.4(c) - engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; and, 8.4(d) - conduct prejudicial to the administration of justice.

On August 16, 2010, Yada T. Magee enrolled as counsel for Respondent.<sup>3</sup> Respondent answered the charges on September 16, 2010, in which he admitted to certain factual allegations but denied others and requested an opportunity to be heard in mitigation.

The 11-DB-057 charges were filed on June 1, 2011. The charges read, in pertinent part:

Stephanie R. Butler filed a complaint against Respondent which was opened for investigation by ODC. Respondent knowingly failed to respond to a lawful demand for information from ODC and otherwise failed to cooperate with the Office of Disciplinary Counsel as detailed below.

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<sup>2</sup> According to Respondent's testimony, he has not sought reinstatement in the Eastern District. See Transcript, p. 62.

<sup>3</sup> Ms. Magee withdrew as counsel on June 20, 2012.

ODC's first notice to Respondent of the complaint filed against him was sent certified mail to his primary registration address on January 6, 2010 and requested a written response. It was returned marked "not deliverable as addressed." Additional information was received from Complainant in the interim and a letter was mailed, not certified, to Respondent at his primary registration address on January 12, 2010. That letter was returned marked "return to sender," "vacant," and "unable to forward." Another attempt was made to notify Respondent of the complaint filed against him. This time the correspondence was mailed to his preferred mailing address and sent certified mail on April 30, 2010. It was returned marked "unclaimed." Finally, ODC Investigator Clay Smith served Respondent personally with notice of the complaint on June 30, 2010. As of March 23, 2011, the Office of Disciplinary Counsel had not received a response to the complaint from Respondent. The only information that [has] been received on Respondent's behalf was received from his counsel in another disciplinary matter, LADB 10-DB-038, and consisted only of medical records and assessments from the Louisiana Avenue Medical Center covering a period of medical history 2007 and prior. A substantive response was not received. Also included therewith was additional information pertaining to 10-DB-038 not relevant to this proceeding.

On March 24, 2011, ODC filed a request for permission to file formal charges. Permission was granted by order of Hearing Committee No. 48 on April 6, 2011. ODC finally received a substantive response to the complaint on April 14, 2011.

By his demonstrated acts and failures to act, the respondent has violated Rules of Professional Conduct 8.1(b) – knowingly fail to respond to a lawful demand for information from the Office of Disciplinary Counsel; 8.1(c) – failure to cooperate with the Office of Disciplinary Counsel; and, 8.4(a) – violate or attempt to violate the RPC.

Pursuant to the motion of ODC, the 11-DB-057 charges were consolidated with 10-DB-038 on June 30, 2011.

After several continuances, the consolidated matter was heard by Hearing Committee Number 37 ("the Committee") on October 22, 2012.<sup>4</sup> The Committee filed its report on March 6, 2013. The Committee made the following findings and conclusions:

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<sup>4</sup> The Committee was composed of Albert C. Miranda (Chairman), DeWayne L. Williams (Lawyer Member), and Robert P. Ventura (Public Member).

### **Findings of Fact**

As to the count in Case No. 10-DB-038, the hearing committee thoroughly reviewed the evidence presented, including Judge Duval's recommendation and complaint and Judge Vance's Order suspending Respondent from the practice of law before the United States District Court for the Eastern District of Louisiana for the period of three months. Additionally, the hearing committee intensely examined the testimony of Respondent.

While the hearing committee was certainly alarmed by the apparent untidy manner in which Respondent practiced his craft in this matter, the committee was persuaded by the testimony of Respondent that same did not rise to the level of violating Rules 1.3, 3.2, 8.4(a), 8.4(c), or 8.4(d). The hearing committee finds that the facts are as articulated by Respondent in his testimony and in his written responses located at ODC 4 and ODC 5.

As to the count in Case No. 11-DB-057, the hearing committee again found Respondent's testimony to be credible, including his admission of being less than vigilant in regards to his mail, and therefore in his response/cooperation with ODC. Again, the committee was very surprised by Respondent's apparent disorderly manner of conducting his business, including the collection of his mail, etc. This is particularly true in that had Respondent simply exercised some vigor in responding, ODC would have dismissed the underlying Complaint much sooner than it did, and Respondent would not be facing the current charges. Nevertheless, it appeared to this hearing committee that Respondent's failure to respond timely to ODC's inquiries was more likely than not due to his proclivity for conducting his business in a disheveled manner rather than a blatant disregard for ODC.

### **Rules Violated**

Given the above, this hearing committee finds that Respondent violated Rule 8.1(c) of the Rules of Professional Conduct - failure to cooperate with the Office of Disciplinary Counsel.

Hearing Committee Report, p. 4. As a sanction, the majority of the Committee recommended that Respondent be suspended from the practice of law for three months. The remaining Committee member agreed with the three month suspension but felt that the suspension should be entirely deferred. On May 7, 2013, ODC filed a Notice of No Objection to the recommendation of the Committee.

Oral argument of this matter was held on June 6, 2013, before Board Panel “A”.<sup>5</sup> Deputy Disciplinary Counsel Eric R. McClendon appeared on behalf of ODC. Respondent appeared on his own behalf.

## **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 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 factual findings of the Committee do not appear to be manifestly erroneous and are supported by the record. At the hearing of this matter, as to the 10-D-B038 matter, ODC asked the Committee to give “great deference” to Respondent’s discipline proceedings in the Eastern District Court. Transcript, p. 109. However, in similar circumstances, the Louisiana Supreme

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<sup>5</sup> Board Panel “A” was composed of Carl A. Butler (Chairman), R. Steven Tew (Lawyer Member), and R. Lewis Smith, Jr. (Public Member).

Court has held that it is not bound by the findings of the federal court.<sup>6</sup> Rather, the Court has held that it is obligated to “conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence.” *In re Dyer*, 99-1652 (La. 10/19/99), 750 So.2d 942, 945 (When considering allegations of misconduct that resulted in the respondent’s disbarment in federal court, the Court conducted an independent review of the underlying facts in the federal discipline proceeding). *See also In re Quaid*, 94-1316 (La. 11/30/94), 646 So.2d 343, 348, *citing* La.Sup.Ct.Rule 19, §19(E) (The Court held that a finding of a violation of federal law by an administrative law judge “is not conclusive of Respondent’s guilt as to those matters” in proving a violation of the Rules of Professional Conduct).

Here, with regard to 10-DB-038, the Committee reviewed the selected documentation submitted by ODC regarding Respondent’s federal discipline and heard Respondent’s testimony. *See* Exhibits ODC1 – ODC3. ODC did not call any other witnesses besides Respondent to testify regarding the federal disciplinary action. The Committee conducted an independent review of this evidence and found that Respondent’s testimony was credible. *See* Hearing Committee Report, p. 4. Thus, the Committee concluded that Respondent’s actions that led to his federal discipline did not constitute violations of the Rules of Professional Conduct. There is nothing in the record to indicate that the Committee’s findings in this regard are manifestly erroneous.

With regard to the 11-DB-057 matter, the findings of the Committee do not appear to be manifestly erroneous.

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<sup>6</sup> The provisions of Louisiana Supreme Court Rule XIX, §21, which pertains to reciprocal discipline, are limited to disciplinary or disability actions by other “state” discipline authorities. Louisiana Supreme Court Rule XIX, §21(A). Thus, there is no mechanism for reciprocal discipline in Louisiana for federal attorney disciplinary actions.

## **B. *De Novo Review***

The Committee correctly applied the Rules of Professional Conduct. With regard to 10-DB-038, the Committee's findings, especially its credibility determination regarding Respondent's testimony, support the conclusion that Respondent did not violate Rules 1.3, 3.2, 8.4(a), 8.4(c), and 8.4(d) in 10-DB-038. ODC did not object to this conclusion. Office of Disciplinary Counsel's Notice of No Objection to Report of the Hearing Committee #37 (filed 5/7/13).

With regard to 11-DB-057, the Committee correctly concluded that Respondent violated Rule 8.1(c), but not 8.1(b). Rule 8.1(b) states, in pertinent part, that a lawyer, in connection with a disciplinary matter, shall not "knowingly fail to respond to a lawful demand for information from [a] ... disciplinary authority." Rule 8.1(c) states that a lawyer, in connection with a disciplinary matter, shall not fail to cooperate with the Office of Disciplinary Counsel. Stephanie Butler filed a complaint against Respondent on December 30, 2009. *See* Respondent Exhibit J. By letter dated January 6, 2010, ODC began the first of several unsuccessful attempts at serving notice of the complaint on Respondent. *See* Exhibits ODC7 – ODC12. On June 30, 2010, ODC was able to finally serve Respondent with a copy of the complaint via personal service. *See* Exhibit ODC13. However, Respondent did not provide a written response to the complaint until almost one year later, on April 12, 2011.<sup>7</sup> *See* Exhibit ODC18. After reviewing the evidence and hearing Respondent's testimony, the Committee concluded that Respondent's failure to cooperate with ODC in a timely manner was negligent as opposed to intentional. "[I]t appeared to this hearing committee that Respondent's failure to respond timely to ODC's inquiries was more likely than not due to his proclivity for conducting his business in a disheveled manner

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<sup>7</sup> Respondent's former counsel in this matter did provide medical records concerning Respondent to ODC in October of 2010. However, these records did not address the substance of the complaint filed by Ms. Butler. *See* Exhibit ODC14.

rather than a blatant disregard for ODC.” Hearing Committee Report, p. 4. There is nothing in the record to suggest that this finding is manifestly erroneous. Accordingly, the record supports the conclusion that Respondent did not violate Rule 8.1(b) because his actions were not “knowing” or intentional. However, the record does support a negligent violation of Rule 8.1(c) based on Respondent’s failure to provide a timely response to the Butler complaint.

ODC also charged Respondent with violating Rule 8.4(a) in 11-DB-057. However, the Committee did not address this Rule in its report. Rule 8.4(a) states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct. By violating Rule 8.1(c), Respondent violated Rule 8.4(a).

## **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 negligently violated his duty owed to the profession by failing to timely respond to the complaint filed by Ms. Butler. Respondent’s delay caused ODC to expend more resources on this matter than it would have otherwise had to expend. In fact, counsel for ODC stated at the hearing of this matter that the Committee would not have heard of the Butler complaint had Respondent filed a timely response.<sup>8</sup> *See* Transcript, pp. 109-110.

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<sup>8</sup> The allegations in the Butler complaint were dismissed by ODC.



The Committee did not cite any aggravating or mitigating factors when discussing the appropriate sanction. The following aggravating factors are supported by the record: prior disciplinary offenses<sup>9</sup> and substantial experience in the practice of law.<sup>10</sup> The following mitigating factors are supported by the record: absence of a dishonest or selfish motive and full and free disclosure to the disciplinary board and a cooperative attitude at the hearing of this matter.

#### **B. The ABA Standards and Case Law**

The ABA Standards for Imposing Lawyer Sanctions suggest that reprimand is the baseline sanction. The pertinent standards are as follows:

Standard 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.

Standard 7.3: Reprimand is generally appropriate when a lawyer negligently 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.

As discussed above, Respondent's actions were the result of negligence as opposed to knowing or intentional conduct. Based upon the standards above, the result of this finding is a baseline sanction of public reprimand.

The Louisiana Supreme Court has imposed sanctions ranging from public reprimand to suspension of one year and one day for failure to cooperate with ODC in an investigation. In *In re Gold*, the Court publicly reprimanded Mr. Gold for five instances of failure to cooperate with ODC.<sup>11</sup> 1998-2819 (La. 4/30/99), 734 So.2d 1210. The following aggravating factors were present: prior disciplinary offenses; pattern of misconduct; multiple offenses; and substantial

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<sup>9</sup> At the hearing, Respondent admitted that he participated in disciplinary diversion in the late 1990s. *See* Transcript, pp. 83-84. The facts resulting in the diversion are unclear.

<sup>10</sup> Respondent was admitted to the practice of law in Louisiana on May 2, 1980.

<sup>11</sup> The Court also extended the period of probation that Mr. Gold was serving at the time based upon a prior discipline matter.

experience in the practice of law. The following mitigating factors were present: absence of a dishonest or selfish motive; cooperative attitude toward the proceeding; and character or reputation.

In *In re Augustine*, the Court suspended Mr. Augustine for thirty days for two instances of failure to cooperate with ODC. 97-1570 (La. 9/26/07), 707 So.2d 1. The hearing committee in the matter found that Mr. Augustine's failure to cooperate was "done knowingly and [was] of an inexcusable nature." *Id.* at 2. There were no aggravating factors present. The following mitigating factors were considered: absence of a prior disciplinary record and remorse.

In *In re Bordelon*, the Court suspended Mr. Bordelon for sixty days for knowingly making false and misleading statements to ODC during its investigation of a complaint. 2004-0759 (La. 1/7/05), 894 So.2d 315. In aggravation, the Court recognized Mr. Bordelon's substantial experience in the practice of law. In mitigation, the Court noted the absence of a prior disciplinary record.

In *In re Fahrenholtz*, the Court suspended Mr. Fahrenholtz for one year and one day for two instances of failure to cooperate with ODC and for failure to maintain his professional obligations. 2009-0748 (La. 10/2/09), 18 So.3d 751. The Court found that Mr. Fahrenholtz's conduct was particularly egregious.

[W]e find that respondent's failure to cooperate with the ODC is more egregious than the typical failure to cooperate case. At no point in this proceeding has respondent made any effort to respond to repeated inquiries from the ODC. Additionally, he has not complied with his other professional obligations as a lawyer, such as paying his bar dues and the disciplinary assessment and completing his mandatory continuing legal education requirements. As a result, respondent has been ineligible to practice law since 2005. Finally, respondent's misconduct is particularly troublesome because he was an elected official at the time.

*Id.* at 755-756. The Court noted several aggravating factors: pattern of misconduct; 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 was only one mitigating factor present: absence of a prior disciplinary record.

When compared to the cases above, the present matter falls on the low end of the sanction range (*i.e.* public reprimand). Unlike *Augustine*, *Bordelon*, and *Fahrenholtz*, Respondent's actions were merely negligent as opposed to knowing or intentional.<sup>12</sup> With the exception of *Bordelon*, all of the matters discussed above involve multiple instances of failing to cooperate with ODC. Here, Respondent engaged in only one instance. Accordingly, the Board rejects the Committee's recommendation of a three-month suspension as too harsh and orders a public reprimand.

## CONCLUSION

The Board adopts the factual findings and legal conclusions of the Committee. The Board orders that the 10-DB-038 charges be dismissed as ODC did not carry its burden in that matter. With regard to 11-DB-057, however, the Board rejects the sanction recommended by the Committee and orders a public reprimand. The Board also assesses Respondent with the costs and expenses of the 11-DB-057 proceeding.<sup>13</sup>

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<sup>12</sup> The *Gold* opinion does not indicate whether the conduct in that matter was negligent, knowing, or intentional.

<sup>13</sup> The costs of the 10-DB-038 matter should be borne by the Board.

## **RULING**

Considering the foregoing, the Board orders that the 10-DB-038 charges be dismissed. Furthermore, the Board orders that Respondent, George A. Blair III, be publicly reprimanded for his misconduct in the 11-DB-057 matter. The Board also orders that Respondent be assessed with the costs and expenses of the 11-DB-057 matter.

## **LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**Stephen F. Chiccarelli  
George L. Crain, Jr.  
Jamie E. Fontenot  
Tara L. Mason  
Edwin G. Preis, Jr.  
R. Lewis Smith, Jr.  
Linda P. Spain  
R. Steven Tew**

**BY:**



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**Carl A. Butler  
FOR THE ADJUDICATIVE COMMITTEE**

## **APPENDIX**

### **RULE 1.3. DILIGENCE**

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

### **RULE 3.2. EXPEDITING LITIGATION**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

### **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:

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(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or

(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;

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(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice...