Supreme Court of Louisiana

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NEWS RELEASE #002

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Per Curiam handed down on the **8th day of January, 2010**, is as follows:

PER CURIAM:

2009-B -1560 IN RE: CRAIG HUNTER KING

Judge Benjamin Jones, of the Fourth Judicial District Court, assigned as Justice Pro Tempore, participating in the decision.

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Craig Hunter King, Louisiana Bar Roll number 19945, be and he hereby is disbarred, retroactive to June 26, 2007, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. 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.

JOHNSON, J., dissents and assigns reasons.
VICTORY, J., dissents and assigns reasons.
KNOLL, J., concurs in result.
GUIDRY, J., concurs and assigns additional reasons.
JONES, J., dissents and assigns reasons.

01/08/10

SUPREME COURT OF LOUISIANA

NO. 09-B-1560

IN RE: CRAIG HUNTER KING

ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM*

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Craig Hunter King, an attorney licensed to practice law in Louisiana but currently on interim suspension based upon his conviction of a serious crime.

UNDERLYING FACTS

On November 15, 1999, respondent assumed the office of district judge for Division "M" of the Civil District Court for the Parish of Orleans. While serving as judge, respondent personally solicited campaign contributions and required his court staff to campaign on his behalf or risk the loss of their employment. When this misconduct was brought to the attention of the Judiciary Commission by his former court reporter, respondent falsely denied the accusations and so testified under oath in a sworn statement. On October 21, 2003, we removed respondent from judicial office for his campaign-related misconduct and for lying about it to the Judiciary Commission. *In re: King*, 03-1412 (La. 10/21/03), 857 So. 2d 432 ("*King I*"). We did not reserve to the ODC the right to institute lawyer disciplinary proceedings against respondent in accordance with Supreme Court Rule XIX, § 6(B).

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* Judge Benjamin Jones, of the Fourth Judicial District Court, assigned as Justice *Pro Tempore*, participating in the decision.

Thereafter, in March 2004, the Orleans Parish District Attorney's Office filed a two-count bill of information charging respondent with perjury and public salary extortion. On May 18, 2007, respondent accepted a plea agreement and pled guilty to one felony count of conspiracy to commit public payroll fraud (by permitting, allowing, or encouraging his staff to participate in campaign activities on court time). The perjury charge was dismissed. In accordance with the agreement, the trial court deferred the imposition of respondent's sentence for six months and placed him on inactive probation for that period of time, all pursuant to the provisions of La. Code Crim. P. art. 893.

Following respondent's guilty plea, on June 26, 2007, we placed respondent on interim suspension based upon his conviction of a serious crime. We further ordered that necessary disciplinary proceedings be instituted pursuant to Rule XIX, §§ 11 and 19. *In re: King*, 07-1079 (La. 6/26/07), 958 So. 2d 1172.

On December 3, 2007, following the conclusion of respondent's probationary period, the trial court set aside his criminal conviction pursuant to La. Code Crim. P. art. 893(E)(2). The trial court also expunged the record of his conviction pursuant to La. R.S. 44:9. Respondent subsequently argued to this court that based upon the trial court's orders, his interim suspension should be dissolved and he should be reinstated to the practice of law. We denied respondent's petition. *In re: King*, 08-0255 (La. 3/7/08), 983 So. 2d 1246.

DISCIPLINARY PROCEEDINGS

In February 2008, the ODC filed one count of formal charges against respondent, alleging that his conduct as set forth above violated Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a

lawyer in other respects), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct. Respondent answered the formal charges and asserted that the ODC lacks jurisdiction to proceed in this matter.

Hearing Committee Report

The hearing committee conducted a formal hearing on the merits. Following the hearing, the committee filed its report with the disciplinary board. In a split recommendation, two members of the committee rejected respondent's jurisdictional argument and recommended that the sanction of permanent disbarment be imposed. The lawyer member of the committee dissented, agreeing with respondent that the ODC lacks jurisdiction in this matter.

After considering the evidence and testimony presented at the hearing, the majority of the committee made the following findings:

Respondent freely admitted that he inappropriately used his staff in campaign activities while on the trial court, and that he pled guilty to conspiracy to commit public payroll fraud, a felony. Respondent denied that he committed perjury, but on cross-examination, he conceded that he was not honest during his testimony under oath before the Judiciary Commission. The committee concluded this conduct violated the Rules of Professional Conduct as charged in the formal charges. The committee determined that respondent intentionally attempted to deceive the Judiciary Commission's Office of Special Counsel. He violated duties owed to the public and the legal system, causing serious harm to the administration of justice. The baseline sanction for respondent's misconduct is disbarment.

The committee found the following aggravating factors apply: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and substantial experience in the practice of law (admitted 1990). In mitigation, the committee found the following factors: absence of a prior disciplinary record, character or reputation, imposition of other penalties or sanctions, and remorse. The committee also observed in mitigation that respondent was inexperienced as a judge when the campaign fundraising events took place, although he was not inexperienced as a lawyer when he gave false statements under oath.

Considering respondent's misconduct in light of the permanent disbarment guidelines and the prior jurisprudence of this court, the majority of the committee recommended that respondent be permanently disbarred.

The lawyer member of the hearing committee dissented, on the ground that the ODC lacks jurisdiction to prosecute this matter. Alternatively, if jurisdiction does exist, the dissenting member of the committee would recommend that respondent be suspended from the practice of law for eighteen months, retroactive to June 26, 2007, the date of his interim suspension.

Respondent filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

With one member dissenting, the disciplinary board agreed at the outset that the ODC has jurisdiction to prosecute respondent. The board found that the hearing committee's factual findings are not manifestly erroneous, and that respondent violated the Rules of Professional Conduct as charged. Respondent violated Rule 8.4(b) by abusing the powers of his judicial office and by lying under oath. These criminal acts reflect adversely on his honesty, trustworthiness, or fitness as a lawyer.

Respondent violated Rule 8.4(c) by lying under oath and by engaging in conspiracy to commit public payroll fraud. Respondent engaged in conduct prejudicial to the administration of justice by conducting improper and prohibited campaign activities as a judge, and by lying under oath at his sworn statement during the Judiciary Commission proceedings. This conduct violated Rule 8.4(d). Finally, by violating the foregoing rules, respondent violated Rule 8.4(a).

The board determined that respondent violated duties owed to the public and the legal system. His conduct was intentional, and caused serious harm. The board accepted the aggravating and mitigating factors found by the committee, and in addition, found as an aggravating factor that respondent engaged in illegal conduct. Considering all these factors, the board recommended that respondent be permanently disbarred.

Respondent filed an objection to the disciplinary board's recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

DISCUSSION

Initially, we must address respondent's assertion that the ODC lacks jurisdiction to institute lawyer disciplinary proceedings against him because we did not reserve the agency's right to do so in *King I*. We find respondent's argument faulty, as this proceeding is based upon a criminal conviction and not upon judicial misconduct.

Supreme Court Rule XIX, § 6(B) refers to the misconduct which was the subject of the judicial disciplinary proceedings, stating, "[t]his jurisdiction of the agency should not be exercised if the **misconduct** was the subject of a judicial disciplinary proceeding in which there has been a final determination by the court, unless the court reserved to the agency the right to pursue lawyer discipline in

accordance with this subsection." [Emphasis added.] However, the instant proceeding is not based on the misconduct which was the subject of *King I*. Rather, it is based on respondent's conviction of a serious crime pursuant to Supreme Court Rule XIX, § 19. Because this conviction occurred long after respondent had been removed from office, it follows the conviction cannot be the "misconduct" which was the subject of the judicial disciplinary proceeding. Consequently, there is no impediment to the filing of formal charges by the ODC.

These formal charges are based upon respondent's plea of guilty to the crime of conspiracy to commit public payroll fraud, a violation of La. R.S. 14:138. In an attorney disciplinary proceeding based on the lawyer's criminal conviction, the issue of his guilt may not be relitigated. Because the lawyer's conviction, whether based on adjudication or guilty plea, is tantamount to a finding of his guilt beyond a reasonable doubt, the clear and convincing standard of proof that applies to disciplinary proceedings has already been satisfied. *In re: Bankston*, 01-2780 (La. 3/8/02), 810 So. 2d 1113; *Louisiana State Bar Ass'n v. Wilkinson*, 562 So. 2d 902 (La. 1990). In this type of proceeding, the sole issue to be determined is whether the crime warrants discipline, and if so, the extent thereof. Supreme Court Rule XIX, § 19(E); *In re: Boudreau*, 02-0007 (La. 4/12/02), 815 So. 2d 76.

Conspiracy to commit public payroll fraud, which is a felony under Louisiana law, is clearly a serious crime that warrants discipline by this court. The fact that respondent's conviction was subsequently set aside under La. Code Crim. P. art. 893 or expunged under La. R.S. 44:9 does not preclude the use of that conviction for bar disciplinary purposes. *See In re: Edwards*, 99-1825 (La. 7/2/99), 747 So. 2d 6; *In re: Yarno*, 98-0442 (La. 5/29/98), 713 So. 2d 451; *Louisiana State Bar Ass'n v. Porterfield*, 550 So. 2d 584 (La. 1989). Therefore, the only remaining issue is the appropriate sanction for respondent's misconduct. The resolution of that issue

depends upon the seriousness of the offense, the circumstances of the offense, and the extent of the aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Perez*, 550 So. 2d 188 (La. 1989).

The crime of public payroll fraud is defined as follows:

> A. Public payroll fraud is committed when:
>
> (1) Any person shall knowingly receive any payment or compensation, or knowingly permit his name to be carried on any employment list or payroll for any payment or compensation from the state, for services not actually rendered by himself, or for services grossly inadequate for the payment or compensation received or to be received according to such employment list or payroll; or
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> (2) Any public officer or public employee shall carry, cause to be carried, or permit to be carried, directly or indirectly, upon the employment list or payroll of his office, the name of any person as employee, or shall pay any employee, with knowledge that such employee is receiving payment or compensation for services not actually rendered by said employee or for services grossly inadequate for such payment or compensation.

In the factual basis for his guilty plea, respondent admitted that he "initiated, and/or directed his staff members to assist in campaigning, fundraising, or soliciting campaign contributions during" court time, and "thus, staff members who agreed and participated in the campaigning, fundraising, or soliciting campaign contributions while on court time, received payment or compensation for services not rendered to" the court.

Under Standard 5.11(a) of the ABA's *Standards for Imposing Lawyer Sanctions*, disbarment is generally appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes fraud. Likewise, under Standard 5.11(b), disbarment is generally appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that

seriously adversely reflects on the lawyer's fitness to practice. Even more fitting is Standard 5.21, which provides as follows:

> Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.

In this case, respondent, while a district judge, knowingly and intentionally misused his office with the intent to obtain a significant benefit for himself. In particular, he misused his court staff for his personal benefit in order to retire his judicial campaign debt, which he testified was "more debt than I had ever experienced in my life." Under Standard 5.21, therefore, we find the applicable baseline standard in this matter is disbarment.

The record supports the following aggravating factors: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law (admitted 1990). The record supports the following mitigating factors: absence of a prior disciplinary record, character or reputation, and imposition of other penalties or sanctions.

Under the facts of this case, we find no reason to deviate downward from the applicable baseline sanction. Accordingly, respondent shall be disbarred.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Craig Hunter King, Louisiana Bar Roll number 19945, be and he hereby is disbarred, retroactive to June 26, 2007, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State

of Louisiana shall be revoked. 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.

01/08/10

SUPREME COURT OF LOUISIANA

No. 2009-B-1560

IN RE: CRAIG HUNTER KING

ATTORNEY DISCIPLINARY PROCEEDINGS

JOHNSON, J., dissents, and assigns reasons:

I respectfully dissent. I would lift the interim suspension and impose no further discipline in this case.

On October 21, 2003, this Court removed Craig Hunter King from judicial office for campaign related misconduct.[1] In that decree, this Court *did not* reserve to the Office of Disciplinary Counsel the right to institute lawyer disciplinary proceedings against Respondent, pursuant to Supreme Court Rule XIX, § 6 (B) which provides in pertinent part:

> . . . If a judge is removed from office or retired involuntarily by the court, the lawyer disciplinary agency should only exercise jurisdiction in the event the court reserves to the agency the right to pursue lawyer discipline in the final decree of the court in which the judge is removed from office, or retired involuntarily.

On May 18, 2007, Respondent pled guilty to conspiracy to commit public payroll fraud by permitting or encouraging his staff to participate in campaign activities on court time, and received a suspended six month sentence. Following the entry of the guilty plea, on June 26, 2007, the Office of Disciplinary Counsel obtained an order from this Court placing Respondent on interim suspension. On December 3, 2007, after completion of the six month period of probation imposed by the District

[1] In re: King, 03-1412 (La.10/21/03), 897 So.2d 432 (King I).

Court, Respondent's conviction was "set aside and the prosecution dismissed," and his criminal record was *expunged.*[2]

On February 1, 2008, Respondent applied for dissolution of his interim suspension and reinstatement to the practice of law, based on the fact that he was acquitted by expungement of all criminal charges previously lodged against him, or alternatively, that an order be issued dissolving the interim suspension and reinstating him to the full practice of law pursuant to Supreme Court Rule XIX,§ 19 which provides:

> D. **Automatic Reinstatement from Interim Suspension upon Reversal of Conviction.**
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> An attorney will be reinstated immediately on the reversal of his conviction for a serious crime that has resulted in his suspension, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney.

The Office of Disciplinary Counsel apposed the automatic reinstatement, and instead filed formal charges against Respondent premised upon the previously adjudicated misconduct, *despite* the prohibition of Supreme Court Rule XIX, § 6 (B) that precludes pursuit of lawyer discipline when not specifically reserved in a final decree, and despite the fact that Respondent's conviction had been legally expunged.

The majority couches its current ruling in terms of finding a violation of Rule

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[2]LSA-R.S. 40:983 then provided, in pertinent part, that:

> Whenever any person who has not previously been convicted of any offense under this part pleads guilty to or is convicted of having violated R.S. 40:966C, 40:967C, 40:968C, 40:969C, 40:970C of this part, and when it appears that the best interests of the public and of the defendant will be served, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as may be required.
>
> Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under R.S. 40:982.

8.4 of the Louisiana Rules of Professional Conduct, and in doing so, ignores the fact that this violation is based on the very same misconduct for which Respondent has already been disciplined by removal from his judicial office. This Court's decree disregards the legal result of expungement, the principles of double jeopardy, and the specific language of Supreme Court Rule XIX, § 6 (B).

This Court has handed down an excessively harsh discipline to a former member of the judiciary, who has not been the subject of previous disciplinary charges, and who, at the time of the misconduct, was a relatively inexperienced judge. Moreover, this Court has disregarded its own jurisprudence with regard to conditional pleas pursuant to LA. R.S. 40:983.

In *Louisiana State Bar Association v. Reis*, 513 So. 2d 1173 (La.1987), Reis entered a conditional plea after being charged under Section L.S.A-R.S. 40:967 (C) with possession of cocaine. Upon completion of his probationary period, the district court entered an order under the terms of the statute dismissing the proceedings against him. This Court held the dismissal of the prosecution in the district court was "tantamount to an acquittal"and could not be used to form the basis of disciplinary charges such as illegal conduct, moral turpitude, or conduct adversely reflecting on his fitness to practice law.

An examination of our jurisprudence shows that disbarment is not the appropriate discipline for the charged misconduct. There are many examples where this court has showed leniency following an attorney's felony conviction and has imposed a period of suspension, rather than disbarment. *In re Steinhardt*, 04-0011 (La. 9/9/04), 883 So. 2d 404, the respondent attorney who was arrested in Texas, driving a vehicle with over eight pounds of marijuana stored in the trunk. Although charged with a felony in Texas, Ms. Steinhardt was allowed to pled to a lesser charge, and

sentenced to two years probation. Despite the comparatively light sentence she received for this criminal conduct, this Court imposed only a three year suspension from the practice of law *with two of the three years deferred*. Likewise, *In re Vaughn*, 97-1862 (La. 9/19/97), 701 So.2d 145, the respondent attorney was suspended from the practice of law for a period of three years based on his federal felony conviction for three counts of mail fraud. Similarly, in *In re Cleveland*, 06-1745 (La. 7/13/06), 933 So.2d 793, the respondent attorney was suspended from the practice of law for three years based upon his federal felony conviction for tax conspiracy and aiding and abetting the filing of a false tax return. Additionally, former Insurance Commissioner Jim Brown was suspended from the practice of law for three years based upon his federal conviction for making false statements to federal investigators. *In re Brown*, 990 So. 2d 1279 (La. 2008). In all of the above cited cases involving felony criminal convictions, the respondent lawyers were given a period of suspension, rather than disbarment.

CONCLUSION

In my view, disbarment in this case is excessively harsh, and without precedent.

01/08/10

SUPREME COURT OF LOUISIANA

No. 09-B-1560

IN RE: CRAIG HUNTER KING

VICTORY, J., dissenting.

My office wrote King I for the Court. In the opinion, the Court deliberately chose not to reserve the right to institute lawyer disciplinary proceedings against King with the Office of Disciplinary Counsel. Although Louisiana Supreme Court XIX Section 6(B) does not deprive the ODC of the right to institute lawyer disciplinary proceedings under these circumstances, it does say the agency "should" not do so.

Further, I do not agree with the majority's reasoning that King is now only being disciplined for the conviction of a crime after King I was rendered. In King I the conduct for which he was removed from office was described in great detail and part of that conduct constituted the crime for which he was convicted. Therefore, under all of these circumstances, I would lift the interim suspension and not discipline King any further.

01/08/10

SUPREME COURT OF LOUISIANA

No. 2009-B-1560

IN RE: C. HUNTER KING

ATTORNEY DISCIPLINARY PROCEEDINGS

GUIDRY, Justice, concurs and assigns additional reasons.

I respectfully concur in the majority's opinion imposing disbarment. I write separately to set forth my view on the issue raised by the respondent regarding the appropriate jurisdiction of this court and the disciplinary agency. I disagree with the respondent's argument that he cannot be disciplined as a lawyer for misconduct considered by the court in his judicial discipline proceeding simply because the court did not specifically reserve to the disciplinary agency a right to pursue lawyer discipline against the respondent.

As the majority notes, Supreme Court Rule XIX, § 6(B) regarding former judges refers to the misconduct that was the subject of the judicial discipline proceeding, stating "[t]his jurisdiction of the agency should not be exercised if the misconduct was the subject of a judicial disciplinary proceeding in which there has been a final determination by the court, unless the court reserved to the agency the right to pursue lawyer discipline in accordance with this subsection." It is significant that our rule uses the permissive limitation "should not be exercised" rather than the mandatory prohibition "shall not be exercised." In my view, the rule does not present a complete jurisdictional bar to lawyer discipline of a former judge; instead, it sets forth the policy of this court that nonetheless yields to the disciplinary agency some measure of discretion in deciding whether to pursue lawyer discipline in the absence of a specific reservation to that effect by the court in the judicial discipline proceeding.

In other words, as a matter of policy, while the disciplinary agency ordinarily declines to pursue lawyer discipline charges in the absence of a reservation of rights, the agency is not divested of jurisdiction to consider such charges should it wish to do so. This is particularly appropriate in cases where additional facts (such as subsequent criminal charges) develop after the court has rendered its decision of judicial discipline.

Furthermore, if we were to view Supreme Court Rule XIX, § 6(B) as jurisdictional in nature, such an interpretation could run afoul of La. Const. art. V, § 25(D), which provides:

> Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law.

By using the mandatory term "shall," our constitution makes it clear that imposition of discipline upon a judge does not preclude a lawyer disciplinary action against him. Thus, I do not interpret Supreme Court Rule XIX, § 6(B) as creating – in the absence of a reservation of rights to the disciplinary agency – an across-the-board jurisdictional impediment to the imposition of lawyer discipline upon a removed judge.

01/08/10

SUPREME COURT OF LOUISIANA

No. 09-B-1560

IN RE: CRAIG HUNTER KING

JONES, Justice Pro Tempore, dissenting.

Although the Court did not reserve to the office of Disciplinary Counsel the right to institute lawyer disciplinary proceedings against respondent in *King I*, I find that the ODC had the discretion to do so. That is particularly true where, as here, a subsequent conviction of a felony, based on the same underlying conduct, follows removal of a judge.

Clearly, the ODC moved against Respondent in the present manner due to the criminal conviction following removal. However, the district judge deferred imposition and execution of a sentence under C.Cr.P. Art. 893 and place respondent on inactive probation for six months; he, thereafter, set aside the conviction and expunged the record.

Accordingly, Respondent does not *now* stand convicted of any crime and may be considered to have no criminal record. In my view, the fact that imposition and execution of a sentence was deferred, a short inactive probationary period was imposed, and the record was expunged, should be considered as an *additional* strong mitigating factor, supporting a downward departure from the baseline sanction of disbarment.

On these facts, I find that a suspension of three years, retroactive to the date of Respondent's interim suspension, June 26, 2007, is appropriate. Disbarment, in light of the aggravating and mitigating factors in this case, is unduly harsh and is not a result required by any prior decision of this Court.

Accordingly, I respectfully dissent.