

SUPREME COURT OF LOUISIANA

NO. 2017-B-1929

IN RE: JAMES A. GRAY, II

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, James A. Gray, II, an attorney licensed to practice law in Louisiana, but currently suspended from practice.

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 1973.

In 2015, this court suspended respondent from the practice of law for a period of two years. *In re: Gray*, 14-2085 (La. 3/17/15), 166 So. 3d 969 (“*Gray I*”). The misconduct at issue involved respondent’s neglect of four legal matters, failure to communicate with clients, failure to return client files upon request, failure to refund unearned fees, and failure to cooperate with the ODC in its investigations. Respondent has not yet sought reinstatement from his suspension in *Gray I* and thus remains suspended from the practice of law.

Against this backdrop, we now turn to a consideration of the misconduct at issue in the instant proceeding.

FORMAL CHARGES

In February 2014, a disciplinary complaint was filed against respondent with the ODC. On March 12, 2014 and May 5, 2014, notices of the complaint were forwarded to respondent at his primary registration address via certified mail with a return receipt request. In both instances, neither the notice nor the return receipt card was returned to the ODC, and the United States Postal Service tracking information indicated that the item was “currently in transit to the destination.”

On August 14, 2014, an ODC investigator hand-delivered a copy of the complaint to respondent’s primary registration address. An office employee signed for and received the complaint. Although respondent was instructed to forward a written, substantive response to the complaint within fifteen days of receipt of the complaint, he failed to do so and failed to contact the ODC about the matter.

On January 28, 2015, respondent received a hand-delivered copy of the complaint while attending oral arguments in this court. On April 2, 2015, another copy of the complaint was forwarded to respondent’s attorney of record, Ernest Jones. Two months later, the ODC contacted Mr. Jones to inquire about the status of a response to the complaint, but respondent never responded to the complaint.

DISCIPLINARY PROCEEDINGS

In July 2015, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.1(c) (failure to cooperate with the ODC in its investigation) and 8.4(a) (violation of the Rules of Professional Conduct). Respondent was personally served with the formal charges but failed to answer. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee

written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the hearing committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee determined that the factual allegations in the formal charges were deemed admitted and proven by clear and convincing evidence. Based on these facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated duties owed to the legal system by failing to cooperate in the investigation of a complaint. It is apparent that he acted intentionally as he was served with notice that action was required by him and yet he never took any action. Respondent caused harm to the legal profession because the ODC has been unable to investigate and resolve the complaint. Such conduct, according to the committee, results in the legal profession being held in disrespect by the public and prevents the legal profession from policing itself. Under the ABA's *Standards for Imposing Lawyer Sanctions*, the baseline sanction is suspension.

In aggravation, the committee found a prior disciplinary record. The committee did not mention any mitigating factors.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for two years. The committee also recommended respondent be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board adopted the factual findings and legal conclusions of the committee. The board also determined that the committee correctly applied the Rules of Professional Conduct.

The board determined that respondent knowingly violated duties owed to the legal profession, causing actual harm. During oral argument before the board, respondent offered no explanation for his failure to participate in the ODC investigation. Respondent stated that he had intended to respond to the formal charges but simply failed to do so.

The board agreed with the committee that the baseline sanction is suspension. In aggravation, the board found a prior disciplinary record. The board found no mitigating factors are present.

Turning to the issue of an appropriate sanction, the board cited the case of *In re: Duhy*, 14-2052 (La. 11/21/14), 154 So. 3d 541, wherein this court suspended an attorney from the practice of law for one year and one day, with all but three months deferred, for failing to cooperate with the ODC in three investigations. The court found that the attorney, who had been previously disciplined five times for failing to cooperate with the ODC, acted knowingly. The following aggravating factors were present: a prior disciplinary record, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. The following mitigating factors were present: personal or emotional problems and remorse.

Considering the foregoing, the board recommended respondent be suspended from the practice of law for one year, followed by a one-year period of probation. The board also recommended respondent be assessed with the costs and expenses of this proceeding.

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

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The evidence in the record of this deemed admitted matter supports a finding that respondent failed to cooperate in a disciplinary investigation. As such, he has violated the Rules of Professional Conduct as alleged by the ODC.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and

mitigating circumstances. *Louisiana State Bar Ass’n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent knowingly, if not intentionally, violated duties owed to the legal profession, causing actual harm. The baseline sanction is suspension. The record supports the following aggravating factors: a prior disciplinary record and substantial experience in the practice of law (admitted 1973). There are no mitigating factors present.

In the past, this court has found that an attorney’s failure to cooperate with the ODC, standing alone, is sufficient to warrant a period of actual suspension. *See, e.g., In re: Augustine*, 97-1570 (La. 9/26/97), 707 So. 2d 1 (thirty-day suspension imposed upon an attorney who knowingly failed to cooperate with the ODC in two investigations), and *In re: Boudreau*, 03-1890 (La. 12/3/03), 860 So. 2d 1119 (six-month suspension imposed upon an attorney who failed to cooperate with the ODC in its investigation of a complaint filed against him; the attorney had recently been disciplined for similar misconduct, and his continued failure to cooperate was therefore found to be “particularly egregious”).

At first glance, the one-year suspension recommended by the board appears somewhat excessive given that the sanctions imposed by this court in failure to cooperate cases have resulted in no more than a six-month actual suspension from the practice of law. However, respondent’s failure to cooperate with the ODC in the instant case is more egregious than the typical failure to cooperate case. The ODC went to great lengths to ensure that respondent had notice of the complaint and a copy of the formal charges. Nevertheless, respondent made no effort to respond to the ODC’s repeated inquiries, which is particularly troublesome since respondent was an elected official throughout the ODC’s investigation. *See In re: Bankston*, 01-2780 (La. 3/8/02), 810 So. 2d 1113 (an attorney occupying a position of public

trust is held to even a higher standard of conduct than an ordinary attorney). The sanction recommended by the board is appropriate in this case.

Accordingly, we will adopt the board's recommendation and suspend respondent from the practice of law for one year, followed by a one-year period of probation.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that James A. Gray, II, Louisiana Bar Roll number 6262, be and he hereby is suspended from the practice of law for one year, followed by a one-year period of probation. 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.