

# Supreme Court of Louisiana

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NEWS RELEASE #013

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 24th day of March, 2021 are as follows:

**PER CURIAM:**

2020-B-01126

IN RE: CLARENCE T. NALLS, JR.

DISBARMENT IMPOSED. SEE PER CURIAM.

Weimer, C.J., concurs in part, dissents in part and assigns reasons.

Crichton, J., dissents and assigns reasons.

McCallum, J., dissents for the reasons assigned by Justice Crichton.

03/24/21

SUPREME COURT OF LOUISIANA

NO. 2020-B-1126

IN RE: CLARENCE T. NALLS, JR.

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Clarence T. Nalls, Jr., a disbarred attorney.

**PRIOR DISCIPLINARY HISTORY**

Before we address the current matter, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 1982.

In 2006, respondent and the ODC filed a joint petition for consent discipline with this court, proposing that he be suspended from the practice of law for one year and one day, fully deferred, subject to his successful completion of a two-year period of probation with conditions, for filing and pursuing a frivolous lawsuit on behalf of a client. On April 17, 2006, we accepted the petition for consent discipline and imposed the sanction proposed by the parties. *In re: Nalls*, 06-0257 (La. 4/17/06), 926 So. 2d 491 (“*Nalls I*”).

Respondent’s two-year probationary period commenced October 1, 2006. During the period of probation, respondent committed additional misconduct by failing to turn over an original will to the attorney for the named executor of the will. On January 16, 2009, we revoked respondent’s probation and made the previously

deferred one year and one day suspension imposed in *Nalls I* immediately executory. *In re: Nalls*, 08-2409 (La. 1/16/09), 998 So. 2d 697 (“*Nalls II*”). We denied respondent’s application for rehearing on March 13, 2009. *In re: Nalls*, 08-2409 (La. 3/13/09), 5 So. 3d 110.

Respondent had not been reinstated from his suspension when the ODC filed formal charges against him in 2012, alleging that he continued to practice law after the effective date of the court’s order in *Nalls II*, failed to notify his clients of his suspension, collected a fee from a client after his suspension, failed to provide a client with a copy of his file upon request, and failed to properly manage and account for client funds. On May 7, 2014, we ordered that respondent be disbarred. *In re: Nalls*, 13-2873 (La. 5/7/14), 145 So. 3d 1011 (“*Nalls III*”). We denied respondent’s application for rehearing on July 1, 2014.

In sum, respondent has not been authorized to practice law in Louisiana since January 16, 2009, the effective date of our order in *Nalls II*. Against this backdrop, we now turn to a consideration of the misconduct at issue in the present proceeding.

## UNDERLYING FACTS

### *Count I*

In June 2015, Jennifer Talley was allegedly injured on the premises of Jason’s Deli in Baton Rouge. Ms. Talley subsequently retained respondent to represent her in a claim for damages against Jason’s Deli and its insurer, Travelers.

Lori Martin, a special investigator for Travelers, was assigned to Ms. Talley’s claim. In December 2015, Ms. Martin filed a complaint against respondent with the ODC, alleging that while a letter of representation was provided by respondent’s son, attorney Chris Nalls, she suspected that she actually dealt with respondent in investigating Ms. Talley’s claim. Ms. Martin suggested that she could tell by hearing the speaker’s voice on the telephone that she was conversing primarily with a much

older gentleman, and not someone of Chris' age. She also said that the cell phone number she was provided to contact Chris actually belonged to his father.

The ODC took Ms. Talley's sworn statement during its investigation of the disciplinary complaint. Ms. Talley testified that respondent had represented her in a personal injury case in the past, so she hired him to represent her in the Jason's Deli matter. She called respondent's law firm and respondent arranged a meeting at his office to discuss the case. During their meeting, respondent indicated to Ms. Talley that he was going to try to settle her claim for at least \$2,500. Ms. Talley subsequently gave an in-person recorded statement to Travelers, but Chris Nalls, not respondent, attended the statement.

Ms. Talley testified that sometime later, Chris contacted her and instructed her to come to the office and sign settlement release forms. As she was examining the paperwork, Ms. Talley noticed that the settlement amount was \$500, not the \$2,500 she was expecting. Chris could offer no explanation for the discrepancy. When Ms. Talley spoke with respondent about the issue, he confirmed that the settlement offer was \$500. Ms. Talley rejected the settlement and terminated the representation. She eventually settled the claim with Jason's Deli on her own.

Ms. Talley testified that she hired respondent presuming he was fully able to practice law. She testified that at no time did either respondent or Chris Nalls advise her that respondent is disbarred.

### *Count II*

In August 2018, Telair Hawkins filed a complaint against respondent with the ODC. Ms. Hawkins retained respondent in the early 1990's to represent her interests in a class action suit against Exxon. According to Ms. Hawkins, she had spoken to respondent approximately one month prior to the filing of her complaint, at which time he advised her that a settlement had been approved and "they were printing

checks.” Thereafter, Ms. Hawkins made several attempts to contact respondent, but he did not return her telephone calls until after she called the Louisiana State Bar Association. At that point, respondent contradicted his previous statement and advised Ms. Hawkins that the class action suit was still in litigation.

The ODC spoke with Ms. Hawkins during its investigation of the disciplinary complaint. She advised the ODC that she had recently spoken to respondent about her claim, both on his cell phone and on the telephone at his law office. Ms. Hawkins said that at no time did respondent reveal to her that he is disbarred and unable to practice law. Respondent spoke with Ms. Hawkins about her claim as though he still represents her and never indicated that he does not represent her. Ms. Hawkins said that she learned of respondent’s disbarment by searching his name online, but when she raised this issue with respondent, he chided her for investigating him.

### **DISCIPLINARY PROCEEDINGS**

In November 2018, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 5.5(a) (engaging in the unauthorized practice of law), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent initially failed to answer the formal charges, and the factual allegations therein were deemed admitted and proven by clear and convincing evidence. Thereafter, respondent opposed the deemed admitted order, and it was recalled, allowing the matter to proceed to a formal hearing on the merits.<sup>1</sup>

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<sup>1</sup> Prior to the hearing, respondent filed several procedural motions, including a motion to dismiss the formal charges and a motion to recuse the ODC. These motions were denied.

## *Hearing Committee Report*

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

The ODC proved by clear and convincing evidence that respondent engaged in the unauthorized practice of law after his 2014 disbarment. The testimony provided by Lori Martin indicated that respondent continued to maintain an active extension on his law firm's telephone system after he was disbarred. Moreover, Ms. Martin's testimony established that respondent's personal cell phone number was provided as an alternate number for the law firm as late as 2015. Respondent also continued to maintain an office in the suite that houses the law practice he operated with his son.

The committee was concerned by respondent's contention at the hearing that he was under no obligation to specifically convey to his clients that he is disbarred. Respondent believed it was not his obligation to inform prospective clients of his disability, in essence placing a sort of *caveat emptor* standard on members of the public. Moreover, respondent indicated that although he will not "broadcast" the fact of his disbarment, if someone asks him directly if he is "ineligible" to practice law he will respond affirmatively but add that he is not guilty of the misconduct of which he was found guilty.

While the facts of Counts I and II differ, the common thread between them is that respondent made statements and performed actions which resulted in misrepresentations made to his clients. In Count I, Ms. Talley testified that respondent acted in the capacity of her legal advisor and counseled her on the potential outcome of her civil matter. More specifically, respondent conveyed to Ms. Talley that he would contact Travelers Insurance Company on her behalf regarding the initial settlement offer of \$2,500. Based upon Ms. Talley's testimony, it was never made clear to her that respondent would not be involved in the handling

of her civil matter. Moreover, Ms. Martin testified that she spoke with respondent to schedule Ms. Talley's recorded statement at his former law office.

As to Count II, Ms. Hawkins testified that she had been in communication with respondent from 1993 to as recently as 2018 relative to a class action lawsuit. Respondent failed to convey to Ms. Hawkins that the lawsuit was dismissed by the federal court in Baton Rouge over fifteen years ago. Ms. Hawkins discussed settlement payments with respondent as late as 2018, but respondent never conveyed to her that he failed to file the necessary documents that would have enabled her to join the class action prior to its dismissal. Furthermore, Ms. Hawkins testified that, as late as 2018, respondent told her that Exxon was actively engaged in the class action lawsuit and that the company was in the process of "cutting checks" to the plaintiffs. It was not until 2018 that Ms. Hawkins learned from another attorney that the class action lawsuit had been dismissed and that she was never enrolled as a plaintiff.

Based upon these findings, the committee concluded that respondent practiced law after his disbarment and affirmatively concealed from clients the fact that he is not authorized to practice law. This conduct is a violation of Rules 5.5(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct.

The committee determined that respondent violated duties owed to his clients and the public. He knowingly and intentionally engaged in the practice of law after his disbarment, which has continued to cause harm to the public and the legal profession. The baseline sanction for respondent's misconduct is disbarment.

In aggravation, the committee recognized respondent's prior disciplinary record and substantial experience in the practice of law. The committee did not address mitigating factors.

Considering respondent's misconduct in light of the permanent disbarment guidelines and the prior jurisprudence of this court, the committee recommended

respondent be permanently disbarred. The committee also recommended respondent be assessed with all costs and expenses of this proceeding.

Respondent filed an objection to the hearing committee's factual findings and recommended sanction. He also filed various procedural motions which were denied by the disciplinary board.

#### *Disciplinary Board Recommendation*

After reviewing this matter, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and are supported by the record. The board adopted these findings. The board also determined that the committee correctly applied the Rules of Professional Conduct.

The board determined that respondent violated duties owed to his former clients, the public, and the legal profession. His conduct was knowing and intentional. Respondent caused harm to Ms. Talley and Ms. Hawkins in that they were misled and not afforded the representation they expected. Ms. Martin and Travelers were harmed in that respondent was not forthright concerning his ineligibility to practice law during the investigation of Ms. Talley's claim. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment.

In aggravation, the board found a prior disciplinary record, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the misconduct, and substantial experience in the practice of law. The board found no mitigating factors are present.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be permanently disbarred. The board also recommended respondent be assessed with the costs and expenses of this proceeding.



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).<sup>2</sup>

## 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.

The record supports a finding that respondent engaged in the unauthorized practice of law and engaged in dishonest conduct. Based on these facts, respondent has violated Rules 5.5(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct.

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).

The record further supports a finding that respondent knowingly, if not intentionally, violated duties owed to his client, the legal system, and the legal profession, causing actual and potential harm. Based on the ABA's *Standards for*

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<sup>2</sup> Simultaneously with the filing of his brief on the merits, respondent filed a "Motion to Recuse Louisiana Supreme Court," which we have denied.

*Imposing Lawyer Sanctions*, the applicable baseline sanction is disbarment. The aggravating factors found by the disciplinary board are supported by the record. There are no mitigating factors present.

Respondent held himself out to be a lawyer after his disbarment and engaged in the unauthorized practice of law. This conduct, combined with that involved in his prior disciplinary matters, indicates that respondent lacks the moral fitness to practice law and is a threat to his clients, the legal profession, and the public. Recognizing that respondent is already disbarred, we will extend the minimum period for readmission pursuant to Supreme Court Rule XIX, § 24(A) for an additional five years from the finality of the instant judgment.

#### **DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Clarence T. Nalls, Jr., Louisiana Bar Roll number 1500, be and he hereby is prohibited from petitioning this court for readmission pursuant to Supreme Court Rule XIX, § 24(A) until five years have passed from the finality of this judgment. 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.

03/24/21

**SUPREME COURT OF LOUISIANA**

**NO. 2020-B-01126**

**IN RE: CLARENCE T. NALLS, JR.**

*ATTORNEY DISCIPLINARY PROCEEDING*

**WEIMER, C.J.**, concurring in part and dissenting in part.

I respectfully dissent only as to the sanction, which I believe should be permanent disbarment given Respondent's extensive record.

03/24/21

**SUPREME COURT OF LOUISIANA**

**No. 2020-B-01126**

**IN RE: CLARENCE T. NALLS, JR.**

Attorney Disciplinary Proceeding

**CRICHTON, J. dissents and assigns reasons:**

In my view, the facts and circumstances of this case, when considered in light of respondent's previous disciplinary cases, warrant permanent disbarment. *See In re: Nalls*, 06-0257 (La. 4/17/06), 926 So.2d 491 (*Nalls I*); *In re Nalls*, 08-2409 (La. 1/16/09), 998 So. 2d 697 (*Nalls II*); *In re Nalls*, 13-2873 (La. 5/17/14), 145 So. 3d 1011 (*Nalls III*). I therefore dissent from the per curiam.

I also write separately to note that my opinion is supported by Mr. Nalls' outrageous actions toward this court both in weeks preceding oral argument in this case and during oral argument. Specifically, Mr. Nalls filed a motion to recuse the Louisiana Supreme Court, accusing then Chief Justice Bernette Johnson and six associate justices of "inexplicable bias," having "committed egregious, intentional and ruthless errors by ignoring the evidence that completely contradicts their erroneous, false, manufactured findings as set out in their Disbarment Order of May 7, 2014." He further asserted that the justices would seek "any means to justify a bogus order" and have "total disdain" and a "passionate hatred" for respondent. Finally, he alleged that the justices violated their oaths of office and Canons 1-3 of the Code of Judicial Conduct. In a supplemental brief, respondent alleged that the Louisiana Supreme Court and the ODC, "with the Court's blessings," has "harassed this Respondent, has ruined his reputation and his ability to earn a living. Of course, that doesn't bother you at all." Respondent's recusal motion was unanimously denied.

During oral argument, and notwithstanding that five of the seven justices were not on the court when *Nalls III* was rendered in 2014, respondent launched into a series of baseless allegations, much the same as his written assertions in his recusal motion. These included assertions that the Court is biased against him, “doesn’t intend to and never will be fair,” and that the bias against him is racially motivated.

Without a scintilla of evidence, this respondent has pursued a series of false allegations in both his written submissions and in his oral argument to this Court. These allegations implicate, *inter alia*, the following Rules of Professional Conduct: 3.1, Meritorious Claims and Contentions; 3.3, Candor Toward the Tribunal; 3.5, Impartiality and Decorum of the Tribunal; 8.1, Bar Admission and Disciplinary Matters; and 8.4, Misconduct (including engaging in conduct prejudicial to the administration of justice). In addition to the Rules of Professional Conduct, the Code of Professionalism provides that lawyers should “be mindful of our responsibility to the judicial system, the public, our colleagues and the rule of law” and should aspire to the highest ideals of our profession. Such guidelines include conducting oneself with respect and civility, and refraining from making statements that misrepresent or mischaracterize facts or law.

Whether representing a client or representing oneself, a lawyer shall comply with the Rules of Professional Conduct and should comply with the professionalism guidelines set forth by both the Louisiana State Bar Association and the Louisiana Supreme Court. In my view, respondent’s long history of misconduct coupled with his disrespect for the system of justice we are charged to honor and serve clearly and convincingly demonstrates that he lacks even minimum fitness to engage in the practice of law. Accordingly, I agree with the unanimous vote of the three members

of the Hearing Committee and the unanimous vote of the nine members of the Disciplinary Board, and would order permanent disbarment.<sup>1</sup>

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<sup>1</sup> Zealous advocacy within the bounds of proper decorum is laudable whether it is a lawyer representing a client or a lawyer representing oneself. As I have previously noted in a case where a lawyer made outrageous statements during oral argument, it is unfortunate that respondent does not seem to understand that being a zealous advocate does not equate to disrespect for the system we are charged to honor and serve. *See In Re McCool*, 15-0284 (La. 6/30/15), 172 So.3d 1058 (Crichton, J., additionally concurring). As in *McCool*, I believe that Mr. Nall's own actions in the face of his impending sanction cannot go unnoticed.