

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #037

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **30th day of September, 2021** are as follows:

PER CURIAM:

2020-B-01335

IN RE: JOSEPH N. MAYER, III

SUSPENSION IMPOSED. SEE PER CURIAM.

Weimer, C.J., additionally concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

NO. 2020-B-1335

IN RE: JOSEPH N. MAYER, III

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Joseph N. Mayer, III, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

On the morning of October 1, 2018, respondent was driving to his New Orleans law office when he stopped at a convenience store and purchased two half-pints of vodka. He drove to a parking garage near his office and sat there for a period of time consuming the alcohol until he became intoxicated. Respondent then left the premises to return home. While driving on Veterans Boulevard in Metairie, respondent rear-ended a car stopped at a traffic light.

Initially, respondent pulled off the road to inspect the damage to the vehicles and exchange relevant information with the other driver. However, he quickly realized he was going to be in trouble. Prior to the arrival of the police, respondent fled the scene of the accident, striking another car in the process. Respondent then drove to a bar several blocks away and drank more vodka. Later, an off-duty police officer saw respondent staggering back to his vehicle and called 911 to report respondent’s condition. Officers were able to identify respondent as having been involved in the hit and run accident. A Breathalyzer test showed his blood alcohol

level was .260g%. Respondent was arrested on charges of DWI, hit and run, no liability insurance, and driving under suspension.¹

In November 2018, the ODC referred respondent to the Judges and Lawyers Assistance Program (“JLAP”) for an independent evaluation. Respondent contacted JLAP on December 7, 2018 and was referred for inpatient treatment at a JLAP-approved facility. Respondent advised that he did not have the financial means to pay for treatment, so JLAP recommended he utilize Bridge House in New Orleans as an option for persons who cannot afford treatment. To date, respondent has not complied with JLAP’s recommendations.

DISCIPLINARY PROCEEDINGS

In August 2019, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer). Respondent answered the formal charges and stated that the events at issue represented “an isolated incident,” that no injuries were involved, and that all property damage issues had been resolved. Respondent further represented that he had successfully completed a pre-trial diversion program to resolve the criminal charges.

Following the filing of respondent’s answer, the matter was set for a formal hearing before the hearing committee. At the hearing, the parties stipulated that respondent would testify in mitigation; however, he “does not contest the material underlying facts surrounding his arrest for DWI, the fact that he was driving while impaired, his level of impairment and that he was driving while under suspension

¹ Respondent testified that his driver’s license had been suspended for non-payment of his state income taxes.

and while uninsured at the time. And as such, he stipulates that that conduct would be a violation of Rule 8.4(b) and 8.4(a), as charged in the formal charges.”

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee found that respondent was heavily intoxicated when he caused two vehicular accidents on October 1, 2018. Respondent does not have a sound recollection of what occurred that morning, but he admits both accidents occurred when he was on his way to work. He also admits that the second accident was coincident with his unlawfully leaving the scene of the first accident. Based on these facts, respondent stipulated that he violated Rules 8.4(a) and 8.4(b) of the Rules of Professional Conduct as charged.

Following the accidents, respondent was charged with DWI, hit and run driving, driving with a suspended license, and driving without vehicle insurance. Because he had no prior alcohol-related traffic violations or arrests, respondent was permitted to enter a diversion program to resolve the criminal charges. After he successfully completed all requirements of the diversion program, the criminal charges were dropped.

In December 2018, respondent participated in a clinical interview with the JLAP program, and it was recommended that he obtain inpatient substance abuse treatment. Although respondent admitted he is an alcoholic, he did not undergo inpatient or outpatient treatment, nor did he enroll in the free program at Bridge House. Respondent has cited issues of cost as the primary reason for not undergoing treatment, but also testified that he felt the diversion program was enough. During the hearing, the JLAP director testified that a diversion program does not satisfy JLAP requirements.

The committee found that respondent violated duties owed to the public and the legal profession. Respondent caused property damage to multiple vehicles, but no personal injuries, though the potential for serious injury to himself and others was high. The applicable baseline sanction is suspension.

In aggravation, the committee found a dishonest or selfish motive (as evidenced by respondent's unlawfully leaving the scene of an accident) and substantial experience in the practice of law (admitted 1979). In mitigation, the committee found the absence of a prior disciplinary record, personal and financial problems, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, good character and reputation, and remorse.

Turning to the issue of an appropriate sanction, the committee recognized that this court has imposed an actual period of suspension in DWI cases involving multiple offenses or in which the arrest stems from a substance use disorder that remains unaddressed. *See In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 3d 941. Applying this jurisprudence, the committee reasoned that an actual period of suspension is warranted in this case.

Accordingly, the committee recommended that respondent be suspended from the practice of law for one year and one day. The committee also recommended that respondent be assessed with all costs of this proceeding.

Respondent filed an objection to the hearing committee's factual findings and recommended sanction.

Disciplinary Board Recommendation

The disciplinary board adopted the hearing committee's findings of fact and rule violations, as they are based on the stipulations of the parties and/or supported by the record. The board also adopted the aggravating and mitigating factors cited by the committee.

The board determined respondent knowingly violated duties owed to the public and the legal profession. He operated a vehicle while impaired, causing actual harm in the way of property damage to two other vehicles. Respondent's conduct also created the potential for serious bodily harm. By engaging in criminal conduct, including leaving the scene of an accident, respondent damaged the reputation of all members of the profession. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the applicable baseline sanction is suspension.

In its discussion on sanctions, the board acknowledged respondent's successful completion of the diversion program to resolve his criminal charges, and his testimony that he has refrained from alcohol use since November 2018. However, the board pointed out that the misconduct at issue in this case "arose out of a substance abuse issue that appears to remain unresolved by the standards that the Court has applied over and over again." Respondent has not sought or obtained a proper JLAP-approved evaluation and treatment, if so indicated. Therefore, the board concluded that deferral of the suspension is not warranted.

Based on this reasoning, the board recommended respondent be suspended from the practice of law for one year and one day. The board further 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).

Interim Order of the Court

Following oral argument, we issued an interim order on May 11, 2021 directing respondent to obtain an evaluation through JLAP within thirty days. The order provided:

IT IS ORDERED that within thirty days of the date of this order, respondent shall submit to an evaluation, not to exceed one day, by a facility approved by the Judges and Lawyers Assistance Program. Following the evaluation, the parties shall cause a copy of the report thereof to be filed in this court as soon as practicable.

IT IS FURTHER ORDERED that the record of this matter shall be held open pending the filing of the report of the evaluation. The parties may file supplemental briefs addressing the report within ten days of the filing thereof.

IT IS FURTHER ORDERED that in the event respondent fails to attend or complete the evaluation, the Office of Disciplinary Counsel shall immediately advise the court of this fact, at which time the court shall proceed with consideration and disposition of the case. Failure to attend or complete the evaluation may be considered by the court in the imposition of discipline. [Internal footnote omitted.]

On June 14, 2021, the ODC notified the court that respondent had not contacted JLAP since the issuance of the interim order. Shortly thereafter, counsel for respondent filed a motion to reset the deadline provided in the order, stating that he had not received a copy of the interim order, but if he had received it, respondent would have promptly complied. Accordingly, on June 24, 2021, we granted respondent an additional thirty days to submit to a JLAP evaluation.

On July 26, 2021, respondent informed the court that he had scheduled an evaluation at Palmetto Addiction Recovery Center on August 4, 2021, the earliest date available. However, on August 3, 2021, respondent cancelled the evaluation, advising JLAP that he could not afford the cost of the evaluation and did not have transportation to Palmetto.

On August 5, 2021, the ODC notified the court of the foregoing facts. On August 9, 2021, respondent filed a reply again urging that he could not afford to attend the evaluation. Accordingly, we now proceed with consideration and disposition of this matter.

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. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The record supports a finding that respondent committed criminal misconduct by driving while intoxicated. This misconduct amounts to a violation of Rules 8.4(a) and 8.4(b) of the Rules of Professional Conduct as charged.

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 violated duties owed to the public and the legal profession, causing the potential for serious harm. Fortunately, no personal injury occurred, but actual harm resulted in the form of property damage to multiple vehicles. Respondent's misconduct was at least knowing. The baseline sanction for this type of misconduct is suspension.

In aggravation, the record supports the following factors: a dishonest or selfish motive, substantial experience in the practice of law, and illegal conduct. In mitigation, the record supports the following factors: the absence of a prior disciplinary record, personal problems, good character and reputation, imposition of other penalties or sanctions, and remorse.

Following respondent's DWI arrest, he contacted JLAP and admitted that he is an alcoholic; however, he refused to comply with JLAP's recommendation for a substance abuse evaluation and treatment. During oral argument in this court, respondent contended that he no longer has an unresolved substance use disorder. Consequently, we ordered an evaluation to assess respondent's condition, but once again, he has declined to cooperate, even after assuring us that he intended to do so promptly. Indeed, it is disappointing that we have made every effort to allow respondent time to obtain an evaluation and treatment, and respondent has consistently delayed and frustrated the process.

Under these circumstances, we must conclude that respondent has a substance abuse problem that appears to remain unresolved, and an actual suspension is therefore warranted under *In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 3d 941. The sanction of a one year and one day suspension means respondent will have to file a formal application for reinstatement if he wishes to return to the practice of law. We specifically caution respondent that in the event he applies for reinstatement, he will be required to show compliance with the criteria set forth in Supreme Court Rule XIX, § 24(E), including obtaining a JLAP evaluation and participating in any recommended treatment and/or monitoring.

Based on this reasoning, we will adopt the board's recommendation and suspend respondent from the practice of law for one year and one day.

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 Joseph N. Mayer, III, Louisiana Bar Roll number 9124, be and he hereby is suspended from the practice of law for one year and one day. 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.

09/30/21

SUPREME COURT OF LOUISIANA

NO. 2020-B-1335

IN RE: JOSEPH N. MAYER, III

ATTORNEY DISCIPLINARY PROCEEDING

WEIMER, C.J., additionally concurring.

I write separately to express my disappointment that action by this court has become necessary. Every effort has been made to encourage and accommodate respondent, who has rebuffed all offers of assistance. I wish to make clear that respondent is not being sanctioned because he has a substance abuse problem; rather, he is being sanctioned because, while intoxicated, he caused a series of automobile accidents and fled the scene, engaging in conduct that violates the law. The practice of law is a privilege, not a right.¹ While we are concerned with the well-being of each attorney, we have an obligation to protect the public. Those whose actions under the influence of a substance abuse problem demonstrably cause harm to a client or to the public must establish that the problem is in the past. We have been willing to work with respondent to accomplish this goal, and continue to hope he can, in the future, demonstrate competency and return to the practice of law.

¹ See Moity v. Louisiana State Bar Ass'n, 239 La. 1081, 1090, 121 So.2d 87, 90 (1960).