# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinion handed down on the **18th day of May, 2023** are as follows:

**PER CURIAM:**

2023-B-00066 IN RE: HENRY L. KLEIN

SUSPENSION IMPOSED. SEE PER CURIAM.

Crichton, J., concurs in part and dissents in part and assigns reasons.

McCallum, J., concurs in part and dissents in part for the reasons assigned by Crichton, J.

SUPREME COURT OF LOUISIANA

NO. 2023-B-0066

IN RE: HENRY L. KLEIN

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Henry L. Klein, an attorney licensed to practice law in Louisiana.

**UNDERLYING FACTS**

This disciplinary matter originates from respondent's actions in connection with a civil matter. While it is not our intent to express any opinion on this civil proceeding, a brief discussion of the facts is necessary in order to understand the context of the disciplinary charges.

Essentially, respondent represented Regina Heisler in connection with a suit brought by Girod LoanCo, LLC ("Girod"), in which it sought to enforce certain promissory notes executed by Mrs. Heisler both individually and in her capacity as the executrix of her late husband's succession.[1] On March 12, 2019, Girod filed a "Verified Petition for Foreclosure by Executory Process" against Mrs. Heisler in the 24th Judicial District Court for the Parish of Jefferson. Two days later, respondent removed the action to federal court on the alleged basis of diversity jurisdiction. On June 5, 2019, the federal court remanded the matter to the 24th JDC, finding the

[1] The notes were originally executed in favor of First NBC Bank. Girod purchased the notes after the bank failed.

undisputed evidence in the record established that Mrs. Heisler and Girod are both citizens of Louisiana.

On June 21, 2019, the district court entered an "Order for Writ of Seizure and Sale" in favor of Girod. Respondent filed an exception of lack of jurisdiction on the ground that Girod was an "unauthorized foreign entity" and Louisiana has no jurisdiction to hear any claims by such an entity. The court denied the exception, and the court of appeal denied writs. Respondent also filed a motion captioned, "Motion To Vacate Order of Executory Process, Peremptory Exception of No Right of Action, Request for Expedited Hearing and Motion to Dismiss." In denying this motion, the court stated that the relief requested was duplicative of the relief previously requested and previously denied. Again, the court of appeal denied writs.

On October 7, 2019, the district court issued *sua sponte* an "Order to Show Cause Why Attorney Should Not Be Held in Contempt." The order alleged that respondent had sent "threatening and disrespectful correspondence" to the court's fax number and to the personal email address of the court's law clerk. The order also alleged that these communications were *ex parte* efforts by respondent to influence the court to reverse its previous rulings in the Heisler litigation. The show cause hearing was scheduled for October 29, 2019.

Before the hearing could be held, respondent filed two writ applications directly in this court, under docket numbers 19-CD-1582 and 19-CD-1633, seeking "protection" from the district court's show cause order. We denied both applications. *Girod Loanco, LLC v. Heisler*, 19-1582 (La. 10/9/19), 280 So. 3d 594; *Girod Loanco, LLC v. Heisler*, 19-1633 (La. 10/16/19), 280 So. 3d 1159.

Respondent then filed a second "Notice of Removal," suggesting that the show cause order created a federal question supporting the exercise of subject matter jurisdiction by the federal court. On December 23, 2019, the federal court again remanded the matter to the 24th JDC, finding respondent "did not have an

'objectively reasonable basis' for seeking removal, and sought to remove only to delay a state court show cause hearing regarding contempt." The federal court awarded attorney's fees and costs in favor of Girod due to the improper removal.

Following remand, respondent resumed the filing of motions in state court. On May 27, 2020, respondent filed a "Motion to Set a Hearing Pursuant to Precedent Set in *NASCO v. Calcasieu* and *Chambers v. NASCO*, 501 U.S. 32 (1991)." This motion alleged that the "vulture fund" Girod had perpetrated a fraud upon the court and requested an independent investigation to protect the integrity of the court. On June 3, 2020, the district court denied respondent's motion, refused to accept certain exhibits as part of the record, and prohibited respondent from filing further motions in the case without first seeking leave of court and obtaining permission to make such filings.[2] In written reasons, the court found that respondent had engaged in a pattern of filing repetitive motions, abuse of process, and refusing to follow proper procedures.

On August 3, 2020, respondent filed a motion to recuse the district judge. In his motion, respondent accused Girod's counsel of aiding and abetting its client's fraud and the district judge of "turning a blind eye to the fraud." Respondent also stated that the relationship between the district judge and Girod's counsel was "nothing short of shocking" because counsel had made a campaign contribution to the district judge, and that the district judge's integrity had been compromised with counsel's participation. Throughout the pleading, respondent accused the district judge of partiality towards Girod's counsel and its clients, without regard to Mrs. Heisler. Respondent cited no evidence for these allegations. On August 10, 2020, the district judge denied the motion to recuse.

[2] Respondent admitted that after the district court issued this order, he filed another motion without having first sought leave of court to do so. The ODC alleges that as a result of this action, the district court filed a second motion for contempt against respondent.

On August 19, 2020, respondent filed a petition in Orleans Parish Civil District Court on behalf of himself and his wife. The Orleans Parish Civil Sheriff was named as defendant. In the suit, respondent represented that the foreclosure order against Mrs. Heisler was unconstitutional and argued that the Sheriff was not legally obligated to execute the "constitutionally infirm" order. In paragraph 43 of the petition, respondent again alleged that Girod's counsel had actively participated in compromising the integrity of the district judge.

## DISCIPLINARY PROCEEDINGS

On October 16, 2019, the clerk of this court sent correspondence to the ODC enclosing copies of respondent's writ applications in 19-CD-1582 and 19-CD-1633, which involved the contempt proceedings arising from respondent's *ex parte* communications. The correspondence was not in the nature of a complaint, but requested that the ODC review the filings for the purpose of determining whether any ethical violations may have occurred.

The ODC opened an investigation into the matter. During its investigation, the ODC took the sworn statement of Girod's counsel. Counsel testified that respondent sent messages to the law firm's managing partner in which he threatened to file a legal malpractice claim against the firm. Respondent, in pleadings, also accused the firm of aiding and abetting criminal activity on the part of its client, demanded that the firm dismiss Girod's claims, and pay a settlement of three million dollars. Respondent also sent harassing messages to non-attorney employees of the firm, including the Chief Finance Officer, the Chief Operating Officer, the Human Resources manager, and the Information Technology staff.

In January 2021, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated Rules 3.1 (a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis

in law and fact for doing so that is not frivolous), 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal), 3.5(a) (a lawyer shall not seek to influence a judge, juror, prospective juror or other official by means prohibited by law), 3.5(b) (a lawyer shall not communicate ex parte with a judge, juror, prospective juror or other official during the proceeding unless authorized to do so by law or court order), 3.5(d) (a lawyer shall not engage in conduct intended to disrupt a tribunal), 4.4(a) (in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person), 8.2(a) (a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge), 8.4(a) (violation of the Rules of Professional Conduct), 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 denied any misconduct. He asserted that his work to protect Mrs. Heisler was "above board, yet sabotaged by the district judge and by the ruthless tactics" of Girod. Respondent also stated that the district judge was "corrupted" by Girod and its counsel.

In light of respondent's answer, the matter proceeded to a formal hearing on the merits.

*Formal Hearing*

The hearing committee conducted a formal hearing on December 8, 2021. Respondent did not appear at the hearing. When reached by telephone, respondent stated that he was ill and could not attend the hearing. Respondent declined the

opportunity to participate in the hearing via telephone or video conference. Instead, he requested a continuance, which was denied. The hearing then proceeded in respondent's absence, and the ODC called Girod's counsel to testify.

A second day of hearing was held on March 28, 2022. Respondent appeared at the hearing but was not represented by counsel. Respondent did not call any witnesses to testify. His evidence consisted of information as to the civil matter in which he represented the Heisler family, information as to his history as an attorney, and information as to his personal history. He did not present any evidence to refute any of the facts as presented by the ODC.

*Hearing Committee Report*

After considering the evidence and testimony presented at the hearing, the hearing committee found that respondent violated the Rules of Professional Conduct as alleged in the formal charges. Respondent violated Rule 3.1 by removing the Heisler case to federal court, not once but twice, in response to a contempt motion issued against him, with the court finding no reasonable basis for the removal, and that the removal was filed solely to delay the contempt matter in the state court proceeding. These actions had no basis in law or fact, nor did there exist a good faith argument for an extension, modification, or reversal of existing law. Respondent violated Rule 3.3(a)(1) when he falsely accused Girod's counsel of aiding and abetting criminal activity on the part of Girod, without any evidence to support such a claim. Respondent violated Rule 3.4(c) when he continued to file additional pleadings into the record without leave of court, disregarding the district court's filing order. Respondent violated Rules 3.5(a)(b)(d) when he had *ex parte* communications with the district court's law clerk. This conduct was an inappropriate and disruptive attempt to influence the court. Respondent violated Rule 4.4(a) when he sent multiple messages to other attorneys not associated with

the litigation, as well as non-attorney employees, of Girod's counsel. These communications had no purpose other than to embarrass and/or burden individuals not associated with the Heisler litigation. Respondent violated Rule 8.2(a) when he filed several public court documents accusing the district judge of compromising his integrity, "turning a blind eye" to fraud perpetrated by Girod's counsel, and receiving inappropriate campaign contributions from Girod's counsel, all without any evidence to support such claims. Respondent violated Rules 8.4(a)(c)(d) by the personal and defamatory attacks he made on Girod's counsel and the district judge. These attacks were dishonest and were prejudicial to the administration of justice.

The committee determined respondent violated duties owed to the legal system and the legal profession. He acted knowingly and intentionally. Respondent's misconduct caused actual harm, in that his statements about the district judge and Girod's counsel were inflammatory and were not supported by any evidence, and designed to attempt to damage the reputation of a sitting judge and of a well-established law firm. His statements were made in public pleadings filed with the court, and also in the course of the hearing, without any regard for the risk associated with making the statements. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee determined the following aggravating factors are present: a prior disciplinary record,[3] refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted 1968). The committee determined the only mitigating factor present is respondent's full and free disclosure to the disciplinary board.

[3] Respondent was suspended from the practice of law for three months in 1987. In 1989, he was suspended for six months. Respondent has also received three formal private reprimands (1975, 1988, and 1989) and two admonitions (1993 and 2018).

Based on these findings, the committee recommended respondent be suspended from the practice of law for one year and one day.

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

*Disciplinary Board Recommendation*

After review, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and adopted same. Based on these factual findings, the board determined respondent's conduct violated the Rules of Professional Conduct as alleged in the formal charges.

The board agreed with the committee that respondent violated duties owed to the legal system and the legal profession. His actions were knowing and intentional, and caused actual harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension. The board agreed with the aggravating and mitigating factors found by the committee.

Considering these findings, the court's prior jurisprudence discussing similar misconduct, and the applicable aggravating factors, the board recommended respondent be suspended from the practice of law for one year and one day. The board further recommended that respondent attend Ethics School and that he be assessed with the costs and expenses of this matter.

Respondent filed an objection to the board's recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).[4]

[4] Respondent filed numerous motions in this court both prior to and after the docketing of the case for oral argument. After careful review, we find the motions are without merit and hereby deny them.

## 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 charges in this case allege that in the course of representing a client in pending litigation, respondent made unsubstantiated, disparaging remarks about the trial judge and opposing counsel, engaged in *ex parte* communications with the trial court's law clerk, continued to file duplicative pleadings into the record although ordered by the trial court to refrain from doing so without leave of court, and removed the case to federal court solely for the purpose of delay. Respondent's sole defense to these charges is based on his assertion that he was acting as a zealous advocate for his client and was seeking to address what he perceived as a significant injustice.

While we have recognized attorneys must be vigorous advocates on behalf of their clients, we have consistently rejected any attempts by lawyers to justify their unethical conduct under the guise of "zealous advocacy." *In re: Zohdy*, 04-2361 (La. 1/19/05), 892 So. 2d 1277, 1289 at n.15. *See also In re: Young*, 03-0274 (La. 6/27/03), 849 So. 2d 25, 31 ("While respondent's motivation may have been to protect the interests of his client, he may not violate his professional obligations as an officer of the court under the guise of being a zealous advocate.").

Respondent's actions in the instant case clearly crossed the boundary between zealous advocacy and professional misconduct. As the hearing committee found, many of respondent's actions, such as his removal of the Heisler case to federal court to avoid the state court contempt hearing, had no basis in fact or law and were intended solely for purposes of delay. He filed multiple pleadings into the record without leave of court, in clear violation of the trial court's order. He improperly entered into *ex parte* communications with the trial court's law clerk, which the committee found represented an "inappropriate and disruptive attempt to influence the court." Finally, he has repeatedly made unfounded accusations of improper conduct against opposing counsel and the trial court.

Significantly, respondent's harassing conduct did not abate after the filing of formal charges but has continued during the course of these disciplinary proceedings. Respondent's filings in this disciplinary matter are replete with unsubstantiated attacks on the integrity of the ODC, the trial judge, and opposing counsel.[5] When asked during oral argument to provide proof for these assertions, respondent merely referred to vague "inferences" which he claims to have drawn from the facts. Such unsupported attacks clearly exceed the bounds of mere advocacy. *See In re: Milkovich*, 493 So. 2d 1186, 1198-99 (La. 1986) (finding an attorney "far exceeded the limits of zealous advocacy" by leveling "a vicious attack on the integrity of the prosecutor and the judge which is not in any manner suggested by the record.").

Respondent has also burdened this court during these disciplinary proceedings by filing multiple motions and pleadings, the vast majority of which have no bearing

[5] Many of respondent's filings in this court arguably could be seen as violating Supreme Court Rule VII, § 7, which provides, "[t]he language used in any brief or document filed in this court must be courteous, and free from insulting criticism of any person, individually or officially, or of any class or association of persons, or of any court of justice, or other institution." However, because respondent was representing himself in these disciplinary proceedings, we exercised our discretion to permit the filings so as to not interfere with respondent's ability to defend himself.

on the issues presented in his disciplinary case. Instead, respondent has consistently attempted to re-litigate the merits of the *Girod* matter in the context of his disciplinary case. Such actions are clearly inappropriate and any attempt by respondent to covertly re-litigate final judgments will not be countenanced by this court.

Taken as a whole, respondent's actions, both in the context of the underlying litigation and the disciplinary proceedings, display a disturbing lack of respect for the judicial system and his obligations as a professional. As aptly stated by Justice Crichton, "[i]t is unfortunate that respondent does not seem to understand that being a zealous advocate does not equate to such repugnant disrespect for the system we are charged to honor and serve." *In re: McCool*, 15-0284 (La. 6/30/15), 172 So. 3d 1058, 1090 (Crichton, J. concurring). It is beyond question that the formal charges have been proven by clear and convincing evidence.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In imposing 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 submits his actions should not be a basis for discipline as he caused no actual harm to any client. We disagree. Even a cursory review of the facts demonstrates he violated duties owed to the legal system and the legal profession. His actions were knowing and intentional, and caused actual harm to the administration of justice.

The applicable baseline sanction is suspension. The aggravating and mitigating factors found by the hearing committee are supported by the record.

In fashioning an appropriate sanction, we take some guidance from *In re: Abadie*, 20-1276 (La. 5/13/21), 320 So. 3d 1073, 1081, *cert. denied sub nom*. *Abadie v. Louisiana Att'y Disciplinary Bd.*, 212 L. Ed. 2d 11, 142 S. Ct. 1114 (2022), in which we imposed a year and a day suspension on an attorney who filed improper pleadings, failed to follow court procedures, and attacked the integrity of the presiding judge. In doing so, we stated:

> It is clear respondent was frustrated that her client did not obtain the relief to which she believed he was legally entitled. It is an unfortunate fact that in many instances, litigation leaves one of the parties and its counsel disappointed by the outcome. However, this does not give an attorney license to make unsupported and reckless allegations of collusion and conspiracy on the part of the judges who participated in the matter. Rather, lawyers are expected to be professionals and to honor their obligations to the legal system and to the profession. Respondent failed to do so, and for this misconduct, she must be sanctioned.
>
> Based on this reasoning, and considering respondent's complete lack of remorse, we find the board's recommended sanction is appropriate. Accordingly, we will suspend respondent from the practice of law for one year and one day.

Similarly, in this case, we are confronted with respondent's failure to honor his obligations to the profession and legal system, as well as his continued lack of remorse for his actions. We find a one year and one day suspension, which will require respondent to file a formal application for reinstatement pursuant to Supreme Court Rule XIX, § 24, is an appropriate sanction. As in *In re: Simon*, 04-2947 (La. 6/29/05), 913 So. 2d 816, 826–27, "[w]e urge respondent to take this opportunity to reflect upon his professional and ethical duties as a member of the bar of this state, in particular the need to balance the zealous advocacy of a client's cause with his oath as an attorney to 'maintain the respect due to courts and judicial officers.'"

## 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 Henry L. Klein, Louisiana Bar Roll number 7440, be and he hereby is suspended from the practice of law for a period of 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.

**SUPREME COURT OF LOUISIANA**

**No. 2023-B-00066**

**IN RE: HENRY L. KLEIN**

Attorney Disciplinary Proceeding

**CRICHTON, J., concurs in part and dissents in part and assigns reasons:**

I agree with the majority's finding that respondent has violated the multitude of Rules of Professional Conduct as alleged. However, I disagree with the sanction of one year and one day suspension, as I find it unduly lenient. Respondent has not only continued to deny any responsibility for his misconduct, he has engaged in a pattern of filing repetitive and unnecessary documents in this Court since the Office of Disciplinary Counsel filed its formal charges against him on January 18, 2023. In fact, other than his objection and brief responding to the Petition filed by Office of Disciplinary Counsel, as of May 17, 2023, respondent has filed approximately fourteen documents in this Court since the Office of Disciplinary Counsel's initial filing, many of which seek only to address the underlying litigation and have no actual relevance to (or express remorse for) respondent's misconduct.[1] This Court's rules setting forth the Code of Professionalism in the Courts provides that lawyers will "speak and write civilly and respectfully in all communications with the court" and "will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice." La. S.Ct. Rules, Part G, § 11.[2]

[1]These documents include, but are not limited to, a "Request for Special Assignment" (seeking to have his disciplinary matter heard on an expedited basis), a "Motion for Judgment on the Pleadings" (a pleading not relevant to disciplinary proceedings in this Court), a "Notice of Significant Development" (pertaining only to the underlying litigation and not respondent's misconduct), a "Verified Notice of Significant Filing" (also related to the underlying matter and not the instant disciplinary process), and most recently a "Motion to Dismiss Pursuant to SCOTUS Rulings at [sic] *Axon v. FTC* and *SEC v. Cochran* and for Further Relief" (a repetitive, albeit largely unclear, filing urging this Court to investigate alleged collusion between the Office of Disciplinary Counsel and Girod, a party in the underlying litigation).

[2] *See also,* Rule 3.1 of the Rules of Professional Conduct ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or

Respondent's filings here have attempted to re-litigate the underlying matter which brought rise to the original allegations against him, they have requested this Court give special order and consideration to his disciplinary case, and they have maligned his opposing counsel following oral argument before this Court.[3] *See* La. S.Ct. Rule VII, § 7 ("[t]he language used in any brief or document filed in this court must be courteous, and free from insulting criticism of any person, individually or officially, or of any class or association of persons, or of any court of justice, or other institution.") These meritless documents have served no other purpose than to harass and detract from the important work of this Court.

In my view, respondent's prior misconduct throughout his career, coupled with the present violations, demonstrate that his abusive disregard for the most basic rules of decorum outweighs any alleged "advocacy" he may claim.[4] He has caused needless delay and disruption and has shown zero remorse for his actions. Accordingly, I would impose a lengthier suspension than that set forth by the majority.

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reversal of existing law."); and Rule 3.5(d) ("A lawyer shall not engage in conduct intended to disrupt a tribunal.").

[3] In a filing on March 5, 2023, entitled "Motion to Strike Hearsay and Request for Enforcement of April 14 SCOTUS Ruling," respondent, as he has done before, accuses the Office of Disciplinary Counsel of collusion with Girod.

[4] As I have stated before and as noted by the majority, "[i]t is unfortunate that respondent does not seem to understand that being a zealous advocate does not equate to such repugnant disrespect for the system we are charged to honor and serve." *In re: McCool*, 15-0284 (La. 6/30/15), 172 So. 3d 1058, 1090 (Crichton, J., concurring).