ORIGINAL

Louisiana Attorney Disciplinary Board
FILED by: Donna P. Burgess
Docket# 22-DB-038
Filed-On 3/13/2023

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: ROBERT WILLIAM HJORTSBERG

DOCKET NO. 22-DB-038

REPORT OF HEARING COMMITTEE # 12

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Robert William Hjortsberg ("Respondent"), Louisiana Bar Roll Number 31587.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 8.4(a), 8.4(b), 8.4(c), and 8.4(d).[2]

PROCEDURAL HISTORY

The formal charges were filed on August 24, 2022. Respondent filed an answer to the charges on September 20, 2022. The hearing of this matter was held on February 3, 2023. Chief Disciplinary Counsel Charles B. Plattsmier appeared on behalf of ODC. Respondent appeared with counsel, Dane S. Ciolino.

For the following reasons, the Committee finds that the evidence is clear and convincing that Respondent, with respect to Count 1 of the formal charges, violated Rules 8.4(a), 8.4(b) and 8.4 (c). The Committee further finds that the ODC did not carry its burden of proving clear and convincing evidence with respect to Count 2 of the formal charges. As a sanction for the Rules violation related to Count 1, the Committee recommends that Respondent be suspended from the practice of law for six months, with all but two months of this suspension deferred, with a one year probationary period after the active period of suspension.

[1] Respondent was admitted to the practice of law in Louisiana on September 10, 2008. Respondent is currently eligible to practice law.
[2] See the attached Appendix for the text of these Rules.

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT 1

On or about January 27, 2021 the Office of Disciplinary Counsel opened file number 0039019 when the Respondent self-reported through his attorney that he planned to enter a guilty plea to federal misdemeanor bill of information for failure to file his federal income tax return for the calendar year 2017. The underlying facts reflect that he failed to file for two (2) years—both 2017 and 2018, but obtained a negotiated plea for a single year in exchange for truthful testimony and cooperation in a federal criminal trial. Inasmuch as his cooperation with federal authorities might have had an impact, there has been a delay in sentencing in his criminal case. Failure to file federal income tax returns has formed the basis for disciplinary sanctions in the past and reflects clear violations of Rule 8.4(b)—the commission of a criminal act; 8.4(c)—conduct involving dishonesty; and 8.4(a)—violate or attempt to violate the Rules of Professional Conduct, or do so through the acts of another.

COUNT 2

On or about April 25, 2022 the Office of Disciplinary Counsel opened file number 0039906 after receiving a complaint from Matthew Caplan, an assistant district attorney in the office of the District Attorney for the 22nd JDC. The Respondent represented a criminal defendant identified as Zarius Brown in *State of Louisiana vs. Zarius Brown, Docket #18CR10-139415* in Washington Parish. Brown faced charges of attempted first-degree murder of a police officer. Reportedly the defendant/client voluntarily chose to absent himself from the trial. Respondent moved for a continuance but upon consideration of the argument advanced, the trial judge denied the motion. Respondent then advised that he would not participate in the trial but rather would simply sit at counsel table, taking no role in the defense of his client. He did not participate in jury selection, opening statements, cross examination of any witnesses, did not call any witnesses, and declined to participate in closing arguments. The jury found the defendant guilty. On appeal the Respondent's conduct was determined to be a clear case of ineffective assistance of counsel such that the defendant's conviction was reversed and the case remanded for a new trial.

The Respondent's intentional decision to refuse to participate in the criminal trial is a failure to provide reasonably diligent representation as required by Rule 1.3; and actions which were clearly prejudicial to the administration of justice in violation of Rule 8.4(d). As before, his conduct also violates 8.4(a).

EVIDENCE

ODC introduced the following exhibits into evidence without objection from the Respondent.

ODC 1. Self-report of Bill of information through Counsel (1/27/21)

ODC 2.	Guilty Plea (3/10/21)
ODC 3.	Removed and not introduced as an exhibit
ODC 4.	Judgment (8/24/22)
ODC 4 (a).	Respondent's 2017 and 2018 U.S. Individual Tax Returns and payment records (under seal by protective order)
ODC 5.	Complaint Received (4/25/22)
ODC 6.	Notice of Investigation to Respondent (5/4/22)
ODC 7.	Return Receipt (5/10/22)
ODC 8.	Notice representation (5/11/22)
ODC 9.	Initial Response from Respondent (6/10/22)
ODC 10.	ODC request for additional information (6/10/22)
ODC 11.	Supplemental Response from Respondent (6/17/22)
ODC 12.	First Circuit Court of Appeal record – State v. Brown (*in globo*)

Respondent did not introduce any exhibits into evidence.

The following witnesses were called to testify by ODC.

(1) Respondent Robert William Hjortsberg, in person

Respondent graduated from Loyola Law School in New Orleans, Louisiana in 2007. He passed the Louisiana Bar Examination and was licensed in 2008. Respondent was employed by the Regan Law Firm for two years, practicing criminal defense work. He then worked for the Jason Williams Firm for ten years, leaving in the year 2020.

With respect to Count 1 of the Formal Charges, Respondent admits that he did not file income tax returns for the years 2017 and 2018. Respondent was prosecuted by the U.S. Attorney's Office in the United States District Court, Eastern District of Louisiana, and eventually pled guilty on March 21, 2021 to a misdemeanor offense of willful failure to file a return, supply information or pay tax, 26 U.S.C. §7203 (ODC Exhibits 2 and 4). Hjortsberg self-reported his federal charges on January 27, 2021 to the ODC (ODC Exhibit 1). He was sentenced on August 24, 2022 to six months home detention, 36 months' probation, restitution of $31,651 and a fine of $4,000 (ODC Exhibit 4). Respondent also agreed as part of his plea to provide testimony in the federal trial of Jason Williams and Nicole Burdett if needed (Respondent was not called to testify in that federal trial). Respondent was not a W-2 employee; he received 1099 forms for his work during the years 2017 and 2018. He did not withhold any taxes. Respondent has paid the restitution ordered by the court as part of his sentence. There may be more money that he owes with respect to his guilty plea, but he has not been notified of that yet. He plans to pay whatever else is owed.[3] When questioned by Committee Member Judy Milnar as to why Respondent did not file his tax returns for 2017 and 2018, Respondent testified that it was carelessness.

[3] Respondent eventually filed tax returns for 2017 and 2018 jointly with his wife. His wife was not prosecuted, and she withheld taxes as a W-2 employee in her job.

Respondent stated that he had a person who held himself out as a CPA who filed his taxes in previous years. After Respondent learned his taxes had not been filed, this person advised him that it was "no big deal." However, Respondent admitted that his failure to file was willful.

Respondent further testified that he cooperated fully with the ODC. Respondent was not a public official.

Regarding Count 2 of the formal charges by the ODC, Respondent testified that he represented Zarius Brown who was charged with several felony counts, including attempted first degree murder of a police officer, in the 22nd Judicial District, Parish of Washington before the Honorable William H. Burris, presiding judge. The trial of Brown on these charges commenced on March 10, 2020, and the jury had been called for examination. After the prosecution and the judge examined the first panel of jurors on *voir dire* a restroom break was taken. Zarius Brown, after the break, did not return to the courtroom. Efforts made to locate Mr. Brown were unsuccessful. Respondent testified that he had no knowledge that Mr. Brown would skip bail. Respondent testified that the situation of the client absenting himself during the trial was a first for him, for Judge Burris, and for the prosecutor. Respondent moved for a continuance and for mistrial, and both were denied. Respondent did not request to withdraw as counsel because he believed it would be improper to do so and would result in prejudice to his client. He testified that he made the strategic decision not to participate during the trial. Respondent stated that he made these decisions "on the spot" and that he felt his actions were in the best interest of his client. He stated that the case involved a police officer's testimony versus his client's version of events. Consequently, Respondent felt that it was in the best interests of his client that Respondent not participate in the trial. Judge Burris did not hold Respondent in contempt for his failure to participate in the trial, stating, "That is your strategic choice." Respondent did not request the opportunity to take writs to the court of appeal. Respondent had not received prior instructions from Zarius Brown as to whether Mr. Brown would testify and how to proceed without his presence.

The trial for Zarius Brown in his absence took two days, and the jury found Mr. Brown guilty on all counts. Respondent could not recall whether he sought advice during the two trial days from other attorneys as to how to proceed while the client was absent. Respondent was present in the courtroom during the entire trial, but did not question any witnesses, did not make any arguments, and did not enter any evidentiary objections. The verdict was appealed, and the Court of Appeal, First Circuit of Louisiana, reversed the conviction and remanded it for further proceedings for ineffective assistance of counsel that included an improper jury charge to which Respondent did not object. Respondent credibly testified that he was not trying to disrespect the court and was open with the court as to what he was doing. Neither Judge Burris nor the prosecutor in the district court reported Respondent to the ODC. The appellate attorney for the district attorney's office reported Respondent to the ODC after the First Circuit published its opinion.

The following witnesses were called by the Respondent:

(1) William H. Burris, District Court Judge, 22^{nd} JDC, by telephone

Judge Burris testified that he has served as a district judge since 2018. He presided over the Zarius Brown trial. Mr. Brown was on bail and not incarcerated when he left the courtroom and never returned. Voir dire of the jury had begun. Judge Burris had never experienced this before. He credibly testified that Respondent was agitated, visibly upset and was unsure what to do. Nevertheless, Respondent was punctual and respectful to the Court. Respondent moved for a continuance and a mistrial, but Judge Burris declined, relying on Code of Criminal Procedure article 832. Judge Burris was frustrated by Respondent's lack of participation, but did not hold Respondent in contempt for not participating in the trial because he believed that a criminal defendant is not required to do anything at trial except be punctual and respectful. Respondent did not request time to get ethical guidance or time to seek writs. If he had, Judge Burris testified that he probably would not have granted a stay, but even if he did, he would not have given Respondent more than a short time to file an emergency writ. Judge Burris would not have granted a motion to withdraw. Judge Burris did not report Respondent's conduct to the ODC for the same reasons that he did not hold Respondent in contempt. Judge Burris was concerned that doing so would be tantamount to telling someone he would "have to potentially breach the Fifth Amendment by speaking or by participating in trial." Judge Burris recalled having a discussion much later with the Assistant District Attorney who thought that the First Circuit Court of Appeal's decision instructed that the DA to report the matter to the ODC. Judge Burris testified that he did not know that he would agree with that interpretation, but the DA had already reported so not necessary for him to do so. Judge Burris testified that his number one priority during a jury trial, outside of the constitutional rights of the defendant, is to value and honor the commitment that jurors make.

(2) Camille Buras, District Court Judge, Orleans Parish Criminal Court, in person

Judge Buras has served as a district judge in criminal court since 1998. She credibly testified that Respondent argued many motions before her, and Respondent has been prompt, prepared, straightforward, and that Respondent has a very good professional reputation. When asked if she has ever presided over a trial where a defendant left the court, Judge Burris responded that it was very rare and recalled two occasions where it happened in her court. Only one occasion was after the jury had been sworn, and she declared a mistrial in that one instance.

(3) Thomas Calogero, in person

Mr. Calogero testified that he has practiced as a criminal defense attorney for approximately thirty years. He credibly described Respondent, with whom he has worked, as very diligent, very prepared and a person of outstanding character. Mr. Calogero further testified that he has never had a situation where a criminal defendant absented himself after a trial commenced. Mr. Calogero testified that he had never taken a writ during a trial, but has heard of it being done during trial.

(4) Susan Lampton, in person

Ms. Lampton works with the World War II Museum in New Orleans. She is not an attorney. She has known Respondent since 2009 through his volunteer work and fundraising for the Museum. She credibly testified as to the good character of Respondent.

(5) Carl Rochet, in person

Mr. Rochet is employed as a U.S. marketing director by McDonald's and is not an attorney. He is best friends with Respondent and has known him since college. He credibly described Respondent as a person of good character.

(6) Bivian "Sonny" Lee, in person

Mr. Lee is the founder and CEO of the nonprofit organization, Son of a Saint. Respondent has volunteered with Son of a Saint. Mr. Lee credibly testified that Respondent, when he has volunteered, has done what he said he would do and more.

FINDINGS OF FACT

A. <u>Count 1</u>

In his Response to Formal Charges, Respondent admitted that he failed to file his federal income tax returns for the years 2017 and 2018. Respondent further admitted in his Response that his conduct in failing to file these returns violated Rules 8.4(a), 8.4(b) and 8.4(c) of The Rules of Professional Conduct. Therefore, the hearing related Count 1 was for the purpose of ultimately determining the sanction for Respondent's admitted Rules violations. During the hearing, Respondent confirmed that he admitted the Rules violations in his Response to Formal Charges. The Committee reviewed the exhibits introduced into evidence at the hearing, and those exhibits further support the Rules violations that were admitted by Respondent. The Committee accepts the admissions of Respondent and further finds that there is clear and convincing evidence to support Count 1 of the Formal Charges for violations of Rules 8.4(a), 8.4(b) and 8.4(c).

With respect to Count 1, the Committee makes further findings of facts based upon the evidence presented at the hearing on February 3, 2023:

(1) According to Respondent's Amended U.S. Individual Income Tax Return (ODC Exhibit 4(a)), Respondent's adjusted gross income in 2017 was $95,227.00. The amount of tax owed was $31,651.00. According to Respondent's Amended U.S. Individual Income Tax Return for 2018 (ODC Exhibit 4(b)), Respondent had an adjusted gross income of $58,606.00 with tax owed of $13,160.00. Consequently, the Respondent's combined adjusted gross income for the years 2017 and 2018 was $153,833.00. The combined tax owed by Respondent for the years 2017 and 2018 was $44,811.00.

(2) In his "Stipulated Factual Basis for Guilty Plea" (ODC Exhibit 2), Respondent agreed that he failed to file a 2017 tax return until July 28, 2020, even though he knew that he was required to file by October 15, 2018. The Committee finds that the Respondent's failure to file tax returns for the years 2017 and 2018, in light of the exhibits introduced by the ODC regarding Respondent's federal prosecution, was dishonest in nature.

(3) Respondent is not a current or former public official.

(4) Respondent has paid the full amount of restitution for failing to file his 2017 tax return. Respondent has also has paid the full amount of his 2018 taxes that are due according to his filed amended return for that year.

(5) Respondent pled guilty to failure to file his tax return in the year 2017. He was sentenced to thirty-six (36) months' probation and was placed on home detention, with location monitoring by voice recognition, for a period of six (6) months. He was ordered to pay an assessment of $25.00, restitution of $31,651.00 and a fine of $4,000.00.

(6) Based upon the credible testimony of Judge Buras and Mr. Calogero at the hearing, Respondent has a good professional reputation. Based upon the credible testimony of Ms. Lampton, Mr. Rochet and Mr. Lee, Respondent has volunteered with charitable organizations and is considered to be a person of good character and reputation in the community.

(7) Respondent credibly expressed remorse for his actions that led to his admitted Rules violations.

(8) The Committee finds that Respondent had a dishonest or selfish motive in failing to file his tax returns. He admitted as part of his guilty plea that he knew that he was required to file his 2017 tax return by October 15, 2018 and failed to do so. Although Respondent testified at the hearing that his reason for not filing his tax return was carelessness, on cross examination by the ODC, Respondent admitted his failure to file in 2017 was willful and testified to such as part of his plea agreement. Further, the Committee notes that Respondent failed to file returns for two (2) years and had the educational background and previous experience to understand his obligation to pay taxes on his income and file tax returns timely. Reliance upon an advisor that it is "no big deal" to not file tax returns is not reasonable.

(9) Respondent, after he made the decision to plead guilty, reported himself to the Office of Disciplinary Counsel and has had a cooperative attitude throughout these disciplinary proceedings.

(10) Respondent has no prior discipline.

B. <u>Count 2</u>

Based upon the evidence presented at the hearing, the Committee makes the further findings of fact:

(1) Respondent credibly testified that he had no knowledge that his client, Zarius Brown, would not return to the courtroom after his trial began.

(2) According to the credible testimony of Judge Burris, Respondent was visibly upset and agitated when his client did not return to the courtroom during the trial.

(3) Respondent credibly testified that he made the strategic decision not to participate in the trial.

(4) Respondent credibly testified that he believed that it was in the best interests of his client not to proceed with the trial. Respondent was prepared for the trial. Based upon the credible testimony of Respondent and Judge Burris as to what occurred after Zarius Brown left the courtroom, the Committee finds that Respondent had no selfish motive or intention when he made the decision not to participate in the trial.

(5) Respondent, on behalf of his client, argued for a mistrial which was denied.

(6) Respondent credibly testified that he had no intention to disrespect the court or to engage in conduct that was prejudicial to the administration of justice.

RULES VIOLATED

With respect to Count 1, Respondent admitted that his conduct in failing to file his tax returns for the years 2017 and 2018 violated Rules 8.4(a), 8.4(b) and 8.4 (c). Furthermore, the Committee finds that the record fully supports that by clear and convincing evidence, the Respondent's conduct violated Rules 8.4(a), 8.4(b) and 8.4 (c). Respondent entered a guilty plea in federal court to willful failure to file his 2017 U.S. individual tax return, and admitted during the hearing before the Committee that he willfully failed to file his returns.

With respect to Count 2, the Committee finds that the ODC did not carry its burden of proving by clear and convincing evidence that Rules 1.3, 8.4(a) and 8.4(d), for which Respondent was formally charged, were violated.

Rule 1.3 states that, "A lawyer shall act with reasonable diligence and promptness in representing a client." The evidence introduced at the hearing demonstrated that Respondent appeared for and was prepared for the trial of his client Zarius Brown. During a break from the examination of jurors on voir dire, Zarius Brown left the courtroom and did not return. There was no credible evidence introduced at the Committee hearing that showed that Respondent was complicit in any way with Mr. Brown's decision to absent himself from the trial. On the contrary, Respondent testified that he had no knowledge that Mr. Brown would skip bail, and Judge Burris credibly testified that Respondent was visibly upset and was unsure what to do. Furthermore, Respondent argued to the court that he could not proceed with the trial competently without his client because of the nature of the case which turned on his client's word against the police officer. Respondent moved for a mistrial and remained in the courtroom during the two days of trial. Respondent made the strategic decision as Mr. Brown's attorney to do what Respondent thought was in the best interests of his client. There was no credible evidence introduced at the Committee hearing that Respondent's decision to not further participate in the trial was to benefit himself or was made because Respondent was not prepared for trial.

The question of whether Respondent violated Rule 8.4(d) and 8.4(a) is a closer question for the Committee. The Committee finds that there was not clear and convincing evidence of violation of Rules 8.4(d) and 8.4(a). The Committee finds that Respondent acted in what he believed at the time was in the best interests of his client. He had not faced this situation of a client absenting himself during a trial and neither had the presiding judge nor prosecutor. The decision was made during the heat of the trial. Respondent was not ordered by the court to participate in the trial. Balanced against Respondent's actions that he believed were in the best interests of his client is the potential adverse impact on the system of justice. The precedential effect of no ethical violation for an attorney's unwillingness to actively participate on behalf of his absent client during a trial is a potential adverse impact on the administration of justice that concerns the Committee. However, there was no credible evidence presented in this specific case that Respondent was complicit in any way with his client's absence. To the contrary, Judge Burris testified at the hearing that Respondent was agitated and visibly upset after he learned that his client left the premises. Respondent was open with the Court about why he felt he could not continue to participate in the trial without his client. Furthermore, the evidence showed that Respondent was prepared for trial, and his decision to not participate in the trial was not self-serving.

ODC cites in support the case of *In re: Young*, 2003-0274 (La. 06/27/2003), 849 So.2d 25 and argues that this decision is most nearly similar on the facts and law. However, the *Young* decision is distinguishable. Young was charged with two counts of ethical misconduct. The first count involved Young's representation of Allan Williams in a criminal matter. Young became convinced that Williams was guilty and that he intended to take the stand to testify falsely. On the day of trial, Young filed a motion to withdraw where he insisted that the trial "as a waste of time" because there was no possibility of the State not proving its case. Young also maintained in his motion that he "forsakes" the taking of another criminal case because conflicts are more likely to occur in criminal matters. The presiding judge denied the motion to withdraw, and Young then declined to participate in voir dire of the jury. The judge thereupon dismissed the jury, and appointed new counsel, resulting in delay. The judge later barred Young from representing another criminal defendant in her court. The Louisiana Supreme Court found that Young violated Rule 1.1(a) for failure to provide competent representation when he indicated it was "a waste of time" to proceed and refused to participate in voir dire. Respondent Hjortsberg was not formally charged with a violation of Rule 1.1(a). However, even if he had been so charged, the circumstances were different. Respondent Hjortsberg's non-participation at trial was not based on his belief that it was a "waste of time," but that he could not properly defend his client against the criminal charges without his client's presence due to the nature of the case.

The second count addressed by the Louisiana Supreme Court in *Young* involved Young's actions in his representation of Vincent, another criminal defendant. Four days before Vincent's trial began, Young filed for a motion for continuance and admitted he failed to prepare for trial. Respondent further stated that Vincent had not paid him for collect calls, and Young was adamant about not doing any more work until Vincent paid his bill. The judge granted the continuance and rescheduled the trial. As the new trial date approached, Young advised Vincent, who had been incarcerated for approximately one year, that he was unprepared for trial because he was still investigating. Young then assisted Vincent in filing a *pro se* motion to terminate Young as his attorney, for continuance and for time to appoint a new attorney to protect his right to consent defense. The judge granted the motion and shortly thereafter sent a letter to the ODC expressing her concerns about Young's mishandling of the Williams and Vincent matters. In its decision, the Louisiana Supreme Court found a violation of Rule 8.4(d), but it was based on the court's determination that Young, through the artifice of a *pro se* motion, forced the trial court to grant a continuance. The Supreme Court held that Young had a duty to present the facts to the trial court and allow the trial court to make an informed ruling on the continuance issue. In contrast, the alleged misconduct of Respondent Hjortsberg did not involve artifice. The transcript of the trial demonstrates that Respondent was open and forthright with Judge Burris as to what he was doing and why.

In the decision of *In re: Downing*, 2005-B-1553, 930 So.2d 897, 905 n. 5 (La. 5/17/2006), the Louisiana Supreme Court recognized that the proscription against conduct that is prejudicial to the administration of justice in Rule 8.4(d) most often applied to litigation related misconduct and cited to the cases as examples listed in footnote 4 of its opinion in *Louisiana State Bar Association v. Harrington*, 585 So.2d 517, 520 (La. 1990). Those example cases listed in *Harrington* involved dishonesty, deception or concealment. There was no clear and convincing evidence that Hjortsberg's conduct during the Zarius Brown trial involved dishonesty, deception or concealment.

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

(1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
(2) Whether the lawyer acted intentionally, knowingly, or negligently;
(3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
(4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to the profession and the public by willfully not filing his tax returns. Respondent's conduct reflects poorly on the profession and violates his obligations to the public to pay his individual taxes timely. Respondent acted knowingly. Respondent's misconduct caused actual harm because his taxes totaling $44,811 were not paid until well after he was required to do so by law.

The *ABA Standards for Imposing Lawyer Sanctions,* Standard 5.12, suggests that suspension is the baseline sanction for Respondent's misconduct.

The Louisiana Supreme Court decision of *In re: Harvey Wayne Cook*, 2010-B-0092, 33 So.3d 155 (La. 04/16/2010) provides guidance and sets forth four principal factors to consider for sanctions in this area: (1) Whether there is a pattern of failure to file over a number of years; (2) the amount of money involved; (3) whether Respondent's actions were selfish or dishonest in nature; and (4) whether Respondent is held to a higher standard as a result of having a position as a public official. *See* 33 So.2d 155 at 161. With respect to the first factor, Respondent failed to file his individual tax returns for two years. With respect to the second factor, the amount of money involved was $44,811 in taxes for the years 2017 and 2018 along with a $4,000 fine. With respect to the third factor, Respondent's actions were selfish or dishonest in nature. Respondent did not give a credible reason for not paying his taxes or filing his tax returns. As distinguished from the facts in the *Cook* decision, there was no credible evidence introduced at the Committee hearing that Respondent's offenses were motivated by financial pressure or family, personal or emotional problems. With respect to the fourth factor, Respondent is not held to a higher standard as a result of being in a position as a public official.

The one aggravating factor found by the Committee is Respondent's dishonest or selfish motive in failing to pay taxes and file tax returns as described in the previous paragraph.

The Committee also finds that the following mitigating factors have been proven by the Respondent by clear and convincing evidence; (1) Absence of a prior disciplinary record. (2) Respondent exercised good faith efforts to rectify the consequences of his misconduct. Respondent has paid his back taxes as well as the fine imposed by the federal court. (3) There was the imposition of other penalties or sanctions. The federal court, as part of Respondent's guilty plea, ordered that Respondent pay a fine of $4,000. Respondent has paid this fine. (4) Respondent, according to the testimony of witnesses called at the hearing before the Committee, is a person of good character and enjoys a favorable reputation in the community. Respondent has worked with volunteer groups for years, and witnesses Judge Buras and Thomas Calogero both testified to Respondent's good professional reputation. (5) Respondent credibly testified as to his sincere remorse associated with his misconduct. (6) Respondent has made a full and free disclosure to the ODC. Respondent self-reported his actions after his federal charges, provided a sworn statement to the ODC, and has otherwise cooperated in this disciplinary proceeding.

The Supreme Court in its opinion in *Cook*, imposed a sanction of a six month suspension from the practice of law with three months deferred, followed by a one year period of supervised probation. The amount of restitution in the *Cook* case ($121,233) was considerably more than Respondent's restitution. In addition, the attorney in *Cook* pled guilty to two counts of misdemeanor failure to file a tax return whereas Respondent pled guilty to one misdemeanor count (although Respondent admitted he failed to file for two years). The Supreme Court in *Cook* relied upon the hearing committee, disciplinary board and the federal court to find that the attorney was not motivated by greed or other selfish motives, but rather hit a period of financial pressure problems due to family matters. There was no credible proof introduced at the Committee hearing that Respondent Hjortsberg suffered from personal or emotional problems during the time he failed to pay his taxes or file tax returns.

CONCLUSION

Considering all of the facts of this case, the Committee recommends a six month suspension from the practice of law with all but two months deferred as the appropriate sanction for Respondent's misconduct. After serving the active portion of the suspension, the Committee recommends that Respondent be placed on probation for a period of a period of one year subject to the condition that any misconduct during the period of probation will result in the deferred portion of the suspension becoming executory. The Committee further recommends that all costs and expenses in the matter be assessed against the Respondent in accordance with the Supreme Court Rule XIX Section 10.1.

This opinion is unanimous and has been reviewed by each Committee member, who fully concurs and who has authorized John F. Olinde to sign on her/his behalf.

New Orleans, Louisiana, this 10 day of March, 2023.

Louisiana Attorney Disciplinary Board
Hearing Committee # 12

John F. Olinde, Committee Chair
Charles A. Cerise, Jr., Lawyer Member
Judy L. Milnar, Public Member

BY: ______________________________
John F. Olinde, Committee Chair
For the Committee

APPENDIX

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:
(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) Engage in conduct that is prejudicial to the administration of justice;
…

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #032

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **28th day of June, 2024** are as follows:

PER CURIAM:

2024-B-00149 *IN RE: ROBERT WILLIAM HJORTSBERG*

SUSPENSION IMPOSED. SEE PER CURIAM.

Hughes, J., dissents in part for the reasons assigned by Justice Crain.
Crichton, J., additionally concurs and assigns reasons.
Crain, J., dissents in part and assigns reasons.
McCallum, J., dissents in part for the reasons assigned by Justice Crain.

SUPREME COURT OF LOUISIANA

NO. 2024-B-0149

IN RE: ROBERT WILLIAM HJORTSBERG

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

Count I

In January 2021, respondent self-reported through his attorney that he would plead guilty to a federal misdemeanor bill of information based on his failure to file an income tax return for 2017. The underlying facts reflect that respondent failed to file an income tax return for two years, both 2017 and 2018, but he obtained a negotiated plea for a single year in exchange for truthful testimony and cooperation in a federal criminal trial.

The ODC alleges that respondent's conduct violated Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

Count II

Zarius Brown was charged by bill of information with attempted first degree murder of a police officer, illegal possession of stolen things, and aggravated criminal damage to property. Respondent was retained to represent Mr. Brown in the criminal matter, which was pending in the 22nd Judicial District Court for the Parish of Washington.

On the first day of the two-day trial, Mr. Brown was with respondent while a panel of prospective jurors on *voir dire* was questioned by the trial court and then by the prosecutor. Following this questioning, the trial court recessed for a brief restroom break. During the break, Mr. Brown left the courthouse and did not return. Efforts made to locate Mr. Brown were unsuccessful.

The trial court noted that Mr. Brown had voluntarily absented himself after trial had commenced. Thus, according to the trial court, Mr. Brown's presence was not required, and the trial would continue. Respondent moved for a continuance and a mistrial, but the trial court denied the motions. Respondent then advised the court that he would not participate in the trial and would simply sit at the counsel table, taking no role in the defense. The jury was picked without any input from respondent on Mr. Brown's behalf. Respondent also did not give an opening statement or closing argument, made no objections, and did not participate in cross-examination of the State's witnesses or call any witnesses for the defense.

At the conclusion of the trial, the jury found Mr. Brown guilty as charged on all counts, and he was sentenced by the trial court. However, the convictions and sentences were reversed on appeal and the case remanded for a new trial after respondent's conduct was found to be a clear case of ineffective assistance of counsel:

> Defense counsel's representation of the defendant, in his refusal to participate at trial, clearly fell below an objective standard of professional reasonableness. With regard to all

> counts, we find that the defendant demonstrated prejudice, the second prong of *Strickland* [*v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)]. Defense counsel did not object to improper comments by the prosecution, the improper jury instruction, or the leading of the witnesses. Additionally, defense counsel was silent and made no objections to the prosecutor's comments regarding the defendant's flight and his failure to take the stand. Accordingly, we find that the defendant showed that there was a reasonable probability that but for defense counsel's unprofessional errors, the result of the proceedings would have been different regarding all counts.

State v. Brown, 21-0625, pp. 15-16 (La. App. 1st Cir. 2/16/22), 2022 WL 472966 (not designated for publication).[1]

The ODC alleges that respondent's conduct violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 8.4(a), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.

DISCIPLINARY PROCEEDINGS

In August 2022, the ODC filed formal charges against respondent. Respondent, through counsel, filed an answer admitting that he failed to file his federal income tax returns for 2017 and 2018 in violation of Rules 8.4(a), 8.4(b), and 8.4(c). Respondent denied any misconduct in Count II, asserting that he acted in good faith to protect the interests of his client.

Considering respondent's answer, the matter proceeded to a formal hearing on the merits.

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[1] Judge Guidry authored the opinion for the court of appeal. Judge Chutz concurred, stating, "In my view, this case does not present an instance of ineffective assistance of counsel, but of the complete denial of the defendant's constitutional right to counsel." Judge Holdridge dissented as to the reversal of the defendant's convictions and sentences, stating, "In this case, the circumstances and facts surrounding the defendant's failure to appear at the trial and the lack of participation at the trial by the defendant's counsel should be examined at a contradictory hearing in response to a post-conviction relief application."

Formal Hearing

The hearing committee conducted the formal hearing on February 3, 2023. The ODC introduced documentary evidence and called respondent to testify before the committee. Respondent called the following witnesses to testify: Judge William Burris of the 22nd Judicial District Court; Judge Camille Buras of the Orleans Parish Criminal Court; attorney Thomas Calogero; Susan Lampton, an employee of the World War II Museum, Carl Rochet, respondent's best friend; and Bivian "Sonny" Lee, the founder and CEO of Son of a Saint, a nonprofit organization.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee summarized the testimony as follows:

Respondent – Regarding Count I, respondent admitted that he willfully failed to file income tax returns for 2017 and 2018, for which he was prosecuted in the United States District Court for the Eastern District of Louisiana. On March 21, 2021, respondent pleaded guilty to a misdemeanor violation of 26 U.S.C. § 7203. He was sentenced to six months of home detention, thirty-six months of probation, payment of $31,651 in restitution, and a $4,000 fine. Respondent also agreed as part of his plea to provide testimony in the federal trial of Jason Williams (his former employer) and Nicole Burdett, if needed, but he was not called to testify in that federal trial. Respondent has paid the restitution ordered by the court as part of his sentence.[2] Respondent indicated that his failure to file income tax returns resulted from carelessness. He added that the person who filed his taxes in previous years had held himself out as a CPA, and after respondent learned his taxes were not filed,

[2] Respondent eventually filed tax returns for 2017 and 2018 jointly with his wife, who was not prosecuted. The returns included respondent's 1099 income for his work during 2017 and 2018, as well as his wife's W-2 income for those years.

this person advised it was "no big deal." Respondent noted that he cooperated fully with the ODC and was not a public official.

Regarding Count II, respondent testified that Mr. Brown had been charged with several felony counts in the 22nd JDC before Judge William Burris. The trial commenced on March 10, 2020. After the prosecution and the judge examined the first panel of jurors on *voir dire*, a restroom break was taken. Mr. Brown did not return to the courtroom after the break, and efforts to locate him were unsuccessful. Respondent testified that he had no knowledge Mr. Brown would skip bail. This situation – the client absenting himself during the trial – was a first for respondent, Judge Burris, and the prosecutor.

Respondent moved for a continuance as well as a mistrial, both of which were denied, but he did not request to withdraw as counsel, believing it would be improper and result in prejudice to his client. Respondent instead made the strategic decision to not participate in the trial. He made these decisions "on the spot." Respondent felt his actions were taken in the best interests of his client because the case involved a police officer's testimony versus his client's version of events. Judge Burris did not hold respondent in contempt for failure to participate at trial, stating: "That is your strategic choice." Respondent did not request the opportunity to take writs to the court of appeal.

Respondent had not received prior instructions from Mr. Brown as to whether he (Mr. Brown) would testify or how to proceed without his presence, and respondent could not recall whether he sought advice from attorneys about how to proceed with an absent client. Respondent was present in the courtroom during the entire trial, although he did not question witnesses, make arguments, or enter evidentiary objections. Following the two-day trial, the jury found Mr. Brown guilty on all counts.

On appeal, the First Circuit reversed the conviction and remanded the case for further proceedings for ineffective assistance of counsel, including an improper jury charge to which respondent did not object. Respondent credibly testified that he was not trying to disrespect the court and that he was open about what he was doing. Neither Judge Burris nor the prosecutor reported respondent to the ODC. Rather, an appellate attorney for the district attorney's office reported respondent after the First Circuit rendered its opinion.

Judge William Burris – Judge Burris, who testified by phone, indicated that he presided over the Brown trial (Count II). *Voir dire* of the jury had begun, and Mr. Brown, who was on bail and not incarcerated, had left the courtroom but did not return. Judge Burris had never experienced this before. He credibly testified that respondent was agitated, visibly upset, and unsure about what to do, but was also punctual and respectful to the court. Respondent had moved for a continuance and a mistrial, both of which Judge Burris denied. Although he was frustrated by respondent's lack of participation at trial, Judge Burris did not hold respondent in contempt for the reason that a criminal defendant is not required to do anything at trial except be punctual and respectful. Although respondent did not request time to obtain ethical guidance or seek writs, had he done so, Judge Burris probably would not have granted more than a short time to file an emergency writ, and he would not have granted a motion to withdraw. Judge Burris did not report respondent's conduct to the ODC for the same reason that he did not hold respondent in contempt – doing so would be tantamount to telling someone he would "have to potentially breach the Fifth Amendment by speaking or by participating in trial." Judge Burris had a discussion much later with the assistant district attorney who thought the First Circuit's decision instructed the DA's office to report the matter to the ODC. Judge Burris did not know that he would agree with that interpretation, but since the DA's office had already reported the matter, it was not necessary for him to do so. Judge

Burris testified that his number one priority in a jury trial, outside of the constitutional rights of the defendant, is to value and honor the commitment made by jurors.

Judge Camille Buras – Judge Buras credibly testified that respondent, who had argued many motions before her, was prompt, prepared, and straightforward, and has a very good professional reputation. When asked whether she had ever presided over a trial where a defendant left the courtroom, Judge Buras responded that it was very rare, recalling only two occasions in which it happened in her court. In one instance, the jury had already been sworn and she then declared a mistrial.

Thomas Calogero – Mr. Calogero, who has practiced as a criminal defense attorney for approximately thirty years, credibly described respondent, with whom he has worked, as very diligent, very prepared, and a person of outstanding character. Mr. Calogero testified that he never had a situation in which a criminal defendant absented himself after a trial commenced. Mr. Calogero further testified that he had never taken a writ during a trial, although he has heard of it being done.

Susan Lampton – Ms. Lampton has known respondent through his volunteer work and fundraising for the World War II Museum. Ms. Lampton credibly testified to the good character of respondent.

Carl Rochet – Mr. Rochet, a marketing director for McDonald's, has known respondent since college. Mr. Rochet credibly described respondent as a person of good character.

Sonny Lee – Mr. Lee credibly testified that respondent, who volunteered with Son of a Saint, has done what he said he would do and more.

The committee acknowledged respondent's admission that he failed to file income tax returns for 2017 and 2018. Based upon the evidence presented at the hearing, the committee made additional factual findings regarding Count I, including the following:

1. Respondent's combined adjusted gross income for 2017 and 2018 was $153,833, and the combined tax owed for 2017 and 2018 was $44,811.
2. Respondent had a dishonest or selfish motive in failing to file his tax returns. As part of his guilty plea, he admitted knowing that he had to file his 2017 tax return by October 15, 2018, which he did not do. Respondent testified that his reason for not filing his 2017 tax return was carelessness, but on cross-examination by the ODC, he admitted that his failure to file was willful and that he testified to such as part of his plea agreement. Respondent had the educational background and experience to understand his obligation to timely pay taxes on his income and file tax returns. The reliance upon an advisor who stated it is "no big deal" to not file tax returns is not reasonable.
3. Respondent has paid the full amount of restitution for failing to file his 2017 tax return. He has also paid the full amount of his 2018 taxes, according to his filed amended return for that year.
4. After deciding to plead guilty, respondent self-reported to the ODC and has maintained a cooperative attitude throughout these disciplinary proceedings.
5. Based upon the credible testimony of Judge Buras and Mr. Calogero, respondent has a good professional reputation. Based upon the credible testimony of Ms. Lampton, Mr. Rochet, and Mr. Lee, respondent has volunteered with charitable organizations and is a person of good character and reputation in the community.
6. Respondent credibly expressed remorse for his actions that led to his admitted rules violations.
7. Respondent is not a current or former public official.

Based upon the testimony and other evidence in the record, the committee made the following additional factual findings regarding Count II:

1. Respondent credibly testified that he had no knowledge that his client, Mr. Brown, would not return to the courtroom after his trial began.
2. According to the credible testimony of Judge Burris, respondent was visibly upset and agitated when his client did not return to the courtroom during trial.
3. Respondent credibly testified that he made the strategic decision not to participate in the trial.
4. Respondent credibly testified that he believed it was in the best interests of his client not to proceed with the trial. Respondent was prepared for trial. Based upon the credible testimony of respondent and Judge Burris as to what occurred after Mr. Brown left the courtroom, respondent had no selfish motive or intention when he made the decision not to participate in the trial.
5. Respondent, on behalf of his client, argued for a mistrial which was denied.
6. Respondent credibly testified that he had no intention to disrespect the court or engage in conduct that was prejudicial to the administration of justice.

Regarding the rule violations at issue in Count I, the committee acknowledged respondent's admission that his misconduct violated Rules 8.4(a), 8.4(b), and 8.4(c). As to Count II, the committee found the ODC did not carry its burden of proof. With respect to Rule 1.3, the evidence introduced at the hearing demonstrated that respondent appeared for and was prepared for trial. No credible evidence was introduced to show that he was complicit in any way with Mr. Brown's decision to absent himself from the trial. Indeed, respondent testified that he had no knowledge that Mr. Brown would skip bail, and Judge Burris credibly testified that respondent was visibly upset and unsure of what to do. Furthermore, respondent argued to the court that he could not proceed with the trial competently without his client due to the nature of the case, which turned on his client's word against that of the police officer. Respondent moved for a mistrial and remained in the courtroom during the two days of trial. He made a strategic decision as Mr. Brown's attorney to do what he thought was in the best interest of his client. No credible evidence was introduced at the hearing to show that the decision to not further participate in the trial was to benefit himself or was made because he was unprepared for trial.

With respect to Rule 8.4(d), the committee noted that respondent acted in what he believed to be the best interest of his client. He had not previously faced the situation of a client absenting himself during trial and neither had the presiding judge or the prosecutor. The decision was made during the heat of trial. Respondent was not ordered by the court to participate in the trial. Balanced against respondent's actions, and what he believed were the best interests of his client, is the potential adverse impact on the justice system. The precedential effect of no ethical violation for an attorney's unwillingness to actively participate on behalf of his absent client during trial has a potential adverse impact on the administration of justice, which is concerning; however, no credible evidence was presented to show that respondent was complicit in any way with his client's absence. To the contrary, Judge Burris testified that respondent was agitated and visibly upset after learning his client left the premises. Respondent was open with the court about why he felt he could not continue to participate in the trial without his client. Furthermore, the evidence showed that he was prepared for trial, and his decision to not participate in the trial was not self-serving.

The committee determined respondent knowingly violated duties owed to the public and the legal profession. His conduct reflects poorly on the profession and violated obligations he owed to the public. His conduct caused actual harm because his taxes were not paid until well after he was required to do so by law. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

As mitigating factors, the committee found the absence of a prior disciplinary record, good faith effort to rectify the consequences of the misconduct, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, character or reputation, imposition of other penalties or sanctions, and remorse. The only aggravating factor found by the committee was a dishonest or selfish motive.

Concluding that respondent's misconduct was limited to the charges set forth in Count I, and further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended that respondent be suspended from the practice of law for a period of six months, with all but two months deferred, followed by a one-year period of probation with the condition that any misconduct during the period of probation will result in the deferred portion of the suspension becoming executory. The committee also recommended that respondent be assessed with all costs and expenses of this proceeding.

The ODC 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, with one clarification: the committee's finding that respondent asked for a mistrial after Mr. Brown absented himself from trial is correct and supported by the record; however, respondent also asked for a continuance.

With respect to Count I, the board determined the committee correctly found that respondent violated Rules 8.4(a), 8.4(b), and 8.4(c). With respect to Count II, the board agreed that respondent did not violate Rule 8.4(d) and adopted the committee's analysis regarding same; however, the board declined to adopt the finding that Rules 1.3 and 8.4(a) were not violated. Although respondent acted in what he believed was the best interest of his client, he did not act with reasonable diligence in representing Mr. Brown. The evidence introduced at the hearing demonstrated that respondent appeared for and was prepared for the trial of his client. However, after Mr. Brown left the courthouse and the court denied respondent's motions for a continuance and for a mistrial, respondent failed to participate in the proceedings. Respondent failed to participate in *voir dire*, gave no opening statement, made no objections, conducted no cross-examination of any witness, and refused to make a closing argument.

The board determined that respondent violated a duty owed to his client by failing to participate in trial and violated duties owed to the public and the legal profession by willfully not filing his tax returns. He acted knowingly and intentionally, and his conduct caused actual harm. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

As aggravating factors, the board found a dishonest or selfish motive, multiple offenses, substantial experience in the practice of law (admitted 2008), and illegal conduct. As mitigating factors, the board found the absence of a prior disciplinary record, good faith effort to rectify the consequences of the misconduct, full and free disclosure to the disciplinary board, character or reputation, imposition of other penalties or sanctions, and remorse.

After further considering the court's prior jurisprudence addressing similar misconduct, the board determined that the sanction recommended by the committee is reasonable and addresses respondent's misconduct in Count I. The board noted that under the unique factual circumstances of Count II, respondent's violation of Rules 1.3(a) and 8.4(a) should not add to the severity of the sanction.

Accordingly, the board recommended that respondent be suspended from the practice of law for six months, with all but two months deferred, followed by a one-year of probation with the condition that any misconduct during the period of probation will result in the deferred portion of the suspension becoming executory.

The board further recommended that respondent be assessed with all costs and expenses of this proceeding.

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

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.

Respondent does not dispute the misconduct or the charged rule violations in Count I. Specifically, he admits that he willfully failed to file income tax returns for 2017 and 2018, in violation of Rules 8.4(a), 8.4(b), and 8.4(c) of the Rules of Professional Conduct.

In Count II, respondent admits that he did not actively participate in the criminal trial of his client, the defendant, after the client left during *voir dire* and failed to return to the courtroom; however, he denies any professional misconduct. We disagree and find that respondent violated Rules 1.3, 8.4(a), and 8.4(d) as charged.

An accused's right to be represented by counsel is a fundamental component of our criminal justice system. *United States v. Cronic*, 466 U.S. 648, 653 (1984).

The right to the effective assistance of counsel is the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. *Id.* at 656. If counsel entirely fails in this regard, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. *Id.* at 659.

Here, respondent was physically present in the courtroom during Mr. Brown's trial, but he provided no defense at all to Mr. Brown. He did not participate in jury selection, cross-examine the State's witnesses, or hold the State to its burden of proving the alleged criminal offenses beyond a reasonable doubt. Respondent did not deliver an opening statement or closing argument to emphasize the State's burden of proof. He did not object to improper comments by the prosecution, improper jury instructions, or the leading of witnesses. In other words, respondent was no more effective in representing Mr. Brown than a proverbial potted plant. As a result of respondent's inaction, the court of appeal reversed Mr. Brown's convictions and sentences and the case was remanded for a new trial, thereby wasting the time and resources of the trial court, the attorneys representing the State, and the citizens participating in jury service. We find that under these circumstances, respondent did not act with reasonable diligence in representing Mr. Brown and that his conduct was prejudicial to the administration of justice.

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 his client, the public, and the legal profession. He acted knowingly and intentionally and caused actual harm. We agree with the hearing committee and the disciplinary board that the applicable baseline sanction is suspension. The record supports the aggravating and mitigating factors found by the board.

Under the unique circumstances of this case, we find the appropriate sanction is a six-month suspension, with all but thirty days deferred, followed by a one-year period of probation.

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 Robert W. Hjortsberg, Louisiana Bar Roll number 31587, be and he hereby is suspended from the practice of law for a period of six months. It is further ordered that all but thirty days of this suspension shall be deferred. Following the completion of the active portion of his suspension, respondent shall be placed on probation for a period of one year. The probationary period shall commence from the date respondent and the ODC execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. All costs and expenses in the matter of this disciplinary proceeding 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. 2024-B-00149

IN RE: ROBERT WILLIAM HJORTSBERG

Attorney Disciplinary Proceeding

Crichton, J., additionally concurs and assigns reasons.

I agree with the majority opinion. With respect to Count II, regarding respondent's failure to participate in the criminal trial, respondent had an obligation as an officer of the court to do more than merely sit silently. As a result, I agree with the majority that he violated Rules 1.3, 8.4(a), and 8.4(d) as charged.

I write separately because, in my view, respondent's violations of the rules as set forth in Count II present a policy matter for this Court. In this case, as the majority explains in detail, respondent moved for a continuance when his retained client—who was charged with attempted first degree murder of a police officer, among other charges—fled the courthouse during jury selection. This rare situation occurred without warning and presents to the Court as a *res nova* issue in the professional responsibility context. Though respondent's initial confusion over the situation was understandable, a lawyer in this situation cannot opt to be the proverbial potted plant.[1] The effect of respondent's decision was that, by absconding the courthouse during trial, his client was permitted a retrial due to respondent's choice to sit entirely mute—a result the justice system cannot condone.[2]

[1] *See* Iran-Contra Hearings; Note of Braggadocio Resounds at Hearing, N.Y. Times, July 10, 1987, at A7 (noting retort of attorney Brendan V. Sullivan to Senator Daniel Inouye: "Well, sir, I'm not a potted plant. I'm here as the lawyer. That's my job.").

[2] The majority opinion explains that the hearing committee in this case found absolutely no credible evidence that respondent was complicit in his client's decision to absent himself from trial or not return. Therefore, while this case is distinguishable on the facts, I reiterate my comments in *State v. Brown*, 2018-1999 (La. 9/30/21), 330 So. 3d 199, 285-89, regarding a lawyer's obligations not only to his client, but also to the administration of justice.

Because of the *res nova* nature of this issue and the facts as presented at the hearing, I further agree with the majority that we should not impose any additional period of suspension beyond that ordered for Count I for the Count II violations.

SUPREME COURT OF LOUISIANA

No. 2024-B-00149

IN RE: ROBERT WILLIAM HJORTSBERG

Attorney Disciplinary Proceeding

CRAIN, J., dissents in part,

The respondent's client absconded during trial without his knowledge. The respondent moved for a continuance and a mistrial, but the trial court denied the motions. The judge then proceeded to trial, and the jury found the defendant guilty as charged on all counts. The respondent strategically chose not to participate in the trial. The client was not present to express his wishes, nor to assist in his defense.

The court of appeal reversed the convictions and sentences. It remanded the case for a new trial, finding respondent's conduct to be ineffective assistance of counsel. This was error. Ineffective assistance should have been raised on post-conviction relief, not on direct appeal, affording respondent an opportunity to explain his inaction at a post-conviction hearing. *State v. Howard*, 98-0064, (La. 4/23/99), 751 So.2d 783, 802.

I do not believe respondent's choice to not participate violates the Rules of Professional Conduct. The defendant has the right to assistance of counsel. U.S. Const. Amend. VI; La. Const. art. 1, § 13. However, the respondent had no one to assist because the defendant absconded. Through this act, the respondent's ethical obligation to the defendant also disappeared. Further, a defendant must be competent to assist in his defense, or it is a violation of his rights to proceed. La. Code Crim. Proc. art. 641. Here, there was no competent defendant to assist counsel.

Under these facts, counsel was not obligated to do anything. I dissent in part and find no violation of count two.

The Supreme Court of the State of Louisiana

IN RE: W. GLENN SOILEAU

No. 2022-B-01764

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IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and Recommendations (Formal Charges);

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March 07, 2023

Permanent disbarment imposed. See per curiam.

PDG

SJC

JTG

WJC

JBM

Weimer, C.J., concurs and assigns reasons.
Hughes, J., dissents and assigns reasons.

Supreme Court of Louisiana
March 07, 2023

Katie Marjanovic

Chief Deputy Clerk of Court
For the Court

03/07/2023

SUPREME COURT OF LOUISIANA

NO. 2022-B-1764

IN RE: W. GLENN SOILEAU

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, W. Glenn Soileau, an attorney licensed to practice law in Louisiana, but currently on interim suspension for threat of harm to the public. *In re: Soileau*, 18-0394 (La. 3/23/18), 238 So. 3d 972.

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 1972. He received a formal private reprimand (with notice) in 1985.

In 1987, while serving as a judge of the Breaux Bridge City Court, respondent was charged with the following judicial misconduct: (1) during the 1986 Breaux Bridge Crawfish Festival, respondent committed a battery upon a law enforcement official and directed verbal abuse and obscenities towards numerous individuals at the Crawfish Festival Headquarters and grounds, including stating that he "owned the goddam town," resulting in his plea of no contest to simple battery and disturbing the peace; (2) engaging in an altercation during a game of pool at a bar in Breaux Bridge which necessitated the response of police, during which respondent informed the police officer that he had no authority to intervene because respondent "ran the town." Subsequent to the incident, the victim pressed charges of simple battery against respondent before a St. Martinville justice of the peace, resulting in respondent's arrest. After being released on a personal recognizance bond, respondent then pressed charges of simple battery against the victim in his own court and fixed bond at $1,000. (3) in his capacity as judge of the Breaux Bridge City Court, respondent issued an arrest warrant for an individual whom he was opposing in civil litigation for criminal charges instituted by his client in the civil litigation; and (4) respondent filed a suit on open account in his own court in an attempt to collect attorney's fees due him for legal services rendered. For this misconduct, the court suspended respondent from judicial office for six months without pay. *In re: Soileau*, 502 So. 2d 1083 (La. 1987).

In 1997, respondent pleaded guilty in federal court to three Class B misdemeanor hunting violations under the Migratory Bird Treaty Act, 16 U.S.C. § 703. Respondent was sentenced to serve six months in prison, followed by a five-year probationary period with conditions, the maximum penalty for a Class B misdemeanor. In imposing the sentence, the federal judge considered, among other things, the severity of the charges and respondent's four prior convictions of the Migratory Bird Treaty Act. She also concluded that respondent had intentionally attempted to mislead the court concerning the relevant facts of the prior convictions. Respondent served six and a half months on interim suspension based on his criminal conviction. On June 18, 1999, this court suspended respondent from the practice of law for two years, with one year deferred, and with credit for the period of his interim suspension, for his criminal conviction and his misrepresentations to the federal court. Following the active portion of his suspension, the court ordered that respondent be placed on supervised probation for two years, with the special condition that he enroll in the Judges and Lawyers Assistance Program. *In re: Soileau*, 99-0441 (La. 6/18/99), 737 So. 2d 23.

In 2013, respondent was admonished by the disciplinary board for a violation of Rule 1.16(d) (declining or terminating representation) of the Rules of Professional Conduct.

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

FORMAL CHARGES

Count I

On August 7, 2017, respondent was arrested in Lafayette and charged with DWI following a traffic accident.[1] According to the police report, respondent's speech was slurred and he was physically unsteady. He was placed under arrest for suspicion of operating a vehicle under the influence of an intoxicating substance and taken to the police department, where his name was entered into the NCIC computer. This search revealed that respondent had previously been arrested for DWI on February 28, 2013 and August 1, 2015.[2] After his arrest in the instant matter, respondent refused to provide a breath sample; however, he did agree to submit a urine sample, which was positive for alprazolam, amphetamine, methamphetamine, and Tramadol.

Respondent was booked on charges of DWI third offense. The criminal charge was ultimately resolved via a pre-trial diversion program.

Count II

On December 28, 2017, the Louisiana State Police and members of the Lafayette Metro Narcotics Task Force made contact with Idalia Hotz, whom they

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[1] Respondent disregarded a red light and was struck by another vehicle.

[2] The ODC did not learn of the 2013 and 2015 DWI arrests until 2017. The charges were apparently dismissed.

had reason to believe was distributing crystal methamphetamine from a room at the Staybridge Suites hotel in Lafayette. While Ms. Hotz was detained in the room, agents noticed that she received a text message on her cell phone alerting her to the presence of police cars in the hotel parking lot. A follow-up text directed Ms. Hotz to "Get rid of whatever you have and hurry." The messages were sent by a contact named "Glenn," whom Ms. Hotz identified to agents as respondent. A short time later, respondent appeared at the hotel and introduced himself to agents as Ms. Hotz's attorney. Respondent said that he paid for the room and requested that the agents vacate the premises. Respondent was advised by the agents of the criminal investigation underway. Respondent then left the hotel.

Meanwhile, a judge signed a search warrant for the hotel room, which was then executed by agents. During the search, agents found nine grams of crystal methamphetamine and a glass smoking pipe. After Ms. Hotz was placed under arrest, she advised the agents that respondent often pays for rooms in different hotels and provides her with meals while she conducts prostitution activities in the various hotel rooms. Agents seized Ms. Hotz's cell phone for further investigation, and text messages found on the phone confirmed that respondent was knowingly financing Ms. Hotz's illegal activities. The messages further established that respondent is also a paying client of Ms. Hotz's.

On March 1, 2018, a warrant was issued for respondent's arrest on charges of pandering, a felony, in violation of La. R.S. 14:84(A); letting premises for prostitution, a misdemeanor, in violation of La. R.S. 14:85(A); prostitution, a misdemeanor, in violation of La. R.S. 14:82(A); and obstruction of justice, a felony, in violation of La. R.S. 14:130.1(A)(1)(a). Respondent was arrested pursuant to the warrant on March 2, 2018. He ultimately pleaded no contest to an amended misdemeanor charge of interfering with a law enforcement investigation; the remaining charges were dismissed.

DISCIPLINARY PROCEEDINGS

In May 2022, 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 1.2(d) (a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent failed to answer the formal charges. 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 committee's consideration.

Hearing Committee Report

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

The committee then determined respondent violated duties owed to the public, the legal system, and the legal profession. He acted intentionally, causing actual harm to the public and the reputation of the legal profession. Citing the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee found the following aggravating factors present: a prior disciplinary record, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and illegal conduct. The committee determined that no mitigating factors are present.

Turning to the issue of an appropriate sanction, the committee found that respondent's misconduct is so egregious that it warrants permanent disbarment under Guideline 2 (intentional corruption of the judicial process) of the permanent disbarment guidelines set forth in Supreme Court Rule XIX, Appendix D. Respondent financially supported a criminal enterprise and interfered with the police investigation of that enterprise. Similarly, in *In re: Lynch*, 02-2275 (La. 1/24/03), 840 So. 2d 508, the respondent was permanently disbarred for engaging in a scheme to prevent law enforcement from investigating a child pornography ring, which included altering the scene of the crime, interfering with the victims, and counseling a witness to testify falsely before a grand jury. Given the deemed admitted facts and the aggravating factors present in this case, the committee concluded that respondent is ethically and morally unfit for the practice of law and that there is no reasonable expectation of significant rehabilitation in his character in the future. Accordingly, the committee recommended respondent be permanently disbarred.

Neither respondent nor the ODC filed an objection to the hearing committee's report. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.

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 record in this deemed admitted matter supports a finding that respondent counseled a client to engage in criminal conduct, committed criminal acts, and engaged in dishonest conduct. This conduct violates 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 intentionally violated duties owed to his client, the public, the legal system, and the legal profession. He caused actual harm to his client and the public, and he damaged the reputation of the legal profession. We agree with the hearing committee that the applicable baseline sanction is disbarment. We also agree with the committee's determination of aggravating and mitigating factors.

Turning to the issue of an appropriate sanction, the committee has recommended that respondent be permanently disbarred. On May 4, 2022, we adopted amendments to Supreme Court Rule XIX related to permanent disbarment. As is set forth in our order, permanent disbarment may be imposed only "upon an express finding of the presence of the following factors: (1) the lawyer's conduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future." The committee found that both of these criteria are satisfied. We agree.

Respondent's misconduct was undoubtedly egregious. By interfering with a police investigation and counseling a client to destroy evidence, respondent has demonstrated a convincing lack of ethical and moral fitness to practice law. Furthermore, respondent's long prior disciplinary history, both as an attorney and a judge, demonstrates that there is no reasonable expectation of significant rehabilitation in his character in the future.

Based on this reasoning, we will adopt the committee's recommendation and permanently disbar respondent.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that W. Glenn Soileau, Louisiana Bar Roll number 12249, be and he hereby is permanently disbarred. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. Pursuant to Supreme Court Rule XIX, § 24(A), it is further ordered that respondent be permanently prohibited from being readmitted to the practice of law in this state. 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.