

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DARRYL L. ROBERTSON
(Bar Roll No. 28202)

BOARD DOCKET NO. 08-DB-024

OPINION OF HEARING COMMITTEE NUMBER 30

This is a proceeding based on one count of formal charges consisting of nine separate violations of the Rules of Professional Conduct filed by the Office of Disciplinary Counsel ("ODC") against Darryl L. Robertson ("Respondent"). In the charges, it is alleged that the Respondent failed to provide competent representation requiring the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation in violation of Rule 1.1(a); Respondent failed to act with reasonable diligence and promptness in representing Mr. Brown in violation of Rule 1.3; Respondent failed to consult with Mr. Brown about the means by which the objectives were to be accomplished, failed to keep him informed regarding the status of his legal matter and failed to comply with his requests for information in violation of Rule 1.4(a)(2)(3)(4); Respondent failed to promptly deliver/return property belonging to Mr. Brown, specifically, his client file in violation of Rule 1.15(d); Respondent improperly terminated Mr. Brown's representation in a manner that had a material adverse effect on his interests, and failed to comply with applicable law requiring notice to or permission of a tribunal when terminating, and failed to take steps to the extent reasonably practicable to protect Mr. Brown's interests in violation of Rule 1.16(b)(1), (c) & (d) ; Respondent failed to render candid advice with regard to informing Mr. Brown of the necessity of retaining new counsel

in violation of Rule 2.1; Respondent failed to expedite the litigation in violation of Rule 3.2; Respondent knowingly disobeyed his obligations under federal law and statutes and the standing orders of the federal court Judge in violation of Rule 3.4(c); and, Respondent violated the Rules of Professional Conduct, engaged in conduct involving deceit and/or misrepresentation, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(c)(d).

Introduction and Procedural History

Formal charges were filed on February 26, 2008. Service of the formal charges was made upon respondent by certified mail on March 1, 2008. On March 18, 2008, Respondent filed a letter with the Disciplinary Board stating that he accepted full responsibility and asked that the Board consider some disciplinary action short of suspension or disbarment. The Respondent also requested a hearing.

On June 18, 2008, a telephone pre-hearing conference was held. Participating in the telephone conference were Deputy Disciplinary Counsel, Alyson R. McCord, Respondent, Darryl L. Robertson, Attorney for the Respondent, Alfred Williams, Hearing Committee Member Edward J. Walter, Jr. and Michael T. Pulaski, Hearing Committee Chair by substitution. During the conference, Respondent and Disciplinary Counsel agreed to various stipulations which would make the hearing scheduled for June 24, 2008 unnecessary. The stipulations were filed in the record on June 23, 2008.

Based upon the stipulations filed into the record, the Hearing Committee finds that the factual allegations to have been admitted and proven by clear and convincing evidence. It further finds that the Respondent violated the Rules of Professional Conduct as set forth below. The Committee recommends that the Respondent be suspended for a period of

one year with six months fully deferred; that the Respondent be placed on supervised probation for six months following the active portion of his suspension; that Respondent should be appointed a practice monitor for three months; and that Respondent should be required to successfully complete Louisiana State Bar Association's Ethics School Program.

Formal Charges

The formal charges, read:

COUNT I

Mr. Glen Brown initiated a disciplinary complaint against you on September 14, 2006. Mr. Brown retained you to represent his interests as a plaintiff relative to a claim for damages against the Richardson Medical Center on June 7, 2005. A contingency fee contract was executed which delineates the terms and scope of the legal representation. On September 26, 2005, you filed a lawsuit on Mr. Brown's behalf with the 5th Judicial District Court.

Subsequent to retaining you, Mr. Brown attempted to establish contact and communication with you regarding the objectives and status of the representation to no avail for approximately one year and four months. Mr. Brown attempted to establish contact with you through the utilization of the telephone and by sending you certified mail correspondence. Mr. Brown's written correspondence was returned to him due to the fact that you changed your address during the course of the representation and you failed to inform him of same. You previously advised the Office of Disciplinary Counsel that you did not take any measures to ensure that your clients were apprised of your address change, but that you completed a forwarding order through the United States Post Office. After

receiving the disciplinary complaint, you submitted correspondence to the Office of Disciplinary Counsel on September 28, 2006, which purports to constitute a withdrawal from representing Mr. Brown, which contains the following language:

Please be advised that the above referenced matter was removed to the Federal Court in the Western District I am not admitted to practice in the Western District. I have attempted to obtain co-counsel to assist me in this matter to no avail. Thus, I am asking that you seek other counsel in this case. I release all claims to any settlement in the matter, and I wish you well. Also, I sincerely apologize for any inconvenience I have cost you and your family.

The lawsuit that you initially filed in District Court on behalf of Mr. Brown was removed to the Western District Federal Court of Louisiana. You were enrolled in the lawsuit as Mr. Brown's legal representative. You were not admitted to practice at the Western District Federal Court and you failed to take requisite action to gain admission, you failed to inform Mr. Brown of your deficient admission status and you failed to inform the Court of your deficient admission status. As a result of your actions, Mr. Brown's legal interest in the lawsuit was not protected and he was not given the opportunity to timely retain new counsel. The foregoing is compounded by the fact that all communications from the Clerk of Court regarding Mr. Brown's legal matter were mailed to your attention utilizing the address that you provided on the initial lawsuit. You failed to respond to requests to communicate, not only by Mr. Brown, but also those that were initiated by opposing counsel, the Clerk of Court and Judge James's law clerk. Further, you failed to respond to both written communications and telephone messages from the Clerk of Court. Your failure to comply with the Court's orders resulted in Judge Robert G. James dismissing your client's lawsuit, without prejudice, on March 9, 2006. Judge James, in his Order, stated, in

pertinent part:

Pursuant to Federal Rule of Civil Procedure 41(b), the Court may dismiss the Plaintiffs' case for failure to prosecute or to comply with the Federal Rules or any order of court. In this case, Mr. Robertson has failed to comply with the Court's standing order, which is consistent with Federal Rule of Civil Procedure 26(f), and he has failed to update the Clerk of Court with a current address and telephone number. See also Local Rule 41.3W.

Accordingly, the Clerk of Court is instructed to dismiss Plaintiffs' case without prejudice ten (10) business days from the date this Order is mailed unless Mr. Robertson files evidence of good cause for his failure to act.

The language contained in the Order evidences the fact that Mr. Brown's lawsuit was dismissed as a result of your failures to communicate and your inaction. Respondent's conduct violates 1.1(a), 1.3, 1.4(a)(2)(3)(4), 1.15(d), 1.16(b)(1), (c) & (d), 2.1, 3.2, 3.4(c), 8.4(a)(c)(d), of the Rules of Professional Conduct.

Findings of Fact

Respondent was served with formal charges as required by Rule XIX, Section 13(A). Respondent stipulated to the entirety of the factual allegations and conclusions of law which flow therefrom as contained in the formal charges Petition; the parties stipulated to the admissibility of the entirety of the violations of the Rules of Professional Conduct as alleged in the formal charges Petition; the parties stipulated to the admissibility of the entirety of the exhibits that were submitted to the Hearing Committee by the ODC, including Exhibits ODC-1 through ODC-16.

Rule Violations

Count I

The admitted facts are that Respondent violated are Rule 1.1(a) by failing to provide

competent representation requiring the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation; Rule 1.3 by failing to act with reasonable diligence and promptness in representing Mr. Brown; Rule 1.4 (a)(2)(3)(4) by failing to consult with Mr. Brown about the means by which the objectives were to be accomplished, failing to keep him informed regarding the status of his legal matter and failing to comply with his requests for information; Rule 1.15(d) by failing to promptly deliver/return property belonging to Mr. Brown, specifically, his client file; Rule 1.16(b)(1), (c) & (d) improperly terminating Mr. Brown's representation in a manner that had a material adverse effect on his interests, and failing to comply with applicable law requiring notice to or permission of a tribunal when terminating, and failing to take steps to the extent reasonably practicable to protect Mr. Brown's interests; Rule 2.1 by failing to render candid advice with regard to informing Mr. Brown of the necessity of retaining new counsel; Rule 3.2 in failing to expedite the litigation; Rule 3.4(c) knowingly disobeying his obligations under federal law and statutes and the standing orders of the federal court Judge; and, Rule 8.4(a)(c)(d) in violating the Rules of Professional Conduct, engaged in conduct involving deceit and/or misrepresentation, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(c)(d). Respondent's conduct violates 1.1(a), 1.3, 1.4(a)(2)(3)(4), 1.15(d), 1.16(b)(1), (c) & (d), 2.1, 3.2, 3.4(c), 8.4(a)(c)(d), of the Rules of Professional Conduct.

Sanctions

Louisiana Supreme Court Rule XIX Section 10(C) states that in imposing a sanction after a finding of lawyer misconduct, the court or board 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 actual or potential injury caused by the lawyers misconduct;
and,
 - 4) the existence of any aggravating or mitigating factors.

The Louisiana Supreme Court also relies on the ABA Standards for imposing lawyer sanctions to determine the baseline sanction. *In Re: Quaid*, 94-1316 (La. 11/30/94); 646 So. 2d 343,350.

In determining an appropriate sanction, the committee has relied upon the ABA Standards for imposing lawyer sanctions, particularly ABA Standard 4.42(a), 4.53(a)(b) 4.62, 6.22, 6.23 and 7.2.

The aggravating factors that should be considered in accordance with Standard 9.22 are dishonest or selfish motive, multiple offenses, bad faith, obstruction of the disciplinary proceedings by intentionally failing to comply with Rules of the disciplinary agency and vulnerability of the victim. The mitigating factor that should be considered in accordance with Standard 9.31 is the absence of a prior disciplinary record.

Louisiana jurisprudence and the ABA Standards dictate that a short to moderate period of suspension with a portion of the suspension deferred is the baseline sanction for the type of misconduct in which the Respondent engaged, which include the violations of the Rules of Professional Conduct set forth in the formal charges. The Respondent's neglect of Mr. Brown's legal matter and his misrepresentation by admission with regard to the dismissal must be considered in conjunction with the serious professional offenses that were committed against opposing counsel, federal court, the judges, the profession and the

administration of justice. See for example, *In Re: Norwood Marcy Lyons*, 491 So.2d 369 (La. 1986); *In Re: Ronald P. Nabonne*, 539 So.2d 1207 (La. 1989); *In Re: Szuba* 2001-1877 (La. 10/5/2001) 797 So.2d 241 and *In Re: Hollis*, 1998-0444, (La. 6/19/98) 714 So.2d 693.

Based upon the pleadings and evidence, it appears Respondent's actions were knowing, if not intentional, and displayed a disregard for the welfare of his clients, profession and the legal system. Respondent clearly violated the duty to his client and his duty owed to the profession.

Considering the conduct of the Respondent, the ABA Standards, the jurisprudence, and Respondent's admission of the violations, the Committee feels that a year suspension with six months fully deferred is the appropriate sanction.

Conclusion

Considering the foregoing, the Committee finds the factual allegations to have been admitted and that Respondent violated the Rules of Professional Conduct. It recommends that Darryl L. Robertson be suspended for a period of one year, six months fully deferred. The Committee also recommends that the Respondent should be placed on supervised probation for six months following the active portion of his suspension and that he should be appointed a practice monitor for three months. Finally, the Committee recommends that the Respondent be required to successfully complete the Louisiana State Bar Association's Ethics School Program. Respondent should be charged with all costs and expenses of the disciplinary proceeding.

Covington, Louisiana this 25th day of September, 2008.



MICHAEL T. PULASKI
SUBSTITUTION CHAIR,
HEARING COMMITTEE #30

EDWARD J. WALTERS
ATTORNEY MEMBER

RYAN D. KINCHEN
PUBLIC MEMBER