

ORIGINAL

Louisiana Attorney Disciplinary Board

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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: HENRY L. KLEIN

DOCKET NO. 24-DB-004

REPORT OF HEARING COMMITTEE #23

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Henry L. Klein (“Respondent”), Louisiana Bar Roll Number 07440.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 3.3(a)(1), 8.1(a) (b) (c), and 8.4(a) (c) (d).²

PROCEDURAL HISTORY

The formal charges were filed on January 30, 2024. Respondent filed an answer to the charges on March 8, 2024. The hearing of this matter was held on July 29, 2024. Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Respondent appeared *pro se*.

For the following reasons, the Committee finds that Respondent engaged in professional misconduct by violating Rule 8.4 and recommends a suspension from the practice of law for one year and one day. The Committee determines that violations of Rules 3.3 and 8.1 were not proven by clear and convincing evidence.

FORMAL CHARGES

The formal charges read, in pertinent part:

Respondent is Mr. Henry L. Klein, Bar Roll #07440. Respondent was admitted in Louisiana in 1968 and has prior discipline. Respondent received Formal Private Reprimands in 1975 and 1988. He received a six-month suspension in 1987.

¹ Respondent was admitted to the practice of law in Louisiana on August 29, 1968. Respondent is currently suspended. See *In re Klein*, 2023-0066 (5/18/2023), 362 So.3d 392.

² See the attached Appendix for the text of these Rules.

He was suspended again in 1989 for 90 days. Respondent received a third Formal Private Reprimand in 1989. He was also admonished twice, in 1993 and again in 2018. Respondent is currently suspended from the practice of law for a period of one year and one day, actual.

The Complainants in the instant matter are Lisa Billman and Jeffrey Pyle of the Office of the General Counsel for the U.S. Department of Agriculture. The complaint was opened under ODC Investigative File #0041015. Complainants represent, among other entities, the Food and Nutrition Service which administers the Supplemental Nutrition Assistance Program ("SNAP"). According to Complainants, for several years, Respondent has represented retail stores in judicial reviews pursuant to Final Agency Decisions.

In the instant matter, on January 30, 2023, Respondent moved for leave to appear *pro hac vice* in the U.S. Northern District of Illinois in the case of *Asad A. Kahn et. al. v. United States of America et.al.* 1:22-cv-04459, Doc. 18. Respondent did not complete the form motion available but drafted his own motion for leave. The complaint reflects that Respondent properly reported the six-month suspension that he had received in 1987. However, he failed to disclose that he had been investigated and was currently under active ODC prosecution in the matter of *In re: Henry Klein*, 21-DB-003 and that the Hearing Committee had recommended a sanction of a suspension from the practice of law for one year and one day. Additionally, Respondent failed to disclose previous suspensions and reprimands.

In his motion, Respondent failed to disclose that he had been found in civil contempt in the matter of *In re: Regina Berglass Heisler*, 20-11509 (Bankr. E.D. La. November 9, 2021). Respondent also failed to disclose that he had been sanctioned by the district court for violations of Federal Rule of Civil Procedure 11 in the matter of *Heisler v. Kean Miller, LLP*, 2:21-cv-0724 (E.D. La. December 15, 2021), Doc. 79.

In the matter of *Aboa, LLC v. Thomas*, 2:22-cv-01381 (E.D. Cal. August 8, 2022), Doc 5, Respondent represented in his motion to appear *pro hac vice* that he had not been disbarred or formally censured by a court of record or by a state bar association and that there were no disciplinary proceedings against him. Respondent's failure to disclose his prior disciplinary history resulted in the U.S.D.C. for the Eastern District of California to revoke his *pro hac vice* status.

In 2019, Respondent filed a request for admission *pro hac vice* to the U.S. D.C. for the Northern District of Oklahoma where he represented to the court that he had not been denied admission, disbarred, suspended from practice, reprimanded, or otherwise disciplined by a bar association. The court denied the application because it had discovered that Respondent had been disciplined twice by the Louisiana Supreme Court. [FN1. See *AR Food Mart v. United States of America*, 4:19-cv-00344 (N.D. Okla. September 17, 2019).] Respondent acknowledged the discipline after having been caught, but only admitted to the two matters that were discovered by the court. He continued to refuse to disclose other discipline. Respondent also appeared to engage in further dishonesty to the tribunal in the matter of *Enas N. A. Said v. United States of America*, 1: 21-cv-01385 (S.D. Ind. December 7, 2022) Doc. 97.

Lastly, Respondent was sent a copy of the formal complaint that was signed-for on June 5, 2023. As of the date of this instant Petition, the ODC has not received a written response from Respondent as required by Rule 8.1. Respondent's failure to respond to the complaint violates the Rule.

Respondent, by engaging in the above-described behavior and actions has violated Louisiana Rules of Professional Conduct Rule 3.3(a)(1), Rule 8.1(a) (b) (c), and Rule 8.4(a) (c) (d).

EVIDENCE

ODC offered the following for admission and such items were admitted as evidence:

ODC-1: Compliant filed against Respondent by Jeffrey Pyle and Lisa Billman³

ODC-2: Notice of Formal Charges

ODC-3: Signed certified return receipt.

ODC-5: Discipline Report of Respondent.

ODC called one witness, Complainant Lisa Billman.

Respondent did not offer any evidence and chose not to testify. ODC did not call Respondent as a witness.

FINDINGS OF FACT

As a threshold matter, the Committee notes that the record in this proceeding is voluminous. Many of the filings pertain to Respondent's assertions that the LADB lacks authority to conduct these proceedings and render a decision. This issue has been litigated previously and this Committee has denied Respondent's various motions on this issue. While Respondent may pursue these claims in other forums, those claims will not be further addressed.

³ ODC-1 is a 256-page document. It consists of: Complaint of Pyle and Billman, dated March 16, 2023, and attachments compiled by the Complainants. Those attachments are *Asad A. Khan v. United States of America*, No. 1-22-cv-04459 (N.D. Ill), Doc. 38; Form Motion for Leave to Appear Pro Hac Vice (N.D. Ill.); *In re Heisler*, No. 20-11509 (Bankr. E.D. La), Doc. 456, 488-3, 527, 538; *Aboa, LLC v. Thomas*, Case No. 2:22-CV-01381 (E.D. Cal) Doc. 5, 5(B), 56, 67; *AR Food Mart v. United States of America*, No. 19-CV-00344 (N.D. Okla), Doc. 7, 8, 9; *Said v. United States of America*, No. 21-cv-01385 (S.D. Ind.), Doc. 97; *Heisler v. Kean Miller, LLP*, No. 21-cv-0724 (E.D. La), Doc. 79; *Heisler v. Ramona D. Elliott*, Case No. 1:22-cv-008094 (D.D.C.), Doc. 1. ODC inartfully offered this document in globo.

The primary issues for the Committee to address are Respondent's applications for admission pro hac vice in *Asad A. Khan et al v. United States of America*, et al, No. 1:22-cv-04459 (N.D. Ill. 2023) and *ABOA, LLC v. Thomas*, 2:22-cv-01381 (E.D. Cal. 2022). The evidentiary issue for this Committee to determine is whether Respondent violated any of the Rules of Professional Conduct as alleged by ODC in the formal charges.

As to the evidence, ODC offered as its primary evidence the 256-page document labeled "ODC-1", consisting of Complaint and attachments compiled by Lisa Billman and Jeffrey Pyle. ODC offered only one witness for testimony, Lisa Billman. Billman's testimony was largely duplicative of the information included in the Complaint. Jeffrey Pyle was subpoenaed to testify, but the parties stipulated that his testimony would be materially similar, if not identical, to Billman's testimony. ODC did not call Respondent as a witness, and the Respondent elected to not offer direct testimony. Given the limited direct testimony, the Committee is required to infer whether violations exist solely from the documents attached to the Billman/Pyle complaint.

In *Kahn*, Respondent filed a motion with the court to appear Pro Hac Vice in the Northern District of Illinois. ODC-1, p. 8-32. This motion was filed on January 30, 2023. In support of the Motion, Respondent offered a lengthy *curriculum vitae* and a copy of a "routinely offered" statement outlining his suspensions during the 1983-86 period. *Id.* at 31. Respondent did not complete the form offered by the United States District Court for the District Illinois. *Id.* at 33-34. That form includes these specific questions:

Has the applicant ever been:

sanctioned, censured, suspended, disbarred, or otherwise disciplined by any court?

Yes

No

or is the applicant currently the subject of an investigation of the applicant's professional conduct?

Yes

No

transferred to inactive status, voluntarily withdrawn, or resigned from the bar of any court?

Yes

No

denied admission to the bar of any court?

Yes

No

held in contempt of court?

Yes

No

At the time of the filing of the pro hac vice motion, Respondent was under investigation and ODC was prosecuting Disciplinary Case 21-DB-003 against him. Further, on November 9, 2021, Respondent had been found in contempt of court by the United States Bankruptcy Court of the Eastern District of Louisiana (*In re Heisler*, 20-11509), ODC-1 at 35-37. Respondent was sanctioned by the United States District Court of the Eastern District of Louisiana for FRCP Rule 11 violations on December 15, 2021 (*Heisler v. Kean Miller, LLC*, 2:21-cv-0724, Doc. 79); *Id.* at 231- 244.

In *ABOA*, Respondent filed an Application for Pro Hac Vice in the Eastern District of California on August 8, 2022. ODC-1 at 127-128. In this instance, Respondent used the form provided by the Court, which included this statement "I have not been disbarred or formally censured by a court of record or by a state bar association; and there are not disciplinary proceedings against me." *Id.* at 127. Respondent attached a certificate of good standing dated September 14, 2021, from the Clerk of Courts for the United States District and Bankruptcy Courts of for the District of Columbia. *Id.* at 129-130. Respondent did not disclose the pending proceeding in 21-DB-003 or the *Heisler* sanctions.⁴ Later in the proceedings, the Court, on its own motion,

⁴ In subsequent pleadings, Respondent attached the "routinely provided" exhibit regarding the 1983-86 sanctions, but still did not disclose 21-DB-003 or *Heisler*.

took judicial notice of Respondent's failure to disclose his prior disciplinary history. Specifically noting that "lawyers have a duty of candor toward the court" and Respondent's own admission that he should be sanctioned, the *ABOA* Court revoked Respondent's pro hac vice status. *Id.* at 131-134. Significantly, Respondents' client did not obtain new counsel, and its cause was dismissed with prejudice.⁵

RULES VIOLATED

ODC is required to prove its case by clear and convincing evidence. This is a high standard and is made particularly difficult in this matter when the evidence presented leaves so much for the Committee to glean and infer from the cumbersome ODC-1.

Louisiana Rule of Professional Conduct 3.3(a)(1) states that "a lawyer shall not **knowingly** make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact of law previously made to the tribunal by the lawyer." The knowledge requirement of Rule 3.3(a)(1) requires a determination of intent. Respondent was not called to testify and did not offer his own testimony, depriving the Committee of the ability to examine Respondent's credibility under oath. Given the record before this Committee, a violation of Rule 3.3(a)(1) was not proven by clear and convincing evidence.

Rule 8.1 states that "a lawyer . . . in connection with a disciplinary matter, shall not (a) make a false statement of fact, (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand

⁵ ODC-1 also included *AR Food Mart v. United States of America*, et al, 4:19-cv-00344 (N.D. Ok. 8/29/19) and *Enas N A Said v. United States of America*, 1:21-cv-01385 (S.D. Ind. 12/7/2022). According to her testimony, Billman discovered these matters as a part of her inquiry into prior sanctions against Respondent. These documents appear to be offered as evidence of further bad acts by Respondent. In *AR Food Mart*, a matter commenced prior to 21-DB-003 or *Heisler*, Respondent disclosed prior discipline, but the matter was dismissed for failure to enroll local counsel. The conduct in *Enas N A Said* involved discovery sanctions resulting in dismissal of claim of Respondent's client. While there is perhaps evidence of misconduct by Respondent in *Said*, the record is insufficient and requires the Committee to draw inferences that are not supported by the record or witness testimony.

for information from . . . [a] disciplinary authority . . . , or (c) fail to cooperate with the Office of Disciplinary Counsel in its investigation. . .” While Respondent’s conduct in responding to this disciplinary matter was at times contemptuous, bombastic and unorthodox, there is no evidence of concealment of material facts in regard to the disciplinary investigation. Further, while his initial response to the Complaint and Formal Charges was atypical, it cannot be maintained that any provision of Rule 8.1 was violated.

Rule 8.4 (a), (c), and (d) states:

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;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

The determination as to whether Respondent committed professional misconduct under Rule 8.4 requires analysis of Respondent’s action in filing the pro hac vice motions in *Khan* and *ABOA*. In both matters, it is clear that Respondent engaged in a pattern of calculated misrepresentation and willful omission of this prior and pending disciplinary matters. Respondent is a seasoned litigator. Indeed, his pleadings regale the Committee with his many accomplishments, varied practice, and appearances in many courts and administrative proceedings. The idea that his failure to disclose his prior disciplinary history, including the very recent decision in 21-DB-003 and the court’s public sanctioning of his conduct in *Heisler* strains credulity. Instead, he chose to take advantage of deficiencies in the disciplinary reporting structure, opting to include certificates of good standing for U.S. District Courts, not the state courts of Louisiana, and attaching his lengthy and self-serving statement to avoid answering the direct questions of the

Southern District of Indiana's questionnaire. The Committee infers from the record that these were attempts by Respondent to create confusion and avoid disclosure of the previous and pending disciplinary matters and sanctions. Therefore, the Committee finds that Respondent violated Rule 8.4(c).

In addition, Respondent's actions resulted in prejudice to the legal system. Respondent repeatedly filed motions regarding his status that delayed the progress of his client's matters. Additionally, it appears that his client's personally suffered, and their matters were dismissed, or lost in the circus of motions and sanctions flowing directly from Respondent's failure to adequately disclose his disciplinary history. Respondent – who has displayed varying degrees of contempt for this Committee, the ODC, the ODC's counsel, and the entire disciplinary process – seems to think his conduct should be excused because he is defending the powerless against federal authorities. Nonetheless, the righteousness of an attorney's mission – whether actual or self-convinced – does not excuse misconduct and calculated attempts to frustrate the judicial system. Therefore, the Committee finds that Respondent violated Rule 8.4(d).

Rule 8.4 does not require a finding that Respondent acted intentionally or knowingly.⁶ Given the record presented and the lack of direct testimony from Respondent, it is difficult for the Committee to infer intent. Nonetheless, the record, taken as a whole, shows that at minimum Respondent was negligent in his duties in filing the pro hac vice motions, and willfully failed to correct those obvious omissions when given the opportunity to do so. Accordingly, the Committee finds Respondent committed professional misconduct in violation of Rule 8.4(c) and (d). By violating these Rules, Respondent violated Rule 8.4(a).

⁶ The Committee is aware of that the Board's holder in *In re Schonekas*, which states that intent is needed for a violation of Rule 8.4(c). Recommendation of the Disciplinary Board, 21-DB-034 (7/31/2024). That matter was not reviewed by the Louisiana Supreme Court. Plain reading of the Rule does not evidence a "knowingly" standard or indicate the necessity of the finding of intent to violate the Rule, such as Rule 3.3(a)(1) explicitly requires.

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 his clients, the public, the legal system and the profession. He acted negligently. Respondent's misconduct caused actual harm to his clients, the courts in which he practiced, and to the disciplinary system.

The *ABA Standards for Imposing Lawyer Sanctions*, particularly Standard 5.12, suggests that a lengthy suspension is the baseline sanction for Respondent's misconduct. The ABA standards provide a framework for analyzing the conduct of the lawyer subject to sanction, taking into account the lawyer's state of mind, prior disciplinary history, and any mitigating or aggravating factors.

Aggravating factors include Respondent's prior disciplinary records, including an active suspension of one year and one day during the pendency of this action. Indeed, Respondent continued to accept representation and make court appearances while the suspension was in place. Respondent also has displayed little remorse for his actions.

Mitigating factors include Respondent's age and personal struggles. Respondent has raised the issue of "compassionate release." The Committee has taken notice of this concept and considers it as part of mitigating factors. The Committee also notes, however, that in the cases cited by Respondent all involve criminal defendants who had been found guilty of the underlying crimes and express remorse for their actions. Here, there is no direct admission of misconduct by

Respondent; any expression of remorse is tempered by open disdain for these proceedings. We find that that application of the principle of compassionate release inapplicable in this matter.

The Committee reviewed jurisprudence offer by ODC: *In re Donald O. Pinkston*, 2002-3251 (La. 5/20/2003); 852 So.2s 966; *In re: Jerry Jackson Stamps & In re: Terese Lynn Witt Stamps*, 2003-2985 (La. 4/1/4/2004); 974 So.2d 113; and *In re Harry Tun*, 2017-D215, 19-BD-019, District of Columbia. While none of these cases are directly on point, the Committee finds the underlying findings persuasive – that negligent acts or omissions designed to mislead the judicial system are violations of the Rules of Professional Conduct.

In the application of sanctions, the Committee again notes that its deliberations were hampered by the inability to hear Respondent's direct testimony while under oath and make a credibility determination of his intent on making the pro hac vice motions. A finding of intentional misconduct in this matter would lead us to the high end of discipline. Nonetheless, we have not made that finding. The Committee recommends a suspension for the practice of law for one year and one date, retroactively to date of the conclusion of his initial suspension, June 29, 2024.

CONCLUSION

Respondent's conduct is deserving of discipline. Based on prior jurisprudence and analysis of the facts of this case, the Committee recommends a one (1) year and one (1) day suspension from the practice of law, retroactive to June 29, 2024. Respondent should also be assessed with the cost and expenses of the proceeding pursuant to Rule XIX, §10.1.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized John F. Olinde, to sign on their behalf.

**Louisiana Attorney Disciplinary Board
Hearing Committee #23**

**John F. Olinde, Committee Chair
Jeffrey W. Peters, Lawyer Member
Thomas W. Mitchell, Public Member**

BY:



**John F. Olinde, Committee Member
For the Committee**

APPENDIX

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; ...

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) Knowingly make a false statement of material fact;
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or
- (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

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;
- ...
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- ...