

The Supreme Court of the State of Louisiana

IN RE: ERIN L. TYRER

No. 2022-B-01632

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IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and  
Recommendations (Formal Charges);  
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February 14, 2023

Suspension imposed. See per curiam.

PDG

JLW

JDH

SJC

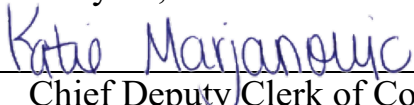
JTG

WJC

JBM

Supreme Court of Louisiana

February 14, 2023



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Chief Deputy Clerk of Court  
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1632

IN RE: ERIN L. TYRER

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Erin L. Tyrer, an attorney licensed to practice law in Louisiana, but currently on interim suspension pursuant to a joint motion of the parties. *In re: Tyrer*, 20-1220 (La. 11/4/20), 303 So. 3d 646.

**UNDERLYING FACTS**

The following facts are not in dispute, having been stipulated to by the parties.

In June 2019, respondent was telephoned by a friend who indicated that she was being placed under arrest for DWI. Respondent drove to the scene and began seeking information about the arrest. The on-scene officer instructed respondent to leave several times, but she continued to argue with him. At this point, the officer detected an odor of alcohol on respondent’s breath and asked for her driver’s license. Respondent refused to submit to a field sobriety test, and the officer attempted to place her under arrest. After initially resisting his efforts, respondent submitted to a field sobriety test and a Breathalyzer test, which showed a blood alcohol level of .129g%. Respondent was arrested and charged with DWI and resisting an officer.

Respondent self-reported her arrest to the ODC. The ODC referred her to the Judges and Lawyers Assistance Program (“JLAP”) for an evaluation. Based on the information provided by respondent at her initial evaluation, the evaluator concluded that respondent did not have a substance use disorder requiring treatment. However,

respondent was recommended for counseling regarding other issues. During one such counseling session, respondent acknowledged that she recently used cocaine and had used it historically, something she failed to truthfully disclose to the JLAP evaluator previously.

## **DISCIPLINARY PROCEEDINGS**

In June 2020, the ODC filed formal charges against respondent, alleging that her conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

Prior to the hearing, respondent and the ODC filed a joint stipulation of facts and rule violations.<sup>1</sup> In this document, respondent admitted to the facts set forth in the formal charges, with limited variation, and admitted that she violated the Rules of Professional Conduct as charged. The parties stipulated that she violated duties owed to the public; that her actions were at all times knowing; and that her conduct caused the potential for harm to others and actual harm to the legal profession. The parties also stipulated to the presence of aggravating and mitigating factors, all of which are outlined in the disciplinary board's report. The matter then proceeded to a mitigation hearing, which was conducted by the hearing committee on July 2, 2021.

### *Hearing in Mitigation*

The ODC introduced documentary evidence at the hearing, including a JLAP report showing that respondent completed an inpatient treatment program at Pine

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<sup>1</sup> See *In re: Torry*, 10-0837 (La. 10/19/10), 48 So. 3d 1038 (respondent and the ODC are free to enter into stipulations, and "effect must be given to them unless they are withdrawn.").

Grove Behavioral Health as well as an IOP program at the Center for Dependency, Addiction, and Rehabilitation. The ODC also introduced a copy of a five-year JLAP recovery agreement signed by respondent on February 1, 2021. The ODC also called Jessica Duplantis, Clinical Case Manager for JLAP, to testify before the committee.

### *Hearing Committee Report*

After considering the testimony and evidence presented at the hearing, the hearing committee acknowledged the stipulations agreed upon by the parties. These stipulations included facts and rule violations. Specifically, the parties stipulated that respondent's conduct, as set forth in the formal charges, violated Rules 8.4(a) and 8.4(b) of the Rules of Professional Conduct.

Based on these findings, the committee determined respondent violated duties owed to the public. She acted knowingly and her misconduct caused potential harm to the legal profession and the general public. After then considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee noted that during the hearing, respondent was very remorseful for her actions. The committee added that she has no prior disciplinary record and continues treatment for substance abuse in Colorado. The committee also found it notable that respondent was not arrested or convicted for the use of cocaine.

The committee noted that of the cases cited by the ODC in its pre-hearing memorandum, the most relevant is *In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 3d 941, wherein the court indicated: “[A]s a general rule, we tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.” The committee noted that respondent engaged in only one instance of DWI and is addressing her substance use issues, but she also admitted to

using cocaine and, initially, was not fully candid with JLAP regarding her cocaine use. The committee concluded that an actual period of suspension is warranted, but due to the voluntary admission of her cocaine use, the steps she has taken to address her substance abuse issues, the remorse for her actions, and the lack of prior discipline, she should not be required to apply for reinstatement.

Considering all of the above, the committee recommended respondent be suspended from the practice of law for one year, retroactive to the date of her interim suspension, and that she be assessed with all costs of this proceeding.

The ODC filed an objection to the hearing committee's report, asserting that the committee should have recommended a suspension of more than one year so as to require respondent to apply for reinstatement. Alternatively, the ODC argued, the committee should have recommended a suspension of more than one year, with all but one year deferred and retroactive to her interim suspension, subject to a period of probation to coincide with the duration of the JLAP agreement.

#### *Disciplinary Board Recommendation*

After review, the disciplinary board determined that the hearing committee's findings of fact are supported by the record and are not manifestly erroneous, as they are largely based upon respondent's stipulations. The board then acknowledged that respondent has stipulated to violating Rules 8.4(a) and 8.4(b), as charged.

The board further acknowledged the following stipulations by the parties: respondent violated duties owed to the public; her actions were at all times knowing; and her conduct caused the potential for harm to others and actual harm to the legal profession. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the applicable baseline sanction is suspension.

The parties stipulated to the following aggravating factor: "lack of full candor and disclosure during her JLAP evaluation." In mitigation, the parties stipulated to

the following factors: absence of a prior disciplinary record, personal and emotional problems, “ultimate good faith efforts to rectify the underlying substance use disorders,” a reputation for good character, interim rehabilitation,<sup>2</sup> and remorse.

In further mitigation, the parties stipulated to a substance abuse disorder that caused the misconduct and for which respondent sought and obtained appropriate JLAP-approved treatment, followed by authorized monitoring. With regard to this stipulation, the board noted that the ODC raised valid concerns about respondent’s adherence to JLAP monitoring. The board noted that the JLAP agreement, signed by respondent five months prior to the hearing, requires that she have an Alcoholics Anonymous (“AA”) or Narcotics Anonymous (“NA”) sponsor, with long-term recovery, and that she diligently work the steps of the program with a sponsor. Ms. Duplantis testified that respondent still did not have a sponsor. Next, the board noted that the JLAP agreement requires respondent to meet in person with a JLAP monitor on a monthly basis. Because respondent lives in Colorado, Ms. Duplantis serves as the JLAP monitor, long-distance from Louisiana. Finally, the board noted that the JLAP compliance report for the first three months of the JLAP agreement reflects that respondent was administratively non-compliant.<sup>3</sup> The board indicated that she has since corrected her deficiencies, and by the time of oral argument before the board, JLAP reported that respondent was in full compliance with the JLAP agreement and the expectation was that she would remain compliant.

Like the committee, the board also took guidance from *Baer*. In addition, the board recognized that the court has imposed fully deferred suspensions in cases

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<sup>2</sup> The board noted that interim rehabilitation is no longer recognized as a factor in the ABA *Standards for Imposing Lawyer Sanctions*.

<sup>3</sup> Ms. Duplantis confirmed that within the first quarter, respondent missed thirteen check-ins and was late submitting three out of four reports. During the first two months of the second quarter, respondent missed eleven check-ins. In a provider report dated May 2021, respondent’s counselor reported that respondent missed two of four required group sessions and found her non-compliant with treatment that month. In February 2021, respondent attended an appointment with the nurse practitioner handling her medical management, but she missed the next-scheduled appointment in May 2021. Respondent told Ms. Duplantis that the medical facility had cancelled the appointment.

involving illegal drug use. For example, in *In re: Arata*, 14-1695 (La. 10/31/14), 150 So. 3d 302, an attorney with a history of chronic pain related to his hemophilia was arrested for possession of opiates. Four days later, the attorney entered Palmetto, where he tested positive for hydrocodone and cocaine. During the evaluation, he admitted that his drug of choice was Vicodin. He also admitted that he smoked marijuana for pain relief and insomnia. He added that he tried cocaine once in college and again in March 2012. At the conclusion of the evaluation, respondent was diagnosed with opioid dependence and cocaine abuse. After successfully completing a ninety-day recovery program, he signed a five-year recovery agreement with JLAP. For his misconduct, the court suspended him from the practice of law for three years, fully deferred, subject to a five-year period of probation to coincide with a newly executed five-year JLAP agreement.

Following careful consideration of respondent's misconduct and subsequent treatment and monitoring, the board recommended respondent be suspended from the practice of law for eighteen months, retroactive to the effective date of her interim suspension, with all but one year deferred, with the following conditions:

1. Upon reinstatement after the active portion of her suspension, respondent shall be subject to a probationary period coinciding with the term of her current, five-year JLAP monitoring agreement executed in February 2021;
2. Respondent shall at all times remain in compliance with her current JLAP monitoring agreement, with periodic reports to be provided to the ODC; and
3. Any failure of respondent to comply with her current JLAP monitoring agreement or any other conditions of probation or any misconduct during the deferral or probationary periods will be grounds for making the deferred suspension executory, or for imposing additional discipline, as appropriate.

Finally, the board recommended respondent be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the disciplinary board's recommendation.

## 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 has stipulated that she engaged in professional misconduct by driving while intoxicated and by using cocaine. In doing so, respondent has violated the Rules of Professional Conduct as alleged in the formal charges and as set forth in the joint stipulation submitted by the parties. Therefore, the sole question presented for the court's consideration is the appropriate sanction for this misconduct.

In determining the 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).



The record supports a finding that respondent knowingly violated duties owed to the public and the legal profession. Her actions had the potential to cause harm to others and caused actual harm to the legal profession. The applicable baseline sanction is suspension. The record supports the aggravating and mitigating factors as stipulated to by the parties.

In determining an appropriate sanction, we find guidance from the case of *In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 3d 941. In *Baer*, we stated the following with respect to appropriate sanctions for DWI offenses:

We have imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, we tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.

After self-reporting her arrest to the ODC, respondent reached out to JLAP and followed their recommendations for evaluation and treatment. Respondent then signed a five-year JLAP recovery agreement on February 1, 2021. Despite the initial deficiencies with compliance, JLAP reports that she is now fully compliant with the agreement. The disciplinary board's recommended sanction includes a probationary period that coincides with the duration of the agreement, which will encourage her commitment towards recovery and protect the public by providing a mechanism to remove her from practice if she relapses into substance abuse in the future.

Accordingly, under the circumstances of this case, we will suspend respondent from the practice of law for eighteen months, with all but one year deferred, subject to the conditions set forth in the board's report. We will further order that respondent's suspension run retroactive to November 4, 2020, the date of her interim suspension.

## DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Erin L. Tyrer, Louisiana Bar Roll number 37340, be and she hereby is suspended from the practice of law for a period of eighteen months, with all but one year deferred, subject to the conditions set forth herein. This suspension shall be retroactive to November 4, 2020, the date of respondent's interim suspension. 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.