

SUPREME COURT OF LOUISIANA

In re: David Band, Jr.

No. 2023-B-00284 (La. Nov. 17, 2023) · No. 2023-B-00284 · Decided November 17, 2023

SUMMARY

The Supreme Court of Louisiana disciplined attorney David Band, Jr. for communicating directly with a represented opposing party without counsel’s consent and making false statements to the Office of Disciplinary Counsel. The court imposed a six-month suspension, deferred all but thirty days, conditioned reinstatement on a mental-health evaluation, and assessed costs. Several justices dissented, finding the discipline too lenient.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam; Hughes, J.; Genovese, J.; Crain, J.
JURISDICTION	Louisiana
DECIDED	November 17, 2023
DOCKET	2023-B-00284
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding arising from formal charges filed by the Office of Disciplinary Counsel. After a formal hearing, the hearing committee found violations of Rules 4.2(a) and 8.1(a) of the Louisiana Rules of Professional Conduct and recommended a six-month suspension. The disciplinary board adopted the factual findings and recommended the same sanction with a mental-health evaluation condition. The respondent objected, and the matter was docketed for oral argument before the Louisiana Supreme Court in its original disciplinary jurisdiction.
STANDARD OF REVIEW	Because attorney disciplinary matters fall within the Louisiana Supreme Court's original jurisdiction, the court acts as the trier of fact and independently reviews the record to determine whether misconduct was proven by clear and convincing evidence. The court applies manifest-error review to the hearing committee's factual findings, although it is not bound by the committee's or disciplinary board's findings and recommendations.

TOPICS

sanctions

appellate jurisdiction

standard of review

appellate procedure

costs

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

appellate procedure

QUESTIONS PRESENTED

1. Whether Band violated Rule 4.2(a) of the Louisiana Rules of Professional Conduct by communicating directly with Bowers about ongoing litigation when he knew she was represented by counsel and had not obtained counsel's consent.
2. Whether Band violated Rule 8.1(a) by knowingly making false statements of material fact to the Office of Disciplinary Counsel during its investigation.
3. What sanction was appropriate in light of the knowing and intentional misconduct, actual and potential harm, aggravating factors, and the absence of a prior disciplinary record.
4. Whether a competency evaluation by a neuropsychologist or other JLAP-designated mental-health professional should be required before reinstatement.

HOLDINGS

1. Band violated Rule 4.2(a) by knowingly communicating directly with Bowers about the ongoing litigation without the consent of her counsel.
2. Band violated Rule 8.1(a) by knowingly making false statements of material fact to the Office of Disciplinary Counsel in connection with the disciplinary matter.
3. A six-month suspension, with all but thirty days deferred, was warranted for Band's knowing and intentional violations of Rules 4.2(a) and 8.1(a), together with assessment of costs.
4. Before reinstatement, Band must consult with the Judges and Lawyers Assistance Program and, at his own cost, undergo an evaluation by a JLAP-designated neuropsychologist or other mental-health professional to determine his competency to continue practicing law.

KEY QUOTATIONS

“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.” (7)

“Turning to the issue of sanction, a period of actual suspension is warranted for respondent’s knowing and intentional communications with Ms. Bowers without the consent of her counsel.” (8)

“It is further ordered that before respondent may be reinstated from his suspension, he must consult with the Judges and Lawyers Assistance Program and undergo, at his cost, an evaluation by a neuropsychologist or

other mental health professional designated by JLAP to determine his competency to continue to practice law.” (9)

FACTUAL BACKGROUND

David Band represented Mortimer Bishop in litigation against Christine Bowers concerning the sale and possession of immovable property. Although Bowers was represented by attorney F. Evans Schmidt, Band directly contacted her through email, Facebook, and telephone about the litigation without Schmidt's authorization, including sending a message asking her to "wear something low cut." Band later made statements to the ODC suggesting that he believed Bowers was unrepresented at relevant times, despite acknowledging in a sworn statement that he contacted her while she was represented because he had difficulty contacting her attorney.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed formal charges against David Band, Jr. in November 2021. Following an April 18, 2022 formal hearing, the hearing committee found that Band knowingly communicated directly with a represented person without counsel's consent and knowingly made false statements to the ODC. The disciplinary board affirmed the findings and recommended a six-month suspension, costs, and a competency evaluation before reinstatement. The Supreme Court independently reviewed the record, imposed a six-month suspension with all but thirty days deferred, required a JLAP-directed competency evaluation before reinstatement, and assessed costs against Band.

DISPOSITION

other

CASES CITED

- In re: Banks, 09-1212 (La. 10/2/09), 18 So. 3d 57
- 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
- Louisiana State Bar Ass'n v. Reis, 513 So. 2d 1173 (La. 1987)
- Louisiana State Bar Ass'n v. Whittington, 459 So. 2d 520 (La. 1984)