

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: KEVIN MICHAEL STEEL

NUMBER: 17-DB-018

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Kevin Michael Steel (“Respondent”), Louisiana Bar Roll Number 26125.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3 (diligence); 1.4(a)(3) (communication – failure to keep client reasonably informed about the status of the matter); 1.5(f)(5) (fees – failure to return unearned portion of a fixed fee); 8.1(a) (knowingly make a false statement of material fact in connection with a disciplinary matter); 8.4(a) (violate or attempt to violate the Rules of Professional Conduct); 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent allowed the formal charges to become and remain deemed admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).<sup>2</sup> The hearing committee (“committee”) assigned to this matter concluded

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<sup>1</sup>Respondent was admitted to the Louisiana Bar on 4/23/99. His primary registration address is 620 Derbigny St., Gretna, LA 70053, and his secondary registration address is 9 Fernwood Dr., Gretna, LA 70056. Respondent is currently eligible to practice law in Louisiana.

<sup>2</sup> This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

Respondent violated the Rules as charged and recommended that he be suspended for one year and one day; that he be ordered to make full restitution to his client of all unearned fees; and that he be ordered to pay all costs and expenses incurred in this matter.

For the following reasons, the Board adopts the factual findings, legal conclusions, and sanction recommendation of the committee.

### **PROCEDURAL HISTORY**

ODC filed formal charges in the instant matter on April 24, 2017. The charges state, in pertinent part:

#### **COUNT I (ODC File 0034058)**

The Office of Disciplinary Counsel (“ODC”) received a complaint from Complainant, Donna Begovich, on January 19, 2016. Complainant hired Respondent to represent her in an action against her automobile insurance company who had denied coverage for a motor vehicle accident in which her son was involved. Complainant met with Respondent on October 28, 2015. Respondent reviewed the materials provided by Complainant and indicated he would represent her against the insurance company. Respondent requested \$1,000.00 on that day from Complainant and indicated \$700.00 of the \$1,000.00 would be to file suit on her behalf against the insurance company in Jefferson Parish. Respondent also indicated he would seek payment of his fee and any other expenses from the insurance company. Respondent also indicated he would send a certified letter to the insurance company within a week informing the company that Complainant had retained counsel and request a written explanation for the denial of the claim. On or about November 15, 2016 [sic], Respondent informed Complainant he had sent the letter to the insurance company and given the company 15 days in which to respond. Complainant requested but never received a copy of said correspondence from Respondent. Complainant never heard anything more from Respondent and terminated his services on December 8, 2015. Complainant terminated Respondent by sending a certified letter to him. In said letter, Complainant requests the return of the \$700.00 Respondent told her would be used to file suit in Jefferson Parish. When Complainant heard nothing from Respondent, she filed the instant complaint.

Respondent filed a written response to the complaint indicating that he had agreed to refund to Complainant the entire \$1,000.00 paid to him. He further stated he had attempted to contact Complainant via text to determine if she would pick up the refund or preferred to have the refund mailed to her. Complainant denies that she ever received any such text from Respondent. On December 29, 2016, Respondent sent correspondence to the ODC stating he had returned

Complainant's refund to her in full. On January 11, 2017, Complainant sent correspondence to the ODC indicating she has not received any refund from Respondent. Further, Complainant indicated in said correspondence that she has had no communication with Respondent since before she lodged the instant complaint.

Respondent's actions in this matter constitute failure to act with reasonable diligence and promptness in representing a client, in violation of Rule 1.3; failure to keep the client reasonably informed about the status of the matter, in violation of Rule 1.4(a)(3); failure to return the unearned portion of a fixed fee, in violation for [sic] Rule 1.5(f)(5); knowingly making a false statement of material fact in connection with a disciplinary matter, in violation of [Rule] 8.1(a); violating or attempting to violate the Rules of Professional Conduct, in violation of Rule 8.4(a); and, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c) of the Rules of Professional Conduct.

By letters dated April 27, 2017, the formal charges were mailed via USPS certified mail to Respondent's primary and secondary registration addresses. The mailings were delivered to both addresses.<sup>3</sup> Respondent failed to file an answer to the charges. Accordingly, on August 4, 2017, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). An order was signed on August 22, 2017, ordering that the factual allegations contained in the formal charges were deemed admitted and proven by clear and convincing evidence and that Respondent be given twenty days from the mailing of the order to show cause why imposition of the order would be improper or would result in a miscarriage of justice. On September 12, 2017, Respondent filed a two-sentence Motion to Recall Order and Request to be Heard in Mitigation with no supporting memorandum. On the same date, Respondent was ordered to submit a memorandum no later than September 28, 2017, offering the factual basis, along with documentary evidence and argument, demonstrating good cause for recalling the committee's order of August 22, 2017. Respondent filed nothing in response to the September 12, 2017 order. On March 28, 2018, ODC filed its submission on sanction in which

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<sup>3</sup> The return receipt on the mailing to the primary address does not indicate the date it was delivered, but the signed receipt was received in the Board office on May 8, 2017. The mailing to the secondary address was delivered on April 29, 2017.

ODC argued that Respondent should be suspended for one year and one day. The ODC filed eight exhibits (ODC-1 through ODC-8).<sup>4</sup>

Hearing Committee No. 09 filed its report on May 10, 2018.<sup>5</sup> The committee concluded that Respondent violated the Rules as charged. In recommending a sanction, the committee found that Respondent violated duties owed to the client, the legal profession, and the public. The committee found Respondent's conduct to be intentional, and at a minimum knowledgeable, and that his misconduct caused actual harm to his client and the legal profession. The committee recognized the following aggravating factors: prior disciplinary offenses; multiple offenses; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; indifference to making restitution; and substantial experience in the practice of law. The committee found a lack of evidence in the record of any mitigating factors. After considering the *ABA Standards for Imposing Lawyer Sanctions*, including Standards 4.42 and 7.2, and the jurisprudence, the committee recommended that Respondent be suspended for one year and one day and be ordered to pay restitution to his client and all costs and expenses associated with this matter.

The matter was originally scheduled for argument before a board panel on August 9, 2018. On May 11, 2018, the ODC filed a notice of no objection to the committee's recommendation. ODC filed its Pre-Argument Brief in support of the committee's recommendation on July 10, 2018.

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<sup>4</sup>Exhibits ODC-1 through ODC-6 were filed with ODC's submission. Exhibits ODC-7 and ODC-8 relating to Respondent's prior discipline were referenced in ODC's submission, but were not filed into the record until July 12, 2018. It is noted that the Board may take judicial notice of Respondent's prior disciplinary record determined from the records maintained by the Board. "The Louisiana Attorney Disciplinary Board is the permanent statewide agency which administers the lawyers disciplinary system and, as such, the agency which maintains records of all such discipline. We are therefore able to take judicial notice of Respondent's prior disciplinary record." *In re White*, 96-DB-002, Recommendation of the Louisiana Attorney Disciplinary Board, p. 14.

<sup>5</sup>Hearing Committee No. 09 was comprised of Donald C. Massey (Committee Chair), Margaret E. Woodward (Lawyer Member), and Harry G. Barkerding (Public Member).

Also on July 10, 2018, Respondent filed a motion to continue the Board panel argument and allow him sixty days to obtain counsel and respond. ODC objected to a sixty-day continuance, but was agreeable to a thirty-day continuance. On July 17, 2018, an order was signed rescheduling the argument for September 20, 2018, and setting a deadline of August 21, 2018 for Respondent to file his response and/or initial brief. No counsel has appeared for Respondent, and Respondent has filed nothing for the Board's consideration.

Oral argument of this matter was held on September 20, 2018, before Board Panel "A."<sup>6</sup> Deputy Disciplinary Counsel Tammy Pruet Northrup appeared on behalf of the ODC. Respondent did not appear.

## **ANALYSIS OF THE RECORD BEFORE THE BOARD**

### **I. Standard of Review**

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a), states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ..., and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

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<sup>6</sup>Board Panel "A" is composed of Brian D. Landry (Chair), Linda G. Bizzarro (Lawyer Member), and Sheila E. O'Leary (Public Member).

**A. The Manifest Error Inquiry**

The factual allegations in the formal charges have been deemed admitted and proven pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3), and are supported by the evidence submitted.

**B. De Novo Review**

The committee correctly applied the Rules of Professional Conduct. The legal conclusions of the committee are supported by the factual allegations asserted in the formal charges and by the evidence in support of the allegations. The record supports the conclusion that Respondent violated Rules 1.3, 1.4(a)(3), 1.5(f)(5), 8.1(a), 8.4(a), and 8.4(c). *See In re Donnan*, 2001-3058 (La. 1/10/03), 838 So.2d 715.

**II. The Appropriate Sanction**

**A. Rule XIX, §10(C) Factors**

Louisiana Supreme Court Rule XIX, §10(C), states that when 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 lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

Here, Respondent violated duties to his client and the profession. Respondent acted knowingly and intentionally. Respondent's failure to communicate with his client, failure to diligently fulfill the services he agreed to perform, failure to return unearned fees, and providing of false information to the ODC in connection with this matter has caused actual damage to his client and the profession. He accepted \$1,000.00 from Complainant, but has presented no

evidence to show that he performed any work on her legal matter and has not returned the unearned fee. Respondent's misconduct caused a delay in the analysis and pursuit of the client's claim and loss of the fee paid to Respondent. Further, Respondent made false statements to the ODC (which were also provided to Complainant) regarding communications with Complainant and regarding the return of the fee paid to him. Conduct of this sort causes the unnecessary expenditure of the limited resources of the disciplinary agency and delays the resolution of complaints and causes damage to the reputation of the profession.

Aggravating factors include: prior disciplinary offenses;<sup>7</sup>dishonest or selfish motive; pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; substantial experience in the practice of law;<sup>8</sup> and indifference to making restitution. The record fails to establish any mitigating factors.

## **B. The ABA Standards and Case Law**

The following ABA *Standards for Imposing Lawyer Sanctions* are instructive in considering the sanction to be imposed for Respondent's misconduct and suggest that the baseline sanction is suspension:

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

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<sup>7</sup>In 2004, Respondent received an admonition and was ordered to attend the LSBA Ethics School within one year of the order of discipline for violation of Rules 1.3 and 1.4. *In re Steel*, Louisiana Attorney Disciplinary Board, 04-ADB-017 (6/8/04). In 2015, Respondent consented to discipline of a three-month suspension, fully deferred, for violations of Rules 1.3 and 1.4(a). *In re Steel*, 2014-2367 (La. 1/16/15), 155 So.3d 513 (Mem). See Exhibits ODC-7, ODC-8.

<sup>8</sup>Respondent was admitted to practice law sixteen years prior to being retained by Complainant.

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or . . .

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

7.20 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Further, the recommended sanction of one year and one day is supported by the jurisprudence discussed in the committee's report as follows:

The Louisiana Supreme Court has found that neglecting a legal matter and failing to cooperate with ODC in investigating a complaint surrounding that neglect merits a one year and one day suspension. [FN14] We agree with ODC that the *In re Ford* [09-B-2524 (3/26/2010), 30 So.3d 742], *In re Hebert* [08-2785 (La. 5/29/09), 9 So.3d 846] and *In re Waltzer* [04-1032 (La. 10/8/04), 883 So.2d 973] matters offer important guidance to the committee.

[FN14 See e.g. *In re: Wyatt*, 2002-0053 (La. 4/12/02), 814 So.2d 1265; see also *In re: Turnage*, 01-1240 (La. 6/22/01), 790 So.2d 620; *In re: Bergeron*, 00-1386 (La. 9/15/00), 768 So.2d 595; *In re Grady*, 99-0440 (La. 4/9/99), 731 So.2d 878; *In re: Powers*, 98-2826 (La. 1/29/99), 731 So.2d 185; and *In re: Kendrick*, 98-0623 (La. 4/3/98), 710 So.2d 326.]

The instant case is similar to *In re: Ford*. In *Ford*, the Court observed:

Respondent acted knowingly, if not intentionally, in violating duties owed to her clients, the legal system, and the legal profession. She caused harm to her clients in that their legal matter has been delayed, and Mr. Van continues to be deprived of his \$5,000. She also harmed the disciplinary system by making misrepresentations and failing to cooperate with the ODC.

Suspension is the baseline sanction.

The Court suspended Ms. Ford from the practice of law for one year and one day and ordered her to make restitution to the Complainant.

In *Hebert* the Court suspended Mr. Hebert for one year and one day as a sanction for neglecting a legal matter, failure to communicate with his client, making false statements to his client and the ODC, and failure to cooperate with ODC in its investigation. In *Waltzer*, Ms. Waltzer was suspended for two years



for neglecting three legal matters, failure to communicate with her clients, failure to properly terminate the representation of her clients, failure to cooperate with ODC in its investigations, including failure to respond to properly served subpoenas, and providing false and misleading information to ODC.

Here, Mr. Steel failed to communicate with Ms. Begovich. He failed to diligently represent Ms. Begovich. Mr. Steel failed to return funds he owed to Ms. Begovich, and he provided untrue information to the ODC, wrongfully claiming that he actually returned unearned funds advanced by Ms. Begovich. We believe that Mr. Steel should be suspended for a year and one day.

Recommendation of Hearing Committee No. 09, pp. 9-10.

Additionally, in the more recent case of *In re Brown-Manning*, 2015-2342 (La. 3/4/16), 185 So.3d 728, the respondent was suspended for one year and one day and ordered to pay restitution for unearned fees for misconduct similar to that of Respondent here.<sup>9</sup> The *Brown-Manning* matter was a deemed admitted matter in which the respondent was found to have neglected two client matters, failed to communicate with her clients, failed to refund unearned fees, and failed to cooperate with the ODC. The Court found that the respondent violated duties owed to her clients and the legal profession, causing actual harm, and stated that the baseline sanction for the respondent's conduct was suspension. Aggravating factors present were pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and indifference to making restitution. Unlike Respondent here, the respondent in *Brown-Manning* had no prior disciplinary record. The absence of a prior disciplinary record was the sole mitigating factor.

Considering the above, the committee's recommended sanction of a one-year and one-day suspension plus restitution is appropriate, and the Board adopts the recommended sanction.

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<sup>9</sup>The respondent in *Brown-Manning* was found to have violated Rules 1.3, 1.4, 1.5(f)(5), 1.16(d), 8.1(c), and 8.4(a).

**CONCLUSION**

The Board adopts the committee’s factual findings and legal conclusions regarding rule violations. The Board recommends that Respondent be suspended for one year and one day and that he be ordered to pay restitution to Ms. Donna Begovich in the amount of \$1,000.00. Additionally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

**RECOMMENDATION**

The Board recommends that Kevin Michael Steel be suspended from the practice of law for one year and one day and that he be ordered to pay restitution to Ms. Donna Begovich in the amount of \$1,000.00. The Board further recommends that Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**Linda G. Bizzarro  
Pamela W. Carter  
Brian D. Landry  
Dominick Scandurro, Jr.  
Danna E. Schwab  
Evans C. Spiceland, Jr.  
Melissa L. Theriot  
Charles H. Williamson, Jr.**

By:   
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Sheila E. O’Leary  
**FOR THE ADJUDICATIVE COMMITTEE**

## APPENDIX

### Rule 1.3 Diligence

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

### Rule 1.4 Communication

(a) A lawyer shall:

...

(3) keep the client reasonably informed about the status of the matter;

...

### Rule 1.5 Fees

...

(f) Payment of fees in advance of services shall be subject to the following rules:

...

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit in to a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

### 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;

...

### 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;

...