

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MICHAEL KEITH LEBLANC

NUMBER: 18-DB-028

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 Michael Keith LeBlanc (“Respondent”), Louisiana Bar Roll Number 27834.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 8.4(a) (violate or attempt to violate the Rules of Professional Conduct); 8.4(b) (commission of a criminal act, especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects); and 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).² The

¹ Respondent is 52 years old and was admitted to the Louisiana Bar on 4/19/02. His primary registration address is 4300 S. I-10 Service Rd. W., Ste. 103N, Metairie, LA 70001, and his secondary registration address is 3510 Plymouth Pl., New Orleans, LA 70131. He was interimly suspended by order of the Supreme Court effective July 29, 2008, and later suspended on consent for a period of three years by order dated September 14, 2012, retroactive to the effective date of his interim suspension. See *In re LeBlanc*, 2012-1487 (La. 09/14/12), 98 So.3d 288. He remains suspended from the practice of law.

² 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.

hearing committee (“committee”) assigned to this matter concluded Respondent violated the Rules as charged and recommended that he be permanently disbarred.

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 March 26, 2018. The charges state, in pertinent part:

II.

The Respondent has a prior disciplinary history including an admonition issued to him in August of 2007 for a conflict of interest and conduct prejudicial to the administration of justice. Additionally, on or about July 29, 2008 the Respondent was interimly suspended for threat of harm to the public having eighteen separate matters under investigation by the Office of Disciplinary Counsel alleging multiple violations of the Rules of Professional Conduct. Finally, the Respondent was suspended by Order of the Louisiana Supreme Court on consent for a period of three years retroactive to his interim suspension of October 29, 2008. The rule violations forming the basis for his consent discipline was [sic] lack of diligence, failure to return an unearned fee, lack of communications, and failing to return client files. Additionally, he failed to cooperate with an ongoing disciplinary investigation. The Respondent remains suspended at this time.

III.

On or about August 4, 2017, the Office of Disciplinary Counsel was contacted by law enforcement with the Jackson County Sheriff Department in Pascagoula Mississippi. The Office of Disciplinary Counsel was advised that, Michael Keith LeBlanc was the subject of an arrest warrant stemming from a report of theft from his employer, Premier Crane Works. The corporate president of Premier Crane Works reviewed his bank statement and noticed two checks that had cleared the bank but which were issued out of sequence. One was in the amount of \$1,955.83 and the other in the amount of \$1,956.38 both made payable to Kimberly Ruben, the girlfriend of the Respondent Michael LeBlanc. Investigation by law enforcement established that the Respondent, without permission, consent or authority, took the two checks from the offices of Premier Crane Works, made those checks payable to his girlfriend, and she subsequently cashed them. Since the date of the discovery of the stolen checks, the Respondent failed to return to his employer’s office and fled the jurisdiction of Mississippi. Law enforcement described Respondent as a fugitive from justice. Recently, the Office of

Disciplinary Counsel was advised that the Respondent was apprehended on an open warrant while in Miami, Florida and has been extradited to the State of Mississippi.

IV.

The Respondent has stolen nearly \$4,000 of funds from his employer. His conduct reflects violations of Rule 8.4(c) – Conduct involving dishonesty, fraud, deceit and misrepresentation; Rule 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act, particularly one that reflects on his honesty and trustworthiness; and Rule 8.4(a) – Violate or attempt to violate the Rules of Professional Conduct.

By letters dated March 28, 2018, the formal charges were mailed via USPS certified mail to Respondent’s primary address and two additional addresses provided by the ODC in its service instructions on the Formal Charges pleading.³ The mailings to Respondent’s primary address and to the Gulfport, MS address were returned stamped “return to sender/unclaimed/unable to forward.” The mailing to the Hastings/Metairie address was delivered and signed for by W. Ruben on March 30, 2018. Louisiana Supreme Court Rule XIX, §§8(C) and 11(E)(2), provide that proof of attempted service pursuant to Section 13(A) shall constitute adequate notice of the proceedings.⁴ Respondent failed to file an answer to the charges. Accordingly, on May 8, 2018, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). By order signed May 17, 2018, the factual allegations contained in the formal charges were deemed admitted. On August 1, 2018, ODC filed its submission on sanction in which ODC argued that Respondent should be permanently disbarred. The ODC filed six exhibits (ODC 1 through ODC 6) with its submission.

³ The two additional addresses are 4512 Hastings, Metairie, LA 70006, and 2518 24th Ave., Gulfport, MS 39501.

⁴ Rule XIX, §13(A), provides that “service of the petition in any disciplinary proceeding shall be made by ... mailing the petition by registered or certified mail to the primary address shown in the registration statement filed by respondent pursuant to Section 8C or other last known address.”

Hearing Committee No. 55 filed its report on September 6, 2018.⁵ The committee concluded that Respondent violated the Rules as charged and recommended Respondent be permanently disbarred. The committee's analysis in support of its recommendation is quoted *infra*.

No objection to the committee's recommendation was filed. ODC filed its Pre-Argument Memorandum on October 5, 2018. Respondent has filed nothing for the Board's consideration.

Oral argument of this matter was held on November 15, 2018, before Board Panel "B."⁶

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 petitions for reinstatement, 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).

⁵ Hearing Committee No. 55 was comprised of James K. Irvin (Committee Chair), Bobby Delise (Lawyer Member), and Francinia Henry (Public Member).

⁶ Board Panel "B" is composed of Pamela W. Carter (Chair), Dominick Scandurro, Jr. (Lawyer Member), and Evans C. Spiceland, Jr. (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 8.4(a), 8.4(b), 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 the public and the profession. Respondent acted knowingly and intentionally. Respondent's actions in committing the criminal acts involved were intentional. He caused harm to his employer, Premier Crane Works, by stealing approximately \$4,000 from Premier.

Aggravating factors include: prior disciplinary offenses; dishonest or selfish motive; pattern of misconduct; multiple offenses; vulnerability of the victim; indifference to making restitution; and illegal conduct.⁷ The record fails to establish any mitigating factors.

B. The ABA Standards and Case Law

The recommended sanction of permanent disbarment is supported by the following well-reasoned analysis provided by the committee:

ANALYSIS

Respondent was admitted to the practice of law on April 19, 2002, after graduating from the Loyola College of Law. He was interimly suspended by the Louisiana Supreme Court on July 29, 2008, and later suspended on consent for a period of three (3) years by order dated September 14, 2012 retroactive to the effective date of his interim suspension. See *In Re: Leblanc* 2012-1487 (La. 09/14/2012), 98 So.3d 288.

According to ODC, Respondent was participating in the Louisiana Attorney's Assistance Program and was under a monitoring agreement when he petitioned for reinstatement on September 14, 2014. Before his hearing on that petition could be held, he relapsed, and ODC's Motion to Dismiss the petition without prejudice was granted. Accordingly, Respondent has been suspended from practice of law since July 29, 2008.

Following his reinstatement effort, a detective with the Jackson County, Mississippi, Sheriff's Department in Pascagoula advised ODC that Respondent was the subject of an arrest warrant alleging that he had committed embezzlement and forgery.⁸ ODC then opened an investigation into those allegations. ODC learned that Respondent had committed the alleged crimes while employed with Premier Crane Works, LLC as an accountant in Pascagoula. Premier Crane Work's President complained that Respondent had written two checks on the company's account made payable to his girlfriend, Kimberly Ruben. The two checks totaled nearly \$4,000. When the President confronted respondent about the checks he denied knowing anything about them and fled to parts unknown.

In January 2018, Respondent was arrested in Miami and extradited back to Mississippi where he was incarcerated pending the embezzlement and forgery charges. The prosecution of the criminal matter in Mississippi is ongoing.

ODC effected service of the Formal Charges on Respondent pursuant to *Supreme Court Rule XIX, Section (C)*. When Respondent failed to answer the charges, ODC moved to have them deemed admitted. An order deeming the

⁷ The committee also found the aggravating factor of substantial experience in the practice of law. Respondent has been suspended since 2008. At that time, he had been practicing for only six years. The Board does not find substantial experience in the practice as an aggravating factor. See *In re Wilson*, 2012-0579 (La. 6/15/12), 90 So.3d 1018.

⁸ The incident was reported to the Jackson County Sheriff's Department on July 28, 2017. See Ex. ODC 1.

charges admitted was issued by this Committee on May 17, 2018, and Respondent failed to file any motion to recall the charges.

The deemed admitted facts reflect embezzlement and forgery by Respondent, each of which is a serious criminal act in violation of Rule of Professional Conduct 8.4(b). A conviction of such a crime is not required to establish a violation of Rule 8.4(b). *In Re: Estiverne* 1999-0949 (La. 09/24/1999), 741 So.2d 649.⁹ The crimes charged against Respondent reflect upon his lack of honesty and untrustworthiness and are also violations of Rule 8.4(c).

Respondent's actions in committing these crimes were, by definition, intentional. They reflect violations of his duties to the public and to the profession: nearly \$4,000 was stolen from his employer; his flight from Mississippi caused law enforcement to expend valuable, time [sic] resources and efforts to locate and extradite him; and his criminal acts reflected adversely on the legal profession's image in the eyes of the public and the consumers of legal services.

ABA Standard 5.11 appears clearly applicable and provides:

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 the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

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

(Emphasis added.)

Thus, the baseline sanction in this case is disbarment. See *In Re: Pearson* 2012-0940 (La. 10/16/2012)[,] 100 So.3d 313 (Respondent violated trust of his partners by embezzling funds from his firm[]); *In Re: Kelly* 1998-0368 (La.06/05/1998), 713 So.2d 458 (Respondent converted refund checks payable to his firm from the clerk of court to his own use); *In Re: Sharp* 2009-0207 (La. 06/26/2009), 16 So.3d 343 (Respondent converted to his own use a personal injury settlement check sent to his firm).¹⁰

There are several aggravating factors warranting an upward deviation from the baseline sanction of disbarment, and there are no applicable mitigating factors. The aggravating factors are prior disciplinary offenses, dishonest motive, pattern of misconduct, multiple offenses, vulnerability of the victim, substantial experience in the practice of law,¹¹ indifference to making restitution, and illegal conduct.

⁹ See also *In re Williams*, 2011-1457 (La. 1/24/12), 85 So.3d 583, 591 ("The fact that an attorney has not been convicted of a crime does not preclude the ODC from proving the attorney committed a criminal act in violation of Rule 8.4(b) of the Rules of Professional Conduct.")

¹⁰ See also *In re Favorite*, 2018-1078 (La. 11/05/18), 255 So.3d 1026 (Respondent wrote checks on closed account and/or account with insufficient funds to pay for rents on townhome and office, employee wages, and furniture and failed to appear in court on charges of issuing worthless checks.)

¹¹ See n. 7.

Appendix E to Supreme [Court] Rule XIX sets forth guidelines for the types of misconduct that may warrant consideration of the imposition of permanent disbarment:

GUIDELINE 9. Instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime. Serious crime is defined in Rule XIX, Section 19. Serious attorney misconduct is defined for purposes of these guidelines as any misconduct which results in a suspension of more than one year.

Respondent's prior discipline imposed by consent was for the maximum three-year suspension and was for serious misconduct. It has now been followed by instance of criminal conduct, which, alone, would warrant the baseline sanction of disbarment.

Considering the Supreme Court Guideline 9 and the other aggravating factors present in this case, this Committee recommends that Respondent Michael Keith LeBlanc be permanently disbarred and his name be permanently stricken from the roster of Louisiana attorneys. Additionally, he should be cast for all costs of these proceedings.

Committee Report, pp. 2-5.

Considering the above, the committee's recommended sanction of permanent disbarment is supportable and appropriate and the Board adopts the recommended sanction.

CONCLUSION

The Board adopts the factual findings, legal conclusions, and sanction recommendation of the committee.

RECOMMENDATION

The Board recommends that Michael Keith LeBlanc be permanently disbarred from the practice of law. The Board further recommends that he 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
Brian D. Landry
Sheila E. O’Leary
Dominick Scandurro, Jr.
Danna E. Schwab
Evans C. Spiceland, Jr.
Melissa L. Theriot
Charles H. Williamson, Jr.**



By _____
Pamela W. Carter
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

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;
- (b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

. . .