

SUPREME COURT OF LOUISIANA

NO. 2019-B-1054

IN RE: MURRAY NEIL SALINAS

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Murray Neil Salinas, a disbarred attorney.

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 2003. In 2013, respondent was admonished for failing to cooperate with the ODC in its investigation of a complaint. In 2016, we disbarred respondent for neglecting several legal matters, failing to refund unearned fees to several clients, and failing to cooperate with the ODC in four investigations, all of which occurred between March 2012 and the latter part of 2014. *In re: Salinas*, 16-1381 (La. 10/17/16), 202 So. 3d 163 (“*Salinas I*”).

Against this backdrop, we now turn to a consideration of the misconduct at issue in the instant proceeding.

FORMAL CHARGES

The ODC filed two sets of formal charges against respondent under disciplinary board docket numbers 17-DB-014 and 18-DB-079. Respondent failed

to answer either set of formal charges. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held in either matter, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. The matters were consolidated on February 4, 2019 before being considered together by a single hearing committee. Respondent filed nothing for the hearing committee's consideration.

17-DB-014

Count I – The Brooks Matter

Broderick Brooks, Jr. retained respondent to represent him in post-conviction relief proceedings. Respondent agreed to file the post-conviction application upon receipt of one-third of the total \$1,000 fee. Mr. Brooks' family paid respondent \$400 during April and May 2012. Respondent failed to file the post-conviction application, and the two-year statute of limitations for the application expired in December 2013.

After a prolonged period of Mr. Brooks' family attempting to contact respondent to no avail, Mr. Brooks' father finally made contact with respondent in August 2015. At the conclusion of the discussion, respondent agreed to return the entirety of the fee paid but has never done so.

Respondent received notice of Mr. Brooks' disciplinary complaint on April 27, 2016 but has never answered or otherwise responded to the ODC.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.5(f)(5) (failure to refund an unearned fee), and 8.1(c) (failure to cooperate with the ODC in its investigation).

Count II – The Simmons Matter

In January 2014, Cleve Simmons retained respondent to defend him against and represent him in a partition lawsuit. Mr. Simmons paid respondent the agreed-upon \$2,000 fixed fee. Respondent never filed any pleadings or completed any work on the matter. In 2015, Mr. Simmons fired respondent and requested the return of the \$2,000. Respondent did not refund the fee.

In May 2016, the ODC mailed notice of Mr. Simmons' disciplinary complaint to respondent at his bar registration address. However, the notice was returned "undeliverable—vacant."

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.5(f)(5), and 8.1(c).

18-DB-079

Count I – The Walker Matter

In May 2016, Benjamin Walker retained respondent to represent him in a criminal matter. The total agreed-upon fixed fee was \$4,500, and respondent agreed to proceed upon receiving one-half of the total fee. Mr. Walker's brother made an initial payment of \$2,500 and continued to make payments until the balance was paid in full.

Respondent enrolled as counsel and appeared in court on two occasions. However, each time the case was continued. Between June 14, 2016 and September 20, 2016, respondent failed to appear at four successive court dates. On the fourth date, the judge determined respondent was not in good standing with Louisiana State Bar Association and appointed the Public Defender's office to represent Mr. Walker. Respondent never refunded the unearned fees.

In February 2017, the ODC sent notice of Mr. Walker's disciplinary complaint by certified mail to respondent at his bar registration address. The mailing was returned "not deliverable as addressed" and "unable to forward."

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.5(f)(5), and 8.1(c).

Count II – The Bates Matter

In April 2016, Jearline Bates retained respondent to defend and represent her son, Schuncey Bates, in a criminal matter. Ms. Bates paid respondent \$3,400 of the agreed-upon \$4,000 fixed fee. Respondent filed no pleadings, made no court appearances, and completed no work in the matter. Respondent also failed to return telephone calls from his client and failed to return the unearned fees.

In September 2017, the ODC sent notice of Ms. Bates' disciplinary complaint by certified mail to respondent at his bar registration address. The mailing was returned "not deliverable as addressed" and "unable to forward."

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.5(f)(5), and 8.1(c).

Hearing Committee Report

After considering the ODC's deemed admitted submission in these consolidated matters, the hearing committee acknowledged that the factual allegations in the formal charges were deemed admitted and proven by clear and convincing evidence. Because of respondent's pattern of misconduct, the committee determined that he acted intentionally, causing actual harm to his clients, the public, and the legal profession. The committee found no mitigating factors present and, in aggravation, cited only respondent's prior disciplinary record.

Turning to the issue of an appropriate sanction, the committee determined that, because respondent is already disbarred, it could not impose any real sanction on him except to recommend that the instant misconduct be fully considered in any future attempt by respondent to be readmitted to the practice of law.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.¹

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.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions

¹ As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that “[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee’s report to the court.”

that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The evidence in the records of these deemed admitted, consolidated matters supports a finding that respondent neglected his clients' legal matters, failed to refund unearned fees, and failed to cooperate with the ODC in its investigations. As such, he has violated the Rules of Professional Conduct as alleged in the formal charges.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a 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).

Respondent intentionally violated duties owed to his clients, the legal system, and the legal profession, causing actual harm. Standard 4.41 of the ABA's *Standards for Imposing Lawyer Sanctions* states that disbarment is generally appropriate when an attorney engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. We find that this Standard applies to respondent's misconduct and establishes disbarment as the baseline sanction in this matter.

The record supports the following aggravating factors: a prior disciplinary record, a dishonest or selfish motive, a 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, vulnerability of the victims,

substantial experience in the practice of law (admitted 2003), and indifference to making restitution. No mitigating factors are apparent from the record.

Turning to the issue of an appropriate sanction, we note that most of the misconduct in the instant matter occurred prior to respondent's disbarment in *Salinas I*. In *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991), we considered an attorney's misconduct that occurred during the same general time period as his misconduct in a previous proceeding, which led to the attorney's disbarment. Because of this timing of the misconduct and because the proceedings all involved the same pattern of misconduct, we adjudged the disbarred attorney guilty of additional violations to be considered when and if the attorney sought readmission instead of imposing an additional disbarment or extending the attorney's delay for applying for readmission. We find that a similar approach is appropriate here. In its deemed admitted submission on sanctions, the ODC agreed.

As such, in the absence of an objection from either party, we agree with the hearing committee that respondent should be adjudged guilty of additional rule violations instead of imposing an additional sanction. Accordingly, we will adopt the committee's recommendation and adjudge respondent guilty of additional rule violations to be considered when and if he applies for readmission to the practice of law.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Murray Neil Salinas, Louisiana Bar Roll number 28751, be and he hereby is adjudged guilty of additional violations warranting discipline, which shall be considered in the event he seeks readmission after becoming eligible to do so. 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.