

SUPREME COURT OF LOUISIANA

NO. 2019-B-1345

IN RE: MICHAEL T. BELL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Michael T. Bell, an attorney licensed to practice law in Louisiana.

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 2001. In 2013, this court accepted a petition for consent discipline in which respondent stipulated that he had failed to communicate with a client and failed to properly terminate a client's representation. For this misconduct, respondent was suspended from the practice of law for one year and one day, with all but one year deferred. *In re: Bell*, 13-2491 (La. 11/22/13), 129 So. 3d 521. In 2016, this court accepted a petition for consent discipline in which respondent stipulated that he had engaged in conduct constituting a conflict of interest. For this misconduct, respondent was publicly reprimanded. *In re: Bell*, 16-0544 (La. 4/22/16), 192 So. 3d 735.

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

FORMAL CHARGES

In September 2015, respondent was hired to represent Beverly Bailey in a claim for injuries she sustained following a slip and fall accident at a Walmart store. Shortly thereafter, respondent sent Mrs. Bailey to Capitol Spine and Rehabilitation Clinic (“the clinic”) for treatment. He also gave her an \$800 loan.

Over the next two years, Mrs. Bailey had difficulty communicating with respondent regarding her case. In November 2017, Mrs. Bailey sought assistance from attorney John McKay. Mr. McKay contacted the Walmart claims department and learned that the case had settled in June 2016 for \$16,000. Upon receiving a copy of the check from Walmart, Mr. McKay noted that the check was made payable to “Beverly Baily & Leroy Baily, indiv & as husb & wife & the Law Offices of Michael T Bell LLC.”¹ However, Mr. and Mrs. Bailey were not aware of the settlement, and neither of them signed the check or received any settlement proceeds therefrom.

The ODC sent copies of the settlement check along with known signatures of Mrs. Bailey, Leon Bailey (her husband), and Michael Bell to a board certified document examiner, Mary Ann Sherry. Ms. Sherry determined that the signatures on the back of the check did not belong to Beverly Bailey or Leon Bailey.

The Walmart claims record revealed that respondent failed to exercise due diligence in the handling of Mrs. Bailey’s claim. Although Mrs. Bailey was transported by ambulance to a hospital following her accident, respondent failed to obtain any medical information from the hospital and submit it to Walmart.

In December 2017, Mrs. Bailey filed a complaint against respondent with the ODC. In January and February 2018, the ODC sent three notices of the complaint

¹ Mr. Bailey’s first name is actually Leon, and the Baileys’ last name is misspelled on the check.

to respondent. Respondent failed to respond to the complaint, necessitating the issuance of a subpoena to obtain his sworn statement.

In April 2018, respondent submitted a response to the complaint, alleging that Mrs. Bailey was due no money from the settlement because he had loaned her \$4,500, of which \$3,700 was in cash. However, in writing and under oath, Mrs. Bailey stated that respondent loaned her only \$800 and did not give her any cash. In May 2018, the ODC sent two letters to respondent requesting additional information in response to the complaint as well as a copy of Mrs. Bailey’s file. When he failed to comply with either request, the ODC issued a second subpoena to respondent.

On July 24, 2018, respondent appeared at the ODC’s offices for a sworn statement. Therein, respondent admitted that he had acquired all the necessary medical release forms from Mrs. Bailey but failed to request her medical records and bills from the hospital and ambulance service. As a result, those medicals were not considered in any settlement negotiations with Walmart.

Further during the sworn statement, respondent was asked whether he had presented a settlement statement to Mrs. Bailey. In response, respondent stated that he had prepared a settlement statement and given it to Mrs. Bailey but that she refused to sign it because “she wasn’t getting any money” from the settlement as a result of the loans she had received. The settlement statement shows the following:

Settlement Proceeds	\$16,000.00	\$16,000.00
Attorney fees (33%)	\$5,333.00	\$10,667.00
Chiropractor	\$6,030.00	\$4,637.00
Copies	\$150.00	\$4,487.00
Loans	\$800.00	\$3,687.00
Loan Interest (25%)	\$200.00	\$3,487.00
NET DUE TO CLIENT		\$3,487.00

Respondent miscalculated 33% of the settlement,² thereby miscalculating the entire settlement statement. According to his own settlement statement, respondent did not loan Mrs. Bailey \$3,700 in cash and he improperly charged or attempted to charge interest on his loan to Mrs. Bailey.

Finally, respondent was asked whether he had paid the expenses of Mrs. Bailey's chiropractic treatment from the settlement. Respondent testified that the clinic "should have been paid, yeah." In November 2018, the ODC spoke with Dr. Gerald Bell, the chiropractor who treated Mrs. Bailey. Dr. Bell advised that he had not received payment of Mrs. Bailey's bill from any source.

DISCIPLINARY PROCEEDINGS

In December 2018, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5 (fee arrangements), 1.8(e)(5) (restrictions on financial assistance provided by a lawyer to a client), 1.8(k) (authorization to settle and endorse), 1.15 (safekeeping property of clients or third persons), 8.1(a) (a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter), 8.1(c) (failure to cooperate in a disciplinary investigation), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent failed to answer the formal charges. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and

² A one-third attorney's fee, properly calculated, should have been \$5,280, not \$5,333.

convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the hearing committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee found that the factual allegations set forth in the formal charges were deemed admitted. The committee added that, absent evidence or argument by respondent, there was no reason to doubt the credibility of evidence submitted by the ODC. The factual allegations, which are supported by this evidence, demonstrate clear and convincing evidence of respondent's violation of the Rules of Professional Conduct as alleged in the formal charges.

Respondent violated duties owed to his client, the public, the legal system, and the legal profession. He knowingly, if not intentionally, violated an ethical and professional duty owed to a client by failing to provide legal services for Mrs. Bailey in an adequate and competent manner, by settling the personal injury case without Mrs. Bailey's authorization, by charging or attempting to charge interest on a loan to Mrs. Bailey, by failing to safeguard client funds and then converting those funds, and by failing to pay Mrs. Bailey's medical bill. He knowingly and intentionally violated a contractual and professional duty owed to a third-party medical provider by failing to safeguard money due to the clinic for services rendered. He violated a duty owed to the public by engaging in criminal conduct. He knowingly and intentionally violated a duty owed to the legal profession by failing to cooperate with the ODC in its investigation and by providing false statements to the ODC. Respondent's conduct caused actual harm to Mrs. Bailey, the clinic, and the ODC.

After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee found the following aggravating factors are supported by the record: a prior disciplinary record, a dishonest or selfish motive, vulnerability of the victim, substantial experience in the practice of law (admitted 2001), indifference to making restitution, illegal conduct, and "lack of remorse." The committee found no mitigating factors present.

Turning to the issue of an appropriate sanction, the committee considered the court's prior decisions in *In re: Dunn*, 18-0340 (La. 5/9/18), 241 So. 3d 984; *In re: Conry*, 14-1761 (La. 1/28/15), 158 So. 3d 786; and *In re: Calahan*, 06-0005 (La. 5/17/06), 930 So. 2d 916. In *Dunn*, the court disbarred an attorney who converted third-party funds from client settlements. In *Conry*, the court permanently disbarred an attorney who converted approximately \$188,000 of client funds and failed to pay approximately \$59,500 owed to third parties. In *Calahan*, the court disbarred an attorney who committed numerous acts of serious attorney misconduct, including forging an endorsement on a settlement check.

After considering this jurisprudence, the committee recommended respondent be disbarred. The committee also recommended that respondent be ordered to pay restitution to his client and/or the third parties, and that he be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. Pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report directly to the court.³

³ 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."

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

The record in this deemed admitted matter supports a finding that respondent settled a case without client authorization, charged interest on money that he loaned to a client, converted client funds, failed to cooperate with the ODC in an investigation, and provided false statements to the ODC. This misconduct amounts to a violation of 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 violated duties owed to his client, the public, the legal system, and the legal profession, causing actual harm. His conduct was both knowing and intentional. Considering the ABA's *Standards for Imposing Lawyer Sanctions*, the baseline sanction in this matter is disbarment.

The record supports the following aggravating factors: a prior disciplinary record, a dishonest or selfish motive, vulnerability of the victim, substantial experience in the practice of law, indifference to making restitution, and illegal conduct. There are no mitigating factors supported by the record.

In *Louisiana State Bar Ass'n v. Hinrichs*, 486 So. 2d 116 (La. 1986), we conducted an extensive review of the jurisprudence in conversion cases in order to determine the appropriate sanctions for different types of conversion. We reserved disbarment, then the most serious sanction available, for conversion cases in which one or more of the following elements are present:

[T]he lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings.

Respondent's conduct meets virtually all the criteria for disbarment. As noted by the hearing committee, respondent acted with a dishonest and selfish motive. He settled Mrs. Bailey's case without her authorization, charged interest on money that he loaned to her, and then retained settlement funds that belonged to her. Clearly, respondent did not act in a manner consistent with his client's interest. In addition, the certified document examiner expert determined that the signatures on the back

of the settlement check were not those of Mr. or Mrs. Bailey. Finally, the duration of the deprivation of funds has been extensive, as respondent still has not made restitution to Mrs. Bailey or to the chiropractor who treated her. Considering that respondent has also failed to cooperate with the ODC in its investigation, we agree that disbarment is the appropriate sanction in this case.

Accordingly, we will adopt the hearing committee's recommendation and impose disbarment. We will also order respondent to make restitution to Mrs. Bailey and the clinic.

DECREE

Upon review of the findings and recommendations of the hearing committee, it is ordered that Michael T. Bell, Louisiana Bar Roll number 27740, be and he hereby is disbarred. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. It is further ordered that respondent shall make full restitution, with legal interest, to Beverly Bailey and Capitol Spine and Rehabilitation Clinic. 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.