

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: SCOTT R. HYMEL

DOCKET NO. 18-DB-006

REPORT OF HEARING COMMITTEE # 62

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of two counts filed by the Office of Disciplinary Counsel (“ODC”) against Scott R. Hymel (“Respondent”), Louisiana Bar Roll Number 26344.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4, 8.1(c), 8.4(a), 8.4(b), 8.4(c).²

PROCEDURAL HISTORY

The formal charges were filed on January 4, 2018. By letters dated January 9, 2018, the formal charges were mailed via certified mail to Respondent’s primary registration address at that time as well as two other known addresses.³ The mailings were returned. An ODC Investigator personally served Respondent with the formal charges on April 23, 2018. Respondent failed to file an answer to the charges. Accordingly, on June 21, 2018, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ By order

¹ Respondent was admitted to the practice of law in Louisiana on October 15, 1999. Respondent is currently suspended from the practice of law for prior misconduct. *See In re Hymel*, 2015-1069 (La. 09/11/2015), ___So.3d___. On September 11, 2015, the Louisiana Supreme Court suspended Respondent for eighteen months for neglecting a legal matter, failing to adequately communicate with a client, making misleading statements to clients, failing to refund an unearned fee, failing to return a client's file upon request, and failing to cooperate with the ODC in two investigations.

² See the attached Appendix for the text of these Rules.

³ Primary registration address as of January 9, 2018: 3406 Beechwood Ave., Cleveland Heights, OH 40118. Other known addresses: 1006 Peninsula Sr., Slidell, LA 70460; 20499 Almar Dr., Shaker Heights, OH 44122.

⁴ 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

signed July 26, 2018, the factual allegations contained in the formal charges were deemed admitted. On September 26, 2018, ODC filed its submission on sanction.

For the following reasons, the Committee finds that the deemed admitted facts, supported by documentary evidence filed in these proceedings by the Office of Disciplinary Counsel reflect serious violations of multiple rules of professional conduct, all of which warrant the baseline sanction of disbarment. However, there are further unfortunate aggravating factors which result in the finding of this Committee that Respondent should be permanently disbarred and cast with all costs of these proceedings.

FORMAL CHARGES

The formal charges read, in pertinent part:

Count 1

The Respondent's grandmother executed a last will and testament making certain bequests to specific family members. The will named Respondent as the executor and attorney for her estate. Upon his grandmother's death, Respondent was to have filed a petition to probate the will in St. Tammany Parish. The Clerk of Court in St. Tammany Parish confirmed that Respondent attempted to file the petition April 12, 2012 but it was not accepted as a result of his failure to file an affidavit of death and heirship and a detailed descriptive list. Although Respondent was notified by the Clerk of the deficiencies in his filing, he did nothing to remedy them, but nevertheless misled the legatees into believing that the succession was properly proceeding thru his diligent efforts. Respondent's conduct reflects violations of Rule 1.3—failing to act with reasonable diligence; and of Rule 8.4(c)—conduct involving dishonesty, fraud, deceit and misrepresentation.

Further, acting through another (identified here as TH), the Respondent caused a check from the estate of his grandmother to be issued directly to him in the amount of \$255,000.00 and which he converted to his own use and to the prejudice of the legatees and heirs under the will. Respondent's conduct reflects

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.

violations of Rule 8.4(c)—conduct involving dishonesty, fraud, deceit and misrepresentation; of Rule 8.4(b)—the commission of a criminal act, particularly those which reflect adversely on the lawyer’s honesty and trustworthiness; and 8.4(a)—violate or attempt to violate the Rules of Professional Conduct, or do so thru the acts of another.

After ODC subpoenaed TH to provide sworn testimony in connection with the investigation of this matter, Respondent wrote and acknowledged that he ‘mismanaged’ the funds from his grandmother’s estate and that he was unable to make restitution in a satisfactory fashion. Prior efforts to have the Respondent cooperate in the ODC investigation were futile and his conduct reflects a violation of Rule 8.1(c)—failure to cooperate was a disciplinary investigation.

Count 2

Respondent was hired by Robert A. Schiff on or about July 31, 2012 to represent his interests in connection with breach of contract litigation. Respondent was paid five thousand (\$5,000) dollars for the representation, but after promising to take significant action for and on behalf of Schiff, the Respondent did little to no work, abandoned the client, failed to reasonably communicate with the client, and failed to refund the unearned fee. Despite demand for return of the fee, the Respondent has continued to exercise dominion and control over those funds resulting in his conversion of the client’s funds to his own use. The Respondent failed to respond to the complaint or otherwise participate in the investigation of the Schiff complaint. The Respondent’s conduct reflects violations of Rule 1.3—failure to exercise reasonable diligence; Rule 1.4—failure to communicate with the client on a reasonable basis; Rule 8.1(c)—failure to cooperate with an ongoing disciplinary investigation; Rule 8.4(c)—conduct involving dishonesty, fraud, deceit or misrepresentation; Rule 8.4(b)—commission of a criminal act (conversion), particularly that which calls into question the lawyer’s honesty or trustworthiness; and Rule 8.4(a)—violate or attempt to violate the Rules of Professional Conduct.

EVIDENCE

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1-25. Respondent did not submit evidence or argument for the Committee’s consideration, nor did he request to be heard in mitigation pursuant to Rule XIX, §11(E)(4).

FINDINGS OF FACT

The Committee finds that the Office of Disciplinary Counsel has proven by clear and convincing evidence that the Respondent violated all of the Rules of Professional Conduct he is alleged to have violated.

RULES VIOLATED

Regarding Count 1, Respondent was alleged to have violated Rule 1.3 in failing to act with reasonable diligence and Rule 8.4(a) violating the Rules of Professional Conduct, subsection (b) - commission of a criminal act, and subsection (c) - conduct involving dishonesty, fraud, deceit and misrepresentation.

The facts are not disputed and are deemed admitted. Scott Hymel was appointed as the Executor of his grandmother's estate and attorney for the estate. Once she passed away, he attempted, but failed, to file the necessary pleadings to probate the will and was notified by the St. Tammany Parish Clerk of Court of the deficiencies. Instead of filing the necessary pleadings to open and close the succession, he misrepresented to the legatees (presumably members of his own family) as to the status of the succession. This misrepresentation is evidence of a breach in his fiduciary duty as Executor and moreover, his obligation as attorney of the estate. Accordingly, the Committee finds that Mr. Hymel violated Rule 1.3 in failing to act with reasonable diligence.

To compound the problems, he effectively stole \$255,000.00 from the estate and, upon discovery, failed to make restitution to the legatees. Respondent admitted to converting this money (he stated "mismanaged") and absconding with the money to Ohio. He is currently awaiting trial on felony theft charges in St. Tammany Parish. The Committee finds that he violated Rule of Professional Conduct 8.4 subsections (a) (b) and (c).

The Second Count involves Respondent's retention in a breach of contract matter. He was paid \$5,000.00 by Robert Schiff in 2012 (presumably as a retainer). Little to no work was performed, the unused portion of the fee was not returned to the client, nor was the client apprised

by Mr. Hymel that he relocated to Ohio in his attempt to conceal the \$225,000 theft. This is another example of Mr. Hymel engaging in behavior clearly in violation of Rule 1.3, which previously earned him an 18 month suspension by the Louisiana Supreme Court.

Lastly, it is uncontroverted via submissions from the ODC that Mr. Hymel failed to cooperate even minimally with this investigation as exhibited by the multiple attempts made to serve him with the complaint.

The Committee finds that Mr. Hymel violated Rule 1.3 as stated above, Rule 1.4, failure to communicate with a client on a reasonable basis and Rule 8.1(c), failure to cooperate with an ongoing disciplinary investigation.

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee 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 the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to his clients and the public. He acted knowingly, and intentionally. Respondent's misconduct caused actual harm – his family members who obviously were essentially stolen from, additionally causing a delay in the succession's resolution, along with additional fees they had to expend to secure new legal representation. Mr. Schiff, the gentleman who hired Mr. Hymel on the breach of contract manner, was harmed insofar as he lost a \$5,000 fee which was unearned and not refunded.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that disbarment is the baseline sanction for Respondent's misconduct.

As the ODC provided in their brief, conversion of funds has resulted in disbarment in other cases. *In Re: Pearson*, 2012-0940 (La. 10/16/12), 100 So.3d 313, *In Re: Kelly*, 1998-0368 (La. 6/5/98), 713 So.2d 458 and *In Re: Sharp* 2009-0207 (La. 6/26/09), 16 So.3d 343.

Unfortunately for the Respondent there are a number of aggravating factors present in his situation, including:

- (a) Prior disciplinary offenses;
- (b) Dishonesty or selfish motive
- (c) A pattern of misconduct
- (d) Multiple offenses
- (e) Vulnerability of victims
- (f) Substantial experience in the practice of law
- (g) Indifference to making restitution
- (h) Illegal conduct.

The ODC could not stipulate to any mitigating factors and Mr. Hymel failed to provide this Committee with any evidence of mitigation.

The ODC is requesting permanent disbarment. Appendix E to Rule XIX sets forth guidelines for the types of misconduct which may warrant consideration of the imposition of a sanction of permanent disbarment:

Instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by a 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.

The prior discipline imposed on Mr. Hymel by the Supreme Court was for a period of eighteen months. Accordingly, this sanction satisfies the definition of "serious attorney misconduct".

Due to the prior record of discipline and the seriousness of these current allegations, the ODC's position is well placed. The deemed admitted facts, supported by documentation in the record supports the conclusion that Scott Hymel engaged in multiple and serious violations of all of the Rules of Professional Conduct he is alleged to have violated.

CONCLUSION

In light of all of the factors cited above, it is this Committee's unanimous recommendation that Scott Hymel is to be permanently disbarred from the practice of law and for his name to be stricken from the roster of attorneys. All costs cast to Respondent.

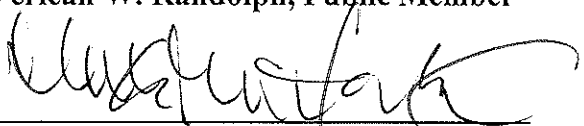
This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Chair Mark Mansfield, to sign on their behalf.

Covington, Louisiana, this 15 day of October, 2018.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 62**

**Mark J. Mansfield, Committee Chair
Kenneth P. Mathews, Lawyer Member
Verlean W. Randolph, Public Member**

BY:


Mark J. Mansfield, Committee Chair

For the 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: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

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:

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

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;
