

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: RONALD DAVID HARVEY

DOCKET NO. 18-DB-046

REPORT OF HEARING COMMITTEE # 35

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of two counts filed by the Office of Disciplinary Counsel (“ODC”) against Ronald David Harvey (“Respondent”), Louisiana Bar Roll Number 34589.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.4(a & b), 8.1(b & c), 8.4(a).²

PROCEDURAL HISTORY

The formal charges were filed on June 13, 2018. By letters dated June 18, 2018, the formal charges were mailed via certified mail to Respondent’s primary and secondary registration addresses.³ The mailings were received on June 20, 2018. On June 29, 2018, Respondent enrolled as counsel on his own behalf. However, Respondent failed to file an answer to the charges. Accordingly, on July 25, 2018, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ By order signed August 7, 2018, the

¹ Respondent was admitted to the practice of law in Louisiana on October 25, 2012. Respondent is currently eligible to practice law.

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

³ Primary: 101 N. Main St., Springhill, LA 71075; Secondary: 12 Ensey St., Apt. 8, Springhill, LA 71075.

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 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

factual allegations contained in the formal charges were deemed admitted. On September 27, 2018, ODC filed its submission on sanction.

For the following reasons, the Committee finds the charges against the Respondent are proven by clear and convincing evidence and that Respondent should be suspended from the practice of law for a period of one year and one day.

FORMAL CHARGES

The formal charges read, in pertinent part:

IV.

On November 15, 2017, the ODC received a complaint from Marilyn Rasberry. The matter was opened under investigative file ODC 0036253. On November 21, 2017, Respondent was sent notice of the complaint and a request for an initial response via certified mail to his primary/preferred address registered with the Louisiana State Bar Association (LSBA) (N. Main). The certified mail was received on November 27, 2017. On December 11, 2017, Respondent requested an extension of time to respond; however, he did not submit an initial response to the complaint. On January 9, 2018, the ODC forwarded to Respondent at his LSBA-registered primary/preferred address a second request for an initial response. The correspondence was not returned to the ODC, indicating receipt. On February 2, 2018, Respondent emailed the ODC and confirmed that his initial response would be submitted on or before February 5, 2018. No initial response was submitted.

V.

Due to Respondent's lack of an initial response, the ODC began investigative efforts to locate Respondent for purposes of serving a subpoena to appear for a sworn statement. During this investigation, it was discovered that on or about July 1, 2012, Respondent was arrested for driving under the influence and other traffic offenses. The ODC also learned that Respondent had not reported his alcohol- or drug-related traffic violation arrest to the Committee on Bar Examinations, prior to sitting for the July of 2012 bar examination and prior to receiving his license to practice law in October of 2012. A complaint was opened and the matter assigned ODC investigative file ODC 0036499. On February 16, 2018, Respondent was sent notice of ODC 0036499 and a request for an initial response via certified mail to his LSBA-registered primary/preferred address (N.

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.

Main). The certified mail was received on February 21, 2018; however, Respondent did not submit an initial response.

VI.

In addition to the above efforts, on February 19, 2018, Respondent personally was served and signed for receipt of:

1. The complaint for ODC 0036253 (Marilyn Rasberry, Complainant);
2. November 21, 2017, ODC request for an initial response in ODC 0036253;
3. January 9, 2018, ODC second request for an initial response in ODC 0036253;
4. Complaint for ODC 0036499 (ODC, Complainant);
5. February 16, 2018, ODC request for initial response in ODC 0036499;
6. February 19, 2018, ODC request for initial response in ODC 0036499; and
7. Subpoena to appear at a sworn statement on March 27, 2018, regarding ODC files ODC 0036253 and ODC 0036499.

VII.

Despite personal service, Respondent failed to appear at his March 27, 2018, sworn statement.

VIII.

Despite the ODC's efforts, Respondent has not submitted an initial response to, or otherwise cooperated with, the investigation of either complaint.

IX.

COUNT 1

ODC 0036253 (Marilyn Rasberry)

Respondent was hired in August of 2016 to represent Jason Rasberry (Jason) in a child custody matter and a property matter incidental to the divorce. Billy and Marilyn Rasberry paid the legal fee for representation on behalf of their son, Jason. For the child custody matter, the Rasberrys paid Respondent \$2,600 on August 23, 2016, via phone operator check no. 000057620. For the return of property representation, the Rasberrys paid Respondent \$3,000, via check no. 8128, receiving receipt no. 041795 on March 24, 2017.

The court record reflects that Respondent's last appearance in court with Jason on the custody matter was on March 28, 2017. The Rasberrys report that, thereafter, Respondent could not be contacted. Respondent failed to respond to telephone calls, and the Rasberrys were unable to schedule an appointment with Respondent. According to Ms. Rasberry, when they went to Respondent's office, it was locked. Because the Rasberrys were unable to contact Respondent, Jason hired another attorney, Kelly Long, to complete the child custody matter.

Jason's father, Billy Rasberry, died on October 9, 2017; however, prior to his death, on August 29, 2017, Billy Rasberry sent Respondent a formal demand letter via certified mail. The letter details the family's efforts to communicate with Respondent and the necessity of hiring new counsel due to Respondent's lack of responsiveness. The Rasberrys sought return of the unearned fee. According to

usps.com tracking information, Respondent received Billy Rasberry's correspondence on September 1, 2017; however, Respondent did not respond.

On December 29, 2017, Ms. Rasberry wrote to the ODC: "[O]n November 14, 2017, I received a check from R. David Harvey, as a refund for the money that was paid and no services rendered. I would like to withdraw my complaint at this time. However, I do feel that the Disciplinary Board needs to be aware of the conduct of Mr. Harvey."

X.

ODC 0036499 (ODC, Complainant)

In attempting to locate Respondent for purposes of serving a subpoena to appear for a sworn statement, it was discovered that Respondent was arrested on July 1, 2012, for driving under the influence (La. Rev. Stat. Ann. § 14:98) and other traffic offenses. On October 10, 2012, Respondent entered a plea of guilty to the amended charge of reckless operation (La. Rev. Stat. Ann. § 14:99). *State v. Harvey*, 4653061, Shreveport City Court. Respondent failed to report this arrest to the Committee on Bar Examinations prior to sitting for the July of 2012 bar examination and prior to receiving his license to practice law on October 25, 2012.

A review of Respondent's bar application history is necessary to an understanding of the alleged violation. In May of 2011, Respondent submitted an application to sit for the July of 2011 bar examination and requested that the National Conference on Bar Examiners (NCBE) prepare a character report. In response to question 21A of the application, Respondent reported that he had never been "cited for, arrested for, charged with, or convicted of any alcohol- or drug-related traffic violations other than a violation that was resolved in juvenile court." On May 4, 2011, Respondent signed an "ACKNOWLEDGEMENT OF COMPLETE APPLICATION," which set forth, "I understand that I should update my application during its pendency and that failure to do so may result in delays in its processing."

Under the Louisiana Supreme Court Rules, Rule XVII, Section 4:

(G) Candor in the Application Process. Lack of candor during the application process may be independent grounds for a finding of lack of good moral character by the Committee and refusal to certify the applicant to the Court for admission. Such lack of candor, if discovered after admission, may serve as the basis for disciplinary action by the Louisiana Attorney Disciplinary Board. Applicants shall provide complete and candid responses to all inquiries, whether on the Bar Examination Application, the NCBE's Request for the Preparation of a Character Report or Supplemental Report, or as part of any investigation, inquiry or proceeding.

(H) Duty to Keep Application Current. Until admitted to the Bar, an applicant is under a continuing obligation to keep his or her application current and must update responses whenever there is an addition to or a change to information previously provided to the

Committee or to the NCBE. Those updates must be made in writing and must include all relevant documentation.

Consistent with Rule XIX, Section 4(H), on November 10, 2011, the Bar Admissions Administrator wrote to Respondent:

Please remember that until you are admitted to the Bar, you are under a continuing obligation to keep your Character and Fitness Report current and must update responses whenever there is an addition to or change to information previously provided to the Committee. These updates must be made in writing and must include all relevant documentation.

After not passing the July of 2011 examination, in December of 2011, Respondent reapplied to sit for the February of 2012 bar examination. Although Respondent was not required to submit a new NCBE application, he was required to submit an affidavit advising of any updates to his previously submitted responses. On his December 5, 2011, affidavit, Respondent reported no changes. Respondent did not pass the examination, and in May of 2012, Respondent reapplied to sit for the July of 2012 bar examination. Again, he was not required to submit a new NCBE application but was required to submit an affidavit advising of any updates to previously submitted responses. Respondent reported no changes.

Thereafter, on July 1, 2012, Respondent was arrested for driving under the influence and other traffic offenses. Respondent sat for the bar examination on July 23, 25, and 27 of 2012. Respondent passed the bar examination, and on October 25, 2012, Respondent received his license to practice law in Louisiana. Respondent did not report his July 1, 2012, arrest for the alcohol- or drug-related traffic offense to the Committee on Bar Examinations, thus failing to meet his continuing obligation to keep his application current until admitted to the Bar.

XI.

The ODC respectfully submits that in Count 1, ODC 0036253 (Rasberry), there is clear and convincing evidence that, as a matter of law, Respondent violated the Rules of Professional Conduct, Rules 1.4(a)-(b) (inadequate communication); 8.1(b) (failure to respond); 8.1(c) (failure to cooperate); and 8.4(a) (violate or attempt to violate RPC). In Count 2, ODC 0036499 (ODC), the ODC respectfully submits that there is clear and convincing evidence that, as a matter of law, Respondent violated the Rules of Professional Conduct, Rules 8.1(b) (failure to respond); 8.1(c) (failure to cooperate); and 8.4(a) (violate or attempt to violate RPC). In Count 2, there is an additional aspect to the Rule 8.1(b) violation in that there is clear and convincing evidence that Respondent failed to disclose a fact necessary to correct a misapprehension known by the person to have arisen in connection with a bar admission application.

EVIDENCE

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1-21. 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

Despite ODC's efforts, Respondent has not submitted an initial response nor did Respondent appear for the scheduled sworn statement on March 27, 2018. The record indicates Respondent was charged with Driving While Intoxicated (14:98B) on July 1, 2012. The record does not include any disclosure of this to the Committee on Bar Examinations. The record also includes a letter from Billy Rasberry, Sr. of having made many attempts to contact Respondent and no evidence to the contrary.

RULES VIOLATED

Accordingly, the Respondent's failure to report the arrest to the Committee on Bar Examinations violated Rule 8.1(b), and Respondent's failure to respond to ODC, to report for the scheduled sworn statement, or to otherwise cooperate with ODC in the investigation of these matters violate Rule 8.1(c). The failure to communicate with Jason Rasberry violates Rule 1.4, and these violations further support a finding that Respondent has violated Rule 8.4(a).

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 client, Jason Rasberry, to the Committee on Bar Examinations, to the Louisiana Supreme Court, and to the legal profession. He acted negligently in violating duties to his client, Jason Rasberry; however, the record reflects a knowing, if not intentional, violation of duties of candor to the legal system, including to the Committee on Bar Examinations and the Louisiana Supreme Court, and a knowing and intentional violation of duties to cooperate with ODC's investigation. Respondent's misconduct caused actual harm to Jason Rasberry by the need to procure new counsel to complete his legal matters. Respondent's misconduct caused actual harm to the legal profession by his lack of candor to the Committee on Bar Examinations and the Louisiana Supreme Court as such behavior was inconsistent with a lawyer's duties of truth and honesty. Respondent's misconduct caused actual harm to the legal profession by his failure to cooperate with the disciplinary investigation, causing the ODC to unnecessarily expend time and expense to attempt to sufficiently investigate the matters, including but not limited to the time and expense of preparing for a scheduled sworn statement for which the Respondent failed to appear.

The *ABA Standards for Imposing Lawyer Sanctions* suggest in 4.42(b) that suspension is generally appropriate when a lawyer engages in a pattern of neglect causing injury or potential injury to a client; in 7.2 that 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; and in 6.12 that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury

to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. Hence, suspension is the baseline sanction for Respondent's misconduct.

Aggravating factors include multiple incidents of negligence in failing to communicate with Respondent's client, multiple incidents in failing to disclose his arrest to the Committee on Bar Examinations, and multiple incidents of failing to cooperate with ODC in the disciplinary investigation. Mitigating factors include the lack of severity of injury to Respondent's client and the lack of additional disciplinary records beyond those in the case at hand. These factors further support the baseline sanction of suspension.

In the matter of *In re: Garrett*, 2013-0491 (La. 10/15/13), 124 So. 3d 1080, an attorney was suspended for one year, with all but six months deferred, for his neglect of a client case, failure to return a client file, failure to cooperate with the ODC, and his failure to disclose on his bar application that he was in arrearages on this continuing child support obligation. The *Garrett* court identified the baseline sanction as suspension. The majority concluded that there was no evidence of intentional misconduct and that the mitigating circumstances (absence of a prior disciplinary record and personal or emotional problems) were compelling. The case in hand appears to have involved a knowing if not intentional false statement on the bar application and knowing and intentional failure to cooperate with the ODC in the disciplinary investigation, including but not limited to the failure to appear for the scheduled sworn statement. There further is no evidence presented by Respondent of mitigating circumstances. Accordingly, the committee finds the appropriate sanction to be the suspension of Respondent from the practice of law for a period of one year and one day.

CONCLUSION

As the Respondent acted negligently in violating duties to his client, Jason Rasberry; knowingly, if not intentionally, violated duties of candor to the legal system, including to the Committee on Bar Examinations and the Louisiana Supreme Court by failing to disclose his arrest, and knowingly and intentionally violating duties to cooperate with ODC's investigation, causing the ODC to unnecessarily expend time and expense to attempt to sufficiently investigate the matters, including but not limited to the time and expense of preparing for a scheduled sworn statement for which the Respondent failed to appear, the committee finds the appropriate sanction to be the suspension of Respondent from the practice of law for a period of one year and one day.

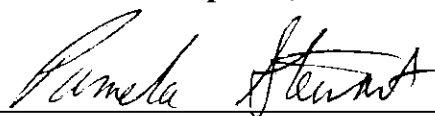
This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Pamela Stewart, Committee Chair, to sign on their behalf.

Ruston, Louisiana, this 28th day of January, 2019.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 35**

**Pamela A. Stewart, Committee Chair
Tyler G. Storms, Lawyer Member
C. Bennett Humphries, Public Member**

BY:



**Pamela A. Stewart, Committee Chair
For the Committee**

APPENDIX

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.

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:

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or

(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;
