10/10/2023 "See News Release 043 for any Concurrences and/or Dissents."

The Supreme Court of the State of Louisiana

IN RE: JEFFERY DEE BLUE

No. 2023-B-00968

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IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and Recommendations (Formal Charges);

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October 10, 2023

Disbarment imposed. See per curiam.

PDG

JLW

JDH

SJC

JTG

WJC

JBM

Supreme Court of Louisiana
October 10, 2023

Katie Marjanovic

Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-0968

IN RE: JEFFERY DEE BLUE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Jeffery Dee Blue, an attorney licensed to practice law in Louisiana but currently ineligible.[1]

FORMAL CHARGES

Count I – The Atkins Matter

In March 2017, Channel Atkins hired respondent to handle her divorce and to obtain a restraining order on her behalf. The fee agreement was $2,000, plus expenses.[2] Thereafter, Ms. Atkins made several attempts to contact respondent but was unsuccessful. Respondent delayed the completion of the matter, which caused Ms. Atkins to incur a significant amount of debt because she had to live off of credit cards after her interim spousal support expired.

In February 2020, the ODC received Ms. Atkins' disciplinary complaint against respondent. The ODC granted respondent's request for an extension of time to submit a written response to the complaint. Nevertheless, he failed to do so, necessitating the issuance of a subpoena to obtain his sworn statement. On July 28,

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[1] Respondent has been ineligible to practice law since October 20, 2020 for failing to pay bar dues and the disciplinary assessment. Thereafter, he also became ineligible for failing to comply with mandatory continuing legal education requirements and failing to submit the trust account disclosure statement.

[2] The record reflects that Ms. Atkins paid respondent $2,000 on March 10, 2017.

2020, respondent appeared for his sworn statement, during which he informed the ODC that he was in the process of shutting down his law practice. During the sworn statement, the ODC gave respondent thirty days to submit a written response to the complaint and provide a copy of Ms. Atkins' file and proof that he had refunded the unearned fee. Respondent failed to provide any of this requested information and never refunded Ms. Atkins' fee.

Subsequently, the ODC received notice that respondent was declared ineligible to practice law on October 20, 2020 for failing pay his bar dues. On June 18, 2021, he was additionally declared ineligible for failing to comply with mandatory continuing legal education requirements for 2020.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1 (Competence), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5 (fee arrangements), 1.15(a) (safekeeping property of clients or third persons), 1.16(d) (obligations upon termination of the representation), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count II – The Holmes Matter

In February 2018, Cassi Holmes hired respondent to handle her father's succession, paying him a $2,500 flat fee. Ms. Holmes believed that the paperwork for her father's annuity account had been fraudulently changed. Therefore, she brought in a handwriting expert to examine the documents. Respondent failed to communicate with the expert by a certain date, as Ms. Holmes had requested, and the expert is now retired.

Respondent also failed to meet with Ms. Holmes when she would travel to Louisiana from California and did not provide any proof that he had actually worked on her father's succession. Ms. Holmes had another attorney check with the court, and the attorney discovered that, as of August 2019, no succession pleadings had been filed. On August 16, 2019, Ms. Holmes wrote to respondent to terminate the representation and to request a refund of the $2,500. Respondent failed to comply with the refund request.

In January 2020, the ODC received Ms. Holmes' disciplinary complaint against respondent. Despite accepting the notice of the complaint, respondent failed to submit a written response, necessitating the issuance of a subpoena to obtain his sworn statement. On July 28, 2020, respondent appeared for his sworn statement. During the sworn statement, the ODC gave respondent thirty days to submit a written response to the complaint and provide a copy of Ms. Holmes' file and proof that he had refunded the unearned fee. Respondent failed to provide any of this requested information and never refunded Ms. Holmes' fee.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c).

Count III – The Berryhill Matter

In August 2018, Thomas Berryhill hired respondent to represent him in a criminal matter, paying him a total of $4,000. Respondent neglected the matter and failed to provide Mr. Berryhill with copies of documents related to his case. More specifically, although Mr. Berryhill wished to proceed to trial to prove his innocence, respondent convinced him to accept a plea agreement he did not want.

In September 2019, Mr. Berryhill was sentenced and was given thirty days to file an appeal. Mr. Berryhill told respondent he wanted to appeal his conviction.

Thereafter, respondent did not return telephone calls from Mr. Berryhill's family and did not respond to Mr. Berryhill's letters.

In August 2020, the ODC received Mr. Berryhill's disciplinary complaint against respondent. Although respondent accepted the notice of the complaint, he failed to submit a response. He also failed to refund any portion of the fee Mr. Berryhill paid.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c).

DISCIPLINARY PROCEEDINGS

In May 2022, the ODC filed formal charges against respondent as set forth above. Respondent failed to file an answer to the 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, 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 committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee made factual findings consistent with the deemed admitted facts set forth in the formal charges. Additionally, the committee found that, in the Atkins matter, respondent intentionally abandoned Ms. Atkins' legal matter and did not take adequate steps to notify her and protect her interests. Regarding the Holmes matter, the committee additionally found that, during his sworn statement, respondent admitted he did not properly handle the succession and owed Ms. Holmes a full refund. The committee further found that respondent intentionally abandoned Ms. Holmes' legal matter and did not take adequate steps to notify her and protect her interests. With respect to the Berryhill matter, the committee additionally found that respondent intentionally failed to pursue Mr. Berryhill's case and refused to refund the money owed to Mr. Berryhill following the abandonment of his law practice. Based upon these facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee then determined that respondent intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. His conduct caused actual harm to his clients who paid for legal services not performed and to the legal profession by his refusal to cooperate with the ODC. After reviewing the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

Based upon the record submitted, the committee found no mitigating factors present. In aggravation, however, the committee found the following: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, and indifference to making restitution.

After further considering the court's prior case law addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for two years. The committee further recommended that respondent be ordered to make full restitution, with interest, to the clients who are the subject of this proceeding.

The ODC filed an objection to the committee's report, arguing the recommended sanction was too lenient.

Disciplinary Board Recommendation

After reviewing this matter, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and adopted same. Based upon these facts, the board agreed with the committee that respondent violated the Rules of Professional Conduct as charged.

The board then determined respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. Respondent's conduct caused actual harm to his clients, especially due to his failure to refund unearned fees and his failure to provide his clients with a copy of their file. Respondent's failure to cooperate with the ODC also caused actual harm to the legal profession. Unlike the committee, the board determined that the ABA's *Standards for Imposing Lawyer Sanctions* support disbarment as the baseline sanction.

In aggravation, the board found a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, and indifference to making restitution. In mitigation, the board found the absence of a prior disciplinary record and personal or emotional problems.[3]

After further considering the court's prior case law addressing similar misconduct, the board recommended that respondent be disbarred. The board further recommended that respondent be ordered to make restitution in the amount of $2,000 to Ms. Atkins, $2,500 to Ms. Holmes, and $4,000 to Mr. Berryhill and be ordered to provide each of them with their file.

Neither respondent nor the ODC filed an objection to the board's recommendation.

[3] During his sworn statement, respondent testified that he was suffering from anxiety and depression, his wife was suffering from health problems, and he and his wife were experiencing marital issues.

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 of this deemed admitted matter supports a finding that respondent abandoned his law practice, resulting in the neglect of three client matters, failed to communicate with the clients, failed to refund their unearned fees, failed to return their files, and failed to cooperate with the ODC in its investigations. The record further supports a finding that respondent 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 knowingly and intentionally violated duties owed to his clients and the legal profession. His conduct caused actual harm to his clients and the attorney disciplinary system. Regarding the baseline sanction, Standard 4.41 of the ABA's *Standards for Imposing Lawyer Sanctions* is applicable here. Pursuant to Standard 4.41, disbarment is appropriate when any of the following occur:

> (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
>
> (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
>
> (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In light of respondent's abandonment of his law practice, we agree with the disciplinary board that the applicable baseline sanction in this matter is disbarment.

Aggravating factors include 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, and indifference to making restitution. The board's findings regarding mitigating factors are supported by the record.

Case law further supports disbarment as the baseline sanction. For example, in *In re: Hawkins*, 22-0675 (La. 6/28/22), 341 So. 3d 519, an attorney abandoned his law practice, resulting in the neglect of at least six client matters, failed to communicate with said clients, failed to provide some of the clients with their file, and failed to cooperate with the ODC in its investigations. For this knowing misconduct, we disbarred the attorney. Likewise, in *In re: Boutte*, 18-0901 (La. 9/21/18), 252 So. 3d 862, an attorney abandoned her law practice, resulting in the neglect of at least two client matters, failed to communicate with said clients, failed to refund unearned fees and return a file to one client, and failed to cooperate with the ODC in its investigation. For this knowing misconduct, we disbarred the attorney and ordered her to make restitution.

In light of this case law, as well as the numerous aggravating factors present, a downward deviation from the baseline sanction is unwarranted. Accordingly, we will adopt the board's recommendation and disbar respondent. We will further order respondent to make restitution in the amount of $2,000 to Ms. Atkins, $2,500 to Ms. Holmes, and $4,000 to Mr. Berryhill and order him to provide each of them with their file.

DECREE

Upon review of the findings and recommendation of the hearing committee and the disciplinary board, and considering the record, it is ordered that Jeffery Dee Blue, Louisiana Bar Roll number 35015, 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 restitution in the amount of $2,000 to Channel Atkins, $2,500 to Cassi Holmes, and $4,000 to Thomas Berryhill and shall provide each of them with their file. 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.