

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: BRADLEY O. HICKS

DOCKET NO. 17-DB-023

REPORT OF HEARING COMMITTEE # 06

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of four counts filed by the Office of Disciplinary Counsel (“ODC”) against Bradley O. Hicks (“Respondent”), Louisiana Bar Roll Number 23777.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4, 1.5, 1.16(b)(5), 1.16(c), 1.16(d), 8.1(c), 8.4(a), and 8.4(c).²

PROCEDURAL HISTORY

The formal charges were filed on May 24, 2017. By letters dated May 31, 2017, the formal charges were mailed via certified mail to Respondent’s primary registration address and two other known addresses.³ The mailings were returned. Respondent failed to file an answer to the charges. Accordingly, on September 1, 2017, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ By order signed by the Chair on September 14, 2017, the

¹ Respondent is currently ineligible to practice law.

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

³ 609 4th St., Leesville, LA 71446; 6150 Graywood Parkway, Lake Charles, LA 70605; PO Box 355, Leesville, LA 71446.

⁴ This rule states:

factual allegations contained in the formal charges were deemed admitted. On November 13, 2017, ODC filed its submission on sanction.

FORMAL CHARGES

The formal charges read, in pertinent part:

Count I (ODC# 33787)

Complainant in ODC Investigative File No. 0033787, is Timothy Petree, an inmate at Allen Correctional. Respondent was appointed in June of 2011, as a Public Defender for Mr. Petree. Complainant sent correspondence to Respondent on June 23, 2015, requesting a copy of his discovery. Respondent failed to respond to Complainant's request. Further, Respondent failed to meet with Complainant to discuss the status, facts, and strategy of his case, prior to his arraignment, at which he plead guilty.

A copy of Complainant's response was forwarded to Respondent on January 5, 2015. According to the certified mailing postal receipt, Mr. Hicks signed for the complaint on January 7, 2016. Mr. Hicks failed to respond. As a result, Respondent was subpoenaed to appear at the Office of Disciplinary Counsel to provide a sworn statement. The Sworn Statement was scheduled for August 30, 2016. Respondent failed to appear.

Respondent was subpoenaed a second time to appear at the Office of Disciplinary Counsel to provide a sworn statement. The sworn statement was scheduled for March 8, 2017. Respondent failed to appear for a second time.

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 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.

Respondent has violated Rule 1.3 (exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information); 8.1(c) (failure to cooperate with the office of disciplinary counsel); and 8.4(a) (violated or attempted to violate rules).

Count II (ODC# 0034385)

Complainant in ODC Investigative File No. 0034385, is Zachary Irons. Complainant hired Respondent in October of 2015, to assist in filing a petition with the courts in order to obtain visitation with his child. Respondent requested a retainer fee of \$1,800. Respondent agreed to accept the first half up front and the remainder in \$100 payments. Mr. Irons paid Respondent \$900 to begin drafting the necessary documents to be filed with the court. On October 20, 2015, Complainant paid his first payment of \$100 to Mr. Hicks.

Respondent stopped communicating with Complainant and failed to file the petition. After several attempts to contact Respondent, Mr. Irons requested a return of his funds. However, Mr. Hicks failed to do so. ODC forwarded a copy of Mr. Iron's complaint to Respondent via certified mail on April 18, 2016, and June 6, 2016. Both were returned. Staff Investigator with the ODC, Tiara Barnes, attempted to hand deliver a copy of the complaint to Respondent, but was unable to make contact.

As a result, Respondent was subpoenaed to appear at the Office of Disciplinary Counsel to provide a sworn statement. The Sworn Statement was scheduled for August 30, 2016. Respondent failed to appear.

Respondent was subpoenaed a second time to appear at the Office of Disciplinary Counsel to provide a sworn statement. The sworn statement was scheduled for March 8, 2017. Respondent failed to appear for a second time.

Respondent has violated Rule 1.3 (exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information); 1.5, (failure to return an unearned fee); 1.16(b)(5), (c), (d), (improper withdrawal); 8.1(c) (failure to cooperate

with the office of disciplinary counsel); and 8.4(a) (violated or attempted to violate rules).

Count III (ODC# 35133)

The Complainant in Investigative File No. 0035133 is Reda Coleman, along with her siblings. They hired Respondent in October of 2014, to open a succession for both of their parents. The siblings paid Respondent \$1,200. The last to Respondent communicated with Complainant was in August of 2015. At that time, Respondent requested her address so that he could forward documents. However, Complainant never received the documents or any other information from Respondent. Thereafter, Complaint contacted the court and learned that Respondent did not file anything on her behalf, in this matter.

The ODC forwarded a copy of Ms. Hughes' complaint to Respondent via certified mail on January 30, 2017, which was returned marked on February 9, 2017. ODC Investigator hand delivered complaint to Respondent on February 17, 2017. Mr. Hick's response was due on March 4, 2017; however, Respondent has failed to respond to the complaint filed by Ms. Hughes.

Respondent has violated Rule 1.3 (exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information); 1.5 (failure to return an unearned fee); 1.6(b)(5), (c), (d), (improper withdrawal); 8.1 (c) (failure to cooperate with the office of disciplinary counsel); 8.4(a) (violated or attempted to violate rules); and 8.4(c) (dishonesty).

Count IV (ODC# 35432)⁵

The Complainant in ODC Investigative File No. 003543 is Audriana S. Hughes. Respondent was hired in January of 2015 to expunge her felony record. Ms. Hughes paid Respondent \$1200. The last to Respondent communicated with Complainant was in August of 2015. At that time, Respondent requested her address so that he could forward documents. However, Complainant never received the documents or

⁵ In its submission to the committee, ODC referred to this charge as "Count III," even though the Hughes matter was previously referred to as "Count III."

any other information from Respondent. Thereafter, Complainant contacted the court and learned that Respondent did not file anything on her behalf, in this matter.

ODC forwarded a copy of Ms. Hughes' complaint to Respondent via certified mail on January 30, 2017, which was returned marked on February 9, 2017. ODC Investigator hand delivered complaint to Respondent on February 17, 2017. Mr. Hicks' response was due on 6 March 4, 2017; however, Respondent has failed to respond to the complaint filed by Ms. Hughes. Respondent has violated Rule 1.3 (exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information); 1.5 (failure to return an unearned fee); 1.16(b)(5), (c), (d), (improper withdrawal); 8.1(c) (failure to cooperate with the office of disciplinary counsel); 8.4(a) (violated or attempted to violate rules); and 8.4(c) (dishonesty).

FINDINGS OF FACT

The essential facts of this matter were deemed admitted and are recited in the Formal Charges.

RULES VIOLATED

Respondent violated Rules 1.3; 1.4; 1.5; 1.16(b)(5); 1.16(c); 1.16(d); 8.1(c); 8.4(a); and 8.4(c).

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 Mr. Timothy Petree, Mr. Zachary Irons, Ms. Reda Coleman and her siblings, Ms. Audriana S. Hughes, and to the legal profession. He acted knowingly. Respondent's misconduct caused potential harm to Mr. Petree, who pleaded guilty to the crimes with which he had been charged at his arraignment. In failing to meet with his client at any point to discuss the case, viable defenses to the charges may have been overlooked.

Respondent caused actual harm to Mr. Zachary Irons. Mr. Irons paid Respondent \$1,000.00; in return, Respondent failed to file Mr. Irons' petition to obtain visitation rights with his child. Respondent refused to refund the money Mr. Irons had already paid, and still has not repaid that money.

Similarly, Respondent accepted \$1,200.00 from Ms. Coleman and her siblings to complete the successions of their parents. While Respondent did actual work on the Coleman matter, he failed to carry that work through to fruition, and the siblings were forced to retain other counsel. The retainer was not refunded. The committee finds that Respondent's actions resulted in actual harm to these clients.

The matter of Ms. Hughes poses another instance in which Respondent failed to perform any substantive work. The committee finds that Respondent's failure to perform this work caused potential, if not actual, harm to Ms. Hughes.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that the baseline sanction for knowingly failing to perform services for a client that causes injury or

potential injury to a client, or in engaging in a pattern of neglect that causes injury or potential injury to a client is suspension. *ABA Standards* 4.42.

ABA Standards 9.2 and 9.3 discuss the aggravating and mitigating factors that may be considered in deciding what sanction to impose. Among the aggravating factors we find relevant to this matter are a dishonest or selfish motive, a pattern or misconduct, multiple offenses, substantial experience in the practice of law (admitted in 1995), and indifference to making restitution. As a mitigating factor, the committee finds that Respondent has no prior history of discipline.

In *In re Vix*, 08-2290 (La. 5/15/09), 11 So.3d 1090, the respondent was found to have acted without diligence in the cases of three clients, failed to communicate adequately with her clients, failed to return unearned fees, improperly withdrawn from representation, failed to cooperate with ODC, and violated other rules of professional conduct. For these acts, the Louisiana Supreme Court imposed a two-year suspension on the respondent, but deferred all but three months because the respondent had “resolved the issues that led to the misconduct.” *Id.* at 1096. The respondent was subject to two years of supervised probation with conditions.

In *In re Harper*, 16-1635 (La. 11/15/16), 205 So.3d 901, the respondent was suspended for three years for misconduct similar to that in the present matter, but involving five separate investigations by ODC.

In the present matter, Respondent’s conduct was more serious than that in *Vix*, but lacks the element found by the supreme court, i.e., resolution of the issues

that led to respondent's misconduct. We find that Respondent's misconduct was less grave than that found in *Harper*. Accordingly, the committee recommends that Respondent, Bradley O'Neal Hicks, bar roll number 23777, be suspended from the practice of law for two years. The committee also recommends that Respondent be required to make restitution in the amount of \$1,000.00 to Mr. Irons, \$1,200.00 to Ms. Coleman and her siblings, and \$1,200.00 to Ms. Hughes.

CONCLUSION

For the foregoing reasons, the committee recommends that Bradley O'Neal Hicks, bar roll number 23777, be suspended from the practice of law for two years and that he be required to make restitution as set forth above..

Alexandria, Louisiana, this 19th day of December, 2017.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 06**

**Michael D. Hislop, Committee Chair
Andree B. Leddy, Lawyer Member
Gracie Ann Guillory, Public Member**

BY: 
**Michael D. Hislop, 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 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue

to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if:

(1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;

(2) the total fee is reasonable; and

(3) each lawyer renders meaningful legal services for the client in the matter.

(f) Payment of fees in advance of services shall be subject to the following rules:

(1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

1.16 Declining or Terminating Representation

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

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:

- (a) Knowingly make a false statement of material fact;
- (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;
- (b)...
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;