ORIGINAL

Louisiana Attorney Disciplinary Board
FILED by: Donna P. Burgess
Docket# 17-DB-018
Filed-On 5/10/2018

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: KEVIN MICHAEL STEEL (Bar Roll No. 26125)

DOCKET NO. 17-DB-018

RECOMMENDATION OF HEARING COMMITTEE NO. 09

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Kevin Michael Steel ("Respondent"), Louisiana Bar Roll Number 26125.[1] ODC alleges that Mr. Steel violated the following Rules of Professional Conduct: Rules 1.3, l.4(a)(3), 1.5(f)(5); 8.l(a); 8.4(a) and 8.4(c).

PROCEDURAL HISTORY

ODC filed the formal charges against Mr. Steel ("Respondent") on April 24, 2017. The formal charges were mailed via certified mail dated April 27, 2017 to Respondent's primary registration address.[2] Respondent failed to file an answer to the charges. Accordingly, on August, 4, 2017, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rules XIX, §11(E)(3).[3]

[1] Respondent is currently eligible to practice law.
[2] Respondent's primary registration address at the time formal charges were filed was 620 Derbigny St., Gretna, LA 70053. In addition, LADB mailed Respondent the charges by certified mail at his secondary address: 9 Fernwood Drive Gretna, LA 70056. The record contains certified mail return receipts at both addresses, along with an Affidavit of Service.
[3] 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 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

By order of August 22, 2017, the factual allegations contained in the formal charges were deemed admitted. Subsequently, on September 11, 2017, Respondent filed a pleading styled "Motion to Recall Order and Request to Be Heard In Mitigation." In that pleading, Respondent offered no facts or other basis explaining his delay in responding to the formal charges. Even so, on September 13, 2017, the hearing committee chair entered an order affording Respondent until September 28, 2017 to "state the factual basis, along with any supporting documentary evidence and argument Respondent wishes to offer, demonstrating good cause for recalling" the committee's August 22, 2017 Order. Since the Committee's Order of September 13, 2017, Respondent has submitted nothing. ODC filed its Submission of Evidence and Written Argument on March 28, 2018. Respondent filed nothing in response.

For the following reasons, the hearing committee finds that Respondent violated the Rules of Professional Conduct as alleged. Moreover, the hearing committee finds that an appropriate sanction under Louisiana Supreme Court Rule XIX, the ABA Standards for Imposing Lawyer Sanctions and interpretative Louisiana Supreme Court jurisprudence is a suspension of one year and one day, along with an Order requiring Respondent to make restitution to Ms. Begovich of the fees he took, yet did not earn, and that all costs and expenses of this proceeding be assessed against Respondent.

FORMAL CHARGES

The formal charges allege:

COUNT I (ODC File 0034058)

> The Office of Disciplinary Counsel ("ODC") received a complaint from Complainant, Donna Begovich, on January 19, 2016. Complainant hired Respondent to represent her in an action against her automobile insurance

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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.

company who had denied coverage for a motor vehicle accident in which her son was involved. Complainant met with Respondent on October 28, 2015. Respondent reviewed the materials provided by Complainant and indicated he would represent her against the insurance company. Respondent requested $1,000.00 on that day from Complainant and indicated $700.00 of the $1,000.00 would be to file suit on her behalf against the insurance company in Jefferson Parish. Respondent also indicated he would seek payment of his fee and any other expenses from the insurance company. Respondent also indicated he would send a certified letter to the insurance company within a week informing the company that Complainant had retained counsel and request a written explanation for the denial of the claim. On or about November 15, 2016, Respondent informed Complainant he had sent the letter to the insurance company and given the company 15 days in which to respond. Complainant requested, but never received a copy of said correspondence from Respondent. Complainant never heard anything more from Respondent and terminated his services on December 8, 2015. Complainant terminated Respondent by sending a certified letter to him. In said letter, Complainant requests the return of the $700.00 Respondent told her would be used to file suit in Jefferson Parish. When Complainant heard nothing from Respondent, she filed the instant complaint.

Respondent filed a written response to the complaint indicating that he had agreed to refund to Complainant the entire $1,000.00 paid to him. He further stated he had attempted to contact Complainant via text to determine if she would pick up the refund or preferred to have the refund mailed to her. Complainant denies that she ever received any such text from Respondent. On December 29, 2016, Respondent sent correspondence to the ODC stating he had returned Complainant's refund to her in full. On January 11, 2017, Complainant sent correspondence to the ODC indicating she has not received any refund from Respondent. Further, Complainant indicated in said correspondence that she has had no communication with Respondent since before she lodged the instant complaint.

Respondent's actions in this matter constitute failure to act with reasonable diligence and promptness in representing a client, in violation of Rule 1.3; failure to keep the client reasonably informed about the status of the matter, in violation of Rule l.4(a)(3); failure to return the unearned portion of a fixed fee, in violation for Rule 1.5(f)(5); knowingly making a false statement of material fact in connection with a disciplinary matter, in violation of 8.l(a); violating or attempting to violate the Rules of Professional Conduct, in violation of Rule 8.4(a); and, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c) of the Rules of Professional Conduct.

EVIDENCE

The formal charges were deemed admitted on August 22, 2018. Along with ODC's written argument submitted on March 28, 2018, ODC submitted exhibits ODC 1 through ODC 6.

FINDINGS OF FACT

The committee finds that the deemed admitted formal charges contained in Count 1 have been substantiated by clear and convincing evidence. Accordingly, the committee finds that the allegations set out in Count 1 of the formal charges are, in fact, true and correct as stated. The evidence upon which the committee relied is found in Exhibits ODC 1, ODC 2, ODC 3, ODC 4, ODC 5 and ODC 6. For the avoidance of any doubt, we find that the documentary evidence submitted by ODC provides a separate and independent basis of proof by clear and convincing evidence of the factual allegations set forth in Count 1.

Respondent assured Complainant that he had forwarded communications to the insurance company involved in Complainant's legal matter. In fact Respondent either failed to send a certified letter to the insurance company, as he represented that he did, or if Respondent actually sent the letter to the insurer, he failed to provide a copy of the transmittal correspondence to Complainant, despite Complainant's repeated requests for it.

Respondent has failed to return funds Complainant advanced to him, despite repeated requests. Furthermore, Respondent misrepresented to ODC that he had, in fact, returned at least a portion of those funds. Respondent failed in his obligation to communicate with Complainant after she requested a return of the funds that she advanced to Respondent.

RULES VIOLATED

The committee finds the following violations of the Rules of Professional Conduct:[4]

[4] Appendix 1 contains relevant excerpts of each of the Rules of Professional Conduct that is implicated.

- Rule 1.3 (failure to act with reasonable diligence and promptness in representing a client)

- Rule l.4(a)(3) (failure to keep the client reasonably informed about the status of the matter)

- Rule 1.5(f)(5) (failure to return the unearned portion of a fixed fee)

- Rule 8.l(a) (knowingly making a false statement of material fact in connection with a disciplinary matter)

- Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct)

- Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation)

SANCTION

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

In addition, the Louisiana Supreme Court relies on the *ABA Standards for Imposing Lawyer Sanctions* (“*ABA Standards*”) to determine the baseline sanction. In doing so, the Court assesses "the type of duty violated, the lawyer's mental state and the extent of the injury caused; and then adjust[s] the sanction in accordance with the aggravating and mitigating factors present." *In re Quaid.*[5]

The Court contrasts the offending lawyer’s blameworthiness with the magnitude of the client's harm, and it “should be considered in tandem as flexible and dynamic elements

[5] 1994-1316, p.13 (La. 11/30/94), 646 So. 2d 343, 350.

influencing the level of sanction to be chosen." *Louisiana State Bar Association v. Amberg.*[6]

Duties Violated

The *ABA Standards* analysis requires that we consider the duties Respondent violated. Under the *ABA Standards,* we find that Respondent has violated duties owed to his clients,[7] the public[8] and the legal profession.[9]

Mental State

We must also consider the Respondent's mental state. The *ABA Standards* define "negligence" as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Finally, "intent" is the conscious objective or purpose to accomplish a particular result. We find Respondent's Rule violations to be intentional, and at a minimum knowledgeable.

Extent of Injury and Harm

Next, we are called upon to assess the extent of injury and harm caused by Respondent's misconduct. We find that Respondent's misconduct has caused actual harm. Also, ODC has been forced to expend its limited resources in its efforts to investigate and address Respondent's multiple Rule violations in the face of Respondent's complete lack of cooperation. *In re: Waltzer*[10] and *In re: Ford.*[11].

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6 553 So. 2d 448, 451 (La. 1989).
7 Standard 4.0
8 Standard 5.0
9 Standard 7.0
10 2004-1032, pp. 15-16 (La. 10/8/04), 883 So. 2d 973, 982.
11 2014-0831, p.4 (La. 6/20/14), 141 So. 3d 800, 802-803.

Baseline Sanction

We agree with ODC's argument that the baseline sanction here is suspension. Standard 4.42 provides that suspension is appropriate when:

> a. A lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
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> b. A lawyer engages in a pattern of neglect causes injury or potential injury to a client.

In addition, Respondent's failures have delayed resolution of Complainant's legal matter.

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, *ABA Standard* 7.2 provides for suspension. Respondent has a duty to cooperate with the ODC, and to do so in a candid and truthful manner. Unfortunately, Respondent made false representations to ODC that he returned the unearned funds to Complainant, which proved to be untrue.

Mitigating and Aggravating Factors

ABA Standards 9.22 and 9.32 set out certain aggravating and mitigating factors that the Rules and Court require hearing committees to take into consideration. We find that the following aggravating factors are present:

1. prior disciplinary offenses [12]
2. multiple offenses;
3. submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
4. indifference to making restitution; and
5. substantial experience in the practice of law[13]

[12] ODC represents that Respondent received an admonition on June 10, 2004 for violating Rules 1.3 (diligence) and 1.4 (communication). Respondent also received a 90 day fully deferred suspension on January 16, 2015 for violating Rules 1.3 (diligence) and 1.4 (communication).

[13] Respondent was admitted to practice on April 23, 1999, and he has been licensed to practice law for 18 years.

We find a lack of evidence in the record of any mitigating factors. Accordingly, the committee finds that there are no mitigating factors.

Jurisprudence

The Louisiana Supreme Court has found that neglecting a legal matter and failing to cooperate with ODC in investigating a complaint surrounding that neglect merits a one year and one day suspension.[14] We agree with ODC that the *In re Ford*[15], *In re Hebert*[16] *and In re Waltzer*[17] matters offer important guidance to the committee.

The instant case is similar to *In re: Ford.* In *Ford,* the Court observed:

> Respondent acted knowingly, if not intentionally, in violating duties owed to her clients, the legal system, and the legal profession. She caused harm to her clients in that their legal matter has been delayed, and Mr. Van continues to be deprived of his $5,000. She also harmed the disciplinary system by making misrepresentations and failing to cooperate with the ODC. Suspension is the baseline sanction.

The Court suspended Ms. Ford from the practice of law for one year and one day and ordered her to make restitution to the Complainant.

In *Hebert* the Court suspended Mr. Hebert for one year and one day as a sanction for neglecting a legal matter, failure to communicate with his client, making false statements to his client and the ODC, and failure to cooperate with ODC in its investigation. In *Waltzer*, Ms. Waltzer was suspended for two years for neglecting three legal matters, failure to communicate with her clients, failure to properly terminate the representation of her clients, failure to

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[14] *See e.g. In re: Wyatt,* 2002-0053 (La. 4/12/02), 814 So. 2d 1265; *see also In re: Turnage*, 01-1240 (La. 6/22/01), 790 So. 2d 620; *In re: Bergeron*, 00-1386 (La. 9/15/00), 768 So. 2d 595; *In re Grady,* 99-0440 (La. 4/9/99), 731 So. 2d 878; *In re: Powers,* 98-2826 (La. 1/29/99), 731 So. 2d 185; and *In re: Kendrick,* 98-0623 (La. 4/3/98), 710 So. 2d 326.
[15] 09-B-2524 (3/26/2010), 30 So. 3d 743.
[16] 08-2785 (La. 5/29/09), 9 So. 3d 846.
[17] 04-1032 (La. 10/8/04), 883 So. 2d 973.

cooperate with ODC in its investigations, including failure to respond to properly served subpoenas, and providing false and misleading information to ODC.

Here, Mr. Steel failed to communicate with Ms. Begovich. He failed to diligently represent Ms. Begovich. Mr. Steel failed to return funds he owed to Ms. Begovich, and he provided untrue information to the ODC, wrongfully claiming that he actually returned unearned funds advanced by Ms. Begovich. We believe that Mr. Steel should be suspended for a year and one day.

CONCLUSION

Based on deemed admitted facts and the supportive evidence provided by ODC, we recommend that Respondent, Kevin Michael Steel, be suspended for a period of one year and one day. We further recommend that Respondent be Ordered to make full restitution to Ms. Begovich of all unearned funds that he took, yet failed to refund, and that Respondent be ordered to pay all costs and expenses incurred in this matter, consistent with La. S. Ct. Rule XIX, §10.1.

New Orleans, Louisiana this 9th day of May, 2018.

Louisiana Attorney Disciplinary Board
Hearing Committee #09
Donald C. Massey Chairman
Margaret E. Woodward, Lawyer Member
Harry G. Barkerding, Public Member

BY: ______________________________

Donald C. Massey, Chairman
FOR THE COMMITTEE

APPENDIX 1

RULES OF PROFESSIONAL CONDUCT IMPLICATED.

Rule 1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4(a)(3) A lawyer shall keep the client reasonably informed about the status of the matter.

Rule 1.5(f)(5) Payment of fees in advance of services shall be subject to the following rules: 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.

Rule 8.1(a) 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: Knowingly make a false statement of material fact.

Rule 8.4(a) 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.

Rule 8.4(c) It is professional misconduct for a lawyer to: (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.