06/22/2020 "See News Release 022 for any Concurrences and/or Dissents."

The Supreme Court of the State of Louisiana

IN RE: FRANCIS C. BROUSSARD

No.2020-B-00366

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

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June 22, 2020

Discipline imposed. See per curiam.

JLW

BJJ

JDH

SJC

JTG

WJC

JHB

Supreme Court of Louisiana
June 22, 2020

Clerk of Court
For the Court

06/22/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-0366

IN RE: FRANCIS C. BROUSSARD

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Francis C. Broussard, a disbarred attorney.

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent's prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 1986.

In 1998, the disciplinary board admonished respondent for engaging in improper financial transactions with a client.

In 2002, we suspended respondent from the practice of law for six months, fully deferred, subject to one year of supervised probation with conditions, for engaging in conduct constituting a conflict of interest and for failing to disburse settlement proceeds to a client for more than one year, during which time the balance of his trust account dropped below the amount held on the client's behalf. *In re: Broussard*, 02-1670 (La. 9/30/02), 827 So. 2d 1133 ("*Broussard I*").

In 2010, we suspended respondent from the practice of law for one year and one day, with all but thirty days deferred, followed by one year of supervised probation with conditions, for failing to communicate with a client and neglecting

his legal matter, resulting in the dismissal of his lawsuit, and failing to release the files of two clients upon request. *In re: Broussard*, 09-1814 (La. 1/8/10), 26 So. 3d 131 ("*Broussard II*").

In 2017, we disbarred respondent, retroactive to February 26, 2014, the date of his interim suspension imposed in *In re: Broussard*, 14-0386 (La. 2/26/14), 134 So. 3d 579, based upon his conviction of one count of making false, fictitious, or fraudulent claims to the IRS, arising out of his effort to employ an "OID scheme" to claim more than $9.7 million in tax refunds over the course of four years. *In re: Broussard*, 16-1441 (La. 1/25/17), 219 So. 3d 290 ("*Broussard III*").

Against this backdrop, we now turn to a consideration of the misconduct at issue in the instant proceeding.

UNDERLYING FACTS

In 2011, Arthur Johnson hired respondent to represent him in a workers' compensation matter stemming from a March 20, 2011 injury he sustained while working for Louisiana Plastic Converting Corporation ("LPCC"). On October 5, 2011, respondent filed a disputed claim for compensation on Mr. Johnson's behalf with the Office of Workers' Compensation ("OWC").

In March 2012, LPCC settled Mr. Johnson's OWC claim for $1,500. On March 20, 2012, Mr. Johnson signed the related receipt and release. On March 30, 2012, the OWC hearing officer signed the following: (1) an order approving the $1,500 settlement; (2) an order approving respondent's $300 fee; and (3) an order dismissing Mr. Johnson's claim against LPCC. On April 5, 2012, LPCC forwarded the settlement check to respondent.

Mr. Johnson was incarcerated and therefore did not attempt to obtain his settlement proceeds until 2018. In July 2018, after not being able to contact respondent, Mr. Johnson wrote to the OWC hearing officer seeking assistance. On

July 9, 2019, LPCC's counsel, attorney P. Scott Wolleson, provided the hearing officer with a copy of the settlement check but was unable to provide an image of the endorsement on the check because LPCC's bank had already destroyed those records.

Mr. Johnson also filed a disciplinary complaint against respondent in July 2018. The ODC mailed respondent notice of the complaint, but he did not claim the mail because he had not updated his address with the Louisiana State Bar Association ("LSBA").

DISCIPLINARY PROCEEDINGS

In December 2018, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(c) (failure to comply with annual professional obligations), 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.15(a) (safekeeping property of clients or third persons), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). Respondent answered the formal charges, denying any misconduct. Accordingly, the matter proceeded to a formal hearing on the merits.

Formal Hearing

The hearing committee conducted the hearing on November 25, 2019. Respondent appeared via telephone and represented himself. Deputy Disciplinary Counsel Tammy Pruet Northrup represented the ODC. The ODC introduced documentary evidence and called two witnesses to testify before the committee.

Respondent did not introduce any documentary evidence and did not call any witnesses. He did, however, testify on his own behalf and on cross-examination by the ODC.

P. SCOTT WOLLESON'S TESTIMONY

Mr. Wolleson testified that LPCC could not recover an image of the cancelled check with endorsements from its bank because of the amount of time that had passed. He was only able to send the hearing officer a copy of the front of the settlement check and a copy of the April 5, 2012 transmittal letter to respondent.

ARTHUR JOHNSON'S TESTIMONY

Mr. Johnson testified that he did not receive a check for his portion of the settlement proceeds on the day he signed the receipt and release. He never saw LPCC's settlement check made payable to himself and respondent; as such, he did not endorse the back of the check. Soon after signing the receipt and release, Mr. Johnson was sent to prison. By the time Mr. Johnson was released from prison, respondent had closed his office, and Mr. Johnson was unable to obtain his settlement proceeds. Therefore, he contacted the OWC and the ODC for help. During a telephone conference call with the OWC hearing officer, Mr. Wolleson, and respondent, respondent told Mr. Johnson that Mr. Johnson had received his settlement proceeds. However, Mr. Johnson denied receiving any funds from respondent.

RESPONDENT'S TESTIMONY

Respondent testified that he does not specifically remember receiving the settlement check, but he is certain he did receive it. He also has no memory of having Mr. Johnson endorse the settlement check or of giving Mr. Johnson a check

for his portion of the proceeds. He indicated, however, that Mr. Johnson probably signed a power of attorney to allow respondent to endorse the settlement check on Mr. Johnson's behalf.

Respondent further testified that he closed his office when he was interimly suspended in 2014, and he discarded all of his records in the summer of 2017. As such, the records for Mr. Johnson's workers' compensation matter were destroyed. When he received the settlement check in 2012, his trust account was with Chase Bank, but Chase Bank no longer has those records. Therefore, he has no records to show he paid Mr. Johnson his portion of the settlement proceeds. Respondent also testified that he did not receive notice of Mr. Johnson's disciplinary complaint until March or April of 2019 when he received a telephone call from the ODC asking for his current address.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee found the following:

All witnesses appeared to attempt to testify truthfully. Most likely, respondent did not give Mr. Johnson his portion of the settlement proceeds, but the records are too old to prove this by clear and convincing evidence. Therefore, the committee could not determine what actually happened with the settlement funds paid by LPCC and sent to respondent. However, the record does prove that respondent failed to keep his contact information current with the LSBA, failed to act with reasonable diligence and promptness while representing Mr. Johnson, and failed to keep Mr. Johnson reasonably informed about the status of his legal matter. The record does not show any communication by respondent to Mr. Johnson about the settlement; respondent destroyed Mr. Johnson's file and has no recollections that would contradict the allegations against him.

Based on these findings, the committee determined respondent violated Rules 1.1(c), 1.3, and 1.4 of the Rules of Professional Conduct. However, the committee determined respondent did not violate Rules 1.15(a), 8.1(c), 8.4(a), 8.4(c), or 8.4(d).

The committee then determined respondent violated duties owed to his client and the legal system. He acted intentionally with respect to his failure to keep records showing what happened to Mr. Johnson's funds. He also acted intentionally in failing to keep his contact information current with the LSBA. His conduct caused harm to his client and caused the disciplinary process to become unnecessarily burdensome. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found a prior disciplinary record and multiple offenses. According to the committee, the sole mitigating factor is respondent's full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee determined that a suspension from the practice of law for one year and one day is appropriate. However, noting that respondent is already disbarred, the committee recommended that the time period in which he can apply for readmission from his disbarment be extended by one year and one day.

Neither respondent nor the ODC filed an objection to the hearing committee's report. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.[1]

[1] As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that "[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee's report to the court."

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. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So.2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So.2d 150.

The record of this matter definitely proves that respondent failed to update his address with the LSBA as required, which resulted in his failure to respond to the ODC's notice of Mr. Johnson's disciplinary complaint. The hearing committee also made factual findings that respondent failed to act with reasonable diligence and promptness while representing Mr. Johnson and failed to keep Mr. Johnson reasonably informed about the status of his legal matter. Based on these facts, respondent has violated Rules 1.1(c), 1.3, 1.4, 8.1(c), and 8.4(a) of the Rules of Professional Conduct as charged.

The committee could not, however, determine what actually happened with the settlement funds paid by LPCC and sent to respondent because the records were old and had already been destroyed by LPCC's bank and by respondent and his bank. Despite making a specific finding that respondent acted intentionally with respect to his failure to keep records showing what happened to Mr. Johnson's funds, the committee, nonetheless, determined respondent did not violate Rules 1.15(a), 8.4(c), or 8.4(d).

The fact that respondent destroyed his records is to his benefit and makes it impossible for the ODC to meet its burden of proof with respect to the allegation

that he failed to safeguard Mr. Johnson's funds and forward same to Mr. Johnson. We addressed a somewhat similar situation in *Louisiana State Bar Ass'n v. Krasnoff*, 488 So. 2d 1002 (La. 1986). In *Krasnoff*, an attorney failed to maintain a client trust account, and there was no direct evidence that the attorney had used funds belonging to his client for his personal use. However, we found that the Bar Association had proven "by clear and convincing evidence or to a high probability" that the attorney had converted the funds to his own use. We then established the following:

> When an attorney relies upon a "black box" defense, viz., that he kept client funds secretly but securely in a private safe or similar unregulated depository, the likelihood of actual embezzlement is so great, and the policy of professional responsibility in protecting the client from such risks so strong, that it should be presumed that the attorney is guilty of embezzlement unless he successfully carries both the burden of going forward with the evidence and the burden of persuasion otherwise.

As in *Krasnoff*, respondent in this matter failed to produce any evidence to overcome a presumption of conversion. In fact, the committee made a factual finding that respondent destroyed Mr. Johnson's file and has no recollections that would contradict the allegations against him. Therefore, based on *Krasnoff*, we find respondent failed to deliver the $1,200 due to Mr. Johnson, in violation of Rules 1.15(a) and 8.4(c).

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, if not intentionally, violated duties owed to his client and the legal profession, causing actual harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the applicable baseline sanction in this matter is suspension.

Aggravating factors include a prior disciplinary record, vulnerability of the victim, substantial experience in the practice of law (admitted 1986), and indifference to making restitution. Mitigating factors include respondent's full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

Turning to the issue of an appropriate sanction, we note that the instant misconduct occurred after the misconduct for which respondent was disbarred in *Broussard III*. Therefore, additional discipline is warranted. We addressed a similar situation in *In re: Jones-Joseph*, 15-1549 (La. 10/9/15), 181 So. 3d 651, and simply extended the time period in which the disbarred attorney could apply for readmission. We agree with the committee that the same approach is appropriate here.

In light of the above, we will adopt the committee's recommendation and extend the minimum time period in which respondent may seek readmission by one year and one day.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that the minimum period within which Francis C. Broussard, Louisiana Bar Roll number 17259, may seek readmission from his disbarment in *In re: Broussard*, 16-1441 (La. 1/25/17), 219 So. 3d 290, be extended for a period of one year and one day. 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.