

The Supreme Court of the State of Louisiana

IN RE: NICHOLAS ANTHONY BELLARD

No.2020-B-00761

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

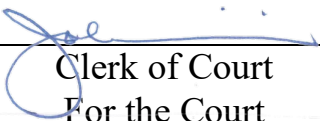
November 04, 2020

Disbarment imposed. See per curiam.

WJC
JLW
JDH
SJC
JTG
JHB

Johnson, C.J., dissents and assigns reasons.

Supreme Court of Louisiana
November 04, 2020



Clerk of Court
For the Court

11/04/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-0761

IN RE: NICHOLAS ANTHONY BELLARD

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Nicholas Anthony Bellard, an attorney licensed to practice law in Louisiana, but currently ineligible to practice.¹

FORMAL CHARGES

Count I

Between January 2013 and April 2016, the ODC received sixteen overdraft and/or insufficient fund notices from Farmer’s State Bank and Trust Company regarding respondent’s client trust account. Accordingly, the matters were opened for investigation. An audit was performed by Angelina Marcellino, the ODC’s forensic auditor, who reviewed and analyzed trust account transactions that occurred between August 2012 and April 2016, at which time respondent closed his trust account with a zero balance. The audit report reveals the extent of respondent’s misuse of his trust account, which includes the commingling and conversion of client and third-party funds.²

¹ On June 29, 2018, respondent was declared ineligible to practice law for failure to comply with the mandatory continuing legal education requirements. He is also ineligible to practice law for failure to pay his bar dues and the disciplinary assessment.

² In her report dated April 18, 2017, the auditor provided a detailed analysis of the trust account activity regarding each client or subject matter. She noted that in some matters, it could not be determined if all parties were paid appropriately or if there are any outstanding obligations due clients or third parties. She noted in other matters that no HUD statement, settlement statement, invoices, or client agreements were provided. In the report, she stated:

In her report, the auditor sets forth a detailed analysis of trust account activity in more than fifty matters. The following are just a few examples of this misuse.

The audit identified several deposits to the trust account that could not be matched to specific disbursements from the trust account.

- In March 2014, deposits totaling \$42,850 were made to the account from Kryton Environmental Services; however, no associated disbursements were identified.
- On December 18, 2013, a \$14,014 deposit was made to the account and identified with Pam and Michael Grotefend; however, no associated disbursements were identified.

The audit identified several disbursements to the trust account that could not be matched to specific deposits to the trust account.

- Two disbursements totaling \$25,000 were made to Mario Figueiredo; however, no associated deposits were identified. Respondent failed to provide any documentation regarding these disbursements.
- A \$5,000 disbursement was made to Susan Goss. Respondent asserted that the disbursement represented a full refund of attorney's fees to Ms. Goss; however, no associated deposits were identified. Respondent failed to provide any client agreement for Ms. Goss.
- Disbursements totaling \$48,000 were identified as proceeds from a sale of property located at Lourdes Road, and no associated deposits were identified.

[Respondent] did not complete reconciliations or maintain account ledgers for the audit period and no supporting documentation was provided for several transactions during the period. Due to the lack of information provided an appropriate amount to be held in trust at the end of the period to honor all client and third party liabilities cannot be determined. However multiple occurrences of insufficient funds have been identified during the period when client or third party money should have been available in trust and several client or third party disbursements have been identified as paid in full . . . by the end of the audit period when the trust was closed with a zero balance.

- The audit identified disbursements totaling \$72,314 made payable to “cash.”

The audit revealed other acts of commingling and conversion by respondent. For example, in the Freddie Richard matter, a \$151,189.76 deposit was made to the trust account and identified with Mr. Richard, while a \$150,332.74 disbursement was made from the account to Mr. Richard. Among other errors, a \$400 payment due to a third party and a \$475 payment due to respondent were not identified as being paid within the audit period or subsequent to the closing of the trust account.

Respondent provided no documentation or explanation for the identified misuses in order to determine if deposited funds were disbursed correctly or if there were any unpaid obligations to clients or third parties. Respondent’s lack of record keeping made it impossible to quantify the actual harm to clients and third parties.

In a sworn statement to the ODC, respondent admitted that he stopped keeping any accounting of his trust account. Respondent also admitted to transferring money from his trust account to former clients for matters unrelated to any litigation, despite knowing that these transfers were violations of the trust accounting rules.

The ODC alleged that respondent’s conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.5 (failure to refund an unearned fee) and 1.15 (safekeeping property of clients or third persons).

Count II

Martin Guillory, on behalf of the Mire Branch Water Corporation, paid respondent \$1,900³ to file suit against a water meter company and \$1,250 to file suit against a former employee of the corporation. Respondent failed to perform any

³ This amount appears to be based on Mr. Guillory’s testimony provided at his sworn statement that “... I think it’s around 19 hundred dollars that he took from us and have not performed any duties for it.” In the complaint, however, Mr. Guillory indicated that he paid respondent \$1,730 for one matter and \$1,250 for the other matter. Notably, the record contains copies of two checks in the amounts of \$1,730 and \$1,250, both payable to respondent.

work in either matter, requiring Mr. Guillory to hire subsequent counsel to file suit. Mr. Guillory repeatedly attempted to contact respondent to inquire about the matters, but respondent did not reply to Mr. Guillory's requests for information. Respondent did not return any of the fees that were paid to him by Mr. Guillory.

In October 2016, the ODC sent respondent notice of the complaint via certified mail, but the mail was returned as undeliverable. Correspondence was then sent to respondent in December 2016 and again in January 2017, but he did not reply. On February 22, 2017, respondent signed for and received a hand-delivered copy of the complaint, but he has not offered a written response to the complaint.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.16 (obligations upon termination of the representation), 3.2 (failure to make reasonable efforts to expedite litigation), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a) (violation of the Rules of Professional Conduct).

Count III

Frank J. Vautrot, Jr. hired respondent to file a lawsuit on his behalf. Mr. Vautrot paid respondent in excess of \$1,500⁴ to pursue the action, but respondent failed to perform any work. Mr. Vautrot repeatedly attempted to contact respondent to inquire about his case, only to be told repeatedly that respondent was "working on it." Respondent eventually stopped responding to Mr. Vautrot, prompting Mr. Vautrot to go to respondent's father's house to inquire about respondent's whereabouts. Respondent's father called respondent, and after respondent

⁴ In the complaint, Mr. Vautrot indicated that he gave respondent a check for \$470 and a check for \$1,500, and copies of the two checks are contained in the record.

answered, Mr. Vautrot was handed the phone. During the call, respondent promised to give Mr. Vautrot some paperwork about his case that day. Respondent failed to do as promised and never contacted Mr. Vautrot again. Respondent effectively abandoned the representation and returned none of the fees that were paid.

During his sworn statement, respondent stated that after he filed the suit for Mr. Vautrot, the case was transferred to a different venue due to the justice of the peace becoming ill. Respondent offered no documents to support this assertion. The ODC asked respondent to provide a written response to the complaint. Despite his assurance under oath that he would do so, he failed to comply with this request.

On April 4, 2017, respondent was forwarded a copy of the initial complaint. Although respondent signed for and received the complaint, he has not offered a written response to same.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.16, 3.2, 8.1(c), and 8.4(a).

DISCIPLINARY PROCEEDINGS

In September 2018, the ODC filed formal charges against respondent. Respondent failed to answer 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 hearing committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee determined that the factual allegations in the formal charges were deemed

admitted and proven by clear and convincing evidence. Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as charged. The committee addressed the alleged rule violations as follows:

Respondent's knowing, if not intentional, failure to perform services for his clients and failure to return unearned fees to his clients is in violation of Rules 1.3, 1.4, 1.16, and 3.2. His knowing, if not intentional, conversion of client funds, commingling of trust account funds, and misuse of his client trust account are in violation of Rules 1.5 and 1.15. His knowing, if not intentional, refusal to submit a written response to the complaints in Count II and Count III, despite numerous attempts to request same, is in violation of Rule 8.1(c).

The committee determined that respondent violated duties owed to his clients, the public, and the legal profession. He intentionally violated duties owed to clients by misusing his client trust account, which resulted in the comingling and conversion of funds, and his abandonment of the representation caused actual harm to his clients. His lack of record keeping makes it impossible to quantify the actual harm to clients and third parties, but the potential for very serious harm is apparent from the audit report. He likely caused actual harm to clients and/or third parties in Count I, although no evidence was introduced showing same; however, the potential for very serious harm was apparent from the audit report. He caused actual harm to the clients in Counts II and III by failing to refund unearned fees. In Count II, he failed to perform the work for which he was hired, requiring the client to hire subsequent counsel. In Count III, he failed to provide his client with proof that he performed the work for which he was hired. His repeated failure to respond to the ODC and cooperate with the ODC caused actual harm to the legal profession by forcing the ODC to unnecessarily expend its limited resources in the investigation of this matter.

After considering the ABA's *Standards for Imposing Lawyer Sanctions* and *Louisiana State Bar Ass'n v. Hinrichs*, 486 So. 2d 116 (La. 1986), wherein the court

established baseline sanctions for conversion of client funds, the committee determined the baseline sanction ranges from a lengthy suspension to disbarment. The committee found the following aggravating factors present: multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and indifference to making restitution. The committee also considered respondent's failure to cooperate with the ODC's investigations to be an aggravating factor. The committee found no mitigating factors present.

After further considering the court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for three years. The committee also recommended respondent be ordered to pay restitution to his clients and refund to them any unearned fees. The committee further recommended that respondent be assessed with the costs and expenses of these proceedings.⁵

The ODC filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board adopted the hearing committee's finding that the factual allegations in the formal charges were deemed admitted and proven by clear and convincing evidence. The board then determined that the legal conclusions of the committee are supported by the factual allegations asserted in the formal charges and/or by the evidence submitted in support of the allegations. Based on these findings, the board determined respondent violated the Rules of Professional Conduct. The board addressed each alleged rule violation as follows:

⁵ One committee member concurred but noted that disbarment would not be unreasonable considering the aggravating factors present and the lack of mitigating factors.

Rule 1.3 (failure to act with reasonable diligence and promptness in representing a client) – In Count II, respondent was hired to file two lawsuits for his client, and by failing to file either suit, he violated Rule 1.3. In Count III, respondent was hired to file a lawsuit for his client, and despite assurances to the client that he was “working on it,” he failed to do so, in violation of Rule 1.3.

Rule 1.4 (failure to communicate with a client) – In Count II, the client attempted to contact respondent several times about the underlying litigation, and respondent did not reply to the client’s requests for information, in violation of Rule 1.4. In Count III, respondent initially communicated with the client, but he eventually stopped doing so, in violation of Rule 1.4.

Rules 1.5 (failure to refund an unearned fee) and 1.15 (safekeeping property of clients or third persons) – With regard to Count I, respondent’s failure to return unearned fees, conversion of client funds, commingling of trust account funds, and misuse of his trust account are in violation of these Rules. In Counts II and III, respondent was not charged with violating Rule 1.5, but his failure to return unearned fees to the clients in those matters amounts to a violation of Rule 1.5.

Rule 1.16 (obligations upon termination of the representation) – By failing to return paperwork to his client in Count III and by failing to return unearned fees to his clients in Counts II and III, respondent violated Rule 1.16.

Rule 3.2 (failure to make reasonable efforts to expedite litigation) – Respondent failed to make reasonable efforts to expedite the lawsuits of his clients in Counts II and III. In Count II, the client was forced to hire new counsel to complete his legal matters. In Count III, the client indicated that his matter was never resolved. These actions violated Rule 3.2.

Rule 8.1(c) (failure to cooperate with the ODC in its investigation) – In Count II, respondent failed to reply to the ODC’s inquiries concerning the client’s disciplinary complaint. In Count III, respondent failed to provide the ODC with a

written response to the client's disciplinary complaint, despite his assurances at his sworn statement that he would do so. Therefore, respondent failed to cooperate with ODC in its investigations of these complaints, in violation of Rule 8.1(c).

Rule 8.4(a) (violation of the Rules of Professional Conduct) – By violating the above cited rules, respondent also violated Rule 8.4(a).

The board determined that respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. As to Count I, he caused actual harm to the clients and third parties identified in the audit report. As to Count II, he caused actual harm to his client by failing to perform the work he was hired to do, requiring the client to hire subsequent counsel, and by failing to refund the legal fees and expenses paid by the client. As to Count III, he caused actual harm to the client by failing to provide the client with proof that he performed the work for which he was hired and by failing to refund legal fees paid by the client. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the applicable baseline sanction is disbarment.

The board found the following aggravating factors present: a dishonest or selfish motive, 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, substantial experience in the practice of law (admitted 2006), and indifference to making restitution. The board found the following mitigating factors present: absence of a prior disciplinary record and personal or emotional problems (participation in the Judges and Lawyers Assistance Program for depression and anxiety in 2016).

After considering the jurisprudence of this court, the board recommended respondent be disbarred. The board also recommended he be ordered to make restitution to the clients and/or third parties listed in the audit report, including

\$2,780⁶ to the Mire Branch Water Corporation and \$1,970 to Frank J. Vautrot, Jr. The board further recommended he be assessed with the costs and expenses of this proceeding.

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

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.

⁶ The board noted that this amount included \$1,630 in legal fees in connection with the former employee matter and \$1,150 in legal fees and expenses in connection with the water meter company matter, but it is unclear how the board arrived at these calculations. As previously mentioned, Mr. Guillory paid respondent a total of \$2,980 for both matters, and the record contains two checks in the amounts of \$1,730 and \$1,250, both of which are made payable to respondent.

The record in this deemed admitted matter supports a finding that respondent neglected legal matters, failed to communicate with clients, converted client funds, overdrew his trust account, failed to maintain records of his trust account, failed to properly withdraw from representations, and failed to cooperate with the ODC in its investigation. Based on these facts, respondent has 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).

The record further supports a finding that respondent violated duties owed to his clients, the public, the legal system, and the legal profession. His misconduct was at least knowing, and perhaps intentional, and caused actual harm to his clients. The baseline sanction for this type of misconduct is disbarment. The following aggravating factors are supported by the record: 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, substantial experience in the practice of law, and indifference to making restitution. The record supports the mitigating factors found by the disciplinary board.

Case law suggests that the board's recommended sanction is appropriate. In *In re: Gilbert*, 16-0044 (La. 3/4/16), 185 So. 3d 734, this court disbarred an attorney for neglecting legal matters, failing to communicate with clients, failing to account

for or refund unearned fees, failing to properly withdraw from a representation, engaging in dishonest conduct, and failing to cooperate with the ODC in its investigation. In *In re: Weber*, 15-0982 (La. 8/28/15), 177 So. 3d 106, this court disbarred an attorney who neglected a legal matter, failed to communicate with a client, converted client funds, and failed to cooperate with the ODC in its investigation. In *In re: Hatfield*, 08-2632 (La. 2/20/09), 2 So. 3d 425, this court disbarred an attorney who neglected legal matters, failed to communicate with his clients, failed to refund unearned fees, and failed to cooperate with the ODC in its investigations. In each of these cases, there were several aggravating factors present and the only mitigating factor present was the absence of a prior disciplinary record.

Based on the above jurisprudence, and considering the record, we will adopt the board's recommendation and disbar respondent. We will further order that respondent make restitution to the clients and/or third parties subject of the audit report, as appropriate; to Mire Branch Water Corporation in the amount of \$2,980; and to Frank J. Vautrot, Jr. in the amount of \$1,970.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Nicholas Anthony Bellard, Louisiana Bar Roll number 30220, 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 to the clients and/or third parties subject of the audit report, as appropriate; to Mire Branch Water Corporation in the amount of \$2,980; and to Frank J. Vautrot, Jr. in the amount of \$1,970. 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.