

The Supreme Court of the State of Louisiana

IN RE: DOUNNISEI KUO GBALAZEH

No.2020-B-01111

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

November 24, 2020

Disbarment imposed. See per curiam.

JTG

BJJ

JLW

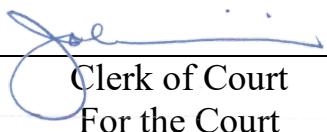
JDH

SJC

JBM

WJC

Supreme Court of Louisiana
November 24, 2020



Clerk of Court
For the Court

11/24/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-1111

IN RE: DOUNNISEI KUO GBALAZEH

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Dounnisei Kuo Gbalazeh, an attorney licensed to practice law in Louisiana, but currently suspended from practice.

PRIOR DISCIPLINARY HISTORY

Before we address the current matter, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 2007. On October 1, 2008, she was declared ineligible to practice law for failure to pay her bar dues and the disciplinary assessment. Respondent is also ineligible to practice for failure to file her trust account disclosure statement and for failure to comply with the mandatory continuing legal education requirements. Respondent has never rectified her ineligibility.

In 2014 and 2015, respondent practiced law on two occasions by seeking to enroll as counsel on behalf of immigration clients. She also failed to cooperate with the ODC in the investigation of two disciplinary complaints against her. On December 5, 2017, we imposed a one year and one day suspension upon respondent for her misconduct. *In re: Gbalazeh*, 17-1704 (La. 12/5/17), 231 So. 3d 21 (“*Gbalazeh I*”). Respondent has not applied for reinstatement from her suspension in *Gbalazeh I* and thus remains suspended from the practice of law.

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

FORMAL CHARGES

In July 2017, Jonathan Savice hired respondent to represent him in an immigration and naturalization proceeding in Philadelphia. He paid respondent approximately \$3,900 for the representation and met with her on three occasions. Respondent then abandoned the representation, failed to return Mr. Savice's telephone calls, and failed to return the unearned fee. Respondent was served with a copy of the complaint, but she did not respond.

DISCIPLINARY PROCEEDINGS

In August 2019, the ODC filed formal charges against respondent, alleging that her conduct as set forth above violated Rules 1.15 (safekeeping property of clients or third persons), 5.5(a) (engaging in the unauthorized practice of law), and 8.1(c) (failure to cooperate with the ODC in its investigation) of the Rules of Professional Conduct.

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 acknowledged that the factual allegations set forth in the formal charges

were deemed admitted and that the deemed admitted facts are supported by the evidence submitted by the ODC. The committee then determined that the deemed admitted facts and the evidence in the record support the conclusion that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined respondent violated duties owed to her client and the legal profession. She acted knowingly, if not intentionally, by accepting fees for work that she did not perform. She then failed to return the unearned fees, essentially converting the funds to her own use. Her misconduct caused actual and serious harm to her client. In addition to the funds he paid to respondent for services that he did not receive, the client had to pay another attorney to complete those services. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee found the following aggravating factors are present: a prior disciplinary record, 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 determined that the record does not support the finding of any mitigating factors.

After further considering the jurisprudence of the court, the committee recommended respondent be disbarred. The committee further recommended respondent be ordered to provide restitution to Mr. Savice and to return to Mr. Savice any of his documents that are in her possession. The committee also recommended respondent be assessed with the costs and expenses of this proceeding.

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

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 in this deemed admitted matter supports a finding that respondent failed to refund an unearned fee, practiced law while she was ineligible to do so, and failed to cooperate with the ODC in its investigation. As such, she has violated the Rules of Professional Conduct as alleged in the formal charges.

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.”

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 her client and the legal profession, causing actual harm. We agree with the hearing committee that the applicable baseline sanction is disbarment. The aggravating factors found by the committee are supported by the record, and no mitigating factors are present.

In recommending a sanction, the committee relied upon the case of *In re: Weber*, 15-0982 (La. 8/28/15), 177 So. 3d 106. In *Weber*, an attorney represented a homeowner in an insurance claim. The insurance company issued a living expenses check made payable to both the attorney and the client. The attorney accepted the check and told his client that he would hold the funds in his trust account until the client needed them. Thereafter, the client was unable to contact the attorney. The client never received the check and had to expend additional resources to hire another attorney to resolve his case. The attorney had not deposited the funds into his trust account, made no attempts to return the money to the client, did not cooperate with the ODC's investigation, and allowed the formal charges to become deemed admitted. His only mitigating factor was the lack of a prior disciplinary record. For this misconduct, we imposed disbarment.

In determining the appropriate sanction in *Weber*, we cited the seminal case of *Louisiana State Bar Ass'n v. Hinrichs*, 486 So. 2d 116 (La. 1986), which set forth

guidelines for imposing discipline in a conversion case. According to *Hinrichs*,
disbarment is warranted when

one or more of the following elements are present: the lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings.

Respondent's misconduct, like the misconduct at issue in *Weber*, falls into this category. The magnitude or duration of the deprivation of funds is extensive, the client was significantly damaged and greatly inconvenienced, and respondent has failed to make any restitution to her client. Accordingly, disbarment is appropriate.

Based on this reasoning, we will adopt the hearing committee's recommendation and disbar respondent. We will also order respondent to make restitution to Jonathan Savice and to return any documents belonging to Mr. Savice.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Dounnisei Kuo Gbalazeh, Louisiana Bar Roll number 30896, be and she hereby is disbarred. Her name shall be stricken from the roll of attorneys and her license to practice law in the State of Louisiana shall be revoked. It is further ordered that respondent shall refund all unearned fees to Jonathan Savice and return all of Mr. Savice's documents to him. 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.