

The Supreme Court of the State of Louisiana

IN RE: NICHOLAS ANTHONY BELLARD

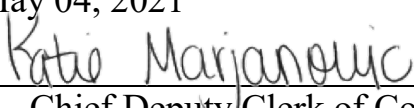
No. 2021-B-00339

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

May 04, 2021

Discipline imposed. See per curiam.

JLW
JDH
SJC
JTG
WJC
JBM
PDG

Supreme Court of Louisiana
May 04, 2021


Chief Deputy Clerk of Court
For the Court

05/04/21

SUPREME COURT OF LOUISIANA

NO. 2021-B-0339

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, 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 2006. On November 4, 2020, we disbarred respondent for neglecting legal matters, failing to communicate with clients, converting client funds, overdrawing his trust account, failing to maintain records of his trust account, failing to properly withdraw from representations, and failing to cooperate with the ODC in its investigation. *In re: Bellard*, 20-0761 (La. 11/4/20), 303 So. 3d 633 (“*Bellard I*”).

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

FORMAL CHARGES

Count I

The ODC received a disciplinary complaint against respondent. On December 7, 2017, a copy of the complaint was delivered to respondent's primary registration address. On May 4, 2018, a second copy of the complaint was delivered to his last known address in North Carolina. On June 7, 2018, a third copy was sent to the North Carolina address. Respondent failed to respond to the complaint.

The ODC alleged that respondent's conduct violated Rule 8.1(c) (failure to cooperate with the ODC in its investigation) of the Rules of Professional Conduct.

Count II

In December 2017, Holly Overfelt hired respondent to represent her in an adoption matter, for which she paid respondent an advance deposit of \$1,500. Several weeks later, she met with respondent to fill out paperwork to begin the adoption process. They later met at her place of employment, at which time respondent provided her with a fingerprint card along with instructions for completing the card. By text message, respondent asked her to mail the completed card to a North Carolina address as he was out of town.

In February 2018, respondent contacted Ms. Overfelt to request an additional payment. By text message, he asked her to deposit the payment into his account titled "AEGC International, LLC." In accordance with his instructions, Ms. Overfelt deposited the requested funds [in the amounts of \$60 and \$100] into the specified account. After receiving the payment, respondent failed to respond to Ms. Overfelt's requests for updates in the matter. In June 2018, Ms. Overfelt contacted the court and learned that no documents had been filed on her behalf.

A copy of the associated disciplinary complaint was forwarded to respondent via certified mail and delivered to his primary address on July 11, 2018. A second copy of the complaint was sent to respondent at that address on August 7, 2018, but respondent failed to respond to the complaint.

The ODC alleged that respondent's conduct violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(f)(5) (failure to refund an unearned fee), 8.1(c), and 8.4(a) (violation of the Rules of Professional Conduct) of the Rules of Professional Conduct.

Count III

In July 2017, Phillip Richard hired respondent to finalize the purchase of his mother's home. During their initial meeting, Mr. Richard signed all the necessary paperwork for the purchase and respondent promised to file the documents within the week. Thereafter, Mr. Richard attempted to contact respondent on several occasions, but respondent had stopped taking his calls. In July 2018, Mr. Richard finally made contact with respondent online, and respondent indicated that he had relocated but promised to file the documents within the week. Again, Mr. Richard heard nothing further from respondent. Mr. Richard attempted to contact respondent on August 19, 2018 and August 27, 2018, but he was not successful.

A copy of the associated disciplinary complaint was forwarded to respondent via certified mail and delivered to his primary address on April 1, 2019. A second copy was sent to that address on May 6, 2019. He failed to respond to the complaint.

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

DISCIPLINARY PROCEEDINGS

In June 2020, 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.

In Count I, respondent violated duties owed to the legal profession. His failure to respond to the complaint was at least knowing, given that he signed for the ODC's first notice of the complaint. His misconduct caused potential harm to the integrity of the legal process.

In Count II, respondent knowingly violated duties owed to his client, the public (the child affected by the incomplete adoption), and the legal profession. His failure to return \$1,660 in unearned fees was knowing, if not intentional, and caused actual harm to the client. His failure to file the documents necessary for the adoption also caused actual harm to his client.¹

In Count III, respondent knowingly violated duties owed to his client and the legal profession. His conduct caused actual harm to his client in that the purchase of the home was not completed, presumably making it necessary for the client to hire another attorney to complete the work.

¹ In the formal charges, the ODC alleged that respondent failed to deposit the advanced fees paid by Ms. Overton into a client trust account, citing Rule 1.5(f)(5) of the Rules of Professional Conduct. Rule 1.5(f)(5) does not apply to this allegation, but more importantly, there is no evidence in the record to prove that the funds were not deposited into a client trust account.

After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension. The committee also determined that multiple aggravating factors, but no mitigating factors, are present.

In *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991), the court observed that when a second attorney disciplinary proceeding involves conduct that occurred during the same time period as the first proceeding, the overall discipline to be imposed should be determined as if both proceedings were before the court simultaneously. The committee noted that the misconduct in *Bellard I* occurred between 2013 and 2017, and that the charges in *Bellard I* were filed in September 2018. By comparison, the misconduct in the instant case occurred between 2017 and 2019, which overlaps or immediately follows the misconduct and the investigation of charges in *Bellard I*, and appears to be part of an ongoing pattern of misconduct. After applying the analysis set forth in *Chatelain*, the committee concluded that if the misconduct at issue in these proceedings had been before the court in *Bellard I*, the court still would have imposed disbarment.

Accordingly, the committee recommended that respondent be adjudged guilty of additional rule violations to be considered if and when he seeks readmission to the practice of law. The committee also recommended that respondent be ordered to pay \$1,660 in restitution to Ms. Overfelt. The committee further recommended that he be assessed with the costs and expenses of these proceedings.

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

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 neglected his clients' legal matters, failed to communicate with his clients, failed to refund unearned fees, and failed to cooperate with the ODC in its investigations. As such, he 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 prior disciplinary 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. There are no mitigating factors in this case.

Turning to the issue of an appropriate sanction, we agree with the hearing committee that, based on *Chatelain*, the misconduct in the instant matter should be considered along with the misconduct in *Bellard I*. We also agree that the combined misconduct would warrant no more than disbarment as was imposed in *Bellard I*.

Accordingly, we will adopt the hearing committee’s recommendation and adjudge respondent guilty of additional rule violations to be considered if and when he seeks readmission to the practice of law. We also order respondent to pay \$1,660 in restitution to Ms. Overfelt.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Nicholas Anthony Bellard, Louisiana Bar Roll number 30220, be and he hereby is adjudged guilty of additional violations warranting discipline, which shall be considered in the event he seeks readmission after becoming eligible to do so. It is further ordered that respondent shall make

restitution to Holly Overfelt in the amount of \$1,660. 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.