

The Supreme Court of the State of Louisiana

IN RE: CHRISTINE Y. VOELKEL

No. 2021-B-00575

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

October 12, 2021

Disbarment imposed. See per curiam.

WJC

JLW

JDH

JTG

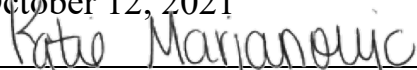
JBM

PDG

Crichton, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana

October 12, 2021



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2021-B-0575

IN RE: CHRISTINE Y. VOELKEL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

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 2004. On May 20, 2019, this court suspended respondent from the practice of law for one year and one day after she had overdrawn her client trust account on several occasions, practiced law while ineligible to do so, and failed to cooperate with the ODC in its investigations. *In re: Voelkel*, 19-0480 (La. 5/20/19), 273 So. 3d 1198 (“*Voelkel I*”). Respondent has not applied for reinstatement from her suspension in *Voelkel 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

For each of the following counts, the ODC attempted to send notices of the overdrafts and associated disciplinary complaints to respondent at her primary bar registration address and/or her preferred mailing address. In each case, the notices

were returned marked as follows: “Return to Sender. Not Deliverable as Addressed. Unable to Forward.” Respondent has not responded to any of the complaints or to the ODC’s requests for information regarding the overdrafts.

Count I

In June 2018, Marie Tridico hired respondent to represent her in a criminal matter as well as a child custody matter, paying respondent a \$2,500 retainer fee. Respondent enrolled as counsel in the criminal matter but failed to enroll as counsel in the custody matter. Respondent filed no pleadings in either matter, failed to take any action on behalf of Ms. Tridico in the custody matter, and did not respond to Ms. Tridico’s repeated requests for updates regarding her matters. Due to her inaction, Ms. Tridico had to be represented by a public defender in the criminal matter and had to retain new counsel to represent her in the custody matter, at an additional cost of \$4,000. Ms. Tridico requested a refund of the fee she paid, but respondent failed to refund any portion of the fee.

The ODC alleged that respondent’s conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1 (failure to provide competent representation to a client), 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), 1.15(a) (safekeeping property of clients or third persons), 1.15(d) (failure to timely remit funds to a client or third party), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count II

In August 2018, Candace Baker hired respondent to represent her in a custody matter, paying respondent a \$1,500 cash retainer fee. In the months that followed, respondent failed to communicate with Ms. Baker about the status of the matter. In addition, respondent failed to enroll as Ms. Baker's counsel, failed to file any pleadings on behalf of Ms. Baker, and failed to attend a hearing on October 4, 2018. Respondent also failed to return the unearned fee despite Ms. Baker's requests for a refund. As a result of respondent's inaction and refusal to refund the retainer fee, Ms. Baker was forced to represent herself in the matter.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1, 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.15(d), 8.1(c), 8.4(a), and 8.4(c).

Count III

Between December 17, 2018 and January 30, 2019, the ODC received six separate notices from Capital One Bank that the balance of respondent's client trust account was insufficient to honor checks which had been presented for payment.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1, 1.15(a), 1.15(d), 8.1(c), and 8.4(a).

Count IV

In January 2019, a disciplinary complaint was filed against respondent by Jacques Bezou, Jr. of the Bezou Law Firm. Mr. Bezou, who is the former employer of respondent, received notice from the 22nd JDC that respondent had written an NSF check to the St. Tammany Parish Clerk of Court. The check, dated December 28, 2018, listed respondent's office address as the address of the Bezou Law Firm,

although she had left the firm approximately eight years prior to the issuance of the check.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1, 1.15(a), 1.15(d), 8.1(c), 8.4(a), and 8.4(c).

Count V

In August 2018, Ann Williams hired respondent to handle a medical malpractice matter. They executed a contingency fee agreement and Ms. Williams paid respondent a \$200 cost deposit. In the months that followed, respondent failed to communicate with Ms. Williams about the status of the matter and did not respond to her phone calls, emails, and text messages. Ms. Williams requested a full refund of the deposit, to no avail.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1, 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.15(d), 8.1(c), 8.4(a), and 8.4(c).

Count VI

In May 2018, Terrence Williams hired respondent to represent him in a child support and visitation matter. His mother (Ann Williams of Count V) paid respondent \$1,500 for the representation. In the months that followed, respondent failed to communicate with Mr. Williams about the status of the matter and did not respond to his phone calls and emails. Respondent did not render the anticipated legal services for Mr. Williams, and she failed to refund any portion of the fee paid. Without these funds, Mr. Williams was unable to hire new counsel to represent him in the matter.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1, 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.15(d), 8.1(c), 8.4(a), and 8.4(c).

Count VII

In September 2017, George Kernan hired respondent to represent him in a domestic matter. He paid respondent an \$11,178 fee for the representation. Thereafter, respondent failed to diligently prepare the necessary pleading to file for Mr. Kernan's divorce and failed to reasonably communicate with him about the status of the matter. In April 2018, Mr. Kernan was served with a petition for child and spousal support as well as a petition to nullify a matrimonial agreement. Court dates were postponed and continued because of respondent's failure to prepare and file necessary pleadings on a timely basis. Due to respondent's inaction, Mr. Kernan had to retain new counsel to represent him in the matter, at additional cost. Respondent failed to refund any portion of the fee that was paid.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1, 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.15(d), 8.1(c), 8.4(a), and 8.4(c).

Count VIII

In December 2017, Alicia Lewis hired respondent to represent her in a civil matter involving First Financial Services. Ms. Lewis provided respondent with the necessary paperwork and \$600 cash as a flat fee payment for the representation. After a few months, respondent failed to communicate with Ms. Lewis about the status of her matter and failed to respond to her phone calls, texts, and emails. Ms. Lewis requested a refund of the fee she paid, to no avail.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1, 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.15(d), 8.1(c), 8.4(a), and 8.4(c).

Count IX

In March 2017, Robin Allen hired respondent to file suit against First Castle Federal Credit Union, paying respondent a \$1,500 flat fee. After the suit was filed, respondent failed to communicate with Ms. Allen about the status of the matter, failed to appear for the depositions of Ms. Allen and her mother, and failed to attend a January 2019 trial in the litigation. Due to respondent's inaction, a final judgment dismissing Ms. Allen's claims was entered in February 2019. A judgment in the amount of \$18,594.57 was entered in favor of First Castle on its reconventional demand. First Castle was awarded \$1,700.95 in fees and costs as a result of respondent's failure to proceed with the depositions. Respondent failed to refund any portion of the fee that was paid.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1, 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.15(d), 8.1(c), 8.4(a), and 8.4(c).

DISCIPLINARY PROCEEDINGS

In July 2020, the ODC filed formal charges against respondent as set forth above. 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 adopted the deemed admitted factual allegations as its factual findings. Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined respondent violated duties owed to her clients, the public, the legal system, and the legal profession. Her conduct was knowing.¹ Respondent caused actual harm to her clients in that she failed to return unearned fees and caused some clients to spend additional funds and time to retain subsequent representation. Her conduct caused actual harm to the legal system insofar as her actions and/or omissions impeded judicial proceedings, delayed matters on court dockets, and inconvenienced opposing counsel and court staff. She caused actual harm to the public and the legal profession by virtue of the above and foregoing reasons and their imputation to the reputation and public perception of the legal profession. Under the ABA's *Standards for Imposing Lawyer Sanctions*, the baseline sanction is disbarment.

The committee found the following aggravating factors are supported by the record: a prior disciplinary record, a dishonest or selfish motive, multiple offenses, vulnerability of the victims, substantial experience in the practice of law, and indifference to making restitution. The committee found no mitigating factors present.

Based on these findings, the committee recommended respondent be disbarred. The committee also recommended that respondent be ordered to pay restitution to her clients and/or the Client Assistance Fund, as appropriate, and that she be assessed with the costs and expenses of this proceeding.

¹ In its report, the committee also indicated that the misconduct was "knowing and intentional."

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.

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 provide competent representation to clients, neglected legal matters, failed to communicate with clients, failed to refund unearned fees, mismanaged her client trust account, and failed to cooperate with the ODC in its investigations. As such, she 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).

Respondent violated duties owed to her clients, the public, the legal system, and the legal profession. Her conduct was knowing, and perhaps intentional, and caused significant harm to her clients. Considering the ABA's *Standards for Imposing Lawyer Sanctions*, the baseline sanction in this matter is disbarment. The record supports the aggravating found by the hearing committee. No mitigating factors are apparent from the record.

Based on the foregoing, we will adopt the hearing committee's recommendation and disbar respondent. We will also order respondent to pay restitution to her clients and/or the Client Assistance Fund, as appropriate.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Christine Y. Voelkel, Louisiana Bar Roll number 29469, 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 make restitution to her clients and/or repay to the Louisiana State Bar Association's Client Assistance Fund any amounts paid to claimants on her behalf. 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.

SUPREME COURT OF LOUISIANA

No. 2021-B-00575

IN RE: CHRISTINE Y. VOELKEL

Attorney Disciplinary Proceeding

CRICHTON, J., additionally concurs and assigns reasons:

I agree with the Court’s imposition of disbarment in this matter. However, I write separately to emphasize the seriousness of the misconduct involved and, as I have done previously, note the importance of other potential legal remedies available to the victims harmed by respondent’s transgressions.

As set forth in the formal charges against respondent, respondent converted nearly \$19,000 in client funds from 2017 to 2019. While the time limitations for seeking a remedy in tort may have passed, the victims in this matter may find restitution through criminal prosecution. La. C.Cr.P. art. 572(A)(2) provides that in noncapital offenses, no person shall be prosecuted, tried, or punished for an offense within “four years, for a felony not necessarily punishable by imprisonment at hard labor.”¹ Article 573 of the Code of Criminal Procedure further provides in pertinent part:

¹ La. R.S. 14:67 provides as follows:

- A. Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.

- B. (2) When the misappropriation or taking amounts to a value of five thousand dollars or more, but less than a value of twenty-five thousand dollars, the offender shall be imprisoned, with or without hard labor, for not more than ten years, or may be fined not more than ten thousand dollars, or both.

(3) When the misappropriation or taking amounts to a value of one thousand dollars or more, but less than a value of five thousand dollars, the offender shall be imprisoned, with or without hard labor, for not more than five years, or may be fined not more than three thousand dollars, or both.

The time limitations established by Article 572 shall not commence to run as to the following offenses until the relationship or status involved has ceased to exist when:

(1)The offense charged is based on the misappropriation of any money or thing of value by one who, by virtue of his office, employment, or fiduciary relationship, has been entrusted therewith or has control thereof.

In light of the timing of respondent's misconduct that occurred in 2018 (Counts I, II, and VI), in my view, the District Attorney should consider institution of charges under the aforementioned provisions. Furthermore, regarding the misconduct that occurred in 2017 (Counts VII and IX), while on its face appears prescribed under La. C.Cr.P. art. 572, there is a possibility of prosecution under La. C.Cr.P. art. 573 (respondent, as one who has been "entrusted" with money and has misappropriated it by virtue of her employment as an attorney providing services for payment). In other words, if the victims of respondent's serious misconduct have not pursued civil remedies, the opportunity for criminal prosecution may still be available.

It is well settled the purpose of lawyer discipline proceedings is to maintain appropriate standards of professional conduct in order to protect the public and the administration of justice from lawyers who have demonstrated an inability to competently discharge their professional duties. *Louisiana State Bar Ass'n v. Bensabat*, 378 So.2d 380 (La. 1979). However, as I have previously noted, victims in matters such as these are also entitled to understand their potential remedies outside of the attorney disciplinary process:

. . . . as part of routine practice and policy of the Office of Disciplinary Counsel, victims of conversion or theft such as the one in this case should be advised of the specific purpose of attorney disciplinary proceedings – i.e., to protect the public, maintain high standards of conduct, preserve the integrity of the profession, and deter future misconduct, *see Louisiana State Bar Ass'n v. Reis*, 513 So.2d 1173

(La.1987) – and that such proceeding is distinct from a civil tort action for conversion or a prosecution action for theft.

In re Kelly, 20-118 (La. 6/3/20), 298 So.3d 161 (Crichton, J., additionally concurring, quoting *In re Dangerfield*, 20-B-0116 (La. 5/14/20), 296 So.3d 595 (Crichton, J., additionally concurring)). The Office of Disciplinary Counsel does, in fact, now so advise those who have become victims in similar circumstances.

Thus, a lawyer who, by virtue of her fiduciary relationship with clients, so blatantly violates the Rules of Professional Conduct and commits the tort of conversion or the crime of felony theft will be subject to proceedings in the lawyer disciplinary system and this Court, as well as in potential civil and criminal proceedings, all such that a full measure of justice is achieved.