

The Supreme Court of the State of Louisiana

IN RE: KEVIN MATTHEW DANTZLER

No. 2021-B-01235

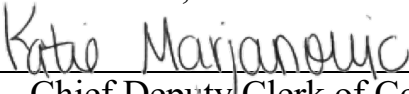
IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

November 03, 2021

Disbarment imposed. See per curiam.

SJC
JLW
JDH
JTG
WJC
JBM
PDG

Supreme Court of Louisiana
November 03, 2021



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2021-B-1235

IN RE: KEVIN MATTHEW DANTZLER

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Kevin Matthew Dantzler, an attorney licensed to practice law in Louisiana but currently on interim suspension for threat of harm to the public. *In re: Dantzler*, 18-0621 (La. 4/27/18), 242 So. 3d 559.

PROCEDURAL HISTORY

In September 2018, the ODC filed formal charges against respondent under disciplinary board docket number 18-DB-063. In June 2019, the ODC filed formal charges against respondent under disciplinary board docket number 19-DB-039. Respondent failed to answer either set of 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).

The two sets of formal charges were considered by separate hearing committees. No formal hearings were held, but the parties were given an opportunity to file with the committees written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for either committee’s consideration.

Before being considered by the disciplinary board, the matters were consolidated. The board then filed a recommendation in this court encompassing both sets of formal charges.

18-DB-063

FORMAL CHARGES

Count I

On March 20, 2017, respondent made a \$7,500 deposit into his trust account. On March 23, 2017, the deposit was charged back because of an improper endorsement. Soon thereafter, respondent's bank notified the ODC that respondent's trust account was overdrawn on April 14, 2017. The overdraft was corrected on April 19, 2017. A subsequent review of respondent's bank statements revealed these additional unreported overdrafts: (1) a check in the amount of \$825 on April 13, 2017; (2) a check in the amount of \$4,629 on March 17, 2017; (3) a check in the amount of \$2,000 on April 12, 2017; and (4) a debit in the amount of \$371 on April 14, 2017.

The ODC received notice from respondent's bank that respondent's trust account became overdrawn again on June 16 and 19, 2017. On June 22, 2017, the account was no longer overdrawn. The ODC requested, via certified mail to respondent's primary bar registration address, additional financial records from respondent for the period of December 2016 through June 2017. The correspondence was returned to the ODC unclaimed. In early September 2017, the ODC personally served respondent with the request for supplemental financial information. Nevertheless, respondent failed to comply. On October 20, 2017, the ODC sent a third request to respondent for the same information. On October 27, 2017, the ODC received correspondence from respondent, indicating he was working on collecting the information. However, respondent never provided this information to the ODC.

The ODC again received notice from respondent's bank that respondent's trust account was overdrawn on November 10, 13, 14, and 15, 2017. On November 16, 2017, the account was no longer overdrawn. The ODC received an additional

notice that respondent's trust account was overdrawn on November 27 and 28, 2017. On November 29, 2017, the account was no longer overdrawn. The ODC received a final notice that respondent's trust account was overdrawn on December 22 and 28, 2017. On January 2, 2018, the account was no longer overdrawn.

On December 4, 2017, the ODC sent notice of these additional overdrafts and a request for additional financial records to respondent at his primary bar registration address via certified mail. The correspondence was returned to the ODC unclaimed. The ODC made two attempts to personally serve respondent with a copy of the notice.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.15 (safekeeping property of clients or third persons), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a) (violation of the Rules of Professional Conduct).

Count II

From September 11, 2017 until November 20, 2017, respondent was ineligible to practice law for failing to pay bar dues and the disciplinary assessment. The ODC received three separate disciplinary complaints regarding respondent's practice of law during this period of ineligibility.

First, Office of Workers' Compensation Judge James Braddock reported that respondent filed a workers' compensation claim on a client's behalf on September 13, 2017. Respondent then failed to appear for a status conference in the case on October 31, 2017. On November 13, 2017, the ODC sent notice of Judge Braddock's complaint to respondent via certified mail to his primary bar registration address. The correspondence was returned to the ODC unclaimed. The ODC made two attempts to personally serve respondent with notice of the complaint. Respondent never responded to the complaint.

Second, attorney Holli Yandle, opposing counsel in a personal injury matter being handled by respondent, reported that she discovered respondent's ineligibility on November 16, 2017 and that respondent had been practicing law during his period of ineligibility. On December 6, 2017, the ODC sent notice of Ms. Yandle's complaint to respondent via certified mail to his primary bar registration address. The correspondence was returned to the ODC unclaimed. The ODC made two attempts to personally serve respondent with notice of the complaint. Respondent never responded to the complaint.

Finally, Alexandria City Court Judge Richard Starling, Jr. reported that respondent attempted to enroll in a criminal case during his period of ineligibility. On October 3, 2017, respondent filed a petition for damages on a client's behalf. On February 20, 2018, the ODC sent notice of Judge Starling's complaint to respondent via certified mail to his primary bar registration address. The correspondence was returned to the ODC unclaimed.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(c) (failure to pay bar dues, failure to pay the disciplinary assessment, or failure to submit trust account disclosure statement), 8.1(c), and 8.4(a).

Count III

Casie Wilkins' husband has an admitted substance abuse problem. Suspecting that her husband was currently using drugs, Mrs. Wilkins began "shadowing" him and discovered he was meeting with respondent frequently. She witnessed what she believed to be a drug transaction in which her husband purchased pain pills from respondent. When Mrs. Wilkins confronted her husband, he "confessed" to buying pain pills from respondent on numerous occasions. Mrs. Wilkins telephoned

respondent and asked him to stop selling drugs to her husband, but the conduct did not stop. As a result, Mrs. Wilkins committed her husband to a treatment facility.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count IV

On March 21, 2017, Brandi Michels hired respondent to handle a custody matter. She paid respondent \$2,500 in legal fees and \$230 in filing fees. She also gave respondent all of her original court documents. Respondent failed to complete the matter and essentially stopped communicating with Ms. Michels. She later discovered that respondent had been ineligible to practice law since September 11, 2017. She also discovered that respondent never enrolled as her attorney or filed anything on her behalf. Ms. Michels requested that respondent return her documents on several occasions. However, respondent failed to do so. Ms. Michels then hired new counsel and sought the return of her file and the money paid to respondent.

On April 17, 2018, the ODC sent notice of Ms. Michels' disciplinary complaint to respondent at his primary bar registration address via certified mail. Respondent did not respond 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), 1.5 (failure to refund an unearned fee), 1.16 (obligations upon termination of the representation), 5.5(a) (engaging in the unauthorized practice of law), 8.1(c), and 8.4(a).

Count V

In January 2013, Ernest Davis hired respondent to handle a workers' compensation matter. Mr. Davis and respondent entered into a 20% contingency fee agreement, but Mr. Davis never received a copy of the contract.

According to Mr. Davis, respondent failed to appear at two depositions and lied to Mr. Davis on several occasions. Respondent also forged Mr. Davis' endorsement on two mileage expense reimbursement checks issued by Luba Insurance Company. In December 2017, respondent cashed one check and took \$140.83 for what he claimed was court filing fees. Respondent gave Mr. Davis a personal check for the balance of \$338, but when Mr. Davis deposited the check, it was returned for insufficient funds. In January 2018, respondent cashed the second mileage reimbursement check, in the amount of \$228.96, without the knowledge or consent of Mr. Davis.

Throughout February and March 2018, respondent failed to communicate with Mr. Davis regarding a March 11th court date and a March 12th mediation date. Mr. Davis finally left respondent a message terminating his services. On March 10, 2018, Mr. Davis went to the workers' compensation court to determine what was required to move his case forward. At that time, the judge presiding over his case informed him respondent had been ineligible to practice law since September 11, 2017. The judge also informed Mr. Davis that there was no \$140.83 filing fee due in the workers' compensation court. Mr. Davis then hired new counsel and sought the return of his file and the money stolen by forgery of the checks.

On April 18, 2018, the ODC sent notice of Mr. Davis' disciplinary complaint to respondent at his primary bar registration address via certified mail. Respondent did not respond to the complaint.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.5, 1.15, 1.16, 5.5(a), 8.1(c), 8.4(a), 8.4(b), and 8.4(c).

Count VI

The Rapides Parish District Attorney's Office notified the ODC that respondent had requested copies of arrest records for his client, Christopher Gauthier, on May 4, 2018, a date subsequent to his interim suspension. On May 9, 2018, the ODC sent notice of the complaint to respondent at his new primary bar registration address via certified mail. According to the Louisiana State Bar Association, respondent had just updated his primary address on May 7, 2018. Nevertheless, respondent failed to respond to the complaint.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 5.5(a), 8.1(c), and 8.4(a).

Count VII

In September 2017, Jessica Palmer hired respondent to handle her divorce. Ms. Palmer initially paid respondent \$1,800, which represented \$1,500 for attorney fees and \$300 for filing fees. Respondent indicated he would file the appropriate pleadings for the divorce but requested an additional \$211 in cash, claiming he did not have enough funds to cover the filing fee. Thereafter, Ms. Palmer was no longer able to contact respondent.

In March 2018, having had no communication from respondent, Ms. Palmer contacted respondent's wife, who is also an attorney, and asked if she would file the divorce petition instead. Respondent's wife informed Ms. Palmer that respondent was hospitalized but that she would consider filing the divorce petition. Ms. Palmer forwarded her paperwork to respondent's wife but did not hear anything further.

On March 15, 2018, respondent contacted Ms. Palmer via text message. Although respondent's wife had indicated he was hospitalized, respondent claimed he had been working out of town. On March 23, 2018, Ms. Palmer met respondent to give him the additional \$211 he had requested for filing fees. Respondent assured Ms. Palmer the divorce petition would be filed the following Monday, March 26, 2018. Nevertheless, respondent failed to file the divorce petition. Because of respondent's failure to file the divorce petition, Ms. Palmer's husband is now entitled to an additional one-half of six months of her retirement contributions.

On May 18, 2018, the ODC sent notice of Ms. Palmer's disciplinary complaint to respondent at his primary bar registration address via certified mail. Respondent did not respond to the complaint.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.5, 5.5(a), 8.1(c), 8.4(a), and 8.4(c).

HEARING COMMITTEE REPORT

Based on the deemed admitted facts and the ODC's deemed admitted submission, the hearing committee found that respondent engaged in general neglect, incompetence, and dishonesty and failed to return unearned fees in multiple counts. Additionally, the committee found that respondent (1) repeatedly overdrew his trust account without explanation in Count I; (2) failed to comply with the court's rules regarding registration and payment of assessments and engaged in the unauthorized practice of law in Count II; (3) engaged in criminal conduct in Count III; (4) completely neglected Ms. Michels' legal matter and failed to refund the unearned fees in Count IV; (5) completely neglected Mr. Davis' legal matter and

failed to refund the unearned fees in Count V;¹ (6) engaged in the unauthorized practice of law in Count VI; and (7) completely neglected Ms. Palmer's legal matter and failed to refund the unearned fees in Count VII.

Based on these facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges. Additionally, the committee determined respondent violated Rule 5.5(a) in Count II even though the ODC did not charge him with this rule violation; the committee determined the factual allegations of Count II put respondent on notice of this rule violation in that the allegations described him practicing law while ineligible to do so.

The committee then determined respondent knowingly, if not intentionally, violated duties owed to his clients, the public, the legal system, and the legal profession. His conduct caused significant harm to his clients and the legal profession. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction ranges from suspension to disbarment.

In aggravation, the committee found the following: a dishonest or selfish motive, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law (admitted 2006), and illegal conduct. The committee did not find any mitigating factors present.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be disbarred. The committee further recommended respondent be ordered to provide an accounting and refund any unearned fees to Ms. Michels, Mr. Davis, and Ms. Palmer.

¹ In fact, the record does not indicate respondent failed to refund unearned fees to Mr. Davis. Instead, the record reflects that respondent converted funds owed to Mr. Davis by cashing two of Mr. Davis' mileage expense reimbursement checks and withholding some or all of the funds from Mr. Davis. Respondent also provided Mr. Davis with a \$338 check that was returned by his bank due to insufficient funds in respondent's bank account. In total, respondent received \$707.79 on Mr. Davis' behalf, and the record is unclear regarding how much of this amount Mr. Davis actually received.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

19-DB-039

FORMAL CHARGES

Count I

In May 2018, following respondent's interim suspension from the practice of law, Judy Miles hired respondent to represent her son in a criminal matter. Ms. Miles paid respondent \$5,700 in cash, but she subsequently discovered he was interimly suspended prior to being retained. Although respondent promised to return the entire \$5,700 to Ms. Miles, he only returned \$2,940.

On July 25, 2018, the ODC sent notice of Ms. Miles' disciplinary complaint to respondent at his primary bar registration address via certified mail. The notice was returned to the ODC unclaimed.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.5(f)(5) (failure to return an unearned fee), 1.15, 8.1(c), 8.4(a), and 8.4(c).

Count II

In January 2017, Sandra Ludwig hired respondent to represent her in a personal injury matter. In July 2017, Ms. Ludwig's claim settled for \$15,000. Respondent paid Ms. Ludwig her portion of the settlement. However, he failed to pay her \$1,635 chiropractor bill, despite withholding this amount from the total settlement.²

² Ms. Ludwig's chiropractor bill totaled \$2,195. However, respondent negotiated with the chiropractor to reduce the bill to \$1,635 if payment was received within two weeks of settlement of the claim. When respondent still had not paid the chiropractor bill more than one year later, the chiropractor sent Ms. Ludwig a bill for the full \$2,195.

On November 13, 2018, the ODC sent notice of Ms. Ludwig's disciplinary complaint to respondent at his primary bar registration address via certified mail. The notice was returned to the ODC unclaimed.

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

HEARING COMMITTEE REPORT

After considering the deemed admitted facts and the ODC's deemed admitted submission, the hearing committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges. The committee then determined respondent knowingly violated duties owed to his clients and the legal system. He failed to pay funds owed to others and made no effort to correct his mistakes, causing actual harm. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee then 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, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution. The committee found the absence of a prior disciplinary record to be the sole mitigating factor present.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be disbarred.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

18-DB-063 & 19-DB-039

DISCIPLINARY BOARD RECOMMENDATION

After review of the record and deemed admitted facts in both sets of formal charges, the disciplinary board determined the hearing committee's additional factual findings in 18-DB-063 were not manifestly erroneous and adopted same. Based on these deemed admitted facts and additional factual findings, the board determined that the committees' conclusions regarding rule violations are supported by the record.

The board then determined respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. His conduct has caused significant actual and potential harm to his clients, potential harm to the legal system, and actual harm to the public, the legal profession, and the attorney disciplinary system. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment.

In aggravation, the board found the following 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, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, substantial experience in the practice of law, indifference to making restitution, and illegal conduct. The board found the absence of a prior disciplinary record to be the sole mitigating factor present.

After also considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be disbarred. The board further recommended respondent be ordered to return funds to his clients as follows: \$2,730 to Ms. Michels, \$369.79 to Mr. Davis, \$2,011 to Ms. Palmer, \$2,760 to Ms. Miles, and \$2,195 to Ms. Ludwig. Additionally, the board recommended respondent be ordered to provide Ms. Michels and Mr. Davis with their client files.

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.

The records of these two deemed admitted matters support a finding that respondent neglected legal matters, failed to communicate with clients, failed to return client files upon request, failed to refund unearned fees, allowed his client trust account to become overdrawn on numerous occasions, converted client funds, practiced law while ineligible to do so, practiced law after being placed on interim suspension, illegally sold pain pills to another person, and failed to cooperate with the ODC in numerous investigations. Based on these facts, respondent has violated

the Rules of Professional Conduct as found by the hearing committees and adopted by the disciplinary board.

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 and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. His conduct caused significant actual and potential harm to numerous entities. Disbarment is the baseline sanction for his misconduct, and the record supports the board's findings regarding the presence of aggravating and mitigating factors.

Our prior jurisprudence also supports disbarment as the baseline sanction. In *In re: Hall*, 15-1208 (La. 9/18/15), 181 So. 3d 643, a respondent practiced law while ineligible to do so, neglected a legal matter, failed to communicate with clients, failed to account for or refund unearned fees, engaged in illegal conduct, engaged in conduct prejudicial to the administration of justice, and failed to cooperate with the ODC in its investigations. For this misconduct, we disbarred the respondent and ordered him to make restitution. Likewise, in *In re: Burkart*, 18-1077 (La. 11/5/18), 255 So. 3d 999, a respondent neglected legal matters, failed to communicate with clients, failed to return unearned fees, failed to return client file materials, mishandled his client trust account, and failed to cooperate with the ODC

in its investigations. For this misconduct, we disbarred the respondent and ordered him to return client files and refund unearned fees.

In light of this case law and the numerous aggravating factors present, we find disbarment is the appropriate sanction here. Accordingly, we will adopt the board's recommendation and disbar respondent. We will further order respondent to make restitution as follows: \$2,730 to Brandi Michels, \$2,011 to Jessica Palmer, \$2,760 to Judy Miles, and \$2,195 to Sandra Ludwig. We will also order respondent to provide Ernest Davis with an accounting of the \$707.79 he received on Mr. Davis' behalf and pay any portion still owed to Mr. Davis. Finally, we will order respondent to provide Ms. Michels and Mr. Davis with their client files.

DECREE

Upon review of the findings and recommendations of the hearing committees and disciplinary board, and considering the record, it is ordered that Kevin Matthew Dantzler, Louisiana Bar Roll number 30237, be and he hereby is disbarred, retroactive to April 27, 2018, the date of his interim suspension. 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 as set forth in this opinion, provide Ernest Davis with an accounting and payment of any funds due to him, and provide Brandi Michels and Ernest Davis with their client files. 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.