

The Supreme Court of the State of Louisiana

IN RE: DERRICK K. WILLIAMS

No. 2022-B-00350

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

May 24, 2022

Suspension imposed. See per curiam.

SJC

JLW

JDH

JTG

WJC

JBM

PDG

Supreme Court of Louisiana

May 24, 2022



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-0350

IN RE: DERRICK K. WILLIAMS

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

FORMAL CHARGES

19-DB-049

Count I

In July 2016, the ODC received a notice from respondent’s bank that his trust account had been overdrawn by \$39.95. In November 2016, the ODC received a notice from respondent’s bank that his trust account had been overdrawn by \$39.95 for a second time. Respondent failed to respond to the ODC’s notice of the related disciplinary complaint, necessitating the issuance of a subpoena to obtain his sworn statement. Despite being served with the subpoena, respondent failed to appear for the sworn statement on February 8, 2017.

The ODC alleged respondent’s conduct violated Rules 1.15 (safekeeping property of clients or third persons) and 8.1(c) (failure to cooperate with the ODC in its investigation) of the Rules of Professional Conduct.

¹ On November 1, 2021, respondent was declared ineligible to practice law for failing to pay his bar dues and the disciplinary assessment.

Count II

The ODC received notice from respondent's bank that his trust account had been overdrawn by \$39.95 on April 9, 2018. Respondent failed to respond to the ODC's notice of the related disciplinary complaint, which was delivered to his bar registration address on June 4, 2018.

The ODC alleged respondent's conduct violated Rules 1.15 and 8.1(c) of the Rules of Professional Conduct.

Count III

Between September 11, 2017 and May 4, 2018, respondent was ineligible to practice law for failing to pay his bar dues and the disciplinary assessment. Despite his ineligibility, on February 8, 2018, respondent sent a letter to an insurance adjuster, notifying the adjuster that he was representing four clients with respect to a personal injury claim. Respondent failed to respond to the ODC's notice of the related disciplinary complaint, which was delivered to his bar registration address on March 1, 2018.

The ODC alleged respondent's conduct violated Rules 5.5 (engaging in the unauthorized practice of law) and 8.1(c) of the Rules of Professional Conduct.

Count IV

On February 19, 2019, respondent's trust account was overdrawn by \$472.72. On March 29, 2019, his trust account was overdrawn by \$295. Respondent failed to respond to the ODC's notice of the related disciplinary complaint, which was delivered to his primary bar registration address on April 15, 2019.

In April 2019, respondent's trust account was overdrawn three times, once in the amount of \$212.82 and twice in the amount of \$944.44. Respondent failed to

respond to the ODC's notice of the related disciplinary complaint, which was delivered to his primary bar registration address on May 21, 2019.

The ODC alleged respondent's conduct violated Rules 1.15 and 8.1(c) of the Rules of Professional Conduct.

20-DB-002

Count I

The ODC received notice from respondent's bank that his trust account had been overdrawn multiple times in June and July 2019 in the approximate total amount of \$1,501. Respondent failed to respond to the ODC's notice of the related disciplinary complaint, which was delivered to his primary bar registration address.

The ODC alleged respondent's conduct violated Rules 1.15 and 8.1(c) of the Rules of Professional Conduct.

Count II

The ODC received notice from respondent's bank that his trust account had been overdrawn multiple times in August 2019 in the approximate total amount of \$1,153. Respondent failed to respond to the ODC's notice of the related disciplinary complaint, which was delivered to his primary bar registration address.

The ODC alleged respondent's conduct violated Rules 1.15 and 8.1(c) of the Rules of Professional Conduct.

DISCIPLINARY PROCEEDINGS

The ODC filed formal charges against respondent under disciplinary board docket number 19-DB-049 in August 2019. The ODC filed formal charges against respondent under disciplinary board docket number 20-DB-002 in January 2020. 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 matters were consolidated before being considered by a single hearing committee. No formal hearings were held, but the parties were given an opportunity to file with the committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the committee's consideration.

Hearing Committee Report

After considering the ODC's submission on sanction, the hearing committee found that the factual allegations in the formal charges are deemed admitted and supported by the evidence in the record. Based on the deemed admitted facts, the committee made the following factual findings:

Respondent overdrew his trust account multiple times in various amounts, which resulted in presumptive conversion of client funds. Respondent also failed to respond to multiple disciplinary complaints and, in one instance, failed to appear for a sworn statement after being served with a subpoena to do so. His failure to respond has frustrated and obstructed the ODC's ability to investigate the presumptive conversion matters. Additionally, in February 2018, respondent engaged in the unauthorized practice of law when he sent a letter of representation to an insurance adjuster on behalf of four personal injury clients.

Based on these facts, the committee determined respondent violated Rules 1.15, 5.5, and 8.1(c) of the Rules of Professional Conduct. More specifically, the committee determined respondent overdrew his trust account on several occasions and engaged in the unauthorized practice of law during a period of ineligibility. Additionally, he failed to cooperate with the ODC's investigations, including failing to appear to testify and failing to produce records after receiving a subpoena to do so.

The committee then determined respondent negligently, if not knowingly, violated duties owed to his clients and the legal profession. Noting that the extent of actual harm to respondent's clients cannot be quantified because of his failure to cooperate in the ODC's investigations, the committee concluded that his conduct caused potential harm, if not actual harm, to his clients and the legal profession. Citing the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found multiple offenses and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency. The sole mitigating factor present, according to the committee, is the absence of a prior disciplinary record.

After also considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee further recommended respondent be ordered to make restitution to any clients or third parties that were harmed.

Respondent filed an objection to the committee's report, denying that his conduct violated the Rules of Professional Conduct.

Disciplinary Board Recommendation

After review, the disciplinary board acknowledged that the factual allegations set forth in the formal charges have been deemed admitted. The board then determined that the hearing committee's additional factual findings are not manifestly erroneous and adopted same.

Based upon these facts, as well as the evidence in the record, the board determined that the committee's legal conclusions regarding rule violations are correct. Specifically, the board determined respondent allowed his trust account to

become overdrawn on numerous occasions, engaged in the unauthorized practice of law during a period of ineligibility, and failed to cooperate with the ODC in several investigations, including failing to appear for a sworn statement and failing to produce his trust account records pursuant to a properly-served subpoena, all in violation of the Rules of Professional Conduct as alleged in the formal charges.

The board then determined respondent knowingly violated duties owed to his clients and the legal profession. His conduct had the potential to cause harm to his clients, with the board noting that a determination of whether any actual harm occurred is not possible because of his failure to cooperate with the ODC's investigations. Respondent's failure to cooperate with the ODC also caused harm to the legal profession. The board agreed with the committee that the baseline sanction is suspension. The board also agreed with the aggravating and mitigating factors found by the committee.

After also considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day. The board further recommended respondent be ordered to (1) provide the ODC with an audit of his trust account for the years 2016 through 2020 conducted by an accountant approved by the ODC and (2) make restitution to any clients or third parties that were shown by the audit to have been harmed.

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 evidence in the record of these deemed admitted matters supports a finding that respondent allowed his trust account to become overdrawn on numerous occasions, engaged in the unauthorized practice of law during a period of ineligibility, and failed to cooperate with the ODC in several investigations, including failing to appear for a sworn statement and failing to produce his trust account records pursuant to a properly-served subpoena. Based on these facts, respondent has violated the Rules of Professional Conduct as charged.

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 also supports a finding that respondent knowingly violated duties owed to his clients and the legal profession, causing potential and actual harm. Aggravating factors include a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, and substantial experience in the practice of law (admitted 2006). We agree with the hearing committee and the disciplinary board that the sole mitigating factor is the absence of a prior disciplinary record. We also agree that the baseline sanction is suspension.

The case of *In re: Voelkel*, 19-0480 (La. 5/20/19), 273 So. 3d 1198, presented the court with an almost identical set of circumstances as is presented here. In *Voelkel*, the court found that an attorney overdrew her trust account on several occasions, practiced law while ineligible to do so, and failed to cooperate with the ODC in its investigations. For this misconduct, the court suspended the attorney from the practice of law one year and one day. Based on this case law, the board's recommended sanction is appropriate.

Accordingly, we will adopt the board's recommendation and suspend respondent from the practice of law for one year and one day. We will further order respondent to provide the ODC with an audit of his trust account for the years 2016 through 2020 conducted by an accountant approved by the ODC and to make restitution to any clients or third parties that were shown by the audit to have been harmed.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Derrick K.

Williams, Louisiana Bar Roll number 30836, be and he hereby is suspended from the practice of law for one year and one day. It is further ordered that respondent shall provide the ODC with an audit of his trust account for the years 2016 through 2020 conducted by an accountant approved by the ODC and shall make restitution to any clients or third parties that were shown by the audit to have been harmed. 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.