The Supreme Court of the State of Louisiana

IN RE: MICHAEL TREAMAN BELL

No. 2022-B-01331

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

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November 08, 2022

Discipline imposed. See per curiam.

JLW

JDH

WJC

PDG

Crichton, J., dissents and assigns reasons.
Genovese, J., dissents for reasons assigned by Justice Crichton.
McCallum, J., dissents for reasons assigned by Justice Crichton.

Supreme Court of Louisiana
November 08, 2022

Katie Marjanovic

Chief Deputy Clerk of Court
For the Court

11/08/22

SUPREME COURT OF LOUISIANA

NO. 2022-B-1331

IN RE: MICHAEL T. BELL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Michael T. Bell, a disbarred attorney.

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 2001.

In 2013, we accepted a petition for consent discipline in which respondent stipulated he had failed to communicate with a client and failed to properly terminate a client's representation. For this misconduct, respondent was suspended from the practice of law for one year and one day, with all but one year deferred. *In re: Bell*, 13-2491 (La. 11/22/13), 129 So. 3d 521.

In 2016, we accepted another petition for consent discipline in which respondent stipulated he had engaged in conduct constituting a conflict of interest. For this misconduct, respondent was publicly reprimanded. *In re: Bell*, 16-0544 (La. 4/22/16), 192 So. 3d 735.

In 2019, we considered a formal charge matter in which respondent was found to have settled a case without his client's authorization, charged interest on money he had loaned to the client, converted client funds, failed to cooperate with the ODC in its investigation, and provided false statements to the ODC. For this misconduct, we imposed disbarment and ordered respondent to make full restitution. *In re: Bell*, 19-1345 (La. 11/5/19), 281 So. 3d 650 (hereinafter referred to as "*Bell I*"). Respondent is not yet eligible to apply for readmission; therefore, he remains disbarred.

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

UNDERLYING FACTS

The Unauthorized Practice of Law Matter

On January 27, 2020, following respondent's disbarment in *Bell I*, he appeared in court in the 23rd Judicial District Court for the Parish of St. James on behalf of the defendant in the matter of *State of Louisiana v. Tyren Jasmin*. Attorney Keith Sanchez also appeared on the defendant's behalf. Respondent did not inform the judge or Assistant District Attorney Adam Koenig that he was disbarred.

On February 14, 2020, the ODC received a disciplinary complaint regarding respondent's appearance from 23rd Judicial District Attorney Ricky Babin and Mr. Koenig. The ODC personally served respondent with notice of the complaint on June 4, 2020. In a July 1, 2020 response to the complaint, respondent claimed he was only present to inform the court that Mr. Sanchez would be the defendant's attorney. Respondent also provided the ODC with a copy of the court's minutes, which indicated the defendant was present with Mr. Sanchez as his attorney.

The Myles Matter

In January 2019, Anthony Myles hired respondent to represent him in a DWI case. Over time, Mr. Myles paid respondent $2,100 of the $2,500 fixed fee. On February 18, 2019, respondent obtained a temporary driving permit for Mr. Myles.

Thereafter, the DWI case was continued several times without resolution. The temporary driving permit expired on November 18, 2019, prior to respondent resolving the DWI case. Additionally, upon respondent's disbarment in *Bell I*, he did not inform Mr. Myles that he was disbarred and did not refund the unearned portion of the fee.

On February 26, 2020, the ODC received a disciplinary complaint from Mr. Myles. The ODC personally served respondent with notice of the complaint on June 4, 2020. In a July 1, 2020 response to the complaint, respondent denied all of the allegations of misconduct. Regarding the fee, he stated that Mr. Myles "had an outstanding balance at the time of his last court appearance with me."

Mr. Myles filed a claim with the Louisiana State Bar Association Client Assistance Fund. The Client Assistance Fund determined respondent owed Mr. Myles $350 and approved a reimbursement payment in that amount.

The Johnson/Jackson Matter

In May 2018, Judy Johnson hired respondent to represent her daughter, Julita Jackson, in a custody matter. Ms. Johnson paid respondent $2,500 for the representation. Respondent represented Ms. Jackson at a hearing on May 8, 2018. Thereafter, respondent failed to communicate with Ms. Johnson or Ms. Jackson and failed to move the matter forward. Ultimately, Ms. Johnson had to obtain new counsel to handle the matter. Ms. Jackson also hired respondent to handle a claim against the Belleville Police Department in Illinois. However, respondent is not licensed to practice law in Illinois and took no action in the matter. When respondent was disbarred in *Bell I*, he failed to inform Ms. Johnson and Ms. Jackson and failed to refund the unearned portion of the fee.

On September 22, 2020, the ODC received a disciplinary complaint from Ms. Johnson. The ODC sent notice of the complaint to respondent at his primary bar registration address, but the correspondence was returned marked "not deliverable as addressed." Respondent then failed to claim the notice of the complaint sent to him at his preferred mailing address. As a result, he did not submit a response to the complaint.

Ms. Johnson filed a claim with the Client Assistance Fund, which determined respondent had only earned $500 of the $2,500 fee. Accordingly, the Client Assistance Fund approved a reimbursement payment of $2,000 to Ms. Johnson.

DISCIPLINARY PROCEEDINGS

In January 2021, the ODC filed formal charges against respondent, alleging that his 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), 1.15 (safekeeping property of a client or third person), 5.5(a) (engaging in the unauthorized practice of law), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Respondent filed an answer to the formal charges, denying he engaged in any misconduct. Accordingly, the matter proceeded to a formal hearing on the merits.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee found that respondent was disbarred by order of the court in *Bell I*. Nevertheless, on January 27, 2020, respondent appeared in court in St. James Parish and did not disclose his disbarment to the judge or opposing counsel. According to the committee, respondent was clearly acting as Mr. Jasmin's attorney at the hearing because he had not disclosed to the district attorney's office that he was disbarred and because he addressed the judge when the judge asked the attorneys to approach the bench. The committee further found that respondent failed to exercise reasonable diligence while representing Mr. Myles and falsely led him to believe he would be able to secure a temporary driver's license for him. Respondent also failed to fulfill his commitments to Ms. Johnson, which led to increased costs and severe aggravation. Respondent's lack of diligence and lack of communication in the Johnson/Jackson matter were so egregious that Ms. Johnson traveled from out of state to participate in the formal hearing held on July 9, 2021. Finally, the committee found that, after respondent was disbarred, at least two more disciplinary complaints were filed against him. He essentially did not cooperate with the ODC or participate until he attended the formal hearing in this matter on July 9, 2021. The committee indicated it was surprised respondent actually showed up for the hearing.

Based on these factual findings, the committee determined respondent violated Rules 1.3, 1.4, 1.15, 5.5(a), 8.1(c), 8.4(c), and 8.4(d) of the Rules of Professional Conduct as alleged in the formal charges. The committee, however, did not find a violation of Rule 8.4(a) as charged.

The committee then determined respondent knowingly violated duties owed to his clients, the legal system, and the public. His conduct caused actual harm to several parties. His failure to disclose his disbarment during the January 27, 2020 hearing could have caused severe harm to Mr. Jasmin, who was facing serious charges that could have led to life in prison.

After considering this court's prior jurisprudence addressing similar misconduct, the committee recommended extending the minimum period for respondent's readmission for not less than five years.

Respondent filed an objection to the committee's report.

Disciplinary Board Recommendation

After reviewing this matter, the disciplinary board determined the hearing committee's factual findings are not manifestly erroneous, with two exceptions. First, the board determined the committee erroneously found that respondent essentially refused to cooperate with the ODC in its investigations. Second, the board determined the committee erroneously found that respondent falsely led Mr. Myles to believe he would be able to secure a temporary driver's license for him. In addition to adopting the committee's remaining factual findings, the board found the following regarding each matter:

<u>The Unauthorized Practice of Law Matter</u> – The ODC sent notice of the disciplinary complaint in this matter to respondent at his primary registration address. However, the mailing was returned marked "not deliverable as addressed." Respondent failed to update his primary registration address as required by Supreme Court Rule XIX, § 8(C). The ODC personally served respondent with notice of the complaint, and he filed a response on July 1, 2020.

Based upon the facts it adopted and additionally found, the board determined respondent violated Rules 5.5(a), 8.4(a), and 8.4(d) of the Rules of Professional Conduct in this matter. However, the board did not find a violation of Rule 8.1(c).

<u>The Myles Matter</u> – Respondent quoted a $2,500 fee to handle Mr. Myles' DWI case. Mr. Myles paid respondent $1,200 during their first meeting, and thereafter made three payments totaling $900, for a total payment of $2,100. According to Mr. Myles, respondent requested an administrative hearing concerning his driver's license and attended court with him on several occasions. Respondent also drew up an affidavit for Mr. Myles. However, Mr. Myles credibly testified that his court dates kept getting continued and respondent did nothing to bring his DWI case to a resolution. Respondent also failed to return Mr. Myles' phone calls or texts

on a consistent basis. Mr. Myles did not receive emails or voicemails from respondent.

The temporary driving permit Mr. Myles received eventually expired, and he received a ticket for driving on suspension. He paid the ticket, which cost him $440. Mr. Myles had previously informed respondent that the temporary permit was about to expire, but respondent did not respond to his inquiry concerning the issuance of a new permit. Mr. Myles told respondent he needed his driver's license for his employment. He later resigned from his job because of concerns with the temporary driving permit and respondent's failure to address the matter. Language on the permit, however, indicated that Mr. Myles could have contacted the Office of Motor Vehicles to request the permit be extended.

Respondent did not inform Mr. Myles that he was disbarred. In December 2019, Mr. Myles hired a new attorney to handle his DWI case. The case was concluded approximately seven months later. Respondent returned Mr. Myles' file to him, but Mr. Myles did not receive one payment receipt and copies of the other payment receipts he requested from respondent. Mr. Myles requested a refund of half of the amount he paid, but respondent refused to refund any amount. The Client Assistance Fund approved a payment of $350 to Mr. Myles with respect to his fee dispute with respondent. However, at the time of the hearing, the record did not indicate if Mr. Myles had yet received this payment.

The ODC sent notice of the disciplinary complaint in this matter to respondent at his primary registration address. However, the mailing was returned marked "not deliverable as addressed." Respondent failed to update his primary registration address as required by Supreme Court Rule XIX, § 8(C). The ODC personally served respondent with notice of the complaint, and he filed a response on July 1, 2020.

Based upon the facts it adopted and additionally found, the board determined respondent violated Rules 1.3, 1.4, 1.15(e) (when in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute), 8.4(a), and 8.4(c) of the Rules of Professional Conduct in this matter.[1] However, the board did not find a violation of Rule 8.1(c).

The Johnson/Jackson Matter – Ms. Jackson hired respondent in May 2018 to handle two legal matters. One involved a custody case in Baton Rouge. The other involved a claim against the Belleville Police Department in Illinois. Ms. Johnson indicated that she signed paperwork in connection with these two legal matters. Ms. Johnson also paid respondent $2,500 on her daughter's behalf for the representation in the custody matter.

On May 8, 2018, respondent represented Ms. Jackson at a hearing addressing a motion for protective order in the custody case. Thereafter, respondent took no further action in the case and failed to reasonably communicate with Ms. Jackson or Ms. Johnson about the matter. Communication eventually stopped altogether. Another attorney was hired to handle the custody case, but she later withdrew. A formal custody order has never been entered for Ms. Jackson.

Respondent is not licensed to practice law in Illinois. He took no action in the matter involving the Belleville Police Department. However, he indicated to Ms. Johnson and Ms. Jackson that he could file the lawsuit, and they hired him to do so.

[1] The board found a violation of Rule 1.15(e) based upon respondent's failure to promptly refund the unearned portion of the fee ($350) to either Mr. Myles or the Client Assistance Fund and his conversion of these funds. The board found a violation of Rule 8.4(c) based upon respondent's failure to inform Mr. Myles of his disbarment and his conversion of the unearned portion of the fee.

Respondent did not notify Ms. Johnson or Ms. Jackson that he had been disbarred in December 2019. The Client Assistance Fund approved a payment of $2,000 to Ms. Johnson with respect to her fee dispute with respondent. Ms. Johnson testified that she received this payment. The ODC sent notice of the disciplinary complaint to respondent at his primary registration address. This mailing was returned marked "not deliverable as addressed." The ODC also sent notice of the complaint to respondent at his preferred address. This mailing was returned unclaimed. Respondent failed to update his primary registration address as required by Supreme Court Rule XIX, § 8(C), failed to claim mail sent to his preferred address, failed to respond to the complaint, and failed to cooperate with the ODC in its investigation.

Based upon the facts it adopted and additionally found, the board determined respondent violated Rules 1.3, 1.4, 1.15(e), 8.1(c), 8.4(a), and 8.4(c) of the Rules of Professional Conduct in this matter.[2]

The board then determined respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. The board agreed with the committee that respondent caused potential harm to Mr. Jasmin. He also caused actual harm to Mr. Myles and Ms. Jackson. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment.

The board found the following aggravating factors present: a prior disciplinary record, a dishonest or selfish motive, a pattern of conduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability

[2] The board found a violation of Rule 1.15(e) based upon respondent's failure to promptly refund the unearned portion of the fee ($2,000) to either Ms. Johnson or the Client Assistance Fund and his conversion of these funds. The board found a violation of Rule 8.4(c) based upon respondent's failure to inform Ms. Johnson or Ms. Jackson of his disbarment and his conversion of the unearned portion of the fee.

of the victims, and substantial experience in the practice of law (admitted 2001). In additional aggravation, the board noted that respondent lacked remorse. The board found no mitigating factors present.

In recommending an appropriate sanction, the board determined that respondent's conduct technically falls under Guideline 8 (following notice, engaging in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer is suspended from the practice of law or disbarred) and Guideline 9 (instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime) of the permanent disbarment guidelines set forth in Supreme Court Rule XIX, Appendix D. Nevertheless, the board determined permanent disbarment was not warranted in this matter, citing *In re: Nalls*, 20-1126 (La. 3/24/21), ___ So. 3d ___, wherein a disbarred attorney practiced law following his disbarment and intentionally concealed his disbarment from clients and third parties. For this misconduct, the court extended the minimum period for readmission pursuant to Supreme Court Rule XIX, § 24(A) for an additional five years.

In light of *Nalls*, the board recommended extending the minimum period for respondent's readmission for five years. The board further recommended that respondent be ordered to make restitution to Mr. Myles in the amount of $350 (or to the Client Assistance Fund if it reimbursed Mr. Myles the $350) and to the Client Assistance Fund for the $2,000 reimbursed to Ms. Johnson.

Neither respondent nor the ODC filed an objection to the 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.

The evidence in the record of this matter supports a finding that respondent neglected two legal matters, failed to communicate with two clients, including failing to inform them when he was disbarred, failed to refund unearned fees to two clients, represented a client in court following his disbarment, and failed to cooperate with the ODC in one investigation. Based on these facts, respondent has violated the Rules of Professional Conduct as found 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 misconduct caused potential harm to Mr. Jasmin and actual harm to Mr. Myles and Ms. Jackson. We agree with the board that the baseline sanction is disbarment.

Aggravating factors include a prior disciplinary record, a dishonest or selfish motive, a pattern of conduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, substantial experience in the practice of law, and indifference to making restitution. We agree with the board that no mitigating factors are discernable from the record.

Respondent's conduct, combined with that involved in his prior disciplinary matters, indicates that he lacks the moral fitness to practice law and is a threat to his clients, the legal profession, and the public. Recognizing that respondent is already disbarred, we will extend the minimum period for readmission pursuant to Supreme Court Rule XIX, § 24(A) for an additional five years from the finality of the instant judgment. We will further order respondent to make restitution to Mr. Myles in the amount of $350 (or to the Client Assistance Fund if it reimbursed Mr. Myles the $350) and to the Client Assistance Fund for the $2,000 reimbursed to Ms. Johnson.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Michael T. Bell, Louisiana Bar Roll number 27740, be and he hereby is prohibited from petitioning this court for readmission pursuant to Supreme Court Rule XIX, § 24(A) until five years have passed from the finality of this judgment. It is further ordered that respondent shall make restitution to Anthony Myles in the amount of $350 (or to the Client Assistance Fund if it reimbursed Mr. Myles the $350) and to the Client Assistance Fund for the $2,000 reimbursed to Judy Johnson. 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. 2022-B-01331

IN RE: MICHAEL TREAMAN BELL

Attorney Disciplinary Proceeding

Crichton, J., dissents and assigns reasons.

I agree with the majority opinion in all respects except for the discipline imposed, as I believe the facts and circumstances of this case, particularly when considered in light of respondent's previous disciplinary cases, warrant permanent disbarment. *See In re: Bell*, 13-2491 (La. 11/22/13) (imposing suspension of one year and one day), 129 So. 3d 521; *In re: Bell*, 16-0544 (La. 4/22/16), 192 So. 3d 735) (imposing public reprimand); *In re: Bell*, 19-1345 (La. 11/5/19), 281 So. 3d 650 (imposing disbarment).

In my view, respondent has met the heightened requirements for permanent disbarment set forth in the recent amendments to Supreme Court Rule XIX. As explained thoroughly in the majority opinion, though the record in this case is replete with egregious rule violations, it is particularly disturbing to me that respondent appeared on behalf of a client before a court while he was disbarred, without disclosing that fact to his co-counsel, the opposing counsel, or the judge. Under these unique and troubling circumstances, I believe the respondent's actions satisfy the requirements of Rule XIX and would impose permanent disbarment. *See also In re Nalls*, 2020-1126 (La. 3/24/21), *reh'g denied*, 2020-01126 (La. 5/13/21), 320 So. 3d 414 (Crichton, J., dissents and would impose permanent disbarment); *In re: Whalen*, 20-0869 (La. 9/29/20), 301 So. 3d 1170 (same); *In re: Mendy*, 16-0456 (La. 10/19/16), 217 So. 3d 260 (same).