ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: KARL J. KOCH

DOCKET NO. 21-DB-065

REPORT OF HEARING COMMITTEE # 1

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Karl J. Koch ("Respondent"), Louisiana Bar Roll Number 17010.[1] In its formal charges, ODC alleges Respondent violated the following Rules of Professional Conduct: 1.15(a, b, c, f) and 8.4(a, b, c).[2]

At the start of the Committee Hearing, ODC moved to dismiss the allegation of Rule Violation 8.4 (b) from its formal charges, which was approved without any objection and the hearing moved forward on the remaining charges.

PROCEDURAL HISTORY

The formal charges were filed on December 3, 2021. Respondent filed an answer to the charges on March 2, 2022. The hearing of this matter was held on October 4, 2022. Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Respondent appeared with counsel, Michael S. Walsh and Harry J. Philips, Jr.

For the following reasons, the Committee finds that Respondent's actions were in violation of Louisiana Rules of Professional Conduct Rule 1.15 (a) (b) (c) (f) and Rule 8. 4 (a) and (c) and

[1] Respondent was admitted to the practice of law in Louisiana on October 11, 1985. Respondent is currently eligible to practice law.
[2] See the attached Appendix for the text of these Rules.

recommends a sanction of suspension from the practice of law for one year, fully deferred, subject to two years of supervised probation.

FORMAL CHARGES

The formal charges read, in pertinent part as follows:

> The ODC received notice from Chase Bank on May 21, 2019 that on May 14, 2019, check number 4528 in the amount of $300.00 was presented for payment to his IOLTA client trust account, xxxxx2506. However, there were insufficient funds available in the trust account at that time to honor the instrument. The check was returned unpaid. The notice was screened and opened under ODC Investigative File # 0037821.
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> Respondent's client trust account was audited for the period of February of 2019 to July of 2019 by ODC Expert Forensic Auditor Angelina Marcellino. The audit revealed that Respondent was utilizing his trust account as his personal operating account. This practice appeared to be ongoing for at least a year and a half. The various disbursements from the trust account were found to be personal, operating, or cash withdrawal in nature. The audit also revealed that Respondent had failed to perform reconciliations on his trust account. The initial overdraft had occurred because Respondent made a disbursement from his client trust account when he knew that the account had held insufficient funds. Respondent failed to make a deposit prior to the check clearing the bank.
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> Respondent provided a sworn statement in the matter on September 10, 2019. At his statement, Respondent admitted that he used his trust account as an operating account instead of as a client trust account. Respondent explained that he used his trust account in that manner because of his personal issues with the Internal Revenue Service, who had previously seized funds from his other bank accounts for non-payment of back taxes. The audit was initially unable to confirm the presence of client funds in the trust account during the time period in which he was also using the account for personal and operational use. It appeared that Respondent was using his IOLTA client trust account solely as a rudimentary tax shelter and a means to thwart the IRS from seizing funds to satisfy Respondent's personal tax obligations. Such use is impermissible under Rule 1.15.
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> Respondent sent additional records to the ODC pursuant to his claim that no client funds were present in his trust account during the entirety of the time period that he was using his trust account as a shield against IRS seizure of personal funds. A review of the records by ODC Expert Forensic Auditor Angelina Marcellino revealed that Respondent misrepresented to the ODC in his sworn statement that no client funds were present during the time that he kept personal and operational funds in the trust account. As such, Respondent also engaged in commingling in addition to the other allegations advanced by the ODC. Ms. Marcellino noted that an exact quantification of misuse and the balance of client money that should have remained in the client trust account was unable to be fully

determined due to Respondent's failure to maintain (and/or provide to the ODC) the necessary records.

Respondent, by engaging in the above listed accounting practices, has violated Louisiana Rules of Professional Conduct Rule 1.15 (a) (b) (c) (f) and Rule 8. 4 (a) (b) (c).

As noted above, the allegation of Rule Violation 8.4 (b) was dismissed from these formal charges at the Committee Hearing without any objection.

EVIDENCE

Admitted into evidence in this matter without objection were the following documents:

ODC 1. Complaint.
OCD 2. Email from Respondent.
ODC 3. Letter to Respondent.
ODC 4. Letter to Respondent.
ODC 5. Letter from Respondent with documentation.
ODC 6. Transcript of Respondent's sworn statement.
ODC 7. Exhibits to sworn statement.
ODC 8. Bank Records from Respondent.
ODC 9. Letter to Respondent requesting further documents.
ODC 10. Supplemental documents from Respondent.
ODC 11. Audit Report.

FINDINGS OF FACT

For the most part the facts as alleged in the formal charges and the rule violations, as amended, were admitted to by Respondent. Testimony of Respondent was offered to clarify or offer context as to the facts and provide evidence in mitigation.

Respondent Testimony

Respondent is originally from Baton Rouge and attended Tulane on a navy ROTC scholarship. He transferred to the Air Force and was allowed time off to attend LSU Law School, graduating with his law degree in 1985. After law school he served as a prosecutor at Andrews Air Force Base from 1985-1989. After his Air Force service ended in 1989, Respondent went into private practice with Lewis Unglesby, where he practiced for twelve years. Around 2000 he left Unglesby and Koch and started practicing with Danny McGlynn and Chris Glisson.

Respondent testified that in 2007 his wife passed away and he was left with a six-year-old and a ten-month-old from that marriage, as well as a daughter from his prior marriage. He left his practice with McGlynn and Glisson and went into private practice, which he has maintained ever since.

Respondent discussed the loss of his wife, who was also an attorney and who was battling a substance abuse problem at the time of her death, and the impact her sudden death had on him personally, as well as on his practice. He had to hire people to help him care for his kids so he could keep working to earn a living.

Respondent maintained a general law practice that included criminal law, administrative, civil and corporate matters. He testified he had a client that owned a group of nursing homes, and he did the med-mal defense work for that one client. As the nursing home group expanded, he hired more staff to handle the work and this continued from 2007 until 2015. At that point his practice had grown to three attorneys and four support staff to handle the workload.

Respondent's one nursing home client went into bankruptcy in 2015 and he was left with a substantial amount of money owed to him for fees for work already completed, as well as for costs he had already incurred on that client's behalf. He discussed the financial stress of dealing with those issues and being forced to downsize and let everyone in his office go. Respondent also canceled his office lease. Since that time, Respondent has been practicing law as a solo practitioner and is currently renting office space from Mary Olive Pearson.

In conjunction with the problems involving his law practice, Respondent described the IRS problems he faced after he and his wife sold their home. From Respondent's testimony, the home sale resulted in a substantial tax gain for income tax purposes – taxes that he alone owed after his wife's death. Respondent testified that the IRS collections activity began in earnest in 2015-2016.

Respondent described the IRS filing liens with the Clerk of Court on all of his cases and notifying the judges in the 19th JDC of his tax problem. Respondent described liquidating his retirement account and borrowing against his life insurance in his effort to work with the IRS agent to reduce his IRS debt.

Respondent testified that the IRS also attached all his business and personal checking accounts, except his firm trust account. He described how the IRS filed liens/seized funds in his bank accounts at Chase on three occasions (except the trust account), including once right before payroll, and the chaos that caused. He testified that because of that, he recalls using the trust account to pay his children's tuition once to safeguard funds.

Respondent testified Chase eventually closed all his personal/business accounts, leaving only his trust account open.

Respondent admitted using his trust account as a personal account. Although he stated he rarely had client funds in that account, he admitted on several occasions there were in fact client funds in that account, so comingling did take place, even though no client funds were misused.

Respondent explained the one overdraft at issue in this proceeding that was drawn on his trust account. He testified he had made a deposit, but it was not credited to his account in time to cover a $300 check he had written to Livingston Parish. He explained he immediately made good on that payment to the Clerk's office and cleared up the overdraft with the bank. Chase notified ODC of the initial overdraft and this investigation ensued.

Respondent testified that Chase later closed his trust account and he described the difficulty he experienced in trying to open an account with any financial institution. He eventually was able to open a checking account at Neighbors and later a new trust account at Iberia Bank, which he still maintains today.

From the testimony presented it was the Committee's impression that Respondent was being forthright, acknowledged his mistakes and was contrite and sorry for the actions he had taken. Overall, he was cooperative with the ODC investigation and tried to work through Chase to provide the documents that were requested by ODC during its investigation. Respondent discussed the difficulty he faced trying to respond to document requests, as he no longer had any accounts at Chase and had difficulty obtaining backup information or more detailed records from Chase than just statements.

One example of Respondent's acknowledgment of his mistake is copied below:

> I -- I -- you know, I mean, I'm here today because I did something pretty -- pretty stupid. And I'm -- and I -- I - this is something I'm going to have to deal with, and I understand that. I -- I didn't take any money from anybody. I didn't steal any money or convert any money, but I mean, I did use the trust account as a personal account. And that - I -- you know, I -- that's my responsibility and my fault.
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> (Hearing Transcript at P. 49)

Respondent confirmed that there were no client funds that were converted for his personal use:

> Q. There has been no suggestion, no allegation by either ODC or any client that any of the money -- any of the money that went through this account was misappropriated, diverted, converted? Pick a description that you like. Stolen?
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> A. No. No.
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> (Hearing Transcript at P. 73)

Another factor in mitigation is the hardship this would place on Respondent and his family if he was prevented from practicing law and earning a living for his family. Respondent testified

he has since remarried and has ten and eleven year old children with his current wife. He now has five children in total. Asked what impact a period of actual suspension from the practice of law would have on him and his family, Respondent testified:

> I mean, the reality is that -- that there's no way -- I -- I'm not going to -- I wouldn't last a month. I mean, unfortunately. It's just the situation I'm in. There's not a lot of -- unless I can find a job that will hire a 62 year old man that only knows how to practice law. I mean, this is what I've done my whole life. And it's -- it -- it is what I am. I -- it's all I do is practice law and work and support my family. And I -- if -- if I was suspended for an actual period of time, I mean, I don't know what we would do. We would -- we would lose our house. We would lose everything.
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> (Hearing Transcript at P. 51)

RULES VIOLATED

Respondent had admitted to the violation of Louisiana Rules of Professional Conduct Rule 1.15 (a) (b) (c) (f) and Rule 8. 4 (a) and (c).

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

(1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession,
(2) Whether the lawyer acted intentionally, knowingly, or negligently,
(3) The amount of the actual or potential injury caused by the lawyer's misconduct, and
(4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to the general public, as lawyers should uphold the highest standards of honesty and integrity. He acted knowingly. Respondent's misconduct resulted in no actual harm to any client.

The ABA Standards for Imposing Lawyer Sanctions suggest that suspension is the baseline sanction for Respondent's misconduct. ABA Standard 4.12 states, "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."

Some of the jurisprudence that guided the Committee in this matter were the Court's prior decisions discussed below.

In *In re Laurent*, the Court imposed a six-month suspension, all deferred, based upon Mr. Laurent's misuse of his trust account. 2002-2163 (La. 1/14/03), 835 So.2d 430. Because of the low case volume of his practice, Mr. Laurent began keeping legal fees he had earned in his trust account to avoid penalties for dropping below the minimum account balance. Mr. Laurent would write checks on the trust account to pay his office expenses and personal debts. The Court found that this conduct was the result of improper practice management as opposed to any intentional or selfish motive, adding the following comment: "While this finding in no way excuses respondent's action, it will serve to ameliorate the harshness of the sanction." *Laurent* at 433. The Court found the presence of the following aggravating factors: 1) pattern of misconduct and 2) failure to cooperate with ODC. The Court found the presence of the following mitigating factors: 1) lack of actual client harm, 2) lack of a prior disciplinary history, and 3) remorse. In addition to the deferred suspension, the Court imposed a two-year period of supervised probation with conditions.

In *In re Cicardo*, the Court imposed a one-year suspension, all deferred, based upon Mr. Cicardo's misuse of his trust account. 2004-0828 (La. 7/2/2004), 877 So.2d 980. Mr. Cicardo reported to ODC that he had used his trust account to pay for the operation of his law office. An audit of the trust account revealed that Respondent used funds that were dedicated to clients or third-parties. However, because Respondent deposited attorney's fees into the trust account, there

were no underpayments or delayed payments to clients or third-parties. The following mitigating factors were present: 1) absence of a prior disciplinary record, 2) absence of a dishonest or selfish motive, 3) personal and emotional problems, 4) full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, 5) good character and reputation, and 6) remorse. The Court also found that there was no actual harm to any client or third-party. There were no aggravating factors present. In addition to the deferred suspension, the Court imposed a two-year period of supervised probation with conditions.

In *In re Spears*, 2011-135 (La. 9/2/11), 72 So.3d 819, the respondent failed to maintain adequate records of his client trust account for several months, commingled his funds with those of his clients by leaving his attorney's fees in his client trust account for extended periods of time and by transferring funds to his trust account from this personal and operating account, and converted client and/or third-party funds when he allowed his client trust account to become overdrawn. The respondent's actions were found to be negligent, and caused no harm, although the Court noted the potential for serious harm to his clients and third parties existed. The Court also found several aggravating factors, including a prior disciplinary history, and numerous mitigating factors. The Court, however, gave little weight to the aggravating factor of prior disciplinary history as those offenses were remote in time and involved dissimilar misconduct to that at issue. For this misconduct, the Court suspended Mr. Spears from the practice of law for one year and one day, fully deferred, subject to two years of supervised probation with conditions. *Id*., 2011-135, pp. 8-9, 72 So.3d at 824.

The respondent in *In re Roberson*, 2009-1741 (La. 1/8/10), 26 So.3d 124, admitted to failing to timely remit funds to a medical provider in "some cases" and to taking several thousands of dollars due to the medical provider out of his trust account and placing the funds into his

administrative account to pay for office expenses because he was having financial problems. He later replaced the funds in his trust account. After the medical provider filed a disciplinary complaint, the respondent paid the medical provider $24,702.00. He was found to have negligently failed to timely remit funds to the medical provider and to have knowingly converted client and third-party funds when he used trust account funds to pay for office expenses. The respondent was suspended for one year and one day, with all but three months deferred, followed by a two-year period of supervised probation and other conditions.

In *In re Schoenberger*, the Court suspended the respondent for one year and one day, with all but sixty days deferred, for negligently commingling and converting client and third-party funds and for intentionally backdating checks in order to make his trust account records appear accurate. 2021-0191 (La. 6/30/21), 320 So.3d 1125. The commingling and conversion did not result in any actual client harm. As aggravating factors, the Court noted a pattern of misconduct and the respondent's substantial experience in the practice of law. As mitigating factors, the Court recognized: absence of a prior disciplinary record, personal or emotional problems, a cooperative attitude toward the proceedings, good character and reputation, and remorse.

In the case at bar, Respondent's actions, while intentional, did not result in any harm to any of his clients. The Committee notes for the record multiple mitigating factors, discussed above, that are present in this situation: 1) an absence of a prior disciplinary record, 2) both personal and financial problems/stressors, 3) cooperation with the disciplinary board, 4) a cooperative attitude toward the proceedings, 5) good character and reputation, and 6) sincere remorse.

CONCLUSION

Based upon the record in this matter, including the exhibits entered into evidence and the testimony presented at the hearing, the Committee finds that Respondent's actions were in

violation of Louisiana Rules of Professional Conduct Rule 1.15 (a) (b) (c) (f) and Rule 8. 4 (a) and (c) and recommends a sanction of suspension from the practice of law for one year, fully deferred, subject to two years of supervised probation. The Committee further recommends Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized the Committee Chair to sign on their behalf.

Baton Rouge, Louisiana, this 8th day of December 2022.

Louisiana Attorney Disciplinary Board
Hearing Committee # 1
H. Price Mounger, Committee Chair
Ron C. Henderson, Lawyer Member
Shelby F. Guidry, Public Member

BY: _____
H. Price Mounger, Committee Chair
For the Committee

APPENDIX

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.
(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).
…
(f) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited. A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.
…

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:
(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
…