

ORIGINAL

Louisiana Attorney Disciplinary Board

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22-DB-024

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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: STEPHEN STERLING III

DOCKET NO. 22-DB-024

REPORT OF HEARING COMMITTEE # 62

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Stephen Sterling III (“Respondent”), Louisiana Bar Roll Number 27298.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4, 1.5(a), 1.5(c), 1.5(f)(5), 3.2, 8.1(c), and 8.4(c).²

PROCEDURAL HISTORY

The formal charges were filed on June 3, 2022. By letter dated June 6, 2022, the formal charges were mailed via certified mail to Respondent’s primary registration address.³ The mailing was received on June 9, 2022. Respondent failed to file an answer to the charges in a timely manner. Accordingly, on October 21, 2022, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ By order signed November

¹ Respondent was admitted to the practice of law in Louisiana on April 20, 2001. Respondent is currently eligible to practice law.

² See the attached Appendix for the text of these Rules.

³ 216 T J Jemison Blvd., Baton Rouge, LA 70802. ODC also requested that the charges be emailed to sterL3esq@gmail.com, which was done on June 7, 2022.

⁴ This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming

14, 2022, the factual allegations contained in the formal charges were deemed admitted. On January 9, 2023, Respondent filed an answer to the charges, but did not request that the deemed admitted order be recalled, nor did he request a hearing in mitigation.⁵ On January 10, 2023, ODC filed its submission on sanction. By letter dated January 12, 2023, the Board Staff informed Respondent of his right to request a recall of the deemed admitted order. Furthermore, a telephone conference was scheduled with the Chair of the Committee and the parties to determine how this matter would proceed. The call occurred as scheduled on February 1, 2023. Participating in the call were the Committee Chair, Deputy Disciplinary Counsel, and Hearing Committee Counsel. Respondent failed to participate in the call. Accordingly, the matter proceeded according to the Committee's deemed admitted order signed on November 14, 2022.

For the following reasons, the Committee finds that Respondent violated the Rules as charged. The Committee recommends that Respondent be suspended from the practice of law for two years and that he be ordered to pay restitution to Mr. Stewman.

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I - ODC File No. 0039200 (Massey complaint)

Shelia C. Massey filed a complaint against Respondent on April 29, 2021. In September of 2016, Ms. Massey sustained severe damage to her front teeth while on the premises of Albertsons Grocery Store. Ms. Massey hired Respondent for legal representation in the matter. Respondent agreed to represent Ms. Massey on a contingency fee basis, but failed to reduce the fee agreement to writing signed by Ms. Massey in violation of Rule 1.5(c).

Respondent filed a *Petition for Damages* in the 19th JDC on Ms. Massey's behalf in September of 2017. Respondent failed to act with reasonable diligence

the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

⁵ However, Respondent did allege certain mitigating factors in his answer, but did not submit any evidence in support of the factors.

and promptness in Ms. Massey's case by failing to timely respond to discovery and failing to communicate with opposing counsel in violation of Rule 1.3.

On December 17, 2019, Respondent agreed to a settlement in Ms. Massey's case; however, Respondent failed to provide Defendants with the necessary paperwork to process the settlement in violation of Rule 3.2. Ms. Massey continually asked Respondent for updates pertaining to the settlement during this period of time. Respondent violated Rule 8.4(c) by being dishonest and deceitful with Ms. Massey regarding the reasons for the delay in processing her settlement.

Defendants filed a *Motion to Enforce Settlement* on August 10, 2020. On January 11, 2021, the Court ordered the Plaintiff to submit the necessary information to perfect the settlement within thirty (30) days. Respondent failed to comply with the Court's order. Approximately five months later, the Defendants filed a *Motion for Contempt and/or Dismissal* on June 21, 2021. On November 8, 2021, the parties advised the Court they entered into a verbal stipulation in which the hearing was no longer needed, as Respondent assured the court and all parties he would complete the settlement paperwork. Once again, Respondent failed to make reasonable efforts to expedite litigation and confect the settlement consistent with the interests of Ms. Massey in violation of Rule 3.2. Respondent also violated Rule 1.4 when he failed to keep Ms. Massey reasonably informed about the status of her case and failed to promptly comply with her reasonable requests for information.

On January 3, 2022, the Defendants filed an *Ex Parte Motion and Order to Deposit the Settlement Funds into the Registry of Court*. The Defendant's motion explains that Defendants were able to obtain a release from Plaintiff and paid Medicare directly, but still have yet to receive a tax identification number or a W-9 from the Respondent in order to issue the remaining payment of settlement funds. On January 31, 2022, the Court ordered the funds to be deposited into the registry of the court and to be released to Ms. Massey and/or her counsel upon her filing of a motion to withdraw the funds. As of June 3, 2022, Respondent has failed to provide the necessary documentation to the Court for the disbursement of Ms. Massey's settlement funds, a violation of Rule 3.2.

There is clear and convincing evidence the Respondent has violated Rules 1.3, 1.4, 1.5(c), 3.2, and 8.4(c) of the Rules of Professional Conduct.

COUNT II - ODC File No. 0037931 (Stewman complaint)

Reginald Stewman filed a complaint against Respondent on May 17, 2021. On January 29, 2021, Mr. Stewman paid Respondent \$150.00 for a consultation pertaining to a DWI arrest that occurred in East Baton Rouge Parish on January 23, 2021. Because of Mr. Stewman's arrest history, it was unknown exactly what DWI offense Mr. Stewman would be charged. Mr. Stewman ultimately hired Respondent for a fixed fee of \$2,500.00 which was quoted based on representation of a first offense DWI. Mr. Stewman paid the fee in full.

Mr. Stewman was ultimately charged with a DWI 4th offense. Respondent advised Mr. Stewman that the legal fee for representation on this charge would be \$10,000.00. Mr. Stewman advised Respondent the fee was too high and asked for

a refund of the \$2,500.00. Respondent stated he would assess the file and determine if a refund was due, but failed to do so.

Respondent did not complete the legal matter, did not file any pleadings, did not make an official appearance in court, and did not attend the arraignment on behalf of Mr. Stewman. Respondent failed to refund any portion of the unearned fixed fee to Mr. Stewman in violation of 1.5(a) and 1.5(f)(5). Respondent was asked to provide ODC with documentation that he deposited the disputed portion of Mr. Stewman's fee to his trust account pending resolution of the fee dispute issue. Respondent failed to cooperate with ODC and provide the requested documentation in violation of Rule 8.4(c). Respondent was offered the opportunity to participate in the LSBA Fee Dispute Resolution Program, but failed to do so.

There is clear and convincing evidence the Respondent has violated Rules 1.5(a), 1.5(f)(5), and 8.1(c) of the Rules of Professional Conduct.

EVIDENCE

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1(a) – (r) and ODC 2(a) – (p). Respondent did not submit evidence or argument for the Committee's consideration, nor did he request to be heard in mitigation pursuant to Rule XIX, §11(E)(4).

FINDINGS OF FACT

The factual allegations in the formal charges are deemed admitted and are supported by the evidence submitted by ODC. Based on the deemed admitted allegations and the evidence in the record, the Committee finds that Respondent's conduct was knowing and intentional.

RULES VIOLATED

The deemed admitted allegations and the evidence submitted by ODC support the conclusion that Respondent violated Rules 1.3, 1.4, 1.5(c), 3.2, and 8.4(c) in Count I; and Rules 1.5(a), 1.5(f)(5), and 8.1(c) in Count II.

Count I: Respondent agreed to represent Ms. Massey on a contingency fee basis, but failed to reduce the agreement to writing, which is a violation of Rule 1.5(c). Respondent failed to timely respond to discovery requests, failed to communicate with opposing counsel, and failed to expeditiously complete the settlement of the matter, which are violations of Rules 1.3 and 3.2.

Respondent failed to respond to Ms. Massey's requests for information and, otherwise, failed to keep her informed about the status of her matter, which are violations of Rule 1.4. When Ms. Massey requested updates on the matter, Respondent provide dishonest answers as to the reason for the delay, which is a violation of Rule 8.4(c).

Count II: Respondent collected a \$2,500 fee, but failed to provide any meaningful representation or provide a refund after being terminated, which are violations of Rules 1.5(a) and 1.5(f)(5). Respondent failed to cooperate with ODC's investigation of this matter, which is a violation of Rule 8.1(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 his clients, the legal system, and the profession. He acted knowingly and intentionally. Respondent's misconduct caused serious actual harm to Ms. Massey and Mr. Stewman. The settlement of Ms. Massey's legal matter was significantly delayed. Mr. Stewman paid a fee for which he received nothing in return.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. Standard 4.42 states: "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client." Here, Respondent knowingly failed to expeditiously settlement Ms. Massey's matter

and knowingly failed refund the unearned fee to Mr. Stewman. Taken as a whole, his conduct indicates a pattern of neglect. As discussed above, this conduct caused serious harm to his clients. Accordingly, suspension is the baseline sanction in this matter.

The following aggravating factors are supported by the record:

- 1) Prior disciplinary offenses: Respondent received an admonition in 2015 for violation Rules 1.1, 1.3, 1.5, 1.16(d), 3.2, and 8.4(a), which is similar to the misconduct present in this matter. *See* ODC Exhibit 3.
- 2) Dishonest or selfish motive: Respondent was dishonest and deceptive in his communication with Ms. Massey when she requested an update on her matter. He also retained Mr. Stewman's legal fee despite failing to provide any substantive legal work on the matter.
- 3) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process: As evidenced by his initial response to the complaint and his sworn statement with ODC, Respondent provided inconsistent and false statements during ODC's investigation of the Massey complaint. *See* ODC Exhibits 1f and 1j.
- 4) Refusal to acknowledge the wrongful nature of his misconduct.
- 5) Vulnerability of the victims: Ms. Massey is an elderly client who suffered serious injuries.
- 6) Substantial experience in the practice of law: Respondent was admitted to practice law in 2001.

Based upon the evidence in the record, there are no mitigating factors.

The Court has held that the baseline sanction for the neglect, failure to communicate, and failure to properly terminate representation in one client matter is a one-year suspension. *See In re Casanova*, 2002-2155 (La. 11/22/02), 847 So.2d 1169, 1175, *citing In re Trichel*, 2000-1304

(La. 8/31/00), 767 So.2d 694. Here, the facts of Count I (Ms. Massey) support this baseline. In support of its argument on sanction, ODC cites to two cases in which the Court imposed a one year and one day suspension. See *In re Collins*, 2019-1746 (La. 2/26/20), 290 So.3d 173; and *In re Aucoin*, 2017-0451 (La. 5/26/17), 220 So.3d 710. Both of these matters involved misconduct in a single client matter. Here, the Committee is confronted with misconduct in multiple client matters and, thus, takes guidance from case law that is analogous in that regard. In *In re Hawkins*, the respondent neglect two client matters, failing to adequately communicate with those clients and failing to refund unearned fees. 2007-1619 (La. 2/22/08); 974 So.2d 1280. The respondent allowed the formal charges to become and remain deemed admitted. The Court found the respondent's conduct to be knowing and intentional and recognized the following aggravating factors: prior disciplinary offenses, 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, and indifference to making restitution. The Court imposed a two-year suspension in *Hawkins*.

CONCLUSION

Based on the foregoing, the Committee finds that Respondent violated the Rules as charged and recommends that he be suspended from the practice of law for two years. The Committee also recommends that Respondent be ordered to pay restitution to Mr. Stewman and that he 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 Michael T. Pualski, to sign on their behalf.

CUVININGTON, Louisiana, this 6 day of MARCH, 2023.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 62**

**Michael T. Pulaski, Committee Chair
Cynthia M. Bologna, Lawyer Member
Paul F. Delaup, Public Member**

BY: Michael T. Pulaski
**Michael T. Pulaski, Committee Chair
For the Committee**

APPENDIX

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4. Communication

(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

...

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written

statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

...

(f) Payment of fees in advance of services shall be subject to the following rules: ... (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

...

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

...