

SUPREME COURT OF LOUISIANA

NO. 2019-B-1652

IN RE: DURWARD D. CASTEEL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Durward D. Casteel, an attorney licensed to practice law in Louisiana but currently on interim suspension pursuant to a joint motion of the parties filed in November 2018. *In re: Casteel*, 18-1745 (La. 11/5/18), 255 So. 3d 1038.

FORMAL CHARGES

Count I

Respondent was hired to defend Patrick O’Donnell against a claim pending in Oklahoma. On February 25, 2015, Mr. O’Donnell forwarded to respondent the sum of \$350,000 to fund Mr. O’Donnell’s contribution of any future settlement. When a settlement was reached, Mr. O’Donnell called upon respondent to fund his contribution to the settlement using the funds entrusted to respondent for safe keeping. Respondent advised Mr. O’Donnell that he had converted the funds to his own use and that they were no longer available. In a sworn statement to the ODC, respondent confirmed that he converted the entirety of Mr. O’Donnell’s funds.¹

¹ Mr. O’Donnell has a claim pending with the Louisiana State Bar Association’s Client Assistance Fund.

Count II

In 2014, respondent was hired to defend Criterion Claim Solutions of Omaha in a lawsuit against a named insured. The carrier negotiated a settlement of the claim and forwarded to respondent a \$10,000 check payable to the plaintiff to be used for the completion of the settlement. Upon receipt of the check, respondent forged the plaintiff's name, cashed the check, and converted the funds to his own use. In a sworn statement to the ODC, respondent confirmed that he forged the plaintiff's name on the settlement check and converted the funds to his own use.

DISCIPLINARY PROCEEDINGS

In December 2018, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 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).

Respondent failed to answer the 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). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the hearing committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee made factual findings consistent with the deemed admitted factual allegations set forth in the formal charges. The committee additionally found that

respondent failed to repay the converted funds. Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee then determined that respondent violated duties owed to his clients and the public. His conduct was knowing, willful, and intentional. His clients suffered significant actual harm as a direct result of his actions. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is disbarment.

The committee found the following aggravating factors are supported by the record: a dishonest or selfish motive, multiple offenses, indifference to making restitution, and substantial experience in the practice of law (admitted 1988). The committee found the following mitigating factors are supported by the record: the absence of a prior disciplinary record, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and remorse. The committee added that respondent self-reported his violations and admitted to same in writing and in a sworn statement to the ODC.

After considering the seriousness of respondent's actions, when balanced with the aggravating and mitigating factors that are present, the committee determined that a downward deviation from the baseline sanction is not warranted. Accordingly, the committee recommended that respondent be disbarred. The committee also recommended that respondent be ordered to pay restitution to his clients, and that he be assessed with the costs and expenses of this proceeding.

Respondent filed an objection to the hearing committee's report. However, he later withdrew his objection and indicated that would not be participating in a hearing. He also expressed his commitment to making full restitution to both of his

clients. Pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report directly to the court for review.²

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 record in this deemed admitted matter supports a finding that respondent converted \$360,000 in client funds. This misconduct amounts to a violation of the Rules of Professional Conduct as alleged in the formal charges.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining

² As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that “[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee's report to the court.”

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 violated duties owed to his clients and the public. His conduct was intentional and caused significant harm. His actions also reflect adversely upon the legal profession and cause erosion of the public trust. Considering the ABA's *Standards for Imposing Lawyer Sanctions*, the baseline sanction in this matter is disbarment. The record supports the aggravating and mitigating factors found by the hearing committee.

In *Louisiana State Bar Ass'n v. Hinrichs*, 486 So. 2d 116 (La. 1986), this court conducted an extensive review of the jurisprudence in conversion cases in order to determine the appropriate sanctions for different types of conversion. The court reserved disbarment, then the most serious sanction available, for conversion cases in which one or more of the following elements are present:

[T]he lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings.

Respondent's conduct meets all the criteria for disbarment. As noted by the hearing committee, respondent acted with a dishonest and selfish motive. By converting \$360,000 in client funds to his own use, he acted in a manner that was inconsistent with his clients' interest. Respondent also committed forgery in

connection with his conversion of client funds in one matter. The duration of the deprivation of funds for his clients has been extensive, as respondent has not made restitution to either of his clients. Without question, respondent caused great expense and inconvenience to his clients, particularly to Mr. O'Donnell, who lost \$350,000 which he needed for the settlement of his case. Under the circumstances, disbarment is the appropriate sanction in this case.

Accordingly, we will adopt the hearing committee's recommendation and impose disbarment. We will also order respondent to make restitution to his clients and to the Client Assistance Fund, as applicable.

DECREE

Upon review of the findings and recommendations of the hearing committee, it is ordered that Durward D. Casteel, Louisiana Bar Roll number 18830, be and he hereby is disbarred. 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 full restitution, with legal interest, to Patrick O'Donnell, Criterion Claim Solutions of Omaha, and the Louisiana State Bar Association's Client Assistance Fund. 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.