

The Supreme Court of the State of Louisiana

IN RE: RAYMOND CHARLES BURKART

No.2020-B-00243

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

June 12, 2020

Permanent disbarment imposed. See per curiam.

JDH

BJJ

JLW

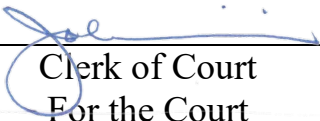
SJC

JTG

WJC

JHB

Supreme Court of Louisiana
June 12, 2020



Clerk of Court
For the Court

06/12/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-0243

IN RE: RAYMOND CHARLES BURKART, III

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Raymond Charles Burkart, III, a disbarred attorney.

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history.

In 2006, respondent was conditionally admitted to the practice of law in Louisiana, subject to a five-year period of probation, with the condition that he comply with a Judges and Lawyers Assistance Program (“JLAP”) agreement. In 2011, we found that respondent had successfully complied with all terms of his probation and terminated the probationary period.

On November 5, 2018, we disbarred respondent for neglecting legal matters, failing to communicate with clients, failing to refund unearned fees, failing to return client files, mishandling his trust account, resulting in a \$3,721.71 negative balance, and failing to cooperate with the ODC in its investigations. All of this misconduct occurred between 2009 and 2016. *In re: Burkart*, 18-1077 (La. 11/5/18), 255 So. 3d 999 (“*Burkart I*”).

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

FORMAL CHARGES

Count I – The McIntosh Matter

In August 2013, Kevin McIntosh hired respondent to represent him in a civil matter and paid him a \$3,000 retainer fee. For the first few months, respondent sent Mr. McIntosh regular mail communication notifying him of proceedings and case updates. Thereafter, all communication stopped, and when Mr. McIntosh contacted respondent's office, respondent's staff told him that respondent was in a drug rehabilitation facility and would no longer be able to represent him. According to Mr. McIntosh, he requested a refund of his remaining retainer fee, which he approximated to be \$2,500, but respondent's staff told him to contact the Louisiana State Bar Association.

In April 2017, Mr. McIntosh filed a disciplinary complaint against respondent. The ODC sent respondent notice of the complaint via certified mail on April 13, 2017, but the notice was returned as undeliverable on April 20, 2017. On July 24, 2017, the ODC's investigator personally served respondent with a copy of Mr. McIntosh's complaint. Respondent failed to respond to the complaint.

The ODC alleged that respondent's conduct violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5 (failure to refund an unearned fee), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

Count II – The Sandifer Matter

In December 2012, Marnisha Sandifer hired respondent to represent her and her son in a personal injury matter stemming from an automobile accident. Ms. Sandifer never received a status update from respondent or any sort of settlement proceeds, and she learned independently that her case was dismissed.¹

In May 2017, Ms. Sandifer filed a disciplinary complaint against respondent. The ODC sent respondent notice of the complaint via certified mail on May 9, 2017, but the notice was returned as unclaimed on June 26, 2017. On July 24, 2017, the ODC's investigator personally served respondent with a copy of Ms. Sandifer's complaint. Respondent failed to respond to the complaint.

The ODC alleged that respondent's conduct violated Rules 1.3, 1.4, 8.1(c), and 8.4(a) of the Rules of Professional Conduct.

Count III – The Criminal Harassment Matter

On December 31, 2015, respondent was arrested for stalking and harassing his ex-girlfriend. Respondent's ex-girlfriend had previously filed reports of similar conduct by respondent, but warnings from the police did not hinder his efforts to follow her. As such, she pressed charges against him.

On September 14, 2017, respondent pleaded guilty to a lesser charge of telephone communication harassment. Respondent was sentenced to serve six months in jail, which sentence was suspended. He was also placed on probation for two years, with the conditions that he submit to random drug testing, seek a mental health evaluation, and have no contact with his ex-girlfriend.

On May 8, 2017, the ODC received notice of respondent's arrest from the 22nd Judicial District Attorney's Office. The ODC sent respondent notice of the

¹ The record indicates that the defendant insurance company sent respondent two checks in settlement of Ms. Sandifer's claim. One check was in the amount of \$15,908.00, and the other check was in the amount of \$5,149.20. The record further indicates that, in March 2015, respondent filed a motion to dismiss Ms. Sandifer's case because her claim had been settled.

complaint via certified mail on May 11, 2017, but the notice was returned on May 18, 2017. Respondent failed to respond to the complaint.

The ODC alleged that respondent's conduct violated Rules 8.1(c), 8.4(a), and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) of the Rules of Professional Conduct.

DISCIPLINARY PROCEEDINGS

In August 2018, the ODC filed formal charges against respondent, as set forth above. 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 submission on sanctions, the hearing committee determined the factual allegations set forth in the formal charges are fully developed and supported by the exhibits in the record. The committee also determined the factual allegations are deemed admitted and sufficient to support a finding that respondent violated the Rules of Professional Conduct as charged.

The committee then determined respondent knowingly and intentionally violated duties owed to his clients and the legal profession. His conduct caused actual harm to his clients and the legal profession and had the potential to cause even more harm to his clients. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

In aggravation, the committee cited respondent's prior disciplinary record and illegal conduct. Additionally, the committee noted respondent's "[r]epetitive pattern of failure to communicate with clients, to exercise due diligence and to promptly return an unearned fee," his lack of remorse, and his "[r]epetitive pattern of failure to communicate and cooperate with the ODC." The committee found no mitigating factors present.

Turning to the issue of an appropriate sanction, the committee first examined respondent's misconduct relative to his misconduct in *Burkart I*. Noting that the instant misconduct occurred between 2012 and 2017, the committee determined the misconduct here and in *Burkart I* occurred during the same time period and must be considered together pursuant to *La. State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991), wherein we held:

When a second disciplinary proceeding against an attorney involves misconduct which occurred during the same time period as the first proceeding, the overall discipline to be imposed should be determined as if both proceedings were before the court simultaneously.

The committee then determined that the entirety of respondent's misconduct here and in *Burkart I*, which includes mishandling his trust account, inappropriate cash withdrawals from his trust account, conversion of client funds, neglecting six legal matters, failing to refund unearned fees to three clients, and engaging in serious criminal conduct, falls under Guideline 1 (repeated or multiple instances of intentional conversion of client funds with substantial harm) of the permanent disbarment guidelines set forth in Supreme Court Rule XIX, Appendix D. In further support of permanent disbarment, the committee cited *In re: Alleman*, 07-2060 (La. 5/30/08), 982 So. 2d 814, and *In re: Straub*, 08-2354 (La. 1/30/09), 999 So. 2d 1123. In *Alleman*, an attorney neglected numerous legal matters, abandoned his law practice, failed to refund approximately \$20,000 in unearned fees and unused costs, converting those funds to his own use, and failed to cooperate with the ODC in

several investigations. We imposed permanent disbarment upon the attorney based on Guideline 1 of the permanent disbarment guidelines. In *Straub*, an attorney neglected numerous legal matters, failed to communicate with numerous clients, failed to refund more than \$40,000 in unearned fees, failed to cooperate with the ODC in its investigations, and failed to repay a loan obtained from a client. Again, we imposed permanent disbarment upon the attorney based on Guideline 1 of the permanent disbarment guidelines.

Under these circumstances, the committee recommended respondent be permanently disbarred. The committee also recommended respondent be ordered to refund Mr. McIntosh's unearned fee with interest.

Neither respondent nor the ODC filed an objection to the committee's report and recommendation.

Disciplinary Board Recommendation

Like the hearing committee, the disciplinary board acknowledged that the factual allegations set forth in the formal charges are deemed admitted and proven. The board also agreed with the committee that respondent violated the Rules of Professional Conduct as charged.

The board then determined respondent knowingly and intentionally violated duties owed to his clients, the legal profession, and the public. His conduct caused actual and potential harm. Specifically, the board found that respondent failed to refund \$2,500 in unearned fees to Mr. McIntosh and settled the claims of Ms. Sandifer and her son for more than \$20,000 without telling her and without disbursing any of the funds to her.

In aggravation, the board found a prior disciplinary record, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceedings by failing to comply with the rules or orders of the disciplinary agency, indifference

to making restitution, and illegal conduct. Like the committee, the board found no mitigating factors present.

With respect to an appropriate sanction, the board agreed with the committee that a *Chatelain* analysis should be applied here and that the instant misconduct should be considered together with the misconduct in *Burkart I* when determining a sanction. Like the committee, the board concluded that respondent's combined conduct falls under Guideline 1 of the permanent disbarment guidelines. In further support of permanent disbarment, the board cited *In re: Meyer*, 13-2410 (La. 1/17/14), 131 So. 3d 43, and *In re: Murphy*, 17-0068 (La. 6/29/17), 224 So. 3d 947. In *Meyer*, an attorney neglected his clients' legal matters, failed to communicate with his clients, failed to refund \$1,100 in unearned fees, failed to return his clients' files, and failed to cooperate with the ODC in its investigations. We imposed permanent disbarment based on Guideline 1 of the permanent disbarment guidelines. In *Murphy*, an attorney neglected legal matters, failed to communicate with clients, failed to refund \$7,150 in unearned fees, attempted to solicit clients from other attorneys, engaged in dishonest conduct, made misrepresentations to the court, practiced law while ineligible to do so, engaged in the unauthorized practice of law after being placed on interim suspension, engaged in criminal conduct, and failed to cooperate with the ODC in its investigations. We imposed permanent disbarment based on Guideline 1 and Guideline 8 (following notice, engaging in the unauthorized practice of law during the period of time in which the lawyer is suspended from the practice of law or disbarred) of the permanent disbarment guidelines.

Based on the above, the board recommended respondent be permanently disbarred. The board further recommended respondent be ordered to refund any unearned fees to Mr. McIntosh and provide an accounting and disbursement of settlement funds to Ms. Sandifer.

Neither respondent nor the ODC filed an objection to the board's report and 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 record in this deemed admitted matter supports a finding that respondent neglected legal matters, failed to communicate with clients, failed to refund unearned fees, was arrested for stalking and harassment before pleading guilty to telephone communication harassment, and failed to cooperate with the ODC in its investigations. As such, he has violated the Rules of Professional Conduct as charged, with one exception. The record contains no evidence and the deemed admitted facts do not indicate that respondent engaged in any type of dishonest conduct in the McIntosh matter. Therefore, we find the ODC failed to prove a Rule 8.4(c) violation.

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 legal profession, and the public, causing actual and potential harm. The baseline sanction for this type of misconduct is disbarment. Aggravating factors include 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, indifference to making restitution, and illegal conduct. No mitigating factors are evident from the record.

With the exception of respondent's failure to cooperate with the ODC's investigations of the instant disciplinary complaints, all of respondent's misconduct at issue here occurred during the same time period as the misconduct at issue in *Burkart I*. Therefore, we agree with the hearing committee and the disciplinary board that we should address the current misconduct in conjunction with the misconduct in *Burkart I*. The concept of simultaneously considering new charges based on conduct occurring at the same time as earlier misconduct originated in our opinion in *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991), in which we explained:

Since the attorney-respondent cannot control the timing of the institution of disciplinary proceedings, it is generally inappropriate to disbar a previously disbarred attorney an

additional time when the violations at issue occurred before or concurrently with the violations which resulted in the initial disbarment. When a second disciplinary proceeding against an attorney involves misconduct which occurred during the same time period as the first proceeding, the overall discipline to be imposed should be determined as if both proceedings were before the court simultaneously.

In *Chatelain*, we were concerned that it would be potentially unfair for a lawyer to receive a greater sanction simply because of the timing of the prosecution. However, as the jurisprudence has evolved, we have also recognized that the lawyer should not benefit in cases where it is obvious that the cumulative effect of the newly-charged misconduct and the prior misconduct would have caused us to impose a greater sanction had we been aware of that misconduct at the time we rendered our initial judgment. *See, e.g., In re: Holley*, 03-1366 (La. 10/3/03), 856 So. 2d 1197 (“[h]ad we considered the instant misconduct together with the misconduct in *Holley I*, it is likely we would have imposed a more severe sanction, probably in the range of eighteen months, with some period of deferral and probation.”). In short, our overriding consideration has been to determine the appropriate overall sanction for the lawyer’s misconduct, ignoring any distortions that may be caused by the timing of the filing of formal charges.

Applying this reasoning to the instant case, we recognize that the substantive misconduct in the instant charges is part of the continuing series of professional breaches by respondent that we first addressed in *Burkart I*. In *Burkart I*, respondent neglected legal matters, failed to communicate with clients, failed to refund more than \$500 in unearned fees, failed to return client files, mishandled his trust account, resulting in a \$3,721.71 negative balance, and failed to cooperate with the ODC in its investigations. Similarly, in the instant matter, respondent neglected his clients’ legal matters, failed to communicate with his clients, failed to refund unearned fees, and failed to cooperate with the ODC in its investigations. Additionally, he was

arrested for stalking and harassment before pleading guilty to telephone communication harassment.

In Appendix D to Supreme Court Rule XIX, we set forth guidelines illustrating the types of conduct that might warrant permanent disbarment. Guideline 1 applies to “repeated or multiple instances of intentional conversion of client funds with substantial harm.” Taken as a whole, respondent’s conduct here and in *Burkart I* falls within Guideline 1. Respondent has intentionally failed to remit or refund a significant amount of client funds and unearned fees, essentially converting approximately \$27,000 to his own use and causing those clients actual harm. Had we been aware of the instant misconduct at the time of *Burkart I*, we would have permanently disbarred respondent.

Accordingly, we will adopt the board’s recommendation and impose permanent disbarment. We will further order respondent to refund any unearned fees to Mr. McIntosh and provide an accounting and disbursement of settlement funds to Ms. Sandifer.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, it is ordered that Raymond Charles Burkart, III, Louisiana Bar Roll number 30320, be and he hereby is permanently 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. Pursuant to Supreme Court Rule XIX, § 24(A), it is further ordered that respondent be permanently prohibited from being readmitted to the practice of law in this state. It is further ordered that respondent shall refund any unearned fees to Kevin McIntosh, with legal interest, and provide an accounting and disbursement of settlement funds to Marnisha Sandifer, with legal interest. 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.