

The Supreme Court of the State of Louisiana

IN RE: HILLARD CHARLES FAZANDE III

No.2020-B-01415

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

March 10, 2021

Permanent disbarment imposed. See per curiam.

JBM

JLW

JDH

SJC

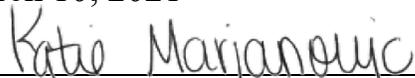
JTG

WJC

PDG

Supreme Court of Louisiana

March 10, 2021



Chief Deputy Clerk of Court
For the Court

03/10/21

SUPREME COURT OF LOUISIANA

NO. 2020-B-1415

IN RE: HILLIARD CHARLES FAZANDE, III

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 2000.

In 2009, we suspended respondent from the practice of law for six months, with all but thirty days deferred, followed by one year of supervised probation with conditions, for taking on the representation of a client without the client’s knowledge or consent and for practicing law while ineligible to do so. *In re: Fazande*, 09-0938 (La. 10/20/09), 23 So. 3d 247 (“*Fazande I*”).

In 2013, we considered a joint petition for consent discipline wherein respondent and the ODC proposed that he be suspended from the practice of law for six months, fully deferred, subject to two years of probation with conditions, for his mishandling of his client trust account by allowing it to become overdrawn. We accepted the petition and imposed the parties’ proposed discipline upon respondent. *In re: Fazande*, 13-0847 (La. 5/17/13), 117 So. 3d 93 (“*Fazande II*”).

In 2020, we disbarred respondent for neglecting legal matters, failing to communicate with clients, failing to refund unearned fees and unused costs, practicing law while ineligible to do so, pleading guilty to federal bank theft charges, and failing to cooperate with the ODC in its investigations. *In re: Fazande*, 19-1918 (La. 2/26/20), 290 So. 3d 178 (“*Fazande III*”).

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

FORMAL CHARGES

In August 2017, Susanne Walls hired respondent to represent her son in a criminal matter. Several months later, Ms. Walls filed a disciplinary complaint against respondent, alleging that he failed to complete the representation. Along with the complaint, Ms. Walls provided the ODC with a copy of the docket master for her son’s case as well as copies of receipts for amounts she paid to respondent.¹ In December 2018, respondent received notice of the complaint, but he did not respond.

Thereafter, an ODC investigator was instructed to interview Ms. Walls in order to gather additional details not included in the written complaint. According to the investigator’s report, Ms. Walls became suspicious of respondent when she learned that he had no office and no business card. She grew more suspicious after her son’s case was continued multiple times and when respondent tried to associate his attorney father with the case. Following an internet search, Ms. Walls discovered that respondent was listed as ineligible to practice law. She contacted respondent to inquire about his bar status, but he denied his ineligibility. However, the docket master revealed that respondent appeared in court on September 11, 2017 and again

¹ The receipts, which are included in the record, reflect that Ms. Walls paid a total of \$1,300 towards the agreed-upon fee of \$5,000.

on November 6, 2017, during which times he was ineligible to practice law for failure to comply with his professional obligations.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1 (failure to comply with annual professional obligations), 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), 1.16 (a)(1)(c)(d) (declining or terminating representation), 5.5(a) (engaging in the unauthorized practice of law), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

DISCIPLINARY PROCEEDINGS

In June 2020, 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 acknowledged that the factual allegations set forth in the formal charges were deemed admitted based upon respondent's failure to file an answer. Based on those deemed admitted facts, the committee determined that respondent violated the Rules

of Professional Conduct as alleged in the formal charges. The committee addressed each of the alleged rule violations as follows:

Respondent violated Rules 1.1, 5.5(a), and 1.16(a)(1) by twice appearing in court while he was ineligible to practice law. He violated Rule 1.4 by failing to communicate with his client. He violated Rule 1.5 by failing to return the unearned fee. He violated Rules 1.3 and 1.16(c)(d) by abandoning his client's case. He violated Rule 8.1(c) by failing to respond to the ODC's investigation. He violated Rule 8.4(c) by failing to advise Ms. Walls that he was ineligible to practice law and by denying his ineligibility when she questioned him about his bar status.

The committee determined that respondent violated duties owed Ms. Walls. He acted negligently, knowingly, and intentionally, and his misconduct caused significant harm to Ms. Walls. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee found the following aggravating factors present: a prior disciplinary record, a 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, substantial experience in the practice of law, and indifference in making restitution. The committee found no mitigating factors present.

Turning to the issue of an appropriate sanction, the committee examined respondent's misconduct relative to his misconduct in *Fazande III*. Noting that the instant misconduct occurred between 2017 and 2018, while the prior misconduct occurred between 2015 and 2018, the committee determined the misconduct here and in *Fazande III* occurred during the same time period and must be considered together pursuant to *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991), wherein the court 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.

Taking the misconduct of *Fazande III* into consideration along with the instant misconduct, the committee determined that respondent should be permanently disbarred. The committee further recommended that respondent be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report 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,

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.”

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 a legal matter, failed to communicate with a client, failed to refund an unearned fee, and practiced law while ineligible to do so. Respondent also failed to cooperate with the ODC in its investigation. As such, he has violated 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 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 client, the legal system, and the legal profession, and his misconduct caused actual harm. We agree with the hearing committee that the applicable baseline sanction is disbarment. Several significant aggravating factors are present, most notably respondent's prior disciplinary record which involved misconduct identical to that at issue in this proceeding. No mitigating factors are apparent from the record.

With the exception of respondent's failure to cooperate with the ODC's investigation of the instant disciplinary complaint, all of the misconduct at issue occurred during the same time period as the misconduct at issue in *Fazande III*. Therefore, we agree with the hearing committee that *Chatelain, supra*, is applicable,

and we will address the current misconduct in conjunction with the misconduct in *Fazande III*.

Turning to the issue of an appropriate sanction, we find guidance from *In re: Mendy*, 18-0384 (La. 5/25/18), 243 So. 3d 538, wherein this court was presented with a similar situation to the case at hand. In *Mendy*, an attorney had neglected a client's matter, failed to communicate with a client, failed to refund an unearned fee, and failed to cooperate with the ODC in its investigation. Mr. Mendy had been recently disbarred for similar misconduct, *Chatelain* was applicable, and Mr. Mendy had two prior suspensions in his disciplinary record. Numerous aggravating factors were present, and there were no mitigating factors to be considered. After noting his consistent pattern of misconduct, we concluded that Mr. Mendy should not be given the opportunity to return to the practice of law. Accordingly, following the fourth and final disciplinary proceeding, Mr. Mendy was permanently disbarred.

Likewise, the hearing committee has concluded respondent's offenses are so egregious that he should be permanently prohibited from applying for readmission to the bar. In our view, this recommendation is consistent with the jurisprudence set forth in *Mendy*. The substantive misconduct in the instant charges is part of a continuing series of professional breaches committed by respondent. Like Mr. Mendy, respondent has two prior suspensions, and the misconduct at issue is similar to the misconduct for which he was disbarred. As in *Mendy*, numerous aggravating factors are present, and no mitigating factors are apparent from the record.

Considering respondent's consistent pattern of misconduct along with the jurisprudence set forth in *Mendy*, the hearing committee's recommended sanction is appropriate for this matter. Respondent has been disciplined by this court on three occasions, and yet, he has apparently learned nothing from his prior discipline, having caused harm to another client. In order to protect the public and maintain the high standards of the legal profession in this state, respondent should not be allowed

the opportunity to return to the practice of law in the future. Accordingly, we will adopt the hearing committee's recommendation and permanently disbar respondent.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Hilliard Charles Fazande, III, Louisiana Bar Roll number 26638, 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 make restitution to Susanne Walls, with legal interest, as appropriate. 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.