

SUPREME COURT OF LOUISIANA

NO. 2015-B-1069

IN RE: SCOTT ROBERT HYMEL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Scott Robert Hymel, an attorney licensed to practice law in Louisiana, but currently ineligible to practice.¹

UNDERLYING FACTS AND PROCEDURAL HISTORY

The ODC filed two sets of formal charges against respondent under disciplinary board docket numbers 13-DB-030 and 14-DB-007. Respondent answered the first set of formal charges, essentially admitting his misconduct and requesting to be heard in mitigation. The matter then proceeded to a formal hearing. Respondent did not answer the second set of formal charges, and the factual allegations contained therein were deemed admitted. In January 2015, the matters were consolidated by order of the disciplinary board. The disciplinary board then filed in this court a single recommendation of discipline encompassing both sets of formal charges.

13-DB-030

¹ Respondent has been ineligible to practice law since September 9, 2013 for failing to pay bar dues and the disciplinary assessment and for failing to file a trust account disclosure form. He is also ineligible for failing to comply with mandatory continuing legal education requirements.

In April 2012, Jerome Jabes hired respondent to probate the will of decedent Ann Spence, paying respondent a flat fee of \$700 plus \$210 in filing fees. Thereafter, respondent neglected the matter. Respondent also failed to return Mr. Jabes' telephone calls and failed to respond to Mr. Jabes' e-mails. When respondent did communicate with Mr. Jabes, he provided misleading information by indicating that he would file the succession with the court, which he never did. Respondent also stated that he would refund half of the fee but never did.

In November 2012, Mr. Jabes filed a disciplinary complaint against respondent. Respondent failed to respond to notice of the complaint, necessitating the issuance of a subpoena to obtain his sworn statement. However, the ODC's staff investigator was unable to serve respondent with the subpoena despite multiple attempts to contact him at several addresses and his cell phone number.

The ODC alleged respondent's misconduct as set forth above violated the following provisions of the Rules of Professional Conduct: 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(f)(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).

As previously noted, respondent answered the formal charges filed against him in 13-DB-030. He essentially admitted his misconduct and requested to be heard in mitigation. Respondent indicated that, during Mr. Jabes' representation, he fell into a deep depression because of an acrimonious divorce, loss of his legal practice, and bitter family issues. He stated that he was currently seeking help for his depression and offered to refund the full \$910 to Mr. Jabes. The matter was then set for a formal hearing, which the hearing committee conducted in October 2013. Respondent failed to appear at the hearing and was not represented.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee made the following factual findings:

Respondent failed to file the succession he was handling for Mr. Jabes despite Mr. Jabes' repeated requests to do so. Respondent assured Mr. Jabes that he would file the succession but did not do so. Thus, respondent violated Rule 1.3 of the Rules of Professional Conduct.

Respondent failed to communicate with Mr. Jabes on several occasions. Mr. Jabes testified that he tried to reach respondent via e-mail and telephone but received no response. In his answer to the formal charges, respondent admitted he was non-responsive to Mr. Jabes. Thus, respondent violated Rule 1.4 of the Rules of Professional Conduct.

Mr. Jabes testified that he paid respondent \$910 in advance for the filing of the succession, yet respondent did not file the succession. Respondent informed Mr. Jabes that he would complete the succession for half the fee and refund the other half. In his answer to the formal charges, respondent indicated he would refund the entire fee. Mr. Jabes testified that he never received a refund from respondent. Respondent failed to return the fee even though it was not earned. Thus, respondent violated Rule 1.5(f)(5) of the Rules of Professional Conduct.

Respondent failed to cooperate with the ODC in its investigation of this matter. Respondent also failed to participate in telephone conference calls and failed to appear at the formal hearing in this matter. Thus, respondent violated Rule 8.1(c) of the Rules of Professional Conduct.

Respondent also violated Rule 8.4(a) of the Rules of Professional Conduct, which prohibits attorneys from violating or attempting to violate the Rules of Professional Conduct.

The committee then determined that respondent knowingly violated duties owed to his client and the legal profession. His conduct caused actual and potential harm in that he has delayed the conclusion of the succession and has deprived Mr. Jabes of his funds. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is suspension.

In aggravation, the committee found a dishonest or selfish motive, substantial experience in the practice of law (admitted 1999), and indifference to making restitution. In mitigation, the committee found the absence of a prior disciplinary record. The committee also noted that respondent, in his answer to the formal charges, reported having gone through a difficult divorce and the loss of his law practice. He further reported suffering from depression and seeking treatment. The committee acknowledged that these allegations may serve to mitigate the sanction; however, respondent never submitted any supporting documentation.

Under these circumstances, the committee recommended that respondent be suspended from the practice of law for one year. The committee further recommended that, prior to his reinstatement, respondent be required to make \$910 in restitution to Mr. Jabes and attend the Louisiana State Bar Association's ("LSBA") Ethics School.

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

In January 2012, Shannon Scott hired respondent on a contingency fee basis to represent her in a suit for specific performance. On October 25, 2013, Ms. Scott wrote to respondent to terminate his services and request the return of her file. Despite agreeing to return Ms. Scott's file, respondent failed to do so.

On October 25, 2013, Ms. Scott retained attorney Alex Ducros to represent her in the matter. Beginning in November 2013, Mr. Ducros initiated a series of text messages with respondent in an effort to obtain Ms. Scott's file. Despite respondent's multiple promises to return the file, he failed to do so.

In December 2013, Ms. Scott filed a disciplinary complaint against respondent. Despite receiving notice of the complaint, respondent failed to file a response.

The ODC alleged respondent's misconduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.16(d) (obligations upon termination of the representation), 8.1(c), 8.4(a), and 8.4(c).

As previously noted, respondent failed to answer the formal charges filed against him in 14-DB-007. 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 found that respondent (1) failed to return Ms. Scott's file following termination of his representation; (2) repeatedly falsely represented that he would return the file; and (3) failed to cooperate with the ODC's investigation by failing

to respond to the disciplinary complaint. Based on these factual findings, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee then determined that respondent knowingly violated duties owed to his client and the legal profession. His conduct resulted in potential harm to his client. Citing the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the appropriate sanction is a suspension from the practice of law for six months. Considering the aggravating factor of respondent's bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, the committee determined that a deferral of the suspension is not appropriate.

In light of the above, the committee recommended that respondent be suspended from the practice of law for six months.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. However, prior to oral argument before a panel of the disciplinary board, respondent submitted a memorandum in which he admitted to his misconduct. He also indicated that, following an acrimonious divorce three years ago, he became severely depressed and abandoned his obligations to his clients. Currently, he is taking antidepressant medication and is enrolled in a theology program at Biola University. Finally, he expressed his remorse and indicated a desire to "make things right." Respondent also appeared at and participated in oral argument before the board panel.

Disciplinary Board Recommendation

13-DB-030 and 14-DB-007

After reviewing the consolidated matters, the disciplinary board determined that both hearing committees' factual findings are supported by the record and are

not manifestly erroneous. Based on these facts, the board determined that both committees correctly applied the Rules of Professional Conduct. Additionally, the board found that respondent violated Rule 8.4(c) as alleged in 13-DB-030 by repeatedly misrepresenting to Mr. Jabes that he was working on the succession when he, in fact, was not.

The board then determined that respondent knowingly violated duties owed to his clients, the legal profession, and the legal system. His conduct caused harm to his clients. The board also determined that the baseline sanction is suspension based on the ABA's *Standards for Imposing Lawyer Sanctions*.

In aggravation, the board found a dishonest or selfish motive, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, substantial experience in the practice of law, and indifference to making restitution. Despite respondent's claims of personal or emotional problems (divorce, loss of his law practice, and depression), he failed to submit supporting documentation. Therefore, the only mitigating factor the board recognized was the absence of a prior disciplinary record.

After also considering this court's prior jurisprudence addressing similar misconduct, a majority of the board recommended that respondent be suspended from the practice of law for eighteen months. Two board members dissented, indicating they would have recommended lengthier periods of suspension. The board further recommended that respondent attend the LSBA's Ethics School and make full and complete restitution to Mr. Jabes.

Neither respondent nor the ODC filed an objection to the disciplinary 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. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

Respondent neglected a legal matter, failed to adequately communicate with a client, made misleading statements to clients, failed to refund an unearned fee, failed to return a client's file upon request, and failed to cooperate with the ODC in two investigations. This conduct amounts to a violation of the Rules of Professional Conduct as charged in both sets of 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).

The record also supports a finding that respondent knowingly violated duties owed to his clients, the legal profession, and the legal system, causing actual harm. The baseline sanction for this type of misconduct is suspension.

Aggravating factors include a dishonest or selfish motive, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law. Mitigating factors include the absence of a prior disciplinary record and remorse.

Turning to the issue of an appropriate sanction, we find guidance from *In re: Gray*, 14-2085 (La. 3/17/15), ___ So. 3d ___, wherein an attorney neglected the legal matters of four clients, failed to communicate with those clients, failed to return his clients' files upon request, failed to refund unearned fees to two clients, and failed to cooperate with the ODC in its investigations. We determined the attorney acted knowingly, and numerous aggravating factors, including a prior disciplinary record, were present. For this misconduct, we suspended the attorney from the practice of law for two years and ordered him to refund any unearned fees to his clients as determined by an arbitrator. In the instant matter, respondent's misconduct is similar to the misconduct in *Gray* but does not involve as many clients. Respondent also does not have a prior disciplinary record. However, unlike the attorney in *Gray*, respondent engaged in dishonest conduct by providing misleading information to his clients. Under these circumstances, an eighteen-month suspension, as recommended by the board, is reasonable.

Accordingly, we will adopt the board's recommendation and suspend respondent from the practice of law for eighteen months. We will further order respondent to attend the LSBA's Ethics School and to make full and complete restitution to Mr. Jabes.

DECREE

Upon review of the findings and recommendations of the hearing committees and disciplinary board, and considering the record, it is ordered that

Scott Robert Hymel, Louisiana Bar Roll number 26344, be and he hereby is suspended from the practice of law for eighteen months. It is further ordered that respondent shall attend the Louisiana State Bar Association's Ethics School and make full restitution with interest to Jerome Jabes. 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.