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SUPREME COURT OF LOUISIANA

NO. 2019-B-1747

IN RE: ROY JOSEPH RICHARD, JR.

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Roy Joseph Richard, Jr., an attorney licensed to practice law in Louisiana but currently on interim suspension.

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 2004. In 2013, he received an admonition for failing to cooperate with the ODC in four investigations. In 2016, we suspended him from the practice of law for one year and one day, with all but sixty days deferred, followed by one year of unsupervised probation, after he allowed his client trust account to become overdrawn on one occasion in October 2013 and failed to cooperate with the ODC’s investigation of the overdraft. *In re: Richard*, 16-0076 (La. 4/4/16), 188 So. 3d 1035.

Respondent was reinstated from his suspension effective June 27, 2016. On June 1, 2017, he was declared ineligible to practice law for failure to comply with the mandatory continuing legal education requirements. Soon thereafter, he was also declared ineligible for failure to pay his bar dues and the disciplinary assessment. Respondent has never rectified his ineligibility.

In May 2018, we considered an emergency petition filed by the ODC, requesting respondent's immediate interim suspension from the practice of law because he posed a threat of harm to the public. The ODC's petition was based on the same allegations of misconduct that are at issue in the instant matter. We granted the ODC's request and placed respondent on interim suspension on May 25, 2018. *In re: Richard*, 18-0803 (La. 5/25/18), 243 So. 3d 555.

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

FORMAL CHARGES

17-DB-049

In November 2015, the ODC received a disciplinary complaint from James Jones, who had retained respondent in 2012 to represent him at a hearing on his pro se application for post-conviction relief. A third party, Rose Disotell, paid respondent a \$5,000 fixed fee on Mr. Jones' behalf.

On March 27, 2013, respondent enrolled and appeared in court with Mr. Jones. The hearing on Mr. Jones' application for post-conviction relief was continued. According to respondent, he met with the assistant district attorney and with the attorney who represented Mr. Jones at his trial. However, he could find no evidence favorable to Mr. Jones. As such, he moved to have the hearing continued without date, and his motion was granted April 9, 2014. Nothing further occurred in the case.

In July 2015, Mr. Jones wrote to respondent requesting the status of his legal matter. Respondent did not respond to Mr. Jones' letter. However, after receiving notice of Mr. Jones' disciplinary complaint in November 2015 and providing a sworn statement to the ODC in February 2017, respondent wrote to Mr. Jones to schedule a meeting with him on March 16, 2017. Respondent did not appear for the

meeting. He subsequently informed the ODC that he did not attend the meeting because he did not receive a confirmation of the scheduled appointment from the prison where Mr. Jones was incarcerated. He stated that he would follow up with the ODC regarding a new court date for the hearing on Mr. Jones' application for post-conviction relief. The ODC heard nothing further from respondent, and the trial court's docket summary does not reflect the setting of a new hearing date. In a letter dated August 9, 2017, Mr. Jones informed the ODC that respondent had not contacted him.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (a lawyer shall 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), 1.16(d) (obligations upon termination of the representation), 3.2 (failure to make reasonable efforts to expedite litigation), and 8.4(a) (violation of the Rules of Professional Conduct).

17-DB-072

In November 2016, Larry Guillory hired respondent to represent him in criminal matters pending in Acadia Parish. The contract of representation provided for a flat fee of "\$4,000 at present, \$5,000 should matters proceed to be more complex, but only under new contract." Mr. Guillory's aunt, Caffie Guillory, paid respondent \$1,000 on November 17, 2016, and respondent agreed to accept the remaining \$3,000 in monthly installments.

On November 22, 2016, respondent filed a motion to enroll and a motion for a continuance of the November 28, 2016 trial date. Both motions were granted, and the trial was reset for July 31, 2017.

On January 27, 2017, Ms. Guillory made a \$300 payment toward her nephew's legal fees and received a receipt from respondent. When Ms. Guillory

attempted to make a second \$300 payment, she could not locate respondent. Text messages, telephone calls, e-mails, and a March 25, 2017 letter went unanswered. Ms. Guillory eventually obtained a different telephone number for respondent from a third party. Although respondent responded to a few text messages that Ms. Guillory sent to the new number, the responses were in the nature of assurances that he would contact Ms. Guillory or her nephew, which he did not do. Later texts to respondent went unanswered.

When Mr. Guillory appeared in court for trial on July 31, 2017, respondent was not present. The matter was reset for a status hearing on September 11, 2017. On that date, respondent again failed to appear, and Judge Kristian Earles advised Mr. Guillory that respondent was ineligible to practice law.

On September 12, 2017, Judge Earles filed a disciplinary complaint against respondent with the ODC. In October 2017, the ODC received a disciplinary complaint from Ms. Guillory.¹ Respondent failed to cooperate with the ODC in its investigation of the complaints.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(b)(c) (a lawyer is required to comply with annual professional obligations), 1.3, 1.4, 1.5(f)(5), 1.16(d), 3.2, 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a).

18-DB-026

¹ Ms. Guillory also filed a claim with and received \$1,300 from the Louisiana State Bar Association's Client Assistance Fund.

Hilton Wilson hired respondent to represent him in a criminal matter pending in Evangeline Parish. Respondent was paid \$11,000 for the representation, which included an appeal, if necessary.

Mr. Wilson was convicted and sentenced in December 2016. A motion for new trial filed by respondent was set for hearing on April 3, 2017, but respondent failed to appear, despite being served with notice of the hearing. The matter was reset for May 25, 2017, and once again, respondent failed to appear despite notice.

Respondent became ineligible to practice law on June 1, 2017; however, he was present in court on June 22, 2017. He received a copy of the motion for new trial, and the motion was set for July 3, 2017. On that date, respondent again failed to appear. The matter proceeded with an indigent defender appointed solely to assist Mr. Wilson at the hearing on the motion. The motion for new trial was dismissed. The court record contains no further pleadings filed by respondent on Mr. Wilson's behalf and no further court appearances by respondent on Mr. Wilson's behalf.

According to Mr. Wilson, he last spoke with respondent on the day of his sentencing. Since then, he has been unable to contact respondent in order to learn the status of his appeal, and he cannot locate respondent to obtain his file. Respondent also failed to return numerous telephone calls from Mr. Wilson's mother on her son's behalf.

In December 2017, the ODC received a disciplinary complaint from Mr. Wilson. Respondent failed to cooperate with the ODC in its investigation of the complaint.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(b)(c), 1.3, 1.4, 1.5(a) (charging an unreasonable fee), 1.5(f)(5), 1.16(d), 8.1(b), 8.1(c), and 8.4(a).

Kimberly Gartman hired respondent in September 2016 to represent her in two criminal matters, one in Allen Parish and the other in Jefferson Davis Parish. The parties signed a fee agreement calling for a \$5,000 flat fee in each matter, with Ms. Gartman to pay \$1,000 down on each matter and monthly payments of \$300. On September 14, 2016, Ms. Gartman paid respondent \$2,000. Thereafter, Ms. Gartman made monthly payments to respondent in accordance with the agreement. Although she was not provided with receipts, Ms. Gartman estimated the total payments made to respondent to be in excess of \$7,000.

No criminal charges have yet been filed against Ms. Gartman in Jefferson Davis Parish. However, a bill of information was filed against Ms. Gartman in Allen Parish on January 11, 2017. The Allen Parish court record reflects that respondent appeared on Ms. Gartman's behalf on February 1, 2017, making an oral motion to enroll. Respondent appeared again with Ms. Gartman on August 7, 2017 and October 10, 2017. On October 10, 2017, a pre-trial conference date was set for January 18, 2018 and a trial date was set for February 5, 2018. According to Ms. Gartman, October 10, 2017 was the last time she spoke with respondent.

On January 18, 2018, Ms. Gartman appeared in court for purposes of the pre-trial conference. Respondent was not present, and Ms. Gartman advised the Allen Parish District Attorney's Office that she had been unable to contact respondent. On February 5, 2018, Ms. Gartman appeared in court alone for trial, and the matter was continued until March 20, 2018. Unable to locate respondent, Ms. Gartman hired new counsel.

Respondent did not file a motion to withdraw as Ms. Gartman's counsel and has not refunded any of the fee paid. Furthermore, when respondent appeared in court with Ms. Gartman on August 7, 2017 and October 10, 2017, he was ineligible to practice law.

In March 2018, the ODC received a disciplinary complaint from Ms. Gartman.² Respondent failed to cooperate with the ODC in its investigation of the complaint.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(b)(c), 1.3, 1.4, 1.5(a), 1.5(f)(5), 1.16(d), 5.5(a) (engaging in the unauthorized practice of law), 8.1(b), 8.1(c), 8.4(a), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

DISCIPLINARY PROCEEDINGS

In September 2017, the ODC filed the formal charges in 17-DB-049. In December 2017, the ODC filed the formal charges in 17-DB-072. In March 2018, the ODC filed the formal charges in 18-DB-026. In May 2018, the ODC filed the formal charges in 18-DB-042. Respondent failed to answer all four sets of 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). The first matter was considered by Hearing Committee No. 22 while the other three matters were consolidated for consideration by Hearing Committee No. 05. No formal hearings were held, but the parties were given an opportunity to file with the hearing committees written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for either hearing committee's consideration.

² Ms. Gartman also filed a claim with and received \$3,800 from the Client Assistance Fund.

Hearing Committee Reports

17-DB-049

After considering the ODC's deemed admitted submission, the hearing committee acknowledged that the factual allegations set forth in the formal charges were deemed admitted and proven. Additionally, the committee found that respondent acknowledged it was reasonable for Mr. Jones to expect respondent's investigation to be completed in the three years between the 2012 fee payment and the filing of Mr. Jones' disciplinary complaint in 2015. The committee concluded that, in all respects, respondent abandoned his representation of Mr. Jones. Based on these facts, the committee determined respondent violated the Rules of Professional Conduct as charged.

The committee then determined that respondent knowingly, if not intentionally, violated a duty owed to his client. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found 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, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution. The committee found no mitigating factors present.

After considering respondent's conduct in light of this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for thirty months, with six months deferred, followed by one year of supervised probation with the condition that respondent make restitution.

The ODC filed an objection to the hearing committee's report. Specifically, the ODC reserved the right to argue for harsher discipline upon the consolidation of 17-DB-049 with the other three matters before consideration by the disciplinary board.

17-DB-072, 18-DB-026, & 18-DB-042

After considering the ODC's deemed admitted submission in these consolidated matters, the hearing committee acknowledged that the factual allegations set forth in each of the three sets of formal charges were deemed admitted and proven. Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as charged by the ODC in each set of formal charges.

The committee then determined that respondent intentionally violated duties owed to his clients, causing actual harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment. In aggravation, the committee found the following: bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency and indifference to making restitution.

In the light of the above, the committee recommended that respondent be disbarred.

The ODC filed an objection to the hearing committee's report. Specifically, the ODC reserved the right to argue for permanent disbarment upon the consolidation of these three matters with 17-DB-049 before consideration by the disciplinary board.

Disciplinary Board Recommendation

17-DB-049, 17-DB-072, 18-DB-026, & 18-DB-042

After reviewing these consolidated matters, the disciplinary board noted that the factual allegations in each set of formal charges were deemed admitted and proven. The board determined that the record supports the deemed admitted facts as well as the factual findings of each hearing committee. Based on these facts, the board agreed with the committees that respondent violated the Rules of Professional Conduct as charged, with one exception. With respect to Rule 1.5(a), the board found that the flat fees respondent charged in 18-DB-026 and 18-DB-042 do not appear to be unreasonable and no evidence was presented to prove they were unreasonable in violation of Rule 1.5(a).

The board then determined that respondent knowingly and intentionally violated duties owed to his clients and the legal profession, causing actual harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment.

In aggravation, the board found the following: 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, vulnerability of the victims, substantial experience in the practice of law, and indifference to making restitution. The board found that the record supports no mitigating factors.

After considering respondent's conduct in light of the permanent disbarment guidelines set forth in Supreme Court Rule XIX, Appendix D, as well as in light of the court's prior jurisprudence addressing similar misconduct, the board recommended that respondent be permanently disbarred. The board further recommended that respondent be ordered to refund all unearned fees.

Although neither respondent nor the ODC filed an objection to the board's recommendation, on January 24, 2020, we ordered briefing addressing the issue of an appropriate sanction. The ODC filed a brief in response to the court's order; respondent did not file a brief.

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 records of these four deemed admitted matters support a finding that respondent neglected legal matters, failed to communicate with clients, failed to refund unearned fees, practiced law while ineligible to do so, and failed to cooperate with the ODC in its investigations. Based on these facts, respondent has violated the Rules of Professional Conduct as found by the disciplinary board.

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 system, and the legal profession. His conduct caused actual harm in the form of delay in legal proceedings and loss of fees paid by or on behalf of his clients. The baseline sanction for respondent's misconduct is disbarment.

The record supports the aggravating factors found by the disciplinary board. No mitigating factors are apparent from the record.

Turning to the issue of an appropriate sanction, we agree with the board that permanent disbarment is warranted. Guideline 1 of the permanent disbarment guidelines set forth in Supreme Court Rule XIX, Appendix D, indicates that permanent disbarment may be warranted for "[r]epeated or multiple instances of intentional conversion of client funds with substantial harm." Respondent accepted fees totaling \$13,300 to represent three clients in criminal matters, but there is no evidence respondent did any significant work for these clients and he has not returned any of the fees. Further, he has not returned any unearned portion of the \$11,000 fee he was paid to represent a fourth client, despite abandoning the client's case after filing a motion for new trial. Therefore, Guideline 1 is applicable.

Additionally, we have made it clear that the permanent disbarment guidelines are illustrative and are not intended to bind our decision-making process. Supreme

Court Rule XIX, Appendix D; *In re: Richard*, 14-1684 (La. 10/3/14), 148 So. 3d 923, 926; *In re: Bark*, 11-1737 (La. 10/21/11), 72 So. 3d 853, 860. In addition to the conversion of unearned fees by respondent which falls under Guideline 1, we find other circumstances exist here which would support permanent disbarment although they do not fall squarely under any of the Guidelines. These additional circumstances include respondent's prior disciplinary history, his apparent abandonment of his clients, his prolonged ineligibility for failure to comply with administrative professional obligations, his repeated failure to respond to requests for information or participate in disciplinary investigations (eight matters from 2012 to 2018), his failure to engage at all in these consolidated proceedings, and the presence of numerous other aggravating factors and complete absence of any mitigating factors. Respondent's consistent pattern of misconduct, including his continuing failure to address the obligations he owes as a professional, demonstrates a clear lack of moral fitness to practice law.

Based on this reasoning, we will adopt the board's recommendation and permanently disbar respondent. We will further order respondent to make restitution of all unearned fees to his clients and/or the Client Assistance Fund, as appropriate.

DECREE

Upon review of the findings and recommendations of the hearing committees and disciplinary board, and considering the record and the brief filed by the ODC, it is ordered that Roy Joseph Richard, Jr., Louisiana Bar Roll number 28981, 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 make full restitution of all unearned fees,

with legal interest, to his clients and/or repay to the Louisiana State Bar Association's Client Assistance Fund any amounts paid to claimants on his behalf. 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.