

The Supreme Court of the State of Louisiana

IN RE: BRAD THOMAS ANDRUS

No. 2021-B-01508

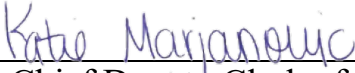
IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

January 19, 2022

Disbarment imposed. See per curiam.

JDH
JLW
SJC
JTG
WJC
JBM
PDG

Crichton, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
January 19, 2022


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2021-B-1508

IN RE: BRAD THOMAS ANDRUS

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

By way of background, Safeco Insurance Company issued a homeowner’s policy to James E. Harmon for his home in Branch, Louisiana. The policy was in effect on May 3, 2014, when Mr. Harmon discovered that his home had sustained extensive water and mold damage as the result of a broken water line. Mr. Harmon promptly contacted Safeco to report the damage and to make a claim on his policy. On May 14, 2014, Safeco issued a reservation of rights letter to Mr. Harmon.

Thereafter, Mr. Harmon retained respondent to handle the matter. On May 18, 2014, Mr. Harmon gave respondent a check in the amount of \$4,500 as an advance deposit for attorney’s fees. On May 26, 2014, Mr. Harmon signed a written fee agreement in which he agreed to pay respondent \$180 per hour for his legal services. On the same date, respondent sent Safeco a letter of representation. On July 27, 2014, Mr. Harmon paid respondent an additional \$5,025 in attorney’s fees.²

¹ Respondent has been ineligible to practice law since July 1, 2020 for failure to comply with his professional obligations.

² Respondent submitted into evidence an invoice for this amount which he testified he had located in a box at his father’s house just before the hearing in this matter. According to the invoice,

By letter dated June 10, 2014, Safeco notified respondent that the damage to Mr. Harmon's home would be covered by his homeowner's policy. After multiple requests to respondent for payment instructions went unanswered, Safeco issued a check on October 20, 2014 payable to Mr. Harmon in the amount of \$36,974.95. On January 21, 2015, Safeco issued a second check payable to Mr. Harmon in the amount of \$1,000. Both checks were mailed to respondent's law office. In February 2015, Mr. Harmon endorsed the checks and respondent deposited them into his client trust account. Thereafter, respondent distributed the funds to pay for repairs to Mr. Harmon's home; however, the balance of his trust account was regularly below the amount he was holding on Mr. Harmon's behalf.

By letter dated December 2, 2016, Mr. Harmon terminated respondent's representation and requested the return of his file. Respondent did not comply with Mr. Harmon's request. In March 2017, Mr. Harmon retained a new attorney who sent two letters to respondent requesting the return of the file, to no avail.

In August 2017, Mr. Harmon filed a complaint against respondent with the ODC, alleging that he did not personally receive any of the Safeco insurance proceeds, nor did he receive an accounting of the funds from respondent. Mr. Harmon acknowledged that some repair work had been done on his home but he maintained that the work was not finished and that the house was not in a livable condition.

In his response to the complaint, dated October 2, 2017, respondent indicated that the checks issued by Safeco were deposited into his client trust account on February 23, 2015. The deposit totaled \$37,974.95. Respondent represented that

respondent worked 63.5 hours on Mr. Harmon's insurance claim between May 26, 2014 and July 25, 2014, including 20.5 hours on one day. He billed this time at \$150 per hour (notwithstanding the hourly fee of \$180 contained in his fee agreement with Mr. Harmon) for a total fee of \$9,525. Less the initial retainer of \$4,500, the total amount due on the invoice was \$5,025.

Mr. Harmon owed him \$8,280 in attorney's fees,³ which Mr. Harmon specifically requested respondent pay himself out of the insurance proceeds. Respondent further indicated that Mr. Harmon did not want to receive a check for the balance due to him of \$29,694.95, but instead, Mr. Harmon requested that respondent maintain these funds in his trust account and disburse them in cash to pay for the restoration of the house. Respondent agreed to this request and represented that he subsequently made cash payments totaling \$25,144.09 to a carpenter, Jim Meche, for labor and materials in connection with the work done on Mr. Harmon's home. Respondent also stated that he paid \$7,882 in cash to Morgan Custom Cabinets to build and install cabinets in Mr. Harmon's kitchen.⁴ According to respondent, the work on the house was "99.99% complete" and would be finished "within two weeks of the date of this letter."

Attached to the response were copies of thirteen receipts for cash payments respondent allegedly made to Mr. Meche.⁵ Each of the cash receipts was purportedly

³ Respondent testified that despite a diligent search, he is unable to locate an invoice for this fee.

⁴ The alleged payments by respondent to Mr. Meche and Morgan Custom Cabinets exceed the balance that was owed to Mr. Harmon (\$29,694.95) by approximately \$3,300. Respondent stated that he paid this overage out of his own pocket.

⁵ These receipts reflect the following cash payments by respondent to Mr. Meche:

March 2, 2015	\$4,860
March 11, 2015	\$2,700
March 15, 2015	\$2,340
March 23, 2015	\$1,800
March 30, 2015	\$4,140
April 6, 2015	\$1,980
September 4, 2015	\$2,074.09
December 11, 2015	\$900
July 7, 2016	\$950
September 9, 2016	\$900
September 23, 2016	\$900
November 18, 2016	\$750
December 2, 2016	\$850

The six cash payments allegedly made in March and April 2015, which total \$17,820, correspond to checks drawn on respondent's client trust account and marked as payment of attorney's fees. Respondent claimed he marked the checks in this fashion at the request of Mr. Harmon. There are

signed by Mr. Meche. Respondent also included copies of invoices allegedly prepared by Morgan Custom Cabinets which reflected a deposit made on June 19, 2017 and payment in full made on August 8, 2017. Both Mr. Meche and Anthony Morgan, the owner of Morgan Custom Cabinets, subsequently indicated that the documentation submitted by respondent was fabricated. Specifically, Mr. Meche informed the ODC that the signatures on the cash receipts are not his signatures.⁶ Mr. Morgan informed the ODC that the cabinet invoices are not his company's invoices, and that the payments received from respondent were not made until September 20, 2017 and April 9, 2018.

The ODC also alleges that respondent engaged in dishonest conduct relating to the submission of his response to Mr. Harmon's disciplinary complaint. Following the filing of the complaint, the ODC granted respondent two extensions of time to respond, such that his response was due on September 29, 2017. On that date, respondent appeared at the ODC's offices to hand-deliver a letter requesting a third extension of time. According to respondent, he had spent "many, many hours" preparing a response to the complaint, which was stored on his laptop computer, but the computer had been stolen when his truck was burglarized sometime the evening before or early that morning. Respondent provided a copy of a handwritten "Voluntary Statement" to the Church Point Police Department ("CPPD") in support of his representation that his computer had been stolen in a vehicle burglary. The ODC granted respondent's request for a third extension of time, and subsequently received his response to the complaint on October 23, 2017.

no corresponding withdrawals from respondent's trust account for the remaining cash payments he claims to have made to Mr. Meche, totaling \$7,324.09; rather, respondent stated that he made these payments from his personal funds.

⁶ Mr. Meche subsequently provided an affidavit to respondent's counsel in which he attested that the signatures on the receipts are genuine and that he did receive the cash from respondent. By way of explanation for his previous statement that he did not sign the receipts, Mr. Meche attested that he was concerned he "was being questioned by an Internal Revenue Service agent and I did not wish to admit any tax fraud or evasion."

Thereafter, the ODC contacted the CPPD in an attempt to verify the information provided by respondent concerning the alleged vehicle burglary. CPPD Captain Richard McBride advised that his agency had no record of receiving a complaint of a vehicle burglary on September 28 or 29, 2017.⁷ Captain McBride also noted several irregularities in the “Voluntary Statement” submitted by respondent, including the absence of a complaint number or a description of the vehicle in question.

Finally, the ODC alleges that respondent engaged in dishonest conduct in connection with the service of a subpoena upon him for a sworn statement. On March 20, 2018, the ODC’s investigator, Robert Harrison, traveled to respondent’s law office in Lafayette to serve him with the subpoena. Respondent’s office is located in a building that he shares with his identical twin brother, Jade Andrus, who is also an attorney. Upon his arrival, Investigator Harrison encountered respondent in the parking lot. After introducing himself to respondent and giving him a business card, Investigator Harrison informed respondent he was there to serve him with a subpoena. In response, respondent stated that he was not Brad Andrus, but was Jade Andrus, Brad’s twin brother.

Following his conversation with “Jade,” Investigator Harrison went inside the building and asked to see respondent. The receptionist informed Investigator Harrison that respondent had just left the office moments before. Respondent was ultimately served with the subpoena on April 4, 2018, and he appeared for a sworn statement on April 10, 2018.

⁷ Initially, Captain McBride informed the ODC that the address where the burglary allegedly occurred was outside the city limits of Church Point, such that the Acadia Parish Sheriff’s Office, and not the CPPD, would have jurisdiction over the matter. He subsequently testified at the hearing that the address in question is within the Church Point city limits. Regardless of where the alleged burglary occurred in relation to the city limits of Church Point, neither the CPPD nor the Acadia Parish Sheriff’s Office has a record of a complaint by respondent that he was the victim of a vehicle burglary.

DISCIPLINARY PROCEEDINGS

In January 2019, the ODC filed formal charges against respondent, alleging that his 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(a) (a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses), 1.15(a) (a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property), 1.16(d) (upon written request by the client, a lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter), 8.1(a) (a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter), 8.1(b) (a lawyer shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in connection with a disciplinary matter, or 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), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Respondent answered the formal charges, denying he engaged in any misconduct. Accordingly, the matter proceeded to a formal hearing on the merits.

Following the hearing, handwriting exemplars were obtained from respondent, Mr. Harmon, and Mr. Meche. The ODC submitted these exemplars for analysis by a forensic document examiner, Robert Foley, who was accepted as an expert. On August 23, 2019, Mr. Foley provided the ODC with a report in which he

determined⁸ that (1) Mr. Harmon signed the fee agreement with respondent; (2) Mr. Harmon signed a document giving respondent permission to deposit the Safeco checks into his client trust account, to pay himself \$8,280 in attorney's fees, and to disburse the remaining funds in cash to a contractor to repair Mr. Harmon's home; (3) Mr. Meche signed a document setting forth his bid to repair Mr. Harmon's house; and (4) Mr. Meche did not sign any of the thirteen cash receipts. Mr. Foley found there were indications that (1) Mr. Harmon did not sign a document giving respondent authority to settle his homeowner's insurance claim against Safeco; and (2) Mr. Harmon did not sign a document accepting Mr. Meche's bid to repair the house and acknowledging that respondent would make payments to Mr. Meche in cash. Mr. Foley concluded that due to the nature of the handwriting exemplars submitted to him for comparison, he could express no opinion as to whether respondent wrote any of the writing in question.

By order of the chair dated August 28, 2019, the hearing committee granted the ODC's motion to file Mr. Foley's report into the record of this matter under seal.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee found that respondent overcharged Mr. Harmon for the work he performed in asserting the homeowner's insurance claim and mishandled his client trust account. In addition, the committee found that respondent attempted to avoid service of a subpoena, misrepresented himself to the ODC's investigator, and failed to produce essential documents to the ODC. The committee did not find respondent's hearing testimony to be credible, particularly with regard to his

⁸ "Determined" represents the highest degree of confidence expressed by document examiners in handwriting comparisons, and means the examiner is certain or has no doubt, based on evidence contained in the handwriting.

explanation for his computer being stolen. Based on these findings, the committee determined that respondent violated Rules 1.5(a), 1.15(a), 8.1(a), 8.1(b), 8.1(c), and 8.4(d) of the Rules of Professional Conduct. The committee also made a determination that respondent failed to provide Mr. Harmon with his file and with a full accounting of the insurance proceeds; however, the committee did not find a corresponding rule violation for this misconduct. The committee likewise did not mention any of the other rule violations alleged in the formal charges.

With regard to the allegations that respondent forged the signature of Mr. Harmon and/or Mr. Meche on certain documents at issue in this matter, the committee determined there was not clear and convincing evidence that the signatures were forged. Mr. Foley could not determine the authenticity of some of the signatures, but the testimony of Mr. Harmon and Mr. Meche regarding their signatures was contradictory and confusing. The evidence suggested that the invoices which were allegedly issued by Morgan Custom Cabinets were not authentic; however, there was also testimony that the cabinets had been installed in Mr. Morgan's home and only a few issues remained to be addressed to complete the repairs to the home. The committee did not find clear and convincing evidence that respondent forged the signatures of others or participated in the forging of documents by others.

The committee determined that respondent violated duties owed to his client, the public, and the legal system. He acted knowingly and intentionally. His misconduct caused harm in the form of a delay in the repair of Mr. Harmon's home and cast serious and legitimate doubt with Mr. Harmon as to how his settlement funds were spent. Respondent's lack of candor and failure to cooperate with the ODC in this matter harmed the profession. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the applicable baseline

sanction is suspension. The committee made no finding of aggravating or mitigating factors.

Under these circumstances, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee also recommended that respondent be assessed with the costs and expenses associated with this proceeding.

The ODC filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board determined that most of the hearing committee's factual findings are not manifestly erroneous. However, the board concluded the committee manifestly erred in its findings regarding the forgery allegations, and determined there is clear and convincing evidence that respondent fabricated the cabinet invoices and the cash receipts. In support of its determination, the board relied upon the following facts:

- The cabinet invoices submitted by respondent with his response to the disciplinary complaint are, on their face, different in form and substance from the billing documents which Mr. Morgan and his former employee, Mr. Carlisle, testified were standard for Morgan Custom Cabinets. Both Mr. Morgan and Mr. Carlisle testified that the documents submitted by respondent would not have been generated by Morgan Custom Cabinets.
- The records of Morgan Custom Cabinets and the testimony of Mr. Morgan and Mr. Carlisle evidence that respondent entered into an agreement for the cabinets and made a deposit of approximately one-half of the total cost on September 20, 2017, after Mr. Harmon filed his complaint with the ODC. Their testimony also indicates that the cabinets were constructed shortly thereafter, but respondent did not pay the balance due until months later. The

board found there is no basis to question the credibility of Mr. Morgan or Mr. Carlisle regarding their testimony.

- The cabinet invoices submitted by respondent reflect that he made final payment on the cabinets on August 8, 2017, four days before Mr. Harmon's complaint was received by the ODC. According to respondent, this payment was not made by him in person; instead, he claimed he sent a friend with \$4,382 in cash to pay the remaining balance on the cabinets, and thereafter, his friend gave him the invoice he provided to the ODC. The friend was reportedly deceased at the time of the hearing. The board noted that if respondent's story is believed, his friend stole the money and manufactured the invoice. However, in order to do so, the friend would have had to know the estimate number on the original cabinet invoice as well as the amount of the initial deposit made by respondent. Further, under respondent's version, the friend would have made the final payment to Morgan Custom Cabinets over one month before the company's billing records show respondent actually entered into the contract and made the initial deposit. The board concluded that respondent's story is not credible, and that he fabricated the cabinet invoices.
- The cash receipts respondent submitted with his response to the disciplinary complaint reflect that he made a series of cash payments to Mr. Meche totaling \$25,144.09 for his work on Mr. Harmon's house. Although Mr. Meche testified during the hearing that he signed the cash receipts, the board found this testimony to be questionable. Mr. Meche previously told Investigator Harrison and Mr. Harmon's friend, Peggy Thibodeaux, that he signed only the original bid document and did not sign the cash receipts. He made the

same attestations in a written statement dated January 29, 2018.⁹ The ODC subsequently presented the report of handwriting expert Mr. Foley, who determined that Mr. Meche signed the bid document but did not sign the cash receipts. Mr. Foley's conclusions comport with Mr. Meche's original statement that he did not sign the receipts.

- Considering Mr. Meche's inconsistent statements, the certain findings of Mr. Foley, and respondent's complete lack of credibility, the board found that respondent fabricated the cash receipts.

Based on these findings, the board determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges, with the exception of Rule 1.4. The board reasoned that although respondent's communications with Mr. Harmon were "not entirely consistent," the ODC did not present clear and convincing evidence that the communications were so deficient as to constitute a violation of Rule 1.4.

The board determined that respondent violated duties owed to his client and the legal profession. He acted knowingly and intentionally, causing harm. Mr. Harmon was overcharged for attorney's fees, the repairs to his home were delayed, and he did not know how his insurance proceeds were spent. Respondent initially took a portion of the proceeds as attorney's fees and did not maintain the balance owed to Mr. Harmon in his trust account, thereby converting funds. In the end, it appears that although repairs were delayed, Mr. Harmon's house was repaired and that most and possibly all of the insurance proceeds were eventually paid by respondent toward the repairs. However, it is unknown whether the same outcome would have occurred had Mr. Harmon not filed a complaint with the ODC. Respondent's mishandling of his trust account also created the potential for harm to

⁹ The board acknowledged that after making these verbal and written statements, Mr. Meche later provided an affidavit to respondent's counsel in which he stated that he did sign the receipts.

clients other than Mr. Harmon. Respondent's lack of candor and failure to cooperate with the ODC caused additional expenditures of resources and potential delay in the resolution of the investigation. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment.

The board found the following aggravating factors are supported by the record: a dishonest or selfish motive, multiple offenses, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and substantial experience in the practice of law (admitted 2000). The sole mitigating factor found by the board is the absence of a prior disciplinary record.

After considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be disbarred. The board further recommended respondent be ordered to participate in the Louisiana State Bar Association's ("LSBA") Fee Dispute Resolution Program and to pay any amounts awarded to Mr. Harmon. Finally, the board recommended that respondent be assessed with the costs and expenses associated with this proceeding.

Neither respondent nor the ODC filed an objection to the disciplinary board's 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.

The record before us supports a finding that respondent engaged in serious attorney misconduct. He neglected his client's legal matter, charged and collected an unreasonable fee, converted client funds held in his trust account, failed to return his client's file upon request, and engaged in deceptive and dishonest behavior in the course of this disciplinary proceeding. This misconduct amounts to a violation of 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 violated duties owed to his client, the public, the legal system, and the legal profession, causing actual harm. His conduct was both knowing and intentional. 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 board.

Turning to the issue of an appropriate sanction, we agree that respondent should be disbarred. While we do not minimize the seriousness of his misconduct as it relates to his client, Mr. Harmon, we suggest that respondent's numerous instances of deceptive behavior are the most disturbing aspect of this matter. From the incredible tale of a vehicle burglary offered as justification for failing to timely

respond to the disciplinary complaint, to his attempt to evade service of a subpoena by claiming to be his identical twin brother, and finally to submitting fabricated receipts and invoices to the ODC, respondent has violated the most fundamental duty of an officer of the court. The utter absence of candor respondent has demonstrated in these proceedings calls his good moral character into serious question and warrants disbarment.

Accordingly, we will adopt the disciplinary board's recommendation and impose disbarment. We will also order respondent to participate in fee dispute arbitration through the LSBA and require him to pay any amounts awarded to Mr. Harmon by the arbitrator.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Brad Thomas Andrus, Louisiana Bar Roll number 26785, 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 ordered that respondent shall participate in the Louisiana State Bar Association's Fee Dispute Resolution Program with respect to the fees paid by James Harmon, and pay any amounts awarded to Mr. Harmon by the arbitrator. 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.