

The Supreme Court of the State of Louisiana

**IN RE: SAMUEL ROBERT AUCOIN**

No. 2023-B-01513

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IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and  
Recommendations (Formal Charges);  
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**March 12, 2024**

Suspension imposed. See per curiam.

JDH

JLW

SJC

JTG

WJC

JBM

PDG

Supreme Court of Louisiana

March 12, 2024



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Chief Deputy Clerk of Court  
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-1513

IN RE: SAMUEL ROBERT AUCOIN

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Samuel Robert Aucoin, a suspended 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 1991.

In August 2020, we placed respondent on interim suspension for threat of harm to the public. *In re: Aucoin*, 20-0979 (La. 8/10/20), 300 So. 3d 838.<sup>1</sup> In December 2021, we suspended respondent from the practice of law for one year and one day for practicing law after failing to comply with his 2018 MCLE requirements and then, while attempting to cure his ineligibility, providing the Louisiana State Bar Association (“LSBA”) with an altered certificate of completion for a CLE course. Respondent also made false statements about the altered certificate to the ODC and at the formal hearing. *In re: Aucoin*, 21-0847 (La. 12/7/21), 328 So. 3d 409 (“*Aucoin I*”). Respondent did not seek reinstatement following his suspension; therefore, he remains suspended from the practice of law.

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<sup>1</sup> The petition for interim suspension was based in part on the complaints received in connection with Counts I and II herein.

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

## **UNDERLYING FACTS**

### *Count I*

Cory Jones retained respondent to represent him in a divorce and child custody matter. Respondent charged Mr. Jones \$1,800 for the representation. According to Mr. Jones, respondent failed to secure the divorce, never answered his phone or responded to text messages, and after two years, still had not performed the work that he was hired to complete.

In October 2019, Mr. Jones filed a complaint against respondent with the ODC. Respondent failed to respond to the complaint, necessitating the issuance of a subpoena compelling him to appear on July 29, 2020 for a sworn statement. Despite being personally served with the subpoena, respondent failed to appear for the sworn statement.

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(a) (failure to communicate with a client), 1.4(b) (a lawyer shall give a client sufficient information to participate intelligently in decisions concerning the objectives of the representation), 1.5(f)(5) (failure to refund an unearned fee), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a) (violation of the Rules of Professional Conduct) of the Rules of Professional Conduct.

### *Count II*

By letter dated January 9, 2020, Keith A. Stutes, the District Attorney for Lafayette Parish, informed the ODC that respondent had been charged with two misdemeanor counts of issuing worthless checks, in violation of La. R.S. 14:71. The

checks at issue were written by respondent on May 2, 2019 to Melancon Pharmacy in the amount of \$153.48 and on June 1, 2019 to Don's Specialty Meats in the amount of \$36.45. Attached to the letter were copies of a warrant, an affidavit addressing the alleged criminal activity, and the bill of information.

On June 22, 2020, the court issued a bench warrant after respondent failed to appear for a hearing. In August 2021, respondent appeared in court and requested an opportunity to make payment on the outstanding worthless checks. However, respondent left court, did not make any payments, and did not return to court. The court issued another bench warrant for his arrest. On August 26, 2021, respondent finally reimbursed the vendors for the worthless checks.

The ODC alleged that respondent's conduct violated Rules 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal), 8.4(a), 8.4(b) (commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

### *Count III*

Michael Comeaux hired respondent to represent him in a divorce proceeding, paying him \$800. Mr. Comeaux indicated he and respondent were present for a hearing in which the judge orally granted the divorce. Several months later, Mr. Comeaux contacted the clerk of court and learned the divorce was never finalized because a judgment had not been presented for signing. Mr. Comeaux indicated that he attempted to contact respondent by text message and phone, but respondent failed to respond. Mr. Comeaux advised that he needed to hire another attorney to complete the divorce.

In April 2021, Mr. Comeaux filed a complaint against respondent with the ODC. Respondent failed to respond to the complaint, necessitating the issuance of

a subpoena compelling him to appear for a sworn statement. During the statement, taken on August 12, 2021, respondent testified that he had no recollection of the representation and no client file. The ODC provided respondent with Mr. Comeaux's contact information and instructed him to contact Mr. Comeaux to clear up any confusion about the representation. However, respondent did not contact Mr. Comeaux as instructed.

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

### **DISCIPLINARY PROCEEDINGS**

On May 5, 2022, the ODC filed formal charges against respondent. Respondent filed an answer to the charges denying any misconduct. Respondent also filed a motion to dismiss, in which he essentially argued that the current formal charges are barred by res judicata since they could have been brought at the same time as the formal charges in *Aucoin I*, but were not. The committee denied the motion. The matter then proceeded to a formal hearing on the merits.<sup>2</sup>

#### *Formal Hearing*

The hearing committee conducted the hearing on October 11, 2022. The ODC introduced documentary evidence and called witnesses to testify before the committee, including Cory Jones (Count I), Assistant District Attorney Ronald Dauterive (Count II), and Michael Comeaux (Count III). Respondent did not introduce any documentary evidence, but he did testify on his own behalf and on cross-examination by the ODC.

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<sup>2</sup> Respondent also filed a motion to dismiss based on alleged improper service of process, and this second motion was also denied by the committee.

## *Hearing Committee Report*

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

Count I – Between January 2018 and April 2018, Mr. Jones and/or his mother sent respondent thirty-seven text messages, along with a request for a refund. During this period of time, several calls were made to respondent, but his voicemail was not available, and he never answered his phone. Respondent finally responded on April 22, 2018, and at that time, asked Mr. Jones for an email address. Respondent stated that he assumed the documents had been received.

In June 2018, Mr. Jones' mother advised respondent that Mr. Jones completed the documents. Four texts requesting a status update were then sent to respondent. In July 2018, respondent replied that he was in court and would call shortly, but he failed to do so. Additional texts were sent to respondent. When he finally replied, respondent stated that his phone went missing, and that prior to that time, he was in the hospital and had surgery. In his reply, respondent stated that he was ready to retrieve the documents. The chain of text messages infers that respondent received the documents in August 2018, and a text message from that time contains a video of Mr. Jones signing the documents.

In January 2019, Mr. Jones' mother sent multiple texts to respondent. In his response, respondent stated that his father had suffered a stroke and that both of his parents were in the hospital. Twenty-one unanswered texts from Mr. Jones' mother then followed. In September 2019 respondent replied, stating that he had presented the filing to the judge in person, which is why the clerk of court had no record of the filing. Mr. Jones returned the necessary documents to respondent. Mr. Jones later hired another attorney, who handled the matter in one week.

Respondent stated that he had Mr. Jones record the signing of the documents to serve as a notarial viewing of the signing. Respondent received a video of the

signing but testified that he never received the signed documents. Respondent also stated that he was paid \$1,500, half of which he owes to Mr. Jones. However,

[t]he Committee does not believe Aucoin. It finds Aucoin received \$1800 from Jones. It finds that Aucoin received the signed documents from Jones that Aucoin claimed he was waiting on. Aucoin's own texts support this conclusion. Aucoin represented to Jones he filed the returned documents and the Committee concludes this is not true. Had the documents been filed they should be able to be found with the clerk of court. The facts stand in stark contrast to Aucoin's testimony and letter of July 3, 2020 when he claims he was waiting for the return of the documents from Jones. Aucoin says his files were moved to a storage shed and that his cousin threw them out in 2020. [Internal footnote omitted.]

On November 14, 2019, the ODC mailed respondent notice of Mr. Jones' disciplinary complaint via certified mail, but the notice was unclaimed. After two additional notices were sent, respondent finally answered. Respondent was then served with a subpoena to appear for a sworn statement on July 29, 2020, but he failed to appear for the sworn statement. Respondent could not explain his failure to timely respond to the complaint and provided no explanation for failing to appear for his sworn statement.

Count II – Respondent was charged in Lafayette Parish with issuing two worthless checks. He subsequently failed to appear in court and two warrants were issued for his arrest. The criminal charges were dismissed on August 31, 2021, after respondent paid the worthless checks, which he admittedly issued. Had the district attorney chosen to pursue the charges, respondent would have been convicted of two violations of La. R.S. 14:71. Although respondent had notice of the checks when he was served with the criminal proceeding on February 11, 2020, he was aware of the problems with the checks prior to that time. The committee noted:

Lawyers should not be issuing worthless checks in the community. It reflects poorly on the lawyer and the profession. If a lawyer is made aware of the issuance of a worthless check this should be cured promptly. If a lawyer has criminal charges brought against him the lawyer

should give due respect to the Court and appear when ordered to appear. Aucoin failed on all acts.

Count III – Respondent agreed to represent Mr. Comeaux for the purpose of filing a divorce. Respondent prepared the divorce papers and there was an appearance in court in St. Landry Parish in January 2019, during which the divorce was orally granted. Mr. Comeaux still owed respondent \$50 for the representation and was told by respondent to return to the courthouse to pay this sum. After Mr. Comeaux did so, respondent gave Mr. Comeaux a paper which, according to Mr. Comeaux, showed that he was divorced as of January 14, 2019. However, Mr. Comeaux lost this paper and the court clerk advised Mr. Comeaux no judgment was signed. Because a signed judgment never made it to the court record in St. Landry Parish, there was no final judgment of divorce. Mr. Comeaux tried to contact respondent on multiple occasions about this issue, but he was not successful in reaching him or in obtaining a refund of the fee he paid. Respondent could offer no explanation. The committee noted:

Once again however Aucoin did not have a file to provide clear and convincing evidence of what occurred – as he should have. He agreed at the time of his statement in August 2021 to contact Comeaux and attempt to resolve the matter. Aucoin never contacted Comeaux as a result of this agreement. ...

Aucoin cannot explain what happened. His testimony is unclear and dodgy. The Committee concludes that the likely scenario is that the Judge signed a Judgment in open court and that Aucoin never took the necessary steps to have the formal judgment filed into the record. It is the responsibility of the lawyer to ascertain that the process was completed for his client. This should have been accomplished promptly.

Based on these findings, the committee determined that respondent violated the Rules of Professional Conduct as follows:

Count I – Respondent violated Rules 1.3 and 1.4(a). He violated Rule 1.5 by failing to issue a \$750 refund, which respondent admits is owed, and by filing to



place the amount of disputed fees into trust. He violated Rule 8.1(c) by failing to respond to the ODC's investigation, despite his prior experience with the disciplinary process. By violating these rules, he also violated Rule 8.4(a). The committee rejected the claim that respondent violated Rule 1.4(b).

Count II – Respondent violated Rule 3.4(c) by knowingly disobeying his responsibilities to the court in Lafayette Parish. He violated Rules 8.4(b) and 8.4(c) by committing a criminal act, which reflects adversely on his honesty and trustworthiness as a lawyer. By violating these rules, he also violated Rule 8.4(a).

Count III – Respondent violated Rules 1.3 and 1.4(a). He violated Rule 1.5 by failing to refund the \$800 fee, which was unearned, and by not placing the funds into trust. By violating these rules, he also violated Rule 8.4(a). The committee rejected the claim that respondent violated Rules 8.1(c) and 1.4(b).

The committee determined that with respect to Counts I and III, respondent knowingly violated duties owed to his clients and the legal profession, thereby causing actual injury to his clients, who had to retain other attorneys to process a simple divorce. In Count II, respondent intentionally violated duties owed to the public, the legal system, and the legal profession, causing the potential for harm. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the applicable baseline sanction is suspension.

The committee determined that the following aggravating factors are present: a pattern of misconduct, multiple offenses, bad faith obstruction of disciplinary proceeding by failing to comply with the rules of the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, indifference in making restitution, and illegal conduct. The committee determined that no mitigating factors are present, noting that while there was some fleeting indication of medical problems, it was wholly uncorroborated.

Turning to the issue of an appropriate sanction, the committee noted that the misconduct here occurred within the same time frame as the misconduct at issue in *Aucoin I*, and therefore, the discipline to be imposed should be determined as if both cases had been charged together.<sup>3</sup> After reviewing the prior jurisprudence of this court, the committee determined that had the misconduct in *Aucoin I* been considered along with the instant misconduct, the appropriate discipline would have been a three-year suspension.

Based on this reasoning, the committee recommended respondent be suspended from the practice of law for three years, to run concurrently with the suspension imposed in *Aucoin I*. The committee also recommended that respondent be ordered to pay restitution of \$1,800 to Mr. Jones and \$800 to Mr. Comeaux, and that he be assessed with all costs and expenses of this proceeding.

Respondent filed an objection to the hearing committee's report.

#### *Disciplinary Board Recommendation*

After review, the board determined the hearing committee's factual findings are not manifestly erroneous and adopted same, with one clarification relating to respondent's failure to respond to the complaint giving rise to Count III and the subsequent need to issue a subpoena to obtain his sworn statement.

In addition, the board determined the committee's conclusions regarding rule violations are correct, with two exceptions regarding Count III. First, the board found the committee erred in its determination that respondent violated Rule 1.5. The formal charges did not allege that respondent failed to return an unearned fee to Mr. Comeaux and did not mention a Rule 1.5 violation. Therefore, respondent did

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<sup>3</sup> In *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991), this court held that 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."

not have fair notice of any allegation of misconduct relating to an unearned fee in Count III.

Second, the board found the committee erred in its determination that respondent did not violate Rule 8.1(c). On April 12, 2021, respondent was served with a copy of Mr. Comeaux's complaint and a letter from the ODC stating that a response was due within fifteen days of receipt. He did not respond. Three months later, the ODC had to issue a subpoena for respondent to appear for a sworn statement. During the statement, respondent agreed to contact Mr. Comeaux to address the matter, but he failed to do so. By this conduct, he violated Rule 8.1(c).

The board determined respondent violated duties owed to his clients, the public, the legal system, and the legal profession. With respect to Counts I and III, his conduct was knowing. He failed to complete the legal work for which he was hired. He failed to file any pleadings on behalf of Mr. Jones and failed to have the final judgment signed or filed to perfect the judge's oral ruling on behalf Mr. Comeaux. His conduct caused significant delay in both proceedings, and his clients had to hire other counsel to complete their divorces. With respect to Count II, respondent's conduct was intentional. He wrote checks to vendors on a bank account previously closed, and he caused harm to the payees by depriving them of funds for more than two years. By failing to appear, he caused delay in the criminal proceedings and the use of extra court resources. His criminal and dishonest behavior reflects adversely on the legal profession, and his failure to cooperate with the ODC's investigations, which created the potential for delays and additional costs in investigation and enforcement, is damaging to the legal profession and the disciplinary system. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction ranges from suspension to disbarment.

The board adopted the aggravating factors found by the committee and found a dishonest or selfish motive to also be present. The board agreed that no mitigating factors are present. The board further agreed that no evidence was presented to corroborate any referenced medical problems or any effect of such problems on respondent's behavior.

Turning to the issue of an appropriate sanction, the board acknowledged the overlap of the misconduct in *Aucoin I* with the misconduct here, which extends beyond that in *Aucoin I*, and submits that if the court had considered the instant misconduct together with the misconduct in *Aucoin I*, a more severe sanction would have been imposed. The board then considered the court's jurisprudence for similar misconduct pursuant to the approach established in *Chatelain, supra*, and agreed that a three-year suspension for the total misconduct is appropriate.

Accordingly, the board recommended respondent's suspension in *Aucoin I* be extended such that his total suspension is for three years beginning on December 21, 2021, the effective date of the suspension in *Aucoin I*. The board also recommended respondent be ordered to pay \$1,800 in restitution to Mr. Jones. The board further recommended that respondent be assessed with the costs and expenses of 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 in this matter supports a finding that respondent neglected legal matters, failed to communicate with clients, failed to refund an unearned fee, knowingly disobeyed an obligation under the rules of a tribunal, engaged in criminal and dishonest conduct, and failed to cooperate with the ODC in its investigations. This conduct amounts to a violation of the Rules of Professional Conduct as found by the hearing committee and modified by the disciplinary board.

Disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *In re: Hingel*, 20-0992 (La. 11/10/20), 303 So. 3d 1029. 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. *In re: Smothers*, 20-0244 (La. 6/22/20), 297 So. 3d 743. The purpose of lawyer disciplinary proceedings is not so much to punish the attorney as it is to maintain appropriate standards of professional conduct in order to protect the public and the administration of justice. *Louisiana State Bar Ass'n v. Powell*, 439 So. 2d 415 (La. 1983).

The record further supports a finding that respondent violated duties owed to his clients, the public, the legal system, and the legal profession. He acted knowingly and intentionally, and his conduct caused actual harm. Therefore, the baseline sanction is suspension. The aggravating factors found by the board are supported by the record, and we agree that no mitigating factors are present.

We have held that when a second attorney disciplinary proceeding involves conduct that 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. *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991). We agree with the committee and the board that, based upon *Chatelain*, the misconduct in the instant matter should be considered together with the misconduct in *Aucoin I*.

In *Aucoin I*, respondent failed to comply with his 2018 MCLE requirements. In 2019, while attempting to cure his ineligibility, he provided the LSBA with an altered certificate of completion for a CLE course. Between June and August 2019, respondent engaged in the unauthorized practice of law. Respondent then provided false statements to the ODC and failed to cooperate with the ODC's investigation, which culminated in the filing of formal charges in November 2019. For this misconduct, the court suspended respondent from the practice of law for one year and one day.

With respect to the instant matter, the misconduct in Count I commenced in October 2017, when respondent was hired by Mr. Jones to obtain a divorce, which work was never performed or completed. The misconduct in Count II occurred in 2019, when respondent wrote checks on a closed account, and between 2020 and 2021, when he failed to comply with criminal court orders. The misconduct in Count III began in January 2019, when respondent failed to perfect the judge's oral ruling and obtain a final judgment of divorce. For the totality of misconduct in the instant matter, case law suggests that the appropriate sanction is in the range of a suspension from the practice of law for one year and one day to two years.<sup>4</sup>

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<sup>4</sup> In *In re: Parks*, 08-3006 (La. 4/24/09), 9 So. 3d 106, an attorney failed to cooperate with the ODC in its investigation of a complaint, and when she finally began to cooperate with the ODC, the attorney made numerous misrepresentations, while under oath and in written and verbal statements. For this misconduct, we imposed a one year and one day suspension. In *In re: Waltzer*, 04-1032 (La. 10/8/04), 883 So. 2d 973, we imposed a two-year suspension upon an attorney who neglected legal matters, failed to communicate with clients, failed to properly terminate representations, failed to cooperate with the ODC in its investigations, failed to appear in response to subpoenas personally served on her, and gave false and misleading information to the ODC. In both cases, the attorney's misconduct was found to be knowing and intentional.

Like the committee and the board, we agree that if the misconduct in *Aucoin I* and the instant matter had been considered together, we would have imposed a more severe sanction than that imposed in *Aucoin I*. After further considering the prior jurisprudence of the court, we further agree that a three-year suspension from the practice of law would be an appropriate sanction for the combined misconduct.

Accordingly, we will adopt the recommendation of the disciplinary board and extend respondent's suspension in *Aucoin I* such that his total suspension is for three years beginning on December 21, 2021, the effective date of the suspension in *Aucoin I*. We will further order respondent to pay \$1,800 in restitution to Mr. Jones.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Samuel Robert Aucoin, Louisiana Bar Roll number 20682, be and he hereby is suspended from the practice of law for a period of three years, which suspension shall run concurrently to the suspension imposed in *In re: Aucoin*, 21-0847 (La. 12/7/21), 328 So. 3d 409. It is further ordered that respondent shall pay restitution to Cory Jones in the amount of \$1,800 plus 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.