

The Supreme Court of the State of Louisiana

IN RE: AARON P. MOLLERE

No. 2024-B-00160

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

April 09, 2024

Disbarment imposed. See per curiam.

SJC

JLW

JDH

JTG

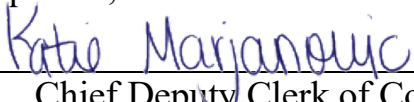
WJC

JBM

PDG

Supreme Court of Louisiana

April 09, 2024



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2024-B-0160

IN RE: AARON P. MOLLERE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Aaron P. Mollere, an attorney licensed to practice law in Louisiana¹ but currently on interim suspension. *In re: Mollere*, 21-1769 (La. 12/7/21), 328 So. 3d 409.

FORMAL CHARGES

Count I

On June 15, 2021, respondent was arrested and charged with possession of cocaine and possession of a firearm while in possession of a controlled dangerous substance. The facts underlying the arrest are as follows:

Based on the observed transaction and the suspicious behavior, in particular their extreme measures to avoid law enforcement, Detectives Lyvers and Foret conducted an investigatory stop of Renaudin and Mollere as they were walking through an open field towards his residence. ... Upon Detectives approaching Renaudin and Mollere, Detectives observed Mollere with his hand behind his back. Detectives ordered Mollere to show his hands, at which time he revealed a firearm. Mollere was ordered to drop the firearm, to which he complied. Detectives detained Mollere and Renaudin utilizing handcuffs, pending further investigation.

Detective Lyvers advised Mollere of his rights as per Miranda, which he agreed to waive and speak to Detective

¹ Respondent is also licensed to practice law in Texas.

Lyvers regarding the investigation. Mollere advised Detective Lyvers that he was Renaudin's attorney... Mollere also advised Detective Lyvers that he consumed crack cocaine throughout the day with Renaudin. Mollere also advised that prior to being stopped by Detectives, he and Renaudin just returned from purchasing crack cocaine in "New Orleans East."

On June 24, 2021, the ODC received a disciplinary complaint from respondent's mother, Janet Mollere, advising of the arrest. Mrs. Mollere also alleged that respondent "needs help, most likely mental & to get drug free." Respondent failed to respond to notice of the complaint.

However, on August 20, 2021, respondent did provide the ODC with a signed authorization to release his records from the Judges and Lawyers Assistance Program ("JLAP"). Respondent's JLAP records revealed that, on July 28, 2021, he entered Palmetto Addiction Recovery Center for inpatient treatment. On August 18, 2021, after only twenty-two days of treatment, respondent left Palmetto against medical advice. Before respondent stopped treatment, Palmetto diagnosed him with the following:

- Alcohol Use Disorder, Severe
- Cocaine Use Disorder, Severe
- Opioid Use Disorder, Severe
- Amphetamine Use Disorder, Severe
- Sedative hypnotic Use Disorder, Severe
- Generalized Anxiety
- Insomnia
- Hypertension
- Lumbar disc disease

Palmetto's recommendation was that respondent immediately complete a long-term inpatient treatment program and then sign a five-year JLAP recovery agreement.

Because respondent failed to respond to the complaint, the ODC issued a subpoena to obtain his sworn statement. During his November 17, 2021 sworn statement, respondent took responsibility for failing to cooperate with the ODC's

investigation and promised to provide a written response to the complaint. However, he never provided the ODC with said response.

Additionally, during his sworn statement, respondent admitted that he had used cocaine with a client prior to and on the day of his June 15, 2021 arrest and that the factual narrative contained in the arrest record was substantially accurate. Respondent also admitted that he converted between \$30,000 and \$40,000 of his parents' money to fuel his "continuing [drug] use."

Following his premature departure from Palmetto in August 2021, respondent did not sign a JLAP recovery agreement and has not been otherwise monitored by JLAP. Respondent admitted to having no contact with JLAP since July 2021, and he continues to use illegal drugs. His criminal matter stemming from his June 15, 2021 arrest is still pending.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.1(b) (knowing failure 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), and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

Count II

In May 2019, Kyle Johnson hired respondent to represent him in a criminal matter. On October 14, 2021, the ODC received a disciplinary complaint from Mr. Johnson. In the complaint, Mr. Johnson alleged that respondent

arrived two hours late to court on July 6, 2021 and failed to present oral argument on a motion to dismiss and/or quash bill of information that he previously had filed on Mr. Johnson's behalf, which motion was denied by the court; represented that he would take an appeal from that negative ruling but failed to do so; failed to attend two scheduled meetings with Mr. Johnson on July 9 and 12,

2021; failed to otherwise reasonably communicate with Mr. Johnson about his legal matter; failed to act with competence and reasonable diligence in representing Mr. Johnson; and failed to return unearned fees paid by Mr. Johnson.

Mr. Johnson also indicated that, due to respondent's failures, he terminated respondent's services and hired new counsel.

Respondent failed to respond to notice of the complaint, necessitating the issuance of a subpoena to obtain his sworn statement. During his November 17, 2021 sworn statement, respondent acknowledged his conduct during the July 6, 2021 hearing as Mr. Johnson had alleged but indicated that he was in "no shape" to present his argument that day. He also acknowledged missing the two scheduled meetings with Mr. Johnson, stating that he was tired and/or sleeping at the time of each meeting.

Additionally, during the sworn statement, respondent acknowledged his failure to cooperate with the ODC and promised to provide a written response to the complaint. He also promised to determine whether Mr. Johnson was due a refund. Following the sworn statement, he failed to do either. He did, however, provide the ODC with some of his trust account bank statements, which confirmed that he did not place any funds in the account that were reasonably disputed by Mr. Johnson as earned.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(a) (failure to provide competent representation to a client), 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), 1.16(d) (obligations upon termination of the representation), 3.2 (failure to make reasonable efforts to expedite litigation), 8.1(b), 8.1(c), 8.4(a), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Count III

By way of background, attorney Kathryn Becnel represented Lakeshia Holder in a personal injury matter. During the representation, Ms. Becnel incurred \$2,450 in expenses, and River Parishes Chiropractic (“RPC”) treated Ms. Holder’s injuries, performing services totaling \$6,755. Thereafter, Ms. Becnel transferred Ms. Holder’s matter to respondent.

In March 2021, respondent settled Ms. Holder’s claim for \$37,000. He received the settlement funds on Ms. Holder’s behalf on March 30, 2021 and deposited the check into his client trust account. In a letter dated April 19, 2021, he informed Ms. Holder of the receipt of the funds and provided a breakdown of the disbursement of the funds, including reimbursements to Ms. Becnel and RPC. Nevertheless, respondent did not disburse any funds to Ms. Becnel or RPC. Furthermore, respondent falsely represented to Ms. Becnel and RPC that he was still awaiting receipt of the funds and, thus, could not yet reimburse them.

On January 31, 2022, after respondent was placed on interim suspension, the ODC received a disciplinary complaint from Ms. Becnel. The complaint reiterated the above facts and indicated that neither Ms. Becnel nor RPC had been reimbursed from Ms. Holder’s settlement funds. Respondent failed to cooperate with the ODC’s investigation of the complaint, necessitating the issuance of a subpoena to obtain his sworn statement. The subpoena also requested that respondent provide a copy of Ms. Holder’s file.

Although respondent appeared for his May 31, 2023 sworn statement, he failed to provide a copy of Ms. Holder’s file. During the sworn statement, respondent confirmed that he received \$37,000 on Ms. Holder’s behalf and deposited the funds into his trust account. Respondent also admitted to using illegal drugs at the time. He was unsure if he had used any of Ms. Holder’s funds to purchase illegal drugs, but he indicated “[i]t might be possible” because he was “just

plain not paying attention... and just thinking that I'm just definitely trying to find a way to OD.”

The ODC advised respondent that he was presumed to have converted the funds belonging to Ms. Becnel and RPC unless he could provide trust account records to rebut the presumption. Not long after the sworn statement, respondent provided the ODC with a copy of Ms. Holder's file and certain trust account records. However, he failed to provide trust account records for the time period at issue; thus, he was unable to overcome the presumption that he converted the funds.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.15(a) (safekeeping property of clients or third persons), 1.15(d) (failure to timely remit funds to a client or third person) 8.1(b), 8.1(c), 8.4(a), 8.4(b), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d).

DISCIPLINARY PROCEEDINGS

In August 2023, the ODC filed formal charges against respondent as set forth above. Respondent failed to answer the formal charges. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee adopted the deemed admitted facts as its factual findings. Based on these

facts, the committee determined respondent violated the Rules of Professional Conduct as follows:

1. In Count I, respondent engaged in serious criminal conduct, converted substantial funds from his parents to fuel his drug use, and failed to cooperate with the ODC's investigation, in violation of Rules 8.1(b), 8.1(c), 8.4(a), and 8.4(b);
2. In Count II, respondent failed to provide competent representation to Mr. Johnson, neglected Mr. Johnson's legal matter, failed to reasonably communicate with Mr. Johnson, failed to refund Mr. Johnson's unearned fees or otherwise deposit into his trust account any amount reasonably in dispute, failed to protect Mr. Johnson's interests after being terminated as his counsel, and failed to cooperate with the ODC's investigation, in violation of Rules 1.1(a), 1.3, 1.4, 1.5(f)(5), 1.16(d), 3.2, 8.1(b), 8.1(c), 8.4(a), and 8.4(d); and
3. In Count III, respondent converted funds due to Ms. Becnel and to RPC from the settlement of Ms. Holder's matter and failed to cooperate with the ODC's investigation, in violation of Rules 1.15(a), 1.15(d), 8.1(b), 8.1(c), 8.4(a), 8.4(b), 8.4(c), and 8.4(d).

The committee then determined that respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system, and the legal profession. The committee further determined that respondent caused actual harm to his parents by converting their funds to fuel his drug use, to Mr. Johnson by delaying his legal matter and failing to refund the unearned portion of the fee he paid, to Ms. Becnel and RPC by converting to his own use their funds from Ms. Holder's settlement, and to the disciplinary system by failing to cooperate with the ODC in its investigations. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

In aggravation, the committee found the following: 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, indifference to making restitution, and illegal conduct, including that involving the use of controlled substances. The sole mitigating factor found by the committee was the absence of a prior disciplinary record.

After further considering the court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be disbarred. The committee also recommended respondent be ordered to make full restitution to Mr. Johnson and/or the Louisiana State Bar Association's Client Assistance Fund,² as well as to his parents, Ms. Becnel, and RPC.

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

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.

² Mr. Johnson filed a \$13,500 claim with the Client Assistance Fund in November 2021. The record does not indicate the status of the claim.

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 record in this deemed admitted matter supports a finding that respondent was arrested for possession of cocaine and for possession of a firearm while in possession of a controlled dangerous substance, neglected a legal matter, failed to communicate with a client, failed to refund unearned fees, converted third-party funds, and failed to cooperate with the ODC in its investigations. This conduct amounts to a violation of the Rules of Professional Conduct as charged.

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 further supports a finding that respondent violated duties owed to his clients, the public, the legal system, and the legal profession. He acted both knowingly and intentionally, and his conduct caused actual harm. We agree with the hearing committee that the applicable baseline sanction is disbarment. We also agree with the committee's assessment of aggravating factors as well as its

determination that the only mitigating factor present is the absence of a prior disciplinary record.

Turning to the issue of an appropriate sanction, we take guidance from *In re: Merritt*, 23-0134 (La. 5/31/23), 361 So. 3d 451, and *In re: White*, 22-1701 (La. 2/24/23), 355 So. 3d 1085. In *Merritt*, an attorney neglected a legal matter, failed to communicate with his clients, converted more than \$11,000 of client funds, and failed to cooperate with the ODC in its investigation. For this misconduct, we disbarred the attorney and ordered him to make full restitution. In *White*, an attorney neglected a legal matter and continuously misled the client about the status of the legal matter, engaged in criminal conduct involving illegal drugs, failed to appear for his arraignment and evaded a bench warrant for more than five years, ignored a client's multiple requests for the return of his file, and failed to cooperate with the ODC in three investigations. For this misconduct, we disbarred the attorney. Based upon this case law, the committee's recommended sanction of disbarment is appropriate to address respondent's misconduct.

Accordingly, we will adopt the committee's recommendation and disbar respondent, retroactive to the date of his interim suspension. We will further order respondent to make full restitution to Mr. Johnson and/or the Client Assistance Fund, as well as to his parents, Ms. Becnel, and RPC.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Aaron P. Mollere, Louisiana Bar Roll number 37232, be and he hereby is disbarred, retroactive to December 7, 2021, the date of his interim suspension. 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 further ordered that respondent shall make full restitution to Kyle Johnson and/or the

Louisiana State Bar Association's Client Assistance Fund, as well as to his parents, attorney Kathryn Becnel, and River Parishes Chiropractic. 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.