

The Supreme Court of the State of Louisiana

IN RE: JEROME M. VOLK, JR.

No. 2021-B-00489

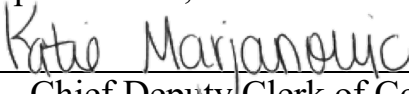
IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

September 27, 2021

Suspension imposed. See per curiam.

PDG
JLW
JDH
JTG
WJC

Crichton, J., dissents and assigns reasons.
McCallum, J., dissents for reasons assigned by Justice Crichton.

Supreme Court of Louisiana
September 27, 2021


Chief Deputy Clerk of Court
For the Court

09/27/21

SUPREME COURT OF LOUISIANA

NO. 2021-B-0489

IN RE: JEROME M. VOLK, JR.

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Jerome M. Volk, Jr., an attorney licensed to practice law in Louisiana.

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 1973. In 2013, this court accepted a petition for consent discipline in which respondent stipulated that he had made false statements about the integrity of a judge. For this misconduct, respondent was suspended from the practice of law for three months, fully deferred. *In re: Volk*, 13-0309 (La. 4/1/13), 110 So. 3d 129 (“*Volk I*”).

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

FORMAL CHARGES

Count I

In 2014, Fast Trak Legal Funding (“FTLF”), a pre-settlement funding company, loaned \$6,435 to respondent’s client, Eddie Miller, against Mr. Miller’s then-pending personal injury lawsuit. Respondent acknowledged Mr. Miller’s debt

to FTLF, which over time increased due to interest. Mr. Miller's case later settled for \$35,000. In February 2018, FTLF agreed to accept \$7,888 in satisfaction of its lien, but respondent failed to pay this amount.

In October 2018, FTLF filed a disciplinary complaint against respondent. Respondent received notice of the ODC's investigation, but he did not respond, necessitating the issuance of a subpoena to obtain his sworn statement. In December 2018, FTLF informed the ODC that respondent had paid the balance due to FTLF.

During his sworn statement, respondent indicated that he tried to respond to the complaint in December 2018, but inadvertently faxed his response to an incorrect number. The ODC asked respondent to provide a written response to the complaint as well as documentation to show where he was holding the funds owed to FTLF while the funds remained unpaid. Respondent failed to provide the requested information.

In June 2019, the ODC issued a subpoena duces tecum to respondent, giving him one month to provide the requested information. Once again, respondent failed to respond.

In October 2019, respondent, through counsel, responded to the request. Respondent claimed that his conduct was purely unintentional and that he never misappropriated funds owed to FTLF. Respondent suggested that he was attempting to resolve the debt to FTLF while upholding his obligation to safeguard his client's property. Respondent claimed he was trying to ensure his client's interests were protected. However, respondent did not provide any evidence establishing that the funds were secured from the time of settlement through the date he disbursed the funds to FTLF.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.15(a) (safekeeping property of

clients or third persons), 1.15(d) (failure to timely remit funds to a client or third party), 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(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count II

In 2002, Mary Hefler retained respondent to open the succession of her parents. Ms. Hefler believed that following the sale of the principal property in the succession, respondent withheld approximately \$3,000 in his trust account to cover any bills that could arise. Despite several requests over the years, respondent failed to provide Ms. Hefler with an accounting for the funds.

In February 2019, Ms. Hefler filed a complaint with the ODC. Respondent confirmed receiving the complaint during his sworn statement on February 13, 2019. In his response, which was not received by the ODC until April 1, 2019, respondent failed to address the merits of the complaint.

On April 9, 2019 and again on April 25, 2019, the ODC sent letters to respondent requesting his detailed written response to the complaint along with supporting documentation. Respondent did not respond to the requests. On June 18, 2019, the ODC issued a subpoena duces tecum to respondent, giving him until July 22, 2019 to provide the requested information. Respondent failed to respond.

On October 1, 2019, respondent, through counsel, admitted he inadvertently retained client funds in his trust account, but he noted that the funds were related to a tort case that he handled for the Hefler family. Respondent claimed that he did not

misappropriate or convert those funds and that he was ready to pay the full \$2,041.56 due to Ms. Hefler.¹ To date, he has not provided Ms. Hefler with the funds.

Following a review of respondent's financial records, the ODC's forensic auditor identified five periods of time in which there had been a conversion of funds, based on the balance of respondent's trust account falling below \$2,041.56.²

The ODC alleged that respondent's conduct violated Rules 1.3, 1.4 (failure to communicate with a client), 1.15(a), 1.15(d), 8.1(b), 8.1(c), 8.4(a), and 8.4(c) of the Rules of Professional Conduct.

DISCIPLINARY PROCEEDINGS

In July 2020, the ODC filed formal charges against respondent as set forth above.³ 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 hearing committee's consideration.

¹ In his answer to the complaint, respondent indicated that from the \$3,000 funds, he made payments of \$698.40 to "Veteran's Affairs" and \$260.04 to TriSpan, the Medicare provider. Respondent indicated that \$2,041.56 represents the amount remaining from the \$3,000 funds that were withheld.

² The ODC's forensic auditor identified the five periods as follows:

- November 23, 2015 - December 17, 2015
- December 28, 2015 - December 30, 2015
- September 14, 2017 - December 10, 2017
- August 30, 2018 - October 21, 2018
- November 26, 2018 - July 23, 2019

³ The ODC sent a copy of the formal charges to respondent via certified mail return receipt requested. Respondent signed the delivery receipt on August 7, 2020.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee made factual findings consistent with the deemed admitted factual allegations set forth in the formal charges. Based on those facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined respondent violated duties owed to his client, the public, the legal system, and the legal profession. His conduct was intentional. He caused harm by delaying payment to FTLF, but his harm to Ms. Hefler is ongoing as she still awaits payment from respondent. Of particular concern is the indifference respondent displayed with respect to the disciplinary process as well as the actual and continued harm to his client. During his sworn statement, respondent was advised in very certain terms that his failure to respond was a serious problem and that his continued failure to do so could result in the filing of formal charges by the ODC. Although respondent indicated that this failure was purely unintentional, he still did not respond. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The aggravating factors found by the committee are a prior disciplinary record in *Volk I*, 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 further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for three years. The committee also recommended respondent make

restitution to Ms. Hefler for any funds that were improperly withheld, and that he be assessed with all costs and expenses of these proceedings.

Neither respondent nor the ODC filed an objection to the hearing 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.

The record in this deemed admitted matter supports a finding that respondent neglected legal matters, failed to communicate with a client, failed to timely remit funds owed to a client and a third party, converted client funds, and failed to cooperate with the ODC in its investigations. As such, he has violated the Rules of Professional Conduct as alleged in the formal charges.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent violated duties owed to his client, the public, the legal system, and the legal profession. His misconduct was intentional and caused harm to FTLF, although he ultimately remitted the funds due to FTLF. Respondent continues to cause harm to Ms. Hefler, as he still retains her funds despite acknowledging that she is owed payment. By failing to cooperate with the ODC's investigation of these matters, respondent caused harm to the legal profession. The applicable baseline sanction is suspension.

The record supports the aggravating factors found by the hearing committee. There are no mitigating factors present.

In Count I, respondent settled his client's case in the spring of 2015. Despite numerous requests by FTLF for the funds it was due, respondent did not pay FTLF until more than three years later, in December 2018. In Count II, Ms. Hefler filed a disciplinary complaint against respondent following his continued failure to provide her with an accounting for the \$3,000 which he retained from a succession. According to her complaint, Ms. Hefler requested an accounting on numerous occasions. In his October 1, 2019 answer to the complaint, respondent indicated that he was ready to pay Ms. Hefler \$2,041.56, representing the full amount of funds he believed were due to her. While the amount of funds at issue is relatively small, the succession was opened in 2002, and Ms. Hefler has still not received her funds.

Considering the guidelines set forth in the seminal case of *Louisiana State Bar Ass'n v. Hinrichs*, 486 So. 2d 116 (La. 1986), we find that respondent's conduct falls within the higher end of the *Hinrichs* range. The magnitude and duration of the deprivation of funds was quite extensive in both the case of FTLF and Ms. Hefler. By depriving FTLF and Ms. Hefler of their funds for such an extended period of time, respondent caused them expense and great inconvenience. Moreover, even with the extended pressure of disciplinary proceedings, respondent has still failed to provide restitution to Ms. Hefler.

Based on this reasoning, we will accept the hearing committee's recommendation and suspend respondent from the practice of law for three years. We further order respondent to provide an accounting to Ms. Hefler and make restitution of any sums due to her.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Jerome M. Volk, Jr., Louisiana Bar Roll number 13109, be and he hereby is suspended from the practice of law for three years. It is further ordered that respondent provide an accounting to Mary Hefler and make full restitution, as appropriate. 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.