

The Supreme Court of the State of Louisiana

IN RE: MICHAEL ISAIAS RODRIGUEZ, JR.

No. 2022-B-01063

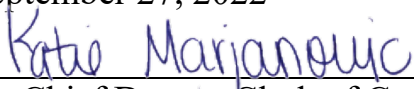
IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

September 27, 2022

Disbarment imposed. See per curiam.

JDH
JLW
JTG
WJC
JBM
PDG

Crichton, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
September 27, 2022


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-B-1063

IN RE: MICHAEL ISAIAS RODRIGUEZ, JR.

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

FORMAL CHARGES

On July 6, 2012, Donald Foy was injured in an accident. Thereafter, he contacted respondent for representation. On July 8, 2013, respondent and his wife, attorney Shannon Casey Rodriguez, filed a lawsuit on Mr. Foy’s behalf.

During his representation of Mr. Foy, respondent was ineligible to practice law as follows:

1. September 9, 2013 to September 20, 2013 – failure to pay bar dues and the disciplinary assessment;
2. September 9, 2014 to August 31, 2015 – failure to pay bar dues and the disciplinary assessment and failure to comply with mandatory continuing legal education requirements; and
3. June 3, 2016 to present – failure to pay bar dues and the disciplinary assessment, failure to comply with mandatory continuing legal education requirements, and failure to submit trust account disclosure statement.

Respondent and opposing counsel set September 6, 2017 as the date for a deposition. That same day, respondent emailed opposing counsel, stating, “I think

it would be unwise for me to attend today's deposition, as I am still technically ineligible. Would you mind rescheduling the deposition to take place in the next 2-3 weeks? I am quite certain that my situation will be resolved within that time period." Opposing counsel agreed, and the deposition was rescheduled for October 23, 2017. Even though respondent was still ineligible to practice law, he appeared at the deposition in his capacity as Mr. Foy's counsel. Furthermore, on November 27, 2017 while still ineligible to practice, respondent emailed opposing counsel regarding settlement of the case.

A pre-trial conference was set for January 24, 2018. Neither respondent nor Mr. Foy appeared, and the matter was rescheduled for April 12, 2018. On March 22, 2018, respondent emailed opposing counsel and advised that his father, attorney Michael I. Rodriguez, Sr., would be enrolling as additional counsel for Mr. Foy. On April 11, 2018, someone faxed to the court a motion to enroll as counsel of record, seeking an order allowing respondent's father to enroll as additional counsel for Mr. Foy. The fax was transmitted via a fax number associated with respondent's wife.

On April 12, 2018, respondent emailed opposing counsel advising that his father had filed a motion to enroll and that the court's signed order would be forwarded upon receipt. Respondent also asked opposing counsel for a continuance of the status conference scheduled for later that day. Opposing counsel agreed to the continuance. However, the filing of the faxed motion to enroll was never completed. Furthermore, the signature on the motion to enroll was not written or authorized by respondent's father, who never agreed to represent Mr. Foy and was not aware that a motion to enroll under his name was forwarded to the court by fax or otherwise.

Opposing counsel eventually discovered respondent's misrepresentation about the motion to enroll. Consequently, opposing counsel emailed respondent on May 2, 2018, stating, "About 10 days ago I left you a VM on your cell given to me

by your dad as he stated he was not handling this matter and did not receive the file from you. The status conference was continued based on your representations he was going to handle.”

The court rescheduled the status conference for July 19, 2018. Opposing counsel was present, but respondent was not. That same day, respondent emailed opposing counsel, advising that he was served with notice of the status conference “last night” but that he was in Florida with his family. Respondent also advised opposing counsel he still had past due bar dues he needed to pay, but once he resolved the issue, he would “like very much to work with you to bring this matter to a conclusion.”

Almost a year later, opposing counsel’s efforts to move the case forward were to no avail. On June 25, 2019, respondent emailed opposing counsel and again represented that his father was assisting with Mr. Foy’s representation. Respondent also advised that, “in the unlikely event that my eligibility status is not resolved... by the end of July, I will withdraw from representing Mr. Foy.” In response, opposing counsel stated, “To be clear, I contacted your Dad when you corresponded that you were adding him as co-counsel a while back. He said he was not going to handle the matter.” Respondent never resolved his ineligibility, and he did not withdraw as Mr. Foy’s attorney.

Frustrated with the lack of progress in his case and unable to make contact with respondent, Mr. Foy sent a letter to respondent on April 23, 2021, notifying respondent that his legal services were terminated and requesting that respondent return his client file. Mr. Foy obtained new counsel, and his new attorney also requested in writing the return of Mr. Foy’s file. On May 24, 2021, respondent emailed Mr. Foy and requested until June 2, 2021 to return the file. On June 4, 2021, after not receiving the file, Mr. Foy again emailed respondent, begging him to return the file. In response, respondent indicated that he had a vested interest in the

outcome of Mr. Foy's lawsuit and that the preparation of the file was taking longer than anticipated. Later that month, respondent began emailing Mr. Foy's file to his new attorney.

On May 25, 2021, the ODC received a disciplinary complaint against respondent from Mr. Foy. The ODC sent respondent multiple notices of the complaint via certified mail, regular mail, and email. Nevertheless, respondent did not provide a response. The ODC then made two attempts to serve respondent with a subpoena to appear for a sworn statement but was unsuccessful.

The ODC alleged that respondent violated the following provisions of the Rules of Professional Conduct: Rules 1.1(b) (failure to comply with MCLE requirements), 1.1(c) (failure to pay bar dues, failure to pay the disciplinary assessment, failure to timely provide change of address information, or failure to submit trust account information), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.16(a)(1) (declining or terminating representation), 3.2 (failure to make reasonable efforts to expedite litigation), 4.1(a) (truthfulness in statements to others), 4.4(a) (respect for rights of third persons), 5.5(a)(e)(3) (engaging in the unauthorized practice of law), 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), 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).

DISCIPLINARY PROCEEDINGS

In January 2022, 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 hearing committee's consideration.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee acknowledged that the factual allegations set forth in the formal charges have been deemed admitted. Based upon the deemed admitted facts and the other evidence in the record, the committee found that respondent intentionally disregarded the Rules of Professional Conduct. Specifically, the committee found that respondent continued to represent Mr. Foy knowing he was ineligible to practice law during several periods of time. He then filed a fraudulent pleading with the court that sought to enroll his father as additional counsel for Mr. Foy. Respondent also delayed the case through false statements to opposing counsel and misrepresented to opposing counsel that he would withdraw as counsel for Mr. Foy if his eligibility status was not resolved. Later, Mr. Foy terminated respondent's services after being unable to contact him. Respondent then delayed the return of Mr. Foy's file. When Mr. Foy filed a disciplinary complaint against respondent, he failed to cooperate with the ODC's investigation.

Based on these factual findings, the committee determined respondent violated the Rules of Professional Conduct as charged. Specifically, the committee determined that respondent failed to fulfill his annual professional obligations in violation of Rules 1.1(b) and 1.1(c); neglected Mr. Foy's legal matter through his delay tactics in violation of Rule 1.3; failed to withdrew from the representation despite his ineligibility in violation of Rule 1.16(a)(1); intentionally made false statements to opposing counsel and filed a fraudulent pleading with the court, which

improperly delayed Mr. Foy's case, in violation of Rules 3.2, 4.1(a), 8.4(c), and 8.4(d); sought a continuance without taking action to resolve his ineligibility and filed a fraudulent pleading to add counsel for no substantial purpose other than to cause delay in violation of Rule 4.4(a); appeared at a deposition and engaged in settlement discussions with opposing counsel while he was ineligible to practice law in violation of Rules 5.5(a) and 5.5(e); and failed to cooperate with the ODC in its investigation in violation of Rules 8.1(b) and 8.1(c). The committee additionally determined that, in intentionally violating the above Rules of Professional Conduct, respondent also violated Rule 8.4(a).

The committee then determined respondent violated duties owed to his client, the public, the legal system, and the legal profession. His misconduct caused actual and potential harm to Mr. Foy, opposing counsel, the public, the legal system, and the legal profession. Citing the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee found the following aggravating factors present: a dishonest or selfish motive, 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, substantial experience in the practice of law (admitted 2002), and illegal conduct (the unauthorized practice of law). The sole mitigating factor found by the committee is the absence of a prior disciplinary record.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be disbarred.

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. 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 failed to fulfill his annual professional obligations, practiced law while ineligible to do so, delayed the resolution of his client's legal matter by making false statements to opposing counsel and filing a fraudulent motion with the court, and failed to cooperate with the ODC in its investigation. Therefore, he has violated the Rules of Professional Conduct as alleged in the formal charges and found by the hearing committee.

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).

We agree with the committee that respondent intentionally violated duties owed to his client, the public, the legal system, and the legal profession, which caused actual and potential harm. We also agree with the committee’s assessment that the baseline sanction in this matter is disbarment.

Aggravating factors include a dishonest or selfish motive, a pattern of misconduct, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law. The sole mitigating factor is the absence of a prior disciplinary record.

Case law addressing similar misconduct suggests disbarment is the appropriate sanction in this matter. See *In re: Walsh*, 21-0280 (La. 6/29/21), 319 So. 3d 281 (disbarment imposed upon an attorney who practiced law after he was suspended, failed to advise his client of his suspension, and fraudulently filed pleadings under his father’s name and bar roll number in an effort to conceal his unauthorized practice of law). The sole mitigating factor present falls far short of outweighing the numerous aggravating factors. Thus, a downward deviation from the baseline sanction is unwarranted.

Accordingly, we will adopt the committee’s recommendation and disbar respondent.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Michael Isaias Rodriguez, Jr., Louisiana Bar Roll number 27868, 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. 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.