

The Supreme Court of the State of Louisiana

IN RE: BART JAMES BELLAIRE

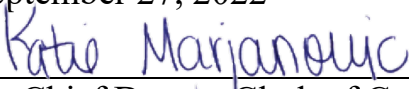
No. 2022-B-01084

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

September 27, 2022

Suspension imposed. See per curiam.

PDG
JLW
JDH
SJC
JTG
WJC
JBM

Supreme Court of Louisiana
September 27, 2022


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1084

IN RE: BART JAMES BELLAIRE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

In January 2010, Mrs. Josette Hanks sold immovable property she had inherited in Vermilion Parish (the “Property”) to Olivia Rae Farms, LLC (“ORF”). Respondent represented ORF and its manager, Joel N. Broussard, in the sale pursuant to a power of attorney granted to him by Mr. Broussard in 2007. After the sale, respondent represented Mrs. Hanks and her husband, Carlan J. Hanks, in a variety of legal matters. These representations occurred both before and after respondent began working full time for Mr. Broussard and his affiliated companies sometime in 2014 or 2015.

In March 2017, Mr. Hanks learned that the Property was back on the market, and he asked respondent to assist him in purchasing the Property from ORF as a gift for Mrs. Hanks. Respondent agreed to do so, and drafted a purchase agreement (and an extension thereof) at the request of Mr. Hanks. Mr. Hanks believed that respondent was his lawyer with regard to his attempt to purchase the Property from ORF. At no time did respondent discuss with Mr. Hanks the conflict of interest which would exist in representing both Mr. Hanks as buyer and Mr. Broussard (via

ORF) as seller in that transaction. Furthermore, at no time did respondent request that Mr. Hanks or Mr. Broussard (personally or on behalf of ORF) provide informed consent, confirmed in writing, waiving the conflict.

In connection with the proposed purchase of the Property, Mr. Hanks gave respondent a \$90,000 deposit requested by Mr. Broussard. Mr. Hanks' ability to purchase the Property was contingent upon the sale of other real estate that he owned in Colorado. When that sale did not materialize, Mr. Hanks sought a full refund of his deposit. Respondent discussed Mr. Hanks' request with Mr. Broussard, who ultimately refunded \$50,000 of the deposit.

In March 2018, Mr. Hanks filed suit against ORF and respondent, seeking the return of the entire deposit. *Carlan J. Hanks v. Olivia Rae Farms, LLC, et al.*, No. 2018-2008 on the docket of the 15th JDC for the Parish of Lafayette. Respondent was served with notice of the suit, but at the direction of Mr. Broussard he did not file an answer. In December 2018, a preliminary default judgment was entered against the defendants. A hearing to confirm the default judgment was held in February 2019. A judgment was rendered and signed in March 2019. In September 2019, immediately prior to a judgment debtor examination, Mr. Broussard paid Mr. Hanks \$40,000 plus his attorney's fees of \$6,900. Respondent personally paid the interest on the judgment, which was satisfied and cancelled in December 2019.

In April 2019, Mr. Hanks filed a complaint against respondent with the ODC. In July 2019, the ODC received a supplement to the complaint from Mr. Hanks. Thereafter, the ODC sent multiple requests to respondent for a written response to the complaint, but he failed to reply, necessitating the issuance of a subpoena to obtain his sworn statement.

Pursuant to the subpoena, respondent appeared at the ODC's office on January 28, 2020 and provided a sworn statement. During the statement, the ODC requested that respondent produce additional documents to assist in its investigation.

Respondent testified that he anticipated producing the vast majority of those documents to the ODC no later than February 7, 2020. On February 4, 2020, respondent emailed the ODC to advise that he “was compiling the records,” but he thereafter failed to produce any additional documents to, or otherwise follow up with, the ODC.

DISCIPLINARY PROCEEDINGS

In July 2021, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.7(a) (conflict of interest: current clients), 1.9(a) (duties to former clients), 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority), and 8.1(c) (failure to cooperate with the ODC in its investigation).

Respondent filed an answer to the formal charges. He denied that he represented Mr. Hanks in 2017 in connection with his attempt to purchase the Property and thus denied that any conflict of interest existed. Respondent admitted that he failed to respond to the disciplinary complaint, but suggested he had been “too overwhelmed to provide a proper response” due to “various personal issues at the time and the realization that he might have violated the Louisiana Rules of Professional Conduct.”

Formal Hearing

The hearing committee conducted a hearing on the formal charges in March 2022. Both respondent and the ODC introduced documentary evidence, including the transcript of a deposition given by Mr. Broussard. The ODC called Mr. and Mrs. Hanks to testify before the hearing committee. Respondent testified on his own behalf and on cross-examination by the ODC.

Hearing Committee Report

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

Both Mr. and Mrs. Hanks credibly testified that they believed respondent was their attorney. Having been represented by respondent in a variety of matters over the years, it was reasonable for Mr. Hanks to think respondent was representing him in 2017 in connection with his attempt to purchase the Property. Respondent should have secured a conflict waiver from Mr. Hanks and Mr. Broussard before proceeding with the representation of both of them.

Respondent testified that in hindsight, he made a mistake by not getting Mr. Hanks and Mr. Broussard to sign a conflict waiver, and that “in the strictest application of the law,” he probably did violate the Rules of Professional Conduct. He testified that he now realizes he “could not be a go-between.” It was clear to the committee that respondent had no ill intent and was attempting to help the parties by trying “to facilitate something between two of [his] friends.” Nevertheless, the committee did not find that respondent was remorseful for his conduct, as he did not acknowledge wrongdoing until he was forced to do so.

Respondent admitted that he did not respond to the disciplinary complaint filed against him, despite several requests from the ODC for a response. A subpoena was required before respondent would provide a response. Several documents the ODC requested of respondent were never provided.

Respondent explained that he failed to cooperate with the ODC out of “fear,” “poor decision making,” and “avoidance.” He also testified that between 2018 and 2020, he “had a lot going on, personally and professionally,” including his wife’s miscarriage, the death of his father, obligations associated with taking one of Mr. Broussard’s companies public, and having to lay off hundreds of employees during the COVID-19 pandemic.

Based upon these findings, the committee determined that respondent violated Rules 1.7(a), 1.9(a), 8.1(b), and 8.1(c) of the Rules of Professional Conduct, as charged in the formal charges.

The committee determined that respondent violated duties owed to his client and the legal profession. He acted negligently in engaging in a conflict of interest and knowingly in failing to cooperate with the ODC. Respondent's misconduct caused actual harm to Mr. Hanks, who had to hire an attorney to file a lawsuit and wait 1½ years for his \$40,000 to be returned, all after attempting to negotiate and resolve the matter directly with respondent. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the applicable baseline sanction ranges from reprimand to suspension.

In aggravation, the committee found the following factors: a pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted 2002). In mitigation, the committee found: absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal problems, and character or reputation.

Considering these circumstances, and the prior jurisprudence of this court in similar cases, the committee recommended that respondent be suspended from the practice of law for six months, with all but ninety days deferred, with the condition that any misconduct during the period of deferral should result in the deferred suspension becoming executory. The committee also recommended that respondent be assessed with the 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. 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 underlying facts of this matter are not seriously in dispute. Respondent engaged in conduct constituting a conflict of interest and failed to cooperate with the ODC in its investigation. This conduct violates the Rules of Professional Conduct as charged 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 and the legal profession. He acted negligently in engaging in a conflict of interest and knowingly in failing to cooperate with the ODC. Respondent's misconduct caused actual harm to Mr. Hanks and to the disciplinary system. The baseline sanction ranges from reprimand

to suspension. The aggravating and mitigating factors found by the hearing committee are supported by the record.

Turning to the issue of an appropriate sanction, a public reprimand would typically be appropriate for respondent's negligent violation of the conflict of interest rules.¹ However, considering respondent's additional, knowing misconduct involving his failure to cooperate with the ODC, as well as the substantial aggravating factors identified by the committee, an actual period of suspension is warranted.²

Based on this reasoning, we will accept the hearing committee's recommendation and suspend respondent from the practice of law for six months, with all but ninety days deferred.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Bart James Bellaire, Louisiana Bar Roll number 27957, be and he hereby is suspended from the practice of law for six months, with all but ninety days deferred. Any misconduct during the period of deferral may be grounds for making the deferred portion of the suspension executory or imposing additional discipline, 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.

¹ See, e.g., *In re: Laborde*, 18-1481 (La. 10/15/18), 254 So. 3d 679 (imposing a public reprimand where the respondent accepted the representation of a husband and wife whose interests were directly adverse to each other, and then, after terminating the legal representation of the husband, filed suit on behalf of the wife against the husband in the same matter).

² We have long held that an attorney's failure to cooperate with the ODC, standing alone, is sufficient to warrant a period of actual suspension. See, e.g., *In re: Augustine*, 97-1570 (La. 9/26/97), 707 So. 2d 1 (thirty-day suspension imposed upon an attorney who knowingly failed to cooperate with the ODC in two investigations).