

The Supreme Court of the State of Louisiana

IN RE: JASON BRUZYK

No. 2022-B-01576

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

February 07, 2023

Suspension imposed. See per curiam.

PDG

JDH

SJC

JBM

Weimer, C.J., concurs in part, dissents in part and assigns reasons.

Genovese, J., dissents and would reject the disciplinary board's recommendation.

Crain, J., dissents and assigns reasons.

Supreme Court of Louisiana

February 07, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1576

IN RE: JASON BRUZIK

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS AND PROCEDURAL HISTORY

Underlying Facts

Respondent structured his written fee agreement as an hourly-fee arrangement (“the fee agreement”) but routinely treated the fee agreement as a flat-fee arrangement. Because the fee agreement was structured as an hourly-fee arrangement, respondent was required to place client funds paid as advanced fees into his client trust account and keep accurate records of the account for reconciliation purposes. Nevertheless, respondent routinely deposited these advanced fees into his operating account, using these funds for operating costs and for the payment of attorney’s fees that were not yet earned.

Specifically regarding the advanced fee, the fee agreement stated that this fee was non-refundable. The fee agreement also stated that work would not commence until the entire advanced fee was paid. Notwithstanding this provision, the fee agreement further stated that, if the client did not pay the entire advanced fee within thirty days of signing the fee agreement, respondent had the right to cancel the fee agreement without refunding any portion of the advanced fee already paid.

Specifically regarding the hourly rates charged, the fee agreement stated that “secretarial services will be billed at \$50 per hour.” The fee agreement also included a provision for after hours and rush work, stating, “Any legal services performed between 5:30 p.m. and 7:30 a.m. or on weekends, holidays, or on a rush basis will be charged at the rate of \$400 per hour.”

At some point in 2013, the ODC received information about respondent’s fee agreement during its investigation of alleged misconduct by another attorney. In September 2013, respondent provided a response to the ODC’s inquiries regarding the fee agreement.

In November 2013, respondent provided the ODC with a sworn statement, during which he revealed the following:

1. Respondent set up his law firm as an LLC called Civil Law Center, LLC (“CLC”) and hired attorneys to work for CLC as independent contractors. He provided these attorney with free office space and use of a conference room. He also paid their bar dues and disciplinary assessment and maintained malpractice insurance for them;
2. Respondent admitted that he was wrongly treating the advanced fees as flat fees despite the language of the fee agreement, but he claimed he never enforced any part of the fee agreement;
3. Because respondent considered the advanced fee to be a flat fee, he immediately paid a portion of the fee to the attorney assigned to the case and deposited the remainder into his operating account;
4. Despite the fee agreement’s language, respondent claimed he never billed his clients by the hour, never charged for secretarial work, and never charged any client \$400 per hour for after hours or rush work. He stated that he included the \$400 per hour fee to discourage clients from calling him on the weekends.

In December 2013, respondent sent letters to all of his current clients, advising them that he had revised the fee agreement to ensure compliance with the Rules of Professional Conduct and inviting them to sign a revised fee agreement. Between 2014 and 2021, respondent provided the ODC with documentation in an effort to prove he did not convert client funds.

The ODC's forensic auditor, Angelina Marcellino, conducted multiple audits of respondent's financial records and ultimately determined in December 2021 that respondent failed to refund a total of \$3,524.50 in unearned fees as follows:

1. \$468.25 to William Tholborn;
2. \$737.50 to Pearline Foley;
3. \$1,531.25 to Ryan Fletcher; and
4. \$787.50 to Keandra Augustine.

The record reflects that respondent has not yet provided these clients with refunds.

Formal Charges

In March 2021, the ODC filed formal charges against respondent. In addition to alleging some of the facts as set forth in the underlying facts section above, the formal charges also alleged the following:

1. Despite claiming in his sworn statement that his clients "never ever got actually charged \$400," respondent provided the ODC with an invoice showing he charged his client, Michael Evans, \$412.50 at the "special rate" on March 30, 2013;
2. As part of his law practice, respondent had arrangements with several other attorneys to whom he would refer cases. Upon receiving an advanced deposit from a client, respondent would immediately give a portion of those funds to one of these referral attorneys assigned to handle the client's case. The fee agreement provided that these funds represented an advanced deposit from

which respondent was to draw hourly fees, and respondent was required to deposit these funds into his trust account. Therefore, in failing to deposit these advanced deposits into his trust account, he immediately received a share of the fee even though he did no work on the case. The evidence establishes that respondent's involvement in the individual client matters was limited to signing the client up and referring the case to another attorney. The attorneys to whom he referred cases were independent contractors, and the arrangement between respondent and the independent contractors was never disclosed to the client, in writing, as required by the Rules of Professional Conduct. Furthermore, respondent did not render meaningful legal services to the clients in these matters; and

3. A review of respondent's financial records uncovered a pattern of conversion of client funds, primarily related to his failure to deposit advanced fees into his trust account. Based upon the initial documentation respondent provided to the ODC, as of June 17, 2014, respondent received a minimum of \$40,896.13 in funds attributable to advanced deposits for fees and/or costs that he failed to deposit into his trust account. Due to respondent's inability to account for the time associated with all individual client matters, there were several cases where it appeared respondent owed a refund to the client. Yet, he could not account for those client funds. He also failed to maintain proper documentation to account for deposits and disbursements related to those client funds.

Based upon the entirety of the factual allegations set forth in the formal charges, the ODC alleged that respondent violated the following provisions of the Rules of Professional Conduct: Rules 1.5 (fee arrangements), 1.5(f)(3) (when the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client

and must be placed in the lawyer's trust account), 1.8(e) (conflict of interest), 1.15(a) (safekeeping property of clients or third persons), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent filed an answer to the formal charges, essentially arguing that the fee agreement was a flat-fee arrangement, in contrast to his sworn statement testimony. Therefore, he denied engaging in any misconduct. Accordingly, the matter proceeded to a formal hearing on the merits.

RESPONDENT'S TESTIMONY

Respondent testified that he is not currently practicing law, with the exception of handling speeding tickets for family and friends. While his current consulting work does not require him to be licensed to practice law, it does require him to be a notary public.

Respondent indicated that the fee agreement at issue was "cobbled together" from several other attorneys' contracts and suggestions, and he admitted that he did not understand what some parts of the fee agreement meant. While he acknowledged that the fee agreement "says what it says" and was "badly written," he claimed he never followed or enforced the fee agreement as written. In practice, he treated the fee agreement as a flat-fee arrangement and overworked the cases based upon the flat fee collected. In practice, he also provided refunds despite the non-refundable language in the fee agreement. When respondent became aware that the ODC had issues with the fee agreement, he revised the language to reflect a flat-fee arrangement and requested that all of his current clients sign the revised fee agreement.

Regarding the \$412.50 charged to client Michael Evans, respondent denied this was an attorney's fee for rush work. Instead, he claimed the charge represented

the client's need to reimburse him for the filing fee he paid to the court himself. He acknowledged telling his clients he would charge \$400 per hour if they called him on weekends when he never had any intention of actually charging them said fee, which he admitted amounted to lying to his clients. While he indicated he would never lie to clients now, he did so then because he "really didn't want to get called" on weekends.

Respondent further claimed that the "Breakdown of Services to Date" letters he sent to CLC's clients were not bills or accountings. They were "marketing" to show the clients, who were primarily family law clients, that CLC was working on their cases in the hopes of encouraging them to hire CLC or refer others to CLC for future personal injury matters. Respondent described his business model for CLC as charging low fees for family law cases in the hopes of attracting personal injury cases.

With respect to mitigating factors, respondent testified that there was no personal gain for him because CLC did not charge the clients enough at the beginning of the cases, overworked the cases, and did not request any further fee payments from the clients. He also fully cooperated with the ODC's investigation and did not have much experience as a solo practitioner when the ODC brought the issue with the fee agreement to his attention. Between the latter part of 2013, when he answered the ODC's notice of the initial disciplinary complaint and provided the ODC with his sworn statement, and the ODC's February 2017 audit report, respondent claimed there was no communication between him and the ODC. After he provided additional documents to the ODC in response to the audit report, he claimed he heard nothing from the ODC until he was served with formal charges in March 2021. Respondent also claimed he was served with the formal charges at his job as Deputy General Counsel at the Louisiana Department of Transportation and

Development and was subsequently fired because he had formal charges pending against him.

ANGELINA MARCELLINO'S TESTIMONY

Ms. Marcellino testified that she conducted her first audit of respondent's financial records in February 2017. Through this first audit, she determined that 52 clients were affected by the fee agreement at issue. She also determined that respondent received a total of \$130,620.95 from those clients, which funds should have been deposited into respondent's trust account. Of the \$130,620.95, Ms. Marcellino determined that \$40,896.13 in unearned fees and/or unused costs should be in respondent's trust account. After receiving additional documents from respondent, Ms. Marcellino revised her audit in March 2017 to reduce the total of unearned fees and/or unused costs by \$1,566, for a total of \$39,330.13 that should be in his trust account.

Thereafter, respondent provided the ODC with revised client ledgers or accountings for all 52 client matters, which showed substantially different amounts earned than respondent's original documents showed. Ms. Marcellino had concerns about the reliability of the new accountings because respondent created them several years after the conclusion of the client matters. Nevertheless, she produced a new audit report in November 2021 using the new accountings along with the other documents respondent had previously produced. The November 2021 audit ultimately revealed a total of \$4,507.50 in unearned fees owed to four clients. However, during the hearing, respondent produced additional documentation regarding one of the clients that again reduced the amount of unearned fees. After reviewing this additional documentation while testifying, Ms. Marcellino calculated that respondent still owed a total of \$3,524.50 to the four clients.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee made factual findings consistent with the underlying facts set forth above. The committee specifically determined that the central issue in this matter is whether the fee agreement was an hourly-fee or a flat-fee arrangement. Based upon the fee agreement's language, which the committee determined was unambiguous, the committee found the fee agreement was an hourly-fee arrangement. The committee then found, in a nutshell, that respondent (1) constructed and repeatedly used an hourly fee agreement; (2) caused at least 52 clients to execute such fee agreements; (3) misrepresented to his clients the nature of the fee agreement and, thus, deceived each of his clients as to the nature of their agreement and the use of their fees; (4) collected substantial advanced fees; (5) failed to deposit the advanced fees into his trust account; (6) repeatedly treated the numerous fee agreements as fixed-fee arrangements; (7) converted said advanced fees by paying contract attorneys immediately upon receipt of client funds, prior to the earning of such fees; (8) deposited remaining advanced fees into his law firm operating account; (9) failed to keep complete records of client funds remitted to him; and (10) failed to return a total of \$3,524.50 in unearned fees to his clients William Tholborn, Pearline Foley, Ryan Fletcher, and Keandra Augustine. Based upon the above facts, the committee determined respondent violated Rules 1.5(f)(3), 1.15(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct.

Regarding the ODC's general allegation that respondent violated Rule 1.5, the committee specifically focused on Rules 1.5(a) (charging an unreasonable fee), 1.5(e)(1) (division of fees between lawyers not in the same firm), and 1.5(e)(3) (division of fees when lawyer does not render meaningful services). Regarding the ODC's general allegation that respondent violated Rule 1.8(e), the committee specifically focused on Rule 1.8(e)(3) (overhead costs of a lawyer's practice, which

are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client).

Regarding the ODC's allegation that respondent charged client Michael Evans an unreasonable fee of \$412.50 on March 30, 2013, the committee noted that respondent testified the charge was for a filing fee. The committee also noted that, in a breakdown of services sent to Mr. Evans on June 17, 2014, the \$412.50 charge was for three telephone calls lasting a total of 1.5 hours and a special rate was applied. The committee found that, had respondent actually charged \$400 per hour for these telephone calls, the charge would have been \$600. Furthermore, the ODC's February 17, 2017 audit report showed respondent performed total services for Mr. Evans that exceeded the fees Mr. Evans paid by \$2,350. Based on these facts, the committee determined there is not clear and convincing evidence that respondent charged Mr. Evans an unreasonable fee in violation of Rule 1.5(a).

Regarding the ODC's allegation that respondent shared fees with other attorneys outside of his firm without disclosing the fee arrangement to clients, the committee found respondent and the other attorneys were in the same firm even though the other attorneys were independent contractors and not respondent's employees. The committee further found the fee agreement did, in fact, disclose to the client that respondent would hire other attorneys to work on the client's case. Based on these facts, the committee determine respondent did not violate Rule 1.5(e)(1) or Rule 1.5(e)(3).

Regarding the ODC's allegation that respondent included a provision in the fee agreement that secretarial services would be charged at \$50 per hour, the committee found no evidence to prove respondent ever actually levied and collected this fee. Based on this fact, the committee determined respondent did not violate Rule 1.8(e)(3).

The committee then determined respondent violated duties owed to his clients, the public, the legal system, and the legal profession. He acted knowingly and intentionally, and he caused actual harm to his clients. Based upon the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found a dishonest or selfish motive, a pattern of misconduct, and indifference to making restitution. In mitigation, the committee found the absence of a prior disciplinary record, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, inexperience in the practice of law (admitted 2006), and a delay in the disciplinary proceedings.¹

After further considering this court's prior case law addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day, fully deferred, subject to a two-year period of supervised probation with the following conditions:

1. Respondent shall make restitution to William Tholborn, Pearline Foley, Ryan Fletcher, and Keandra Augustine in the total amount of \$3,524.50;
2. During the first year of the probationary period, respondent shall attend the Louisiana State Bar Association's Trust Accounting School and attend training on office management procedures; and
3. If respondent maintains a client trust account, he shall have the account audited quarterly and report the results to the ODC.

¹ The ODC claims the delay in the disciplinary proceedings was largely attributable to respondent's continuous production of hundreds of pages of documents that the ODC had to review, noting that respondent was still producing new documents weeks before the December 2021 formal hearing. However, the committee notes:

The delay has not been exclusively attributable to Respondent. During the delay, ODC has made multiple requests for information, ODC has taken time to carefully examine such record productions and make forensic auditing determinations, Respondent has supplied additional information thus causing more delay and revisions, and, at the suggestion of the ODC, both parties have engaged in efforts to correct the Retainer Agreement and re-contact 52 clients for the execution of new contracts.

Both respondent and the ODC filed an objection to the committee's report. Respondent argued that the recommended sanction is too harsh. The ODC argued the recommended sanction is too lenient.

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and adopted same. Based on those facts, the board determined respondent violated the Rules of Professional Conduct as follows:

Rule 1.5(a) – The board determined respondent violated Rule 1.5(a) by including a provision in the fee agreement charging \$400 per hour for after hours and rush work, regardless of whether or not the client was actually charged this fee. Likewise, the board determined respondent violated this rule by including a provision charging \$50 per hour for secretarial work.

Rules 1.5(e)(1) & 1.5(e)(3) – The board agreed with the committee that the ODC failed to prove by clear and convincing evidence a violation of these rules based upon the fact that respondent and his independently contracted attorneys were in the same firm.

Rule 1.5(f)(3) – The board determined the explicit language of the fee agreement describes an hourly fee arrangement. Therefore, respondent was required to deposit any advanced fees collected into his client trust account, which he did not do. Accordingly, the board determined respondent violated Rule 1.5(f)(3).

Rule 1.8(e)(3) – The board determined that respondent attempted to, but did not actually, violate Rule 1.8(e)(3) by including provisions in the fee agreement charging for secretarial work and charging a higher than standard rate for after hours and rush work. Nevertheless, respondent's attempt to violate this rule was a violation of Rule 8.4(a).

Rule 1.15(a) – The board determined respondent violated Rule 1.15(a) by depositing client funds into his operating account instead of his trust account, thereby commingling client funds with his own. Furthermore, the board noted that respondent still owes a total of \$3,524.50 in unearned fees to four clients.

Rule 8.4(c) – The board determined respondent misrepresented the nature of the fee agreement to his clients by structuring it as an hourly fee arrangement and then treating it as a flat-fee arrangement. Consequently, he failed to keep accurate records of his clients' funds and is unable to account for \$3,524.50 in unearned fees owed to four clients. Therefore, the board determined respondent violated Rule 8.4(c).

Rule 8.4(a) – The board determined respondent violated Rule 8.4(a) by violating or attempting to violate the Rules of Professional Conduct as discussed above.

The board then determined respondent knowingly violated duties owed to his clients by depositing advanced fees into his operating account rather than his client trust account and then failing to refund unearned fees to four clients. Based upon the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

In aggravation, the board found a dishonest or selfish motive, a pattern of misconduct, and "no restitution provided to date." In mitigation, the board found the absence of a prior disciplinary record, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, inexperience in the practice of law, and a delay in the disciplinary proceedings.

After further considering this court's prior case law addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year, fully deferred, subject to a one-year period of supervised probation with the conditions recommended by the committee.

Although neither respondent nor the ODC filed an objection to the board's recommendation, we issued an order directing the parties to submit written briefs addressing whether the sanction recommended by the board is appropriate. Both respondent and the ODC submitted briefs in response to the court's order.

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 of this matter supports a finding that respondent structured his written fee agreement as an hourly-fee arrangement and then routinely treated it as a flat-fee arrangement, included provisions in the fee agreement charging unreasonable and improper fees, included provisions in the fee agreement making the advanced fee non-refundable, failed to deposit clients' advanced funds into a trust account, and failed to refund unearned fees totaling \$3,524.50 to four clients. Based on these facts, respondent has violated the Rules of Professional Conduct as found by the disciplinary board.

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 knowingly violated a duty owed to his clients, causing at least four of them actual harm. We agree with the hearing committee and the board that the baseline sanction is suspension.

Aggravating factors include a dishonest or selfish motive, a pattern of misconduct, and indifference to making restitution (although respondent has expressed an intention to make restitution to the four clients to whom he owes refunds, he has failed to do so). Mitigating factors include the absence of a prior disciplinary record, full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings, inexperience in the practice of law, and a delay in the disciplinary proceedings.

We considered somewhat similar misconduct in the case of *In re: Webre*, 17-1861 (La. 1/12/18), 318 So. 3d 667. In *Webre*, an attorney was hired to defend a client against a personal injury claim. The client paid the attorney a \$2,000 advanced fee towards an hourly rate of \$150. Instead of depositing the advanced fee into his client trust account, the attorney deposited the funds into his personal account. The attorney then neglected the client’s legal matter, and when the client terminated the representation and requested a refund, the attorney waited four months before refunding \$1,728 in unearned fees to the client. The ODC’s subsequent review of the attorney’s trust account also revealed several debit card and/or ATM withdrawals from the account. After determining that the attorney’s misconduct was negligent and caused potential and actual harm, we suspended the attorney from the practice

of law for one year and one day, fully deferred, subject to one year of supervised probation with conditions.

While *Webre* involves additional misconduct not found here, we find respondent's failure to deposit into his trust account the advanced fees he collected based on hourly fee agreements is much more egregious than Mr. Webre's considering respondent's misconduct affected more than fifty clients. Furthermore, respondent's continued failure to refund unearned fees to four clients is much more egregious than Mr. Webre's four-month delay in refunding his client's unearned fee. Therefore, we find a more lenient sanction than was imposed in *Webre*, as has been recommended by the board, is unwarranted here.

Accordingly, we will reject the board's recommended sanction and suspend respondent from the practice of law for one year and one day, fully deferred, subject to a two-year period of probation with the conditions recommended by the committee.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record and briefs filed by the parties, it is ordered that Jason Bruzik, Louisiana Bar Roll number 30418, be and he hereby is suspended from the practice of law for one year and one day. This suspension shall be deferred in its entirety, subject to respondent's successful completion of a two-year period of probation governed by the conditions recommended by the hearing committee. The probationary period shall commence from the date respondent and the ODC execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred 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.