

The Supreme Court of the State of Louisiana

IN RE: JUSTIN TAFT MERRITT

No. 2023-B-00134

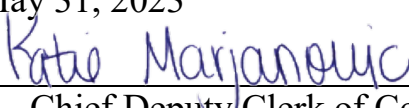
IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and
Recommendations (Formal Charges);

May 31, 2023

Discipline imposed. See per curiam.

WJC
JDH
JTG
PDG

Weimer, C.J., dissents in part and assigns reasons.
Crichton, J., concurs in part, dissents in part, and assigns reasons.
McCallum, J., concurs in part, dissents in part for reasons assigned by Justice
Crichton.

Supreme Court of Louisiana
May 31, 2023


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-0134

IN RE: JUSTIN TAFT MERRITT

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Justin Taft Merritt, an attorney licensed to practice law in Louisiana but currently ineligible to practice.¹

FORMAL CHARGES

In 2019, Brady and Melinda Abshire hired respondent to perform legal services in connection with their acquisition of interests in immovable property located in Terrebonne Parish (the “property”). Respondent prepared and executed two cash sales, which were subsequently filed in the conveyance records on behalf of the Abshires. Respondent also prepared an affidavit of small succession and act of cash sale, whereby the Abshires would acquire an additional undivided interest in the property. In connection with this last matter, the Abshires gave respondent \$2,306.43 towards the payment of the purchase price. The Abshires gave respondent an additional \$9,225.00 for future acquisitions of interests in the property.

In May 2020, respondent transmitted the affidavit of small succession and act of cash sale to the seller. Respondent indicated that he would issue checks for the purchase price upon completion and return of the documents. The seller executed

¹ Respondent has been ineligible to practice law since June 23, 2022 for failing to comply with the mandatory continuing legal education requirements. He is also ineligible to practice for failing to pay his bar dues and the disciplinary assessment and failing to file his trust account registration statement.

the documents and returned them to respondent, but he never tendered the funds to the seller. The Abshires tried to contact respondent on several occasions to inquire about the status of the matter, but he would not accept their communications or respond to their inquiries.

The Abshires retained attorney Paul G. Moresi III, who successfully contacted respondent by telephone on March 24, 2021. At that time, respondent indicated that he would get back to Mr. Moresi with an explanation by April 1, 2021. Respondent failed to do so and never returned the \$11,531.43 paid to him by the Abshires. Mr. Moresi has since filed suit against respondent on behalf of the Abshires.

In June 2021, Mr. Moresi filed a disciplinary complaint against respondent with the ODC on behalf of the Abshires. The ODC attempted to send notices of the complaint to respondent at his primary and secondary bar registration addresses as well as his post office box address. In each case, the notices were returned. The ODC then issued a subpoena to obtain respondent's sworn statement. The ODC's investigator attempted to serve respondent with the subpoena at his bar registration addresses but was unsuccessful. The investigator also tried to contact respondent via telephone and email, to no avail. To date, respondent has not responded to the complaint or otherwise contacted the ODC.

DISCIPLINARY PROCEEDINGS

In June 2022, the ODC filed formal charges against respondent, alleging that his 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), 1.4 (failure to communicate with a client), 1.5(f)(5) (failure to refund an unearned fee), 1.15(d) (failure to timely remit funds to a client or third party), 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).

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 factual allegations of the formal charges as its factual findings. Based on these 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 clients, the public, the legal system, and the legal profession. He acted negligently, knowingly, and intentionally, causing harm. He caused significant financial harm to his clients, who had to hire counsel to file suit for damages incurred. Under the ABA's *Standards for Imposing Lawyer Sanctions*, 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 2010), indifference to making restitution, and illegal conduct, including that involving theft of client property. The committee found the absence of a prior disciplinary record to be the only mitigating factor present.

The committee noted that the court has imposed sanctions ranging from a two-year suspension to permanent disbarment for similar misconduct. *See In re: Guste*, 12-1434 (La. 12/4/12), 118 So. 3d 1023 (two-year suspension for failing to communicate with a client, failing to withdraw from the representation, failing to refund an unearned fee, failing to timely return a client's file, and charging an excessive fee); *In re: Pierre*, 14-2427 (La. 1/23/15), 157 So. 3d 1103 (petition for consent discipline accepted imposing a three-year suspension for commingling and converting client funds, failing to promptly provide an accounting to a client, and making dubious entries on the accounting to justify the retention of client funds); *In re: Weber*, 15-0982 (La. 8/28/15), 177 So. 3d 106 (disbarment for neglecting a legal matter, failing to communicate with a client, converting client funds, and failing to cooperate with the ODC); and *In re: Beauchamp*, 11-1144 (La. 9/23/11), 70 So. 3d 781 (permanent disbarment for neglecting legal matters, failing to communicate with clients, repeated or multiple instances of intentionally converting client funds, and failing to cooperate with the ODC).

Considering the foregoing findings and the prior jurisprudence of this court, the committee recommended respondent be permanently disbarred. The committee further recommended he be assessed with the costs and expenses of this proceeding.

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.

After considering the matter, the court issued an order directing respondent and the ODC to submit written briefs addressing whether the sanction recommended by the committee is appropriate. The ODC submitted a brief in response to the court's order, but respondent did not.

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 in this deemed admitted matter supports a finding that respondent neglected a legal matter, failed to communicate with his clients, converted client funds, and failed to cooperate with the ODC in its investigation. This conduct violates Rules 1.3, 1.4, 1.15(d), 8.1(c), 8.4(a), and 8.4(b) of the Rules of Professional Conduct. The ODC also alleged that respondent failed to refund unearned fees, in violation of Rule 1.5(f)(5), which mandates a lawyer to immediately refund to the client the unearned portion of any fixed fee, minimum fee, or fee drawn from an advanced deposit which the client has paid. However, there is nothing in the deemed admitted facts or in the evidence presented which would suggest that any portion of the funds paid by respondent's clients represented a legal fee. No violation of Rule 1.5(f)(5) has been established. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

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 supports a finding that respondent knowingly, if not intentionally, violated duties owed to his clients, the public, the legal system, and the legal profession, causing significant actual harm. The applicable baseline sanction is disbarment. The record supports the aggravating and mitigating factors found by the committee.

The committee has recommended that respondent be permanently disbarred. However, we find that a more appropriate sanction for respondent’s misconduct is ordinary disbarment. Consider the case of *In re: Weber*, 15-0982 (La. 8/28/15), 177 So. 3d 106, wherein an attorney neglected a legal matter, failed to communicate with a client, converted client funds, and failed to cooperate with the ODC. The attorney acted knowingly, causing actual harm, and numerous aggravating factors were present. For the attorney’s misconduct, we imposed ordinary disbarment and ordered the attorney to make full restitution to his client. As in the instant case, the misconduct involved only one client matter, and the attorney did not have a prior disciplinary record.

In support of permanent disbarment, the ODC cited *In re: Beauchamp*, 11-1144 (La. 9/23/11), 70 So. 3d 781, wherein an attorney neglected legal matters, failed to communicate with clients, failed to refund unearned fees, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and failed to cooperate with the ODC in several investigations. Unlike the instant matter, there were repeated or multiple instances of intentional conversion of client funds, and unlike respondent, the attorney did have a prior disciplinary record.

While we acknowledge that respondent has engaged in serious misconduct, we find the imposition of permanent disbarment to be overly harsh and, therefore, unwarranted. The misconduct in *Beauchamp*, which involved thirteen counts of misconduct, is more egregious, whereas the misconduct in *Weber*, involving only one count of misconduct, is most similar. Under the circumstances, we find that ordinary disbarment, as was imposed in *Weber*, is the more appropriate sanction to address respondent's misconduct.

Accordingly, we will reject the committee's recommended sanction and, instead, impose ordinary disbarment. We will further order respondent to make full restitution to his clients and/or to the Client Assistance Fund, as appropriate.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record and the brief filed by the ODC, it is ordered that Justin Taft Merritt, Louisiana Bar Roll number 33277, 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. It is further order that respondent shall make full restitution to his clients and/or the Louisiana State Bar Association's Client Assistance Fund, as appropriate, for all funds he improperly converted to his own use. 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.