

The Supreme Court of the State of Louisiana

IN RE: KARL J. KOCH

No. 2023-B-01395

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

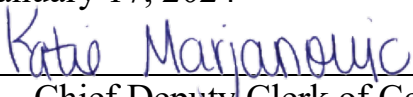
January 17, 2024

Suspension imposed. See per curiam.

JDH
SJC
JTG
WJC
JBM
PDG

Weimer, C.J., dissents and assigns reasons.

Supreme Court of Louisiana
January 17, 2024



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-1395

IN RE: KARL J. KOCH

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

On May 21, 2019, the ODC received notice from Chase Bank that respondent’s client trust account held insufficient funds on May 14, 2019 to honor a \$300 check. Consequently, the ODC audited respondent’s trust account for the period from January 1, 2017 through July 31, 2019. The audit revealed that, for the entire audit period, respondent used the account as his personal and/or operating account and failed to perform reconciliations. More specifically, the various disbursements from the account were for personal or operating expenses or were cash withdrawals. Furthermore, the initial overdraft occurred because respondent made a disbursement from the account when he knew it held insufficient funds, and he failed to make a deposit prior to the \$300 check clearing the bank. The ODC’s auditor was initially unable to confirm the presence of client funds in the trust account during the audit period.

On September 10, 2019, respondent provided the ODC with a sworn statement, during which he admitted to using his trust account as an operating account. He further explained that he utilized his trust account in this way because

the Internal Revenue Service (“IRS”) had previously seized funds from his other bank accounts to pay his outstanding tax liabilities. Respondent also stated that he had not deposited client funds into the trust account recently.

Following the sworn statement, respondent provided the ODC with additional trust account records in support of his contention that the account held no client funds. However, the auditor’s review of these records indicated that client funds were, in fact, held in the account during the audit period. Specifically, respondent deposited almost \$52,000 in client settlement funds into the account between July 2017 and June 2018. The auditor also concluded that, because of respondent’s failure to maintain and/or provide to the ODC complete records of his trust account, an exact quantification of his misuse and the balance of client funds that should have been held in the account could not be fully determined.

DISCIPLINARY PROCEEDINGS

In December 2021, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.15(a) (a lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property), 1.15(b) (a lawyer may deposit the lawyer’s own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose), 1.15(c) (a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred), 1.15(f) (on client trust accounts, cash withdrawals and checks made payable to “Cash” are prohibited; a lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation), 8.4(a) (violation of the Rules of Professional

Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent, through counsel, filed an answer to the formal charges, admitting to all the alleged rule violations except the Rule 8.4(b) violation. Accordingly, the matter proceeded to a formal hearing on the merits. At the beginning of the hearing, the ODC moved to dismiss the Rule 8.4(b) allegation. Respondent did not object, and the ODC's motion to dismiss was granted. The hearing then proceeded on the remaining charges.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee found that, for the most part, respondent admitted the factual allegations set forth in the formal charges as well as the alleged rule violations, except Rule 8.4(b) which the ODC dismissed. Based upon respondent's admissions, as well as the other evidence in the record, the committee determined respondent violated Rules 1.15(a), 1.15(b), 1.15(c), 1.15(f), 8.4(a), and 8.4(c) of the Rules of Professional Conduct as charged.

The committee then determined respondent knowingly violated duties owed to the public, as attorneys should uphold the highest standards of honesty and integrity. The committee also determined respondent's conduct caused no actual harm to any clients. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee appeared to find no aggravating factors present. In mitigation, however, the committee found the following: absence of a prior disciplinary record,¹

¹ In fact, respondent has prior discipline in the form of a 2011 admonition for failing to promptly refund an unearned fee.

personal and financial problems/stressors, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, character or reputation, and “sincere” remorse.

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, fully deferred, subject to a two-year period of supervised probation.

The ODC filed an objection to the committee’s report and recommendation, arguing the recommended sanction is too lenient.

Disciplinary Board Recommendation

After review, the disciplinary board adopted the hearing committee’s factual findings. The board then made the following additional factual findings:

1. Respondent was not trying to hide his personal funds from the IRS by depositing them into his trust account. He disclosed the trust account to the IRS early in its collection process, and he disclosed it again when a new IRS agent was assigned to his case. The new agent apparently knew respondent had personal and operating funds, along with client funds, in his trust account because she advised him that he needed to have an operating account for his personal and operating funds and that he could not use his trust account in such a manner.
2. During his sworn statement, respondent testified that he did not have any client funds in his trust account during the IRS’s collection efforts, which began in 2015 or 2016 and was ongoing during the formal hearing of this matter. Specifically, respondent stated, “No. I mean not – certainly not any time recently, you know.” The ODC argued respondent’s answer was misleading because it indicated that, during the time of the IRS’s collection

efforts, no client funds were present in his trust account when they, in fact, were present according to the documentary evidence. Although respondent's answer to the ODC's question was undoubtedly unclear, the ODC did not follow up with further questions regarding the exact time period in which client funds were in his trust account. Given the ODC's failure to further explore and clarify respondent's answer, respondent's answer cannot be classified as a misrepresentation.

Based upon these facts, the board determined that respondent violated the Rules of Professional Conduct as found by the committee and admitted to by respondent.

The board then determined respondent knowingly violated duties owed to his clients and the public. While respondent's conduct caused no actual harm, the potential for harm was present in that client funds in his trust account were at risk of being seized by the IRS to satisfy his personal tax liability. The board agreed with the committee that the baseline sanction is suspension.

In aggravation, the board found a prior disciplinary record and substantial experience in the practice of law (admitted 1985). In mitigation, the board found personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, character or reputation, remorse, and remoteness of prior offenses.

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 and one day, fully deferred, subject to a two-year period of supervised probation with the condition that he attend the Louisiana State Bar Association's Trust Accounting School. One board member concurred but emphasized that the recommendation "must be followed to the letter."

Neither respondent nor the ODC filed an objection to the board's recommendation.

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 mishandled his client trust account, resulting in commingling of funds. Based on these facts, respondent has violated the Rules of Professional Conduct as found by the hearing committee and disciplinary board and as admitted to by respondent.

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 knowingly, if not intentionally, violated duties owed to his clients, the public, and the legal profession. Although his conduct caused no actual harm, the potential for harm was significant. We agree with the committee and the board that the baseline sanction is suspension.

Aggravating factors include a prior disciplinary record and substantial experience in the practice of law. Mitigating factors present are as follows: personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, character or reputation, delay in the disciplinary proceedings, remorse, and remoteness of prior offenses.

Our prior case law addressing similar misconduct suggests that the board's recommended sanction is reasonable. For example, in *In re: Schoenberger*, 21-0191 (La. 6/30/21), 320 So. 3d 1125, an attorney mishandled his client trust account, which resulted in commingling and conversion but no actual harm. The attorney also backdated four checks to third-party providers in an attempt to mislead the ODC during its investigation. For this misconduct, we suspended the attorney from the practice of law for one year and one day, with all but sixty days deferred, followed by two years of supervised probation with conditions. In *In re: Hunt*, 19-1412 (La. 11/12/19), 282 So. 3d 213, an attorney mishandled her client trust account and failed to fully cooperate with the ODC in its investigation. For this misconduct, we suspended the attorney from the practice of law for one year and one day, fully deferred, subject to two years of supervised probation with conditions. In *In re: Spears*, 11-1135 (La. 9/2/11), 72 So. 3d 819, an attorney mishandled his client trust account, resulting in commingling and conversion of client and third-party funds but no actual harm. For this misconduct, we suspended the attorney from the practice of law for one year and one day, fully deferred, subject to two years of supervised probation with conditions.

In comparison, respondent's misconduct is not as egregious as the misconduct in *Schoenberger* as he did not convert client funds and he did not attempt to mislead the ODC. Furthermore, unlike the attorney in *Hunt*, respondent fully cooperated with the ODC's investigation. Finally, the instant matter involves no conversion of

client funds as was present in *Spears*. Considering this case law, the board's recommended sanction is appropriate.

Accordingly, we will adopt the board's recommendation and suspend respondent from the practice of law for one year and one day, fully deferred, subject to a two-year period of supervised probation with the condition that he attend Trust Accounting School.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Karl J. Koch, Louisiana Bar Roll number 17010, 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 supervised probation with the condition that he attend the Louisiana State Bar Association's Trust Accounting School. The probationary period shall commence from the date respondent, the ODC, and the probation monitor execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the period from the date of this judgment through completion of 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.