

SUPREME COURT OF LOUISIANA

NO. 2019-B-1025

IN RE: EDWARD DUANE SCHERTLER, II

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Edward Duane Schertler, II,<sup>1</sup> an attorney licensed to practice law in Louisiana but currently on interim suspension.

**FORMAL CHARGES**

On March 4, 2016, respondent attempted to introduce contraband into the Lafourche Parish Detention Center. Specifically, on the evening of March 4, 2016 at approximately 9:15 p.m., respondent arrived at the Lafourche Parish Detention Center identifying himself as an attorney and seeking to visit an inmate client. Respondent attempted to enter the facility with a briefcase and objected to his briefcase being searched. When asked for identification, respondent produced a suspended driver’s license (expired since 2010) and an older, damaged Louisiana State Bar Association Identification Card. When the jail staff opened his briefcase, respondent reportedly became nervous and objected to them looking through his briefcase, asserting “attorney-client privilege.” After explaining that they merely intended to examine the contents for contraband, respondent opened his briefcase

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<sup>1</sup> Respondent has been ineligible to practice law for failing to satisfy his mandatory continuing legal education requirements since June 1, 2015. He is also ineligible to practice law for failing to pay bar dues and the disciplinary assessment and for failing to submit his trust account disclosure form.

and attempted to obscure their view of the contents, which included several plastic heat-sealed bags. The bags contained four cellular flip phones, chargers, and tobacco, each of which is strictly forbidden as contraband. After being advised that such contraband was prohibited, respondent nervously left the detention center. Upon further investigation, law enforcement determined that, in a telephone call recorded by the prison system, respondent had prearranged his effort to smuggle contraband to an inmate within the facility. An arrest warrant was sought and obtained for his attempt to introduce contraband into a penal institution, which is a felony.

Additionally, respondent was charged with felony drug charges and possession of stolen items. These charges arose when law enforcement went to respondent's home to arrest him on the outstanding arrest warrant. After noting the presence of drugs in plain view, law enforcement obtained a search warrant for his residence and located Suboxone, marijuana, a .50 caliber weapon, a firearm with an obliterated serial number, and a stolen outboard motor.

Following his arrest, respondent's counsel advised the ODC that respondent had been released on bail and intended to enter a drug treatment facility. Thereafter, respondent failed to enter a long-term treatment facility as indicated, failed to appear for multiple court appearances, and for a time was considered a fugitive from justice for whom a bench warrant remained outstanding until recently.

In light of respondent's conduct, on May 25, 2016, we interimly suspended him from the practice of law. *In re: Schertler*, 16-0951 (La. 5/25/16), 193 So. 3d 118.

## **DISCIPLINARY PROCEEDINGS**

In January 2018, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional

Conduct: Rules 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), 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).

After being personally served with the formal charges, respondent failed to answer. 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.

In its filing, the ODC indicated that respondent was eventually apprehended and served thirty days in jail on contempt charges for failing to appear when ordered. The ODC also indicated that respondent and the prosecutor reached a plea agreement wherein respondent would plead guilty to attempting to introduce contraband into a penal facility and possession of stolen things over \$500. However, on April 5, 2018 when respondent was to enter his guilty pleas, the judge was concerned because respondent seemed impaired. The judge postponed the matter and remanded respondent into custody until the following week. On April 11, 2018, respondent returned to court and entered his guilty pleas. At that time, he was sentenced to two years of incarceration and remains incarcerated at this time.

#### *Hearing Committee Report*

After considering the ODC's deemed admitted submission and acknowledging that the factual allegations in the formal charges were deemed admitted, the hearing committee made the following factual findings:

In support of a Prima facie case against respondent, the ODC submitted a variety of evidence, including transcripts of depositions given by law enforcement personnel who interacted with the respondent and observed his criminal activity, minutes of respondent's sentencing by the 17<sup>th</sup> JDC, and a transcript of the guilty plea entered by respondent in the 17<sup>th</sup> JDC. There is no reason for the committee to doubt the credibility of the overwhelming evidence submitted by the ODC.

Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges. The committee then determined that respondent intentionally violated duties owed to the public, the legal system, and the legal profession, causing actual harm. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is disbarment.

In aggravation, the committee found the following: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, substantial experience in the practice of law (admitted 2004), and illegal conduct. According to the committee, the only mitigating factor present is the absence of a prior disciplinary record.

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

Neither respondent nor the ODC filed an objection to the hearing committee's report.

#### *Disciplinary Board Recommendation*

After review, the disciplinary board acknowledged that the factual allegations in the formal charges were deemed admitted and proven and made the following additional factual findings:

1. Respondent served thirty days (December 12, 2017 through January 11, 2018) in prison for contempt of court.
2. On April 11, 2018, respondent pleaded guilty to the felony charge of attempting to introduce contraband into a penal institution.
3. On April 11, 2018, respondent pleaded guilty to the felony charge of possession of stolen things over \$500.
4. On April 11, 2018, respondent was sentenced to two years of incarceration, with credit for time served in custody prior to the imposition of the sentence.
5. The deemed admitted facts and evidence in this matter establish that respondent also committed the following crimes, although no guilty plea was entered into or conviction obtained: a) possession of marijuana; b) felony possession of a controlled dangerous substance with a firearm; and c) felony possession of a firearm with an obliterated serial number.

In light of the facts, the board adopted the hearing committee's legal conclusions regarding respondent's violation of the Rules of Professional Conduct. The board also agreed with the committee that respondent intentionally violated duties owed to the public, the legal system, and the legal profession, causing actual harm and that the baseline sanction is disbarment.

In aggravation, the board found the following: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, and substantial experience in the practice of law. In mitigation, the board found the absence of a prior disciplinary record and the imposition of other penalties or sanctions.

After considering respondent's conduct in light of the permanent disbarment guidelines as well as the court's prior jurisprudence addressing similar misconduct, the board recommended that respondent be permanently disbarred.

Neither respondent nor the ODC filed an objection to the disciplinary 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.

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 attempted to introduce contraband into a penal institution and possessed Suboxone, marijuana, a controlled dangerous substance with a firearm, a firearm with an obliterated serial number, and a stolen outboard motor; respondent also pleaded guilty to the felony charges of attempting to introduce contraband into a penal institution and possession of stolen things over \$500. This misconduct is a violation of the Rules of Professional Conduct as alleged 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's conduct was intentional, and in acting as he did, he violated duties owed to the public, the legal system, and the legal profession, causing actual harm. The baseline sanction for this type of misconduct is disbarment. The record supports the aggravating and mitigating factors found by the disciplinary board. Additionally, the aggravating factor of illegal conduct is present.

Turning to the issue of an appropriate sanction, in Appendix D to Supreme Court Rule XIX, we set forth guidelines illustrating the types of conduct that might warrant permanent disbarment.<sup>2</sup> While respondent's conduct does not definitively fit any of the specific guidelines, we note that these guidelines are not intended to bind us in our decision-making process. In *In re: Richard*, 14-1684 (La. 10/3/14), 148 So. 3d 923, an attorney conspired and arranged to sell controlled dangerous substances to an undercover narcotics officer; although none of the permanent disbarment guidelines applied, we ultimately concluded that, in order to protect the public and maintain the high standards of the legal profession, the attorney should be permanently disbarred. The instant matter presents a similar situation to that presented in *Richard* and, in order to protect the public and maintain the high

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<sup>2</sup> Effective May 15, 2019, the Appendices to Supreme Court Rule XIX were deleted in their entirety and replaced with new Appendices. The permanent disbarment guidelines are now listed under Rule XIX, Appendix D instead of Appendix E.

standards of the legal profession, we find that respondent should not be allowed the opportunity to return to the practice of law in the future.

Accordingly, we will accept the board's recommendation and permanently disbar respondent.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Edward Duane Schertler, II, Louisiana Bar Roll number 29050, be and he hereby is permanently 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. Pursuant to Supreme Court Rule XIX, § 24(A), it is further ordered that respondent be permanently prohibited from being readmitted to the practice of law in this state. 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.