

SUPREME COURT OF LOUISIANA

NO. 2019-B-1317

IN RE: MICHAEL SEAN REID

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Michael Sean Reid, a disbarred attorney.

**PRIOR DISCIPLINARY HISTORY**

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 2001.

On December 9, 2016, we placed respondent on interim suspension after the ODC reported four overdrafts in his client trust account between May 31, 2016 and July 21, 2016 and received several complaints from his clients. *In re: Reid*, 16-1641 (La. 12/9/16), 207 So. 3d 1039. On December 5, 2018, we disbarred respondent, retroactive to the date of his interim suspension, for neglecting several legal matters, failing to communicate with those clients, failing to refund unearned fees to several clients, allowing his client trust account to become overdrawn on four occasions, and failing to cooperate with the ODC in its investigations. *In re: Reid*, 18-0849 (La. 12/5/18), \_\_\_ So. 3d \_\_\_ (“*Reid I*”).

Against this backdrop, we now turn to a consideration of the misconduct at issue in the instant proceeding.

## **FORMAL CHARGES**

### *Count I – The Mouton Matter*

In early 2016, Daniel Mouton hired respondent to assist him in modifying child custody, paying a total of \$2,750 in attorney's fees and court costs on February 25, 2016. A few months later, Mr. Mouton learned respondent failed to perform any work on his behalf. Mr. Mouton requested a refund via text message, but respondent advised Mr. Mouton that he had spent the money and needed some time to get the money together for a refund. Respondent never refunded the money.

The endorsement on Mr. Mouton's check indicated that respondent cashed the check instead of depositing it into his client trust account. However, even if respondent did deposit the check into his trust account, the balance in the account was less than Mr. Mouton's payment on February 28, 2016 as well as at the end of March 2016 and April 2016. Mr. Mouton has a claim pending with the Louisiana State Bar Association's Client Assistance Fund.

Respondent received notice of Mr. Mouton's disciplinary complaint in December 2016. Nevertheless, he failed to respond.

The ODC alleged that respondent's conduct violated 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(a) (safekeeping property of clients or third parties), 1.16(d) (obligations upon termination of the representation), 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(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

## *Count II – The Seay Matter*

In September 2015, Kirby Seay paid respondent a total of \$2,500 to assist her in a child custody modification and child support matter. Ms. Seay never signed an agreement with respondent, and her case remains pending.

In June 2016, Ms. Seay hired respondent to file a temporary restraining order (“TRO”). On June 6, 2016, she met with respondent to discuss the TRO. During the meeting, respondent was falling asleep and could not recall previous conversations with Ms. Seay. Respondent advised Ms. Seay to contact the Child Support Enforcement Services since the TRO would use most of her remaining retainer. Because respondent failed to provide adequate legal advice regarding the TRO, Ms. Seay was forced to dismiss the case.

Since then, Ms. Seay has tried to contact respondent via emails, telephone calls, and text messages to obtain her file and a refund of the unearned fees. However, those attempts at contact have been unsuccessful.

The endorsement on Ms. Seay’s checks indicated that respondent cashed the checks instead of depositing them into his trust account. However, even if respondent did deposit the checks into his trust account, the balance in the account was less than Ms. Seay’s total payment at the end of November 2015, January 2016, February 2016, March 2016, and April 2016. Ms. Seay filed a claim with the Client Assistance Fund, which paid her \$1,500 in October 2018.

Respondent received notice of Ms. Seay’s disciplinary complaint in December 2016. Nevertheless, he failed to respond.

The ODC alleged that respondent’s conduct violated Rules 1.3, 1.4, 1.15(a), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

### *Count III – The Meaux Matter*

In March 2016, Edward Meaux hired respondent to represent him in a child support matter. Mr. Meaux paid respondent a total of \$6,095.18. Respondent worked on Mr. Meaux's legal matter until June 2016 but, thereafter, stopped communicating with Mr. Meaux or doing any work on his behalf. Mr. Meaux tried several times to contact respondent via text messages, telephone, and email but was unsuccessful.

Mr. Meaux then obtained new counsel. His new attorney eventually received Mr. Meaux's files, which were delivered by an unknown runner respondent had hired. Mr. Meaux has filed a claim with the Client Assistance Fund.

Respondent received notice of Mr. Meaux's disciplinary complaint in January 2017. Nevertheless, he failed to respond.

The ODC alleged that respondent's conduct violated Rules 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

### *Count IV – The Platt Matter*

In June 2016, Cindy Platt hired respondent to represent her in divorce proceedings, paying him \$2,500. Thereafter, respondent failed to communicate with Ms. Platt, did no work on her behalf, and failed to appear at her September 9, 2016 hearing. Ms. Platt tried several times to contact respondent via text messages, telephone, and email but was unsuccessful.

Respondent received notice of Ms. Platt's disciplinary complaint in January 2017. Nevertheless, he failed to respond.

The ODC alleged that respondent's conduct violated Rules 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

### *Count V – The Mendoza Matter*

In May 2016, Harry Mendoza hired respondent to represent him in opposing the intrafamily adoption of his son, paying him a total of \$3,700 in attorney's fees and court costs. Thereafter, respondent failed to communicate with Mr. Mendoza and failed to appear in court on Mr. Mendoza's behalf, which resulted in Mr. Mendoza losing his case. According to Mr. Mendoza, respondent earned only \$500 of the \$3,700 he was paid. Nevertheless, respondent failed to refund the unearned portion of the fee. Mr. Mendoza eventually filed a claim with the Client Assistance Fund.

Respondent received notice of Mr. Mendoza's disciplinary complaint in March 2017. Nevertheless, he failed to respond.

The ODC alleged that respondent's conduct violated Rules 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

### *Count VI – The Melancon Matter*

In June 2015, Matthew Melancon hired respondent to help him obtain domiciliary custody of his two daughters, paying him a \$5,000 deposit. The endorsement on Mr. Melancon's check indicated that respondent cashed the check instead of depositing it into his trust account. However, even if respondent did deposit the check into his trust account, the balance in the account was less than Mr. Melancon's payment for several months.

A few weeks after taking Mr. Melancon's case, respondent stopped communicating with him, despite Mr. Melancon's numerous attempts to contact him. Although Mr. Melancon was able to obtain his file, some documents were missing.

Respondent received notice of Mr. Melancon's disciplinary complaint in March 2017. Nevertheless, he failed to respond.

The ODC alleged that respondent's conduct violated Rules 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

*Count VII – The Henry Matter*

In April 2015, Adam Henry hired respondent to represent him in a child support matter, paying a deposit of \$5,000 to be billed at \$200 per hour. Respondent did not file a motion to modify child support until October 2015, and he only appeared in court on Mr. Henry's behalf on one occasion in January 2016.

In May 2016, respondent notified Mr. Henry that he had expended the \$5,000 deposit but did not provide Mr. Henry with any billing statements. Mr. Henry paid respondent an additional \$1,250. The endorsement on the check indicated respondent cashed the check instead of depositing it into his trust account.

At some point thereafter, a hearing was scheduled in Mr. Henry's case, but respondent informed him the judge had continued the matter. Mr. Henry has had no contact with respondent since June 2016 when respondent notified him of the resetting of the hearing. Furthermore, Mr. Henry later learned that respondent requested the hearing be canceled due to an alleged medical emergency.

Mr. Henry filed a claim with the Client Assistance Fund. He also filed a criminal complaint with the Lafayette Police Department. During its investigation, the police learned that respondent had relocated to Columbus, Texas and was a professional poker player in Austin, Texas.

Respondent received notice of Mr. Henry's disciplinary complaint in May 2017. Nevertheless, he failed to respond.

The ODC alleged that respondent's conduct violated Rules 1.3, 1.4, 1.5(f)(5), 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

## **DISCIPLINARY PROCEEDINGS**

In January 2019, the ODC filed formal charges against respondent, as set forth above. 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 hearing committee's consideration.

### *Hearing Committee Report*

After considering the ODC's submission on sanctions, the hearing committee acknowledged that the factual allegations contained in the formal charges were deemed admitted upon respondent's failure to file an answer. Based on those deemed admitted 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 his clients, the legal system, and the legal profession. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is disbarment. The committee also determined that multiple aggravating factors but no mitigating factors are present.

In light of the above, the committee recommended respondent be permanently disbarred. The committee also recommended that respondent be ordered to pay restitution to his clients and the Client Assistance Fund for unearned fees that were improperly converted to his own use and be ordered to pay all costs of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. Pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report directly to the court.<sup>1</sup>

## 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 matter supports a finding that respondent essentially abandoned his law practice, neglected legal matters, failed to communicate with clients, failed to refund unearned fees, and failed to cooperate with the ODC in its

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<sup>1</sup> As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that “[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee's report to the court.”



investigations. As such, he has violated the Rules of Professional Conduct as charged.

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 has intentionally violated duties owed to his clients, the legal system, and the legal profession, causing actual harm to his clients. The baseline sanction for this type of misconduct is disbarment. Aggravating factors include 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, vulnerability of the victims, substantial experience in the practice of law (admitted 2001), and indifference to making restitution. The record does not indicate the presence of any mitigating factors.

With the exception of respondent's failure to cooperate with the ODC's investigations of the instant disciplinary complaints, all of respondent's misconduct at issue here occurred during the same time period as the misconduct at issue in *Reid I*. Therefore, the ODC suggests in its deemed admitted submission that we address the current misconduct in conjunction with the misconduct in *Reid I*. The concept of simultaneously considering new charges based on conduct occurring at the same time as earlier misconduct originated in our opinion in *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991), in which we explained:

Since the attorney-respondent cannot control the timing of the institution of disciplinary proceedings, it is generally inappropriate to disbar a previously disbarred attorney an additional time when the violations at issue occurred before or concurrently with the violations which resulted in the initial disbarment. When a second disciplinary proceeding against an attorney involves misconduct which occurred during the same time period as the first proceeding, the overall discipline to be imposed should be determined as if both proceedings were before the court simultaneously.

In *Chatelain*, we were concerned that it would be potentially unfair for a lawyer to receive a greater sanction simply because of the timing of the prosecution. However, as the jurisprudence has evolved, we have also recognized that the lawyer should not benefit in cases where it is obvious that the cumulative effect of the newly-charged misconduct and the prior misconduct would have caused us to impose a greater sanction had we been aware of that misconduct at the time we rendered our initial judgment. *See, e.g., In re: Holley*, 03-1366 (La. 10/3/03), 856 So. 2d 1197 (“[h]ad we considered the instant misconduct together with the misconduct in *Holley I*, it is likely we would have imposed a more severe sanction, probably in the range of eighteen months, with some period of deferral and probation.”). In short, our overriding consideration has been to determine the appropriate overall sanction for the lawyer’s misconduct, ignoring any distortions which may be caused by the timing of the filing of formal charges.

Applying that reasoning to the instant case, we recognize that the substantive misconduct in the instant charges is part of the continuing series of professional breaches by respondent spanning the period 2015-2016 that we first addressed in *Reid I*. To consider these charges in isolation from the similar charges in *Reid I* would prevent us from recognizing respondent’s pattern of serious misconduct. Accordingly, we find it appropriate to consider the instant charges together with the

charges at issue in *Reid I* and determine an appropriate sanction as if both cases were before the court simultaneously.

In *Reid I*, we found respondent engaged in multiple instances of neglect of his clients' legal matters, failure to communicate with his clients, and failure to refund unearned fees. He also allowed his client trust account to become overdrawn on four occasions and failed to cooperate with the ODC in its investigations. Similarly, in the instant proceeding, respondent neglected his clients' legal matters, failed to communicate with his clients, failed to refund unearned fees, and failed to cooperate with the ODC in its investigations.

In Appendix D to Supreme Court Rule XIX, we set forth guidelines illustrating the types of conduct which might warrant permanent disbarment. Guideline 1 applies to "repeated or multiple instances of intentional conversion of client funds with substantial harm." Taken as a whole, respondent's conduct here and in *Reid I* falls within Guideline 1. Respondent has intentionally failed to refund a significant amount of unearned fees to numerous clients, essentially converting those funds to his own use and causing those clients actual harm. Evidence in the record reflects that, as of May 31, 2019, the Client Assistance Fund has paid out a total of \$27,775.05 to respondent's clients, most of whom are subjects of either *Reid I* or the instant matter. Furthermore, numerous aggravating factors are present with no factors in mitigation. Had we been aware of the instant misconduct at the time we considered *Reid I*, we would have permanently disbarred respondent.

Accordingly, we will adopt the hearing committee's recommendation and impose permanent disbarment. We will further order respondent to pay restitution to his clients and/or to the Client Assistance Fund, as appropriate, as well as pay all costs of this proceeding.

## **DECREE**

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Michael Sean Reid, Louisiana Bar Roll number 27622, 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. It is further ordered that respondent shall pay restitution to his clients and/or to the Client Assistance Fund, 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.