

SUPREME COURT OF LOUISIANA

NO. 2019-B-1829

IN RE: RONALD DAVID HARVEY

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

**FORMAL CHARGES**

*The Raspberry Matter*

In August 2016, Billy and Marilyn Raspberry hired respondent to represent their son, Jason, in a child custody and property matter incidental to a divorce. In total, they paid respondent \$5,600 for the representation.

The court record reflects that respondent last appeared in court with Jason on March 28, 2017. Following that appearance, respondent failed to respond to the Rasperrys’ telephone calls, and they were unable to schedule an appointment with respondent. On one occasion, they went to respondent’s office, but the front door was locked. As a result of their inability to reach respondent, Jason had to hire another attorney to complete the child custody matter.

On August 29, 2017, Mr. Raspberry sent respondent a letter advising of the family’s many unsuccessful attempts to communicate with him, and that due to his lack of response, they had to hire another attorney to represent their son. Mr. Raspberry also requested a return of \$3,000 of the fee they paid.

Respondent received Mr. Rasberry's correspondence on September 1, 2017, but he did not immediately respond. On November 13, 2017, Mrs. Rasberry mailed a complaint against respondent to the ODC.<sup>1</sup> On November 14, 2017, respondent sent Mrs. Rasberry a check in the amount of \$3,000. Mrs. Rasberry subsequently notified the ODC of her receipt of the check and requested that she be permitted to withdraw her complaint against respondent.

After receiving notice on November 27, 2017 of Ms. Rasberry's disciplinary complaint against him, respondent requested an extension of time to respond to the complaint. On February 2, 2018, respondent e-mailed the ODC and confirmed that his response would be submitted by February 5, 2018. No response was submitted.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.4 (failure to communicate with a client), 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a) (violation of the Rules of Professional Conduct).

#### *The Bar Admission/DWI Matter*

On May 4, 2011, respondent submitted an application to sit for the July 2011 Louisiana bar examination and a Request for Preparation of a Character Report to the National Conference of Bar Examiners ("NCBE"). In response to question 21A of the NCBE application, which inquires whether the applicant has "ever been cited for, arrested for, charged with, or convicted of any alcohol- or drug-related traffic violation other than a violation that was resolved in juvenile court," respondent answered "No." Respondent also signed an acknowledgement of his obligation to update the application during its pendency.<sup>2</sup>

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<sup>1</sup> Mr. Rasberry died in October 2017.

<sup>2</sup> Supreme Court Rule XVII, § 4(H) provides:

On November 10, 2011, the bar admissions administrator wrote a letter to respondent reiterating his duty to update:

Please remember that until you are admitted to the Bar, you are under a continuing obligation to keep your Character and Fitness Report current and must update responses whenever there is an addition to or change to information previously provided to the Committee. These updates must be made in writing and must include all relevant documentation.

Respondent failed the July 2011 bar exam. In December 2011, he reapplied to sit for the February 2012 exam. While respondent was not required to submit a new NCBE application, he was required to submit an affidavit advising of any updates to his previously submitted responses. On his December 5, 2011 affidavit, respondent reported no changes.

Respondent failed the February 2012 bar exam. In May 2012, he reapplied to sit for the July 2012 exam. Again, respondent was not required to submit a new NCBE application, but he was required to submit an affidavit advising of any updates to his previously submitted responses. On his May 3, 2012 affidavit, respondent again reported no changes.

On July 1, 2012, respondent was arrested in Shreveport and charged with DWI. Beginning on July 23, 2012, respondent sat for the bar exam, which he passed. On October 10, 2012, respondent entered a plea of guilty to an amended charge of reckless operation. Respondent was admitted to the Louisiana bar on October 25, 2012. However, he did not report his July 1, 2012 arrest to the Committee on Bar

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Duty to Keep Application Current. Until admitted to the Bar, an applicant is under a continuing obligation to keep his or her application current and must update responses whenever there is an addition to or a change to information previously provided to the Committee or to the NCBE. Those updates must be made in writing and must include all relevant documentation.

Admissions, thus failing to meet his continuing obligation to keep his application current until admitted to the bar.

The ODC discovered respondent's DWI arrest in connection with its attempts to locate him for purposes of serving him with a subpoena to appear for a sworn statement. The ODC subsequently opened a complaint against respondent.<sup>3</sup> Respondent received notice of the complaint on February 21, 2018, but he did not respond to the complaint. Thereafter, the ODC issued a subpoena directing respondent to appear for a sworn statement on March 27, 2018. Despite being personally served with the subpoena, respondent failed to appear for the sworn statement.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.1(b) (failure to disclose a fact necessary to correct a misapprehension known to have arisen in a bar admission matter; knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c), and 8.4(a).

## **DISCIPLINARY PROCEEDINGS**

The ODC filed the aforementioned formal charges against respondent in June 2018. Respondent was served with the formal charges by certified mail, but he failed to file an answer. Accordingly, the factual allegations contained therein were

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<sup>3</sup> Supreme Court Rule XVII, § 4(G) provides:

Candor in the Application Process. Lack of candor during the application process may be independent grounds for a finding of lack of good moral character by the Committee and refusal to certify the applicant to the Court for admission. **Such lack of candor, if discovered after admission, may serve as the basis for disciplinary action by the Louisiana Attorney Disciplinary Board.** Applicants shall provide complete and candid responses to all inquiries, whether on the Bar Examination Application, the NCBE's Request for the Preparation of a Character Report or Supplemental Report, or as part of any investigation, inquiry or proceeding. [Emphasis added.]

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 deemed admitted submission, the hearing committee made factual findings consistent with the factual allegations in the formal charges that were deemed admitted and proven by clear and convincing evidence. Based on those facts, the committee determined respondent violated Rule 8.1(b) of the Rules of Professional Conduct by his failure to report his arrest to the Committee on Bar Admissions<sup>4</sup>; violated Rule 8.1(c) by his failure to cooperate with the ODC; and violated Rule 1.4 by his failure to communicate with Jason Rasberry. The committee further determined that these violations establish a violation of Rule 8.4(a).

The committee found respondent violated duties owed to his client, the legal profession, the Committee on Bar Admissions, and this court. He negligently violated his duty to his client. He knowingly, if not intentionally, violated his duty of candor to the legal system, including the Committee on Bar Admissions and this court. His failure to cooperate with the ODC's investigation was both knowing and intentional. His misconduct caused actual harm to his client, who needed to procure new counsel to complete his legal matters, and to the legal profession. He also caused the ODC to unnecessarily spend time and expense to attempt to sufficiently

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<sup>4</sup> Throughout its report, the hearing committee refers to the Committee on Bar Admissions as the Committee on Bar Examinations.

investigate the matters. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found "multiple incidents" of negligence in respondent's failure to communicate with his client. The committee also found "multiple incidents" of respondent's failure to disclose his arrest and of failure to cooperate with ODC in its investigation. In mitigation, the committee found the absence of a prior disciplinary record and "the lack of severity of injury" to respondent's client.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day.

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 of the formal charges have been deemed admitted and proven. The board also determined that the legal conclusions of the hearing committee are supported by the factual allegations asserted in the formal charges and by the evidence submitted in support of the allegations. Based on these findings, the board concluded that respondent violated the Rules of Professional Conduct as charged.

The board determined that respondent may have acted negligently in violating his duties to his client, but he acted knowingly, if not intentionally, in violating his duties to the legal profession. By failing to communicate with his client or respond to his client's requests, respondent caused a delay in the client's legal matters and required the client to hire a new attorney. Although respondent later returned the unearned fees to his client, prior to receiving the refund, the client had to expend

additional funds to hire the new attorney. Respondent's failure to report his arrest to the Committee on Bar Admissions caused damage to the public and the profession as the Committee on Bar Admissions was unable to accurately assess respondent's character and fitness prior to his admission to the bar. Respondent also failed to participate in the ODC's investigation of the complaints, including failing to respond to the complaints and failing to appear in response to a subpoena for his sworn statement. Such misconduct causes the unnecessary expenditure of the limited resources of the disciplinary agency and delays the resolution of complaints. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

In aggravation, the board found multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and "deceptive practices" during the bar admissions process. In mitigation, the board found the absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and inexperience in the practice of law (admitted 2012).

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day. The board further recommended that he be assessed with the costs and expenses of this proceeding.

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 evidence in the record of this deemed admitted matter supports a finding that respondent failed to communicate with a client, failed to disclose his DWI arrest to the Committee on Bar Admissions, and failed to cooperate with the ODC in its investigations. As such, he has violated the Rules of Professional Conduct as charged 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 negligently violated a duty owed to his client. He knowingly, if not intentionally, violated a duty he owed to the legal profession. By his misconduct, respondent caused actual harm. Under the ABA's *Standards for Imposing Lawyer Sanctions*, the applicable baseline sanction is suspension. Aggravating factors include multiple offenses and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency. The record supports the mitigating factors found by the board.

Without minimizing the seriousness of respondent's misconduct in the Rasberry matter, which primarily involved respondent's failure to communicate with his client, the more problematic issue in this case involves respondent's apparent disregard for his professional obligations.

In *In re: Stamps*, 03-2985 (La. 4/14/04), 874 So. 2d 113, we found "an explicit duty on an 'applicant for admission to the bar' to refrain from knowingly making false statements of material fact on an application for admission and to disclose facts necessary to correct any misapprehensions arising in such a matter." We also indicated that the purpose behind the disclosure requirement was to "provide this court with the information it needs to make an informed determination of whether the applicant possesses sufficient character and fitness to be admitted to the practice of law in this state."

Respondent's failure to report his DWI arrest to the Committee on Bar Admissions was at least knowing, if not intentional. By failing to disclose his arrest, respondent prevented this court from obtaining access to information that had a significant bearing on his good moral character and fitness to practice law. Because respondent had multiple opportunities to disclose his arrest, after being notified in writing of his continuing obligation to keep his bar application current, we cannot say that the failure to disclose this information was simple oversight on his part.

Similarly, we note that respondent's failure to cooperate with the ODC's investigation into these matters was at least knowing, if not intentional. Not only did respondent fail to respond to either of the disciplinary complaints, copies of which he did receive, or to the formal charges that were filed against him, but he also failed to appear for a sworn statement, despite having been personally served with a subpoena compelling his appearance. Again, this does not seem to be a case of simple oversight on the part of respondent.

Under the circumstances, we agree with the board that a one year and one day suspension is appropriate in this case. Under this sanction, respondent will have to apply for reinstatement, at which time we will have the opportunity to make a fully informed determination as to whether he possesses the necessary character and fitness to practice law.

Accordingly, we will adopt the disciplinary board's recommendation and suspend respondent from the practice of law for one year and one day.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Ronald David Harvey, Louisiana Bar Roll number 34589, be and he hereby is suspended from the practice of law for one year and one day. 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.

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**CRICHTON, J., additionally concurs and assigns reasons:**

This Court finds itself once again faced with violations of our Rules of Professional Conduct by a respondent who has demonstrated a stunning indifference to the disciplinary process, providing us with no viable choice but actual suspension from the practice of law. In my view, respondent's misconduct alone warrants discipline, but the lack of response throughout these proceedings is most concerning.

Unfortunately, this Court has seen recent cases of the same sort, *See In re: Quiana Marie Hunt*, 19-1412 (La. 11/12/19), 282 So.3d 213 (Crichton, J., dissenting, finding that because respondent failed to cooperate in disciplinary proceedings, a period of actual suspension should be imposed); *In Re: Jennifer Gaubert*, 18-1980 (La. 2/11/19), 263 So.3d 408 (Crichton, J., additionally concurring, noting the troublesome nature of an attorney refusing to participate meaningfully in disciplinary proceedings); *In re: Reid*, 18-0849 (La. 12/5/18), \_\_ So.3d \_\_, 2018 WL 6382109 (Crichton, J., dissenting, noting that "lack of cooperation with ODC, the Hearing Committee, the Disciplinary Board, and this Court demonstrates (a) stunning indifference to this noble profession"); *In Re: Neil Dennis William Montgomery*, 18-0637 (La. 8/31/18), 251 So.3d 401 (Crichton, J., dissenting, finding disbarment appropriate where respondent made "zero effort" to respond to any of the accusations against him); *In re: Klaila*, 18-0093 (La. 3/23/18),

238 So.3d 949 (Crichton, J., additionally concurring, emphasizing respondent's failure to cooperate warranted the suspension imposed); and *In Re: Mendy*, 16-B-0456 (La. 10/19/16), 217 So.3d 260 (2016) (Crichton, J., dissenting in part and assigning reasons, stating respondent's evident lack of interest in defending these serious charges against him, coupled with his past sanctions).

In this case, the respondent could have simply responded to the serious allegations lodged against him, exercised reasonable concern for his law license, and presented mitigation evidence to assist this Court in its decision. Instead, he demonstrated a lack of concern for the process – one that as reflected above – we have seen far too many times. Because respondent (1) failed to respond to either complaint, (2) failed to respond to a subpoena by Office of Disciplinary Counsel, (3) failed to answer the formal complaint, (4) failed to show up at the Hearing Committee, (5) failed to object to the Hearing Committee's recommendation (even assuming he had standing to do so), and (6) failed to respond to the Louisiana Supreme Court, we have no choice but to order suspension for a year and a day, a result which, after the passage of time, will require a formal readmission process. *See* La. S. Ct. R. XIX, §24(A) (“A disbarred lawyer or a suspended lawyer who has served an active suspension of more than one year shall be reinstated or readmitted only upon order of the court.”)