

SUPREME COURT OF LOUISIANA

NO. 2019-B-1874

IN RE: JERRY L. SETTLE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

The instant disciplinary proceeding arises from a request for revocation of probation and for the imposition of a previously deferred suspension which was filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Jerry L. Settle,¹ for his failure to comply with the conditions of his probation imposed in *In re: Settle*, 16-1747 (La. 10/28/16), 203 So. 3d 218 (“*Settle I*”).

UNDERLYING FACTS AND PROCEDURAL HISTORY

The record in *Settle I* demonstrated that respondent mishandled his client trust account. Prior to the institution of formal charges, respondent and the ODC submitted a joint petition for consent discipline, proposing that 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 governed by the following conditions:

1. Regular quarterly audits of respondent’s IOLTA account shall be submitted to the ODC during the period of probation to be performed by a CPA of respondent’s choosing, approved by the ODC, with the costs and expenses of the audits to be paid by respondent.
2. Respondent shall complete at least six hours of mandatory CLE during the probationary period in the area of law office practice and/or client trust account management.

¹ Respondent, a New Orleans attorney, is 53 years of age and was admitted to the practice of law in Louisiana in 2004.

3. Respondent must successfully complete the Louisiana State Bar Association's Ethics School during the probationary period.
4. Respondent agrees that any subsequent disciplinary violations arising during the probationary period are to be treated in a summary fashion by the ODC as probation violation matters.
5. Respondent shall be assessed all costs and expenses associated with this disciplinary proceeding.

On October 28, 2016, this court accepted the petition for consent discipline in *Settle I*. The court's order stated in pertinent part as follows:

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 probationary period, may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate.** [Emphasis added.]

On February 15, 2017, respondent executed a formal probation agreement with the ODC. The agreement incorporated the conditions set forth in the joint petition for consent discipline and also required respondent to submit professional activities reports to the ODC on a semiannual basis (June 30th and December 31st).

On February 19, 2019, respondent and the ODC filed a "Joint Motion to Extend Probation." In the motion, the parties represented that respondent failed to comply with the conditions of his probation by (1) failing to submit professional activities reports until April 2018, (2) failing to submit evidence of his attendance at the required MCLE courses, and (3) failing to submit quarterly client trust account audit reports until August 2018. The parties additionally represented that the audit reports provided by respondent to date indicated trust account mismanagement. Based upon such, the parties proposed that respondent's probation be extended for one year.

On April 29, 2019, this court issued an order granting the motion, subject to the condition that respondent produce to the ODC proof of full compliance with all conditions of probation within thirty days of the date of the order. The order further

directed the ODC to immediately institute proceedings to revoke respondent's probation if satisfactory proof were not submitted by this deadline.

On June 6, 2019, the ODC filed a notice of compliance with this court, confirming that respondent completed the required MCLE credit hours, submitted his December 2018 professional activities report, and submitted the required quarterly trust account audit reports.

On June 14, 2019, respondent signed an extension of his probation agreement.

The extension included the following provisions:

DURATION – By order dated April 29, 2019, the Louisiana Supreme Court extended [respondent's] probation for a period of one year, conditioned upon his full compliance with all conditions of probation within thirty days of the date of the order. The extended period of probation commenced on June 3, 2019.

PROBATION CONDITIONS – [Respondent] shall:

1. Promptly respond to all requests by and make himself reasonably available for conferences with the ODC;

* * *

4. Regular quarterly audits of respondent's IOLTA account shall be submitted to the ODC during the period of probation to be performed by a CPA of respondent's choosing, approved by the ODC, with the costs and expenses of the audits to be paid by respondent.

- a. 2019 Q2 – July 30, 2019
- b. 2019 Q3 – October 30, 2019
- c. 2019 Q4 – January 30, 2020
- d. 2020 Q1 – April 30, 2020
- e. 2020 Q2 – July 30, 2020

5. Acknowledge that failure to ensure the above-referenced quarterly audit reports are received by the ODC by 5:00 p.m. on the specific due dates will be considered a violation of the terms of this probation agreement and grounds for filing a request for revocation [of probation].

7. Acknowledge that any violation of the Rules of Professional Conduct and/or this Probation Agreement may result in summary revocation of his probation and making the deferred suspension executory and/or may result in the imposition of additional discipline as appropriate.

DISCIPLINARY PROCEEDINGS

Request to Revoke Probation and Make Deferred Suspension Executory

On October 16, 2019, the ODC filed a request to revoke respondent's probation and make the fully deferred suspension imposed *in Settle I* executory, alleging that respondent failed to comply with the terms of his probation.

The ODC alleged that respondent had failed to submit his 2019 second quarterly audit report by the due date of July 30, 2019. The report, which the ODC did not receive until August 7, 2019, showed that respondent failed to correct all discrepancies identified in his previous reconciliations and trust account activity, and failed to resolve individual matter balances to the appropriate payees. There were also additional issues, including the failure to keep accurate records, failure to timely disburse balances, and failure to submit reconciliations for a second trust account.

The ODC further alleged that on August 9, 2019, respondent self-reported three separate instances wherein he wrote and cashed duplicate payments to himself, and in one case, the physical layout of his checkbook resulted in a duplicate check to himself that he cashed "in error." Although respondent discovered that duplication before depositing the duplicate checks, he still deposited each item. The errors were discovered by his certified public accountant. Respondent deposited money back into his trust account after he was notified of these errors. Respondent identified the errors as "clerical" and "writing error[s]."

The ODC's review of respondent's trust account activity confirmed the duplicate payments and revealed conversion in violation of Rule 1.15 (safekeeping property of clients or third persons) of the Rules of Professional Conduct, as follows:

In the first matter, respondent deposited \$12,009 into his trust account, but disbursements related to the matter totaled \$12,018. The disbursements resulted in a deficit because of a duplicate \$9.00 check written to respondent. The corresponding settlement did not allocate \$9.00 of the \$12,009 deposit; therefore,

the first of the two \$9.00 disbursements to respondent is not supported as earned and/or incurred.

In the second matter, respondent deposited \$5,100 into his trust account, but disbursements related to the matter totaled \$6,000. The \$900 deficit is a direct result of respondent making a duplicate payment to himself. The matter holds an actual deficit of \$1,800 because an additional \$900 remains due to the client and to a third-party provider.

In the third matter, respondent deposited \$25,000 into his trust account, but disbursements related to the matter totaled \$25,500.12. The \$500.12 deficit is a direct result of respondent making a duplicate payment to himself. Copies of all checks associated with the matter were not included with respondent's quarterly submission to the ODC. Thus, it could not be confirmed to whom each disbursement was payable and whether any clients or third parties were underpaid or overpaid.

In the fourth matter, respondent deposited \$14,319.26 into his trust account, but disbursements totaled \$15,553.01. Total disbursements and outstanding checks totaled \$18,898.01 and exceeded the associated deposits by \$4,578.75. The cause of the deficit is a \$4,578.75 disbursement to respondent, which was a duplicate payment in excess of the amount that he was owed.

Accordingly, the ODC prayed for revocation of respondent's probation and the imposition of the previously deferred one year and one day suspension.

Hearing on Revocation of Probation

This matter proceeded to a hearing before an adjudicative panel of the disciplinary board on November 14, 2019. The ODC introduced documentary evidence and called the following witnesses to testify at the hearing: Deputy Disciplinary Counsel Katie Causey, head of the probation department for the ODC,

and Angelina Marcellino, forensic auditor for the ODC. Respondent called his certified public accountant to testify at the hearing.

Disciplinary Board Recommendation

On November 25, 2019, the disciplinary board filed its report with this court, recommending that the ODC's request to revoke probation be granted in light of the evidence in the record. The board also recommended that the fully deferred one year and one day suspension imposed in *Settle I* be made executory.

The board found that respondent violated his probation by failing to timely submit his audit report for the second quarter of 2019. The testimony presented at the hearing revealed that respondent had not informed his accountant of the July 30, 2019 deadline or provided his accountant with any records or other information necessary to prepare the audit report. It was not until Ms. Causey contacted respondent and his accountant on July 31, 2019, after the report had not been timely submitted, that respondent began any effort to provide his accountant with the information necessary to prepare the report. Considering respondent's numerous prior failures to comply with the terms of his probation and his already having been granted an extension of his probation, the board found his post-deadline efforts were not sufficient to excuse yet another untimely filing, particularly when he also failed to comply with the terms and conditions of his probation in other areas.

The board also found that respondent violated his probation by failing to respond to the ODC's request for reconciliations on the second trust account. In June 2018, respondent identified the second account, which existed from February 12, 2016 to August 31, 2018, in his annual trust account registration report. On June 3, 2019, Ms. Marcellino wrote to respondent requesting that he provide the ODC with reconciliations and supporting documentation from the date the second account was opened through the first quarter of 2019. Ms. Marcellino further requested that

in the future, respondent provide quarterly reconciliations and supporting documentation for all trust accounts with his submissions during the probationary period. As of the date of the hearing, respondent had not provided the ODC with any quarterly reconciliations related to the second trust account.

Next, the board found that respondent failed to properly maintain and promptly disburse client and third-party funds during his probationary period in violation of Rule 1.15. In mid-2019, after the probation extension was granted, respondent wrote and cashed four duplicate checks in the amounts of \$900, \$9.00, \$500.12, and \$4,578.75 from his trust account. These duplicate checks were made payable to respondent, and were overpayments to himself in connection with four matters. Although respondent realized that he had inadvertently written duplicate checks, which he intended to void, he mistakenly deposited them with other checks that he had written. The testimony reflects that his accountant had given respondent a spreadsheet listing numerous checks which needed to be written to correct prior discrepancies in the trust account, many in amounts under \$1.00. Thus, the duplicate checks were clerical errors that were made when writing out the many checks. After respondent's accountant identified the duplicate checks in early 2019, respondent promptly reimbursed the trust account and self-reported his errors. Nevertheless, respondent technically converted these funds for approximately sixty days. As of the date of the hearing, respondent owed \$900.12 to clients and/or third parties, a portion of which has remained unpaid since 2017.

Finally, the board added that respondent's misconduct giving rise to the above rule violations was negligent and was not motivated by dishonesty.

Based on these findings, the board concluded that respondent violated certain conditions of his probation and committed further violations of the Rules of Professional Conduct. Accordingly, the board recommended that the request to revoke probation be granted and that the fully deferred one year and one day

suspension be made executory. The board further recommended that respondent be assessed with the costs and expenses of this proceeding.²

DISCUSSION

A review of the record reveals that respondent has not complied with the provisions of his probation and has committed further violations of the Rules of Professional Conduct. To protect the public, we find it is necessary to revoke respondent's probation and impose the previously deferred suspension.

Accordingly, we will accept the disciplinary board's recommendation and grant the request to revoke respondent's probation, making the previously deferred one year and one day suspension imposed in *Settle I* immediately executory.

DECREE

For the reasons assigned, respondent's probation is revoked and the previously deferred one year and one day suspension imposed in *In re: Settle*, 16-1747 (La. 10/28/16), 203 So. 3d 218, is hereby made immediately executory. All costs and expenses in the matter are assessed against respondent, Jerry L. Settle, Louisiana Bar Roll number 28856, 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.

² Four board members concurred in the board's recommendation to revoke probation but would not find a violation of probation arising out of the duplicate checks respondent inadvertently made out to himself.