

NO. 2019-B-1746

IN RE: MATTHEW B. COLLINS, JR

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Matthew B. Collins, Jr., an attorney licensed to practice law in Louisiana, but currently ineligible to practice.¹

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 1978. In 2015, this court accepted a petition for consent discipline in which respondent stipulated that he had neglected a legal matter, causing his client’s lawsuit to be dismissed as abandoned, and failed to communicate with his client. For this misconduct, respondent was suspended from the practice of law for six months, fully deferred, subject to a six-month period of unsupervised probation. *In re: Collins*, 15-1835 (La. 11/6/15), 182 So. 3d 35.

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

¹ On September 9, 2016, respondent was declared ineligible to practice law for failure to pay his bar dues and the disciplinary assessment, and for failure to file a trust account registration statement.

FORMAL CHARGES

In May 2011, Shannara Condoll retained the law firm of Collins & Marshall (the “firm”) to represent her on a contingency fee basis in a claim for damages arising out of injuries she had sustained in her leased apartment. On May 11, 2011, the firm sent Ms. Condoll a copy of the original lease agreement and four medical release authorization forms for her to sign and return. On June 28, 2011, the firm sent the landlords a letter acknowledging its representation of Ms. Condoll and requesting the return of her security deposit. There is no indication of any other action taken in the matter, or that there was any other contact with Ms. Condoll regarding the status of her matter.

In May 2017, Ms. Condoll filed a complaint against respondent with the ODC. Respondent failed to respond to notice of the complaint.²

The ODC alleged that respondent’s conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4(a)(3) (failure to keep a client reasonably informed about the status of a matter), 1.4(a)(4) (failure to promptly comply with reasonable requests for information), 1.16(d) (obligations upon termination of the representation), and 8.4(a) (violation of the Rules of Professional Conduct).

DISCIPLINARY PROCEEDINGS

The ODC filed formal charges against respondent in February 2018. Respondent failed to answer the formal charges. Accordingly, the factual allegations

² Attorney Dianne J. Marshall, who was formerly associated with the firm, was also named in the disciplinary complaint. In her answer to the complaint, Ms. Marshall acknowledged that she initially handled Ms. Condoll’s file, but noted that she left the firm in 2012 and did not retain the file. Pursuant to a joint petition for consent discipline, Ms. Marshall admitted that she negligently violated Rules 1.3, 1.4, 1.16(d), and 8.4(a). For her misconduct, Ms. Marshall was publicly reprimanded. *In re: Marshall*, 18-0918 (La. 6/15/18), 245 So. 3d 1040.

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 deemed admitted submission, the hearing committee determined the factual allegations of the formal charges were deemed admitted and proven by clear and convincing evidence. In addition, the committee found that although the complaint indicated that the firm was hired to pursue a personal injury claim and the retainer agreement referenced an injury, the demand letter that was sent to the landlords only asserted a claim for the return of a \$750 security deposit.

Based on these facts, the committee determined that respondent violated Rules 1.3, 1.4(a)(3), 1.16(d), and 8.4(a) of the Rules of Professional Conduct. The committee declined to find a violation of Rule 1.4(a)(4), based on the finding that there was nothing in the facts to show that Ms. Condoll made any requests for information.

The committee determined that respondent violated duties owed to his client and legal profession. The committee indicated that it was impossible to determine from the record whether respondent acted negligently, knowingly, or intentionally. However, respondent's misconduct caused potential harm in that Ms. Condoll may have had a viable claim, which seems to have arisen in 2011 and has now likely prescribed. The committee noted, however, that it does not appear that Ms. Condoll actually paid any money to respondent for the little he did. Finally, the committee added that respondent's total lack of cooperation with the ODC, especially in light

of his prior suspension, is alone grounds for a suspension. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is either a public reprimand or suspension.

The committee found that the aggravating factor of a prior disciplinary record is present. The committee also stated: "Respondent has failed to cooperate with the disciplinary process or to answer the charges against him." The committee found no mitigating factors present.

Based on the foregoing, the committee recommended respondent be suspended from the practice of law for six months. The committee also recommended respondent be assessed with all costs of this proceeding.

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 were deemed admitted and proven. The board also adopted the hearing committee's additional factual finding. Based on these findings, the board concluded that the committee correctly applied the Rules of Professional Conduct.

The board found that respondent violated duties owed to his client and the legal profession. Although the record does not establish his mental state at the time of the misconduct, respondent certainly should have known that his conduct – or lack of activity – would or could cause harm to his client and that his failure to cooperate with the ODC in its investigation was a violation of his duty owed as a professional. The amount of actual injury is not established in the record, but the potential harm is apparent in that Ms. Condoll may have had a viable personal injury claim, which has likely prescribed. Finally, respondent caused the ODC to waste its

limited resources by having to repeatedly pursue his response to the complaint. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the baseline sanction for respondent's misconduct is suspension.

The board found the following aggravating factors are present: a prior disciplinary record, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law (admitted 1978). The board indicated that no mitigating factors are present.

After 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 also recommended respondent be assessed with all costs and expenses of these proceedings.

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 neglected a legal matter, failed to communicate with a client, and failed to protect the client's interests upon the termination of the representation. This misconduct is a violation of the Rules of Professional Conduct as found by the hearing committee and the disciplinary board.

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 violated duties owed to his client and the legal profession. He should have known that by essentially abandoning Ms. Condoll's case, and then by failing to protect her interests, he may have caused her actual harm. Respondent also should have also known, particularly in light of his prior disciplinary record, that his failure to cooperate with the ODC in its investigation harms the legal profession and violates his duty as a professional. The baseline sanction for this misconduct is suspension. The record supports the aggravating factors found by the disciplinary board. No mitigating factors are evident from the record.

In support of its recommended sanction, the disciplinary board cited several cases wherein the attorney received a one year and one day suspension for similar misconduct. In *In re: Gaharan*, 08-2829 (La. 4/2/09), 6 So. 3d 745, an attorney failed to communicate with his client and failed to cooperate with the ODC in its investigation. In *In re: Armato*, 07-0500 (La. 6/1/07), 958 So. 2d 650, an attorney neglected two legal matters, failed to communicate with his clients, and failed to cooperate with the ODC in its investigation. Like respondent, the attorneys in *Gaharan* and *Armato* also failed to meet obligations owed to clients upon the termination of representation. In the cases of *In re: Kehr*, 07-0071 (La. 3/23/07), 952 So. 2d 668, and *In re: Kurzweg*, 03-2902 (La. 4/2/04), 870 So. 2d 978, the misconduct at issue involved neglect of a legal matter, failure to communicate with a client, and failure to cooperate with the ODC. Like respondent, the attorneys in *Kehr* and *Kurzweg* also had prior disciplinary records, and there were no mitigating factors present.

Based on our review of the aforementioned jurisprudence, we find the sanction recommended by the board is appropriate. Accordingly, we will 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 Matthew B. Collins, Jr., Louisiana Bar Roll number 4310, 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.