

SUPREME COURT OF LOUISIANA

NO. 2017-B-1861

IN RE: TIMON V. WEBRE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

**UNDERLYING FACTS**

In October 2012, Martha Lucore retained respondent to defend her against a personal injury claim, for which respondent received a \$2,000 advance deposit towards an hourly rate of \$150. On September 4, 2013, respondent sent an e-mail to Ms. Lucore advising that he intended to file a motion to dismiss the following week. However, other than enrolling as counsel and filing an answer to the petition, respondent did not take any other action in the matter.

In November 2014, Ms. Lucore sent respondent written notice terminating the representation and requesting a refund of the fee she paid. In March 2015, after deducting the costs for filing the answer, respondent refunded \$1,728 of the fee to Ms. Lucore. Ms. Lucore retained new counsel, and the personal injury claim against her was later dismissed.

In his sworn statement, respondent admitted that he deposited the check he received from Ms. Lucore into his personal account instead of his client trust account. There is no evidence that indicates that the funds were deposited into

respondent's trust account during the course of the representation. Bank statements also show several debit card and/or ATM card withdrawals from the trust account.

## **DISCIPLINARY PROCEEDINGS**

In November 2016, the ODC filed formal charges against respondent, alleging that his conduct as set forth above 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 (failure to communicate with a client), 1.5(f)(4) (when the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account), 1.15(a) (safekeeping property of clients or third persons), 1.15(f) (cash withdrawals and checks made payable to "Cash" are prohibited on client trust accounts), 1.16(d) (obligations upon termination of the representation), and 8.4(a) (violation of the Rules of Professional Conduct).

Respondent answered the formal charges, and the matter was set for a formal hearing before the hearing committee. Prior to the hearing, respondent and the ODC entered into a joint stipulation of facts and rule violations. In this document, respondent stipulated to the essential facts alleged by the ODC and admitted that he violated the Rules of Professional Conduct as charged, except that he did not stipulate to a violation of Rule 1.15(f).

### *Hearing Committee Report*

After considering the evidence and testimony presented at the hearing, the hearing committee accepted the joint stipulations agreed to by the parties. In addition, the committee found that the evidence, including both the bank statements related to the trust account and the testimony of respondent, reflects that respondent used a debit card and an ATM card to withdraw funds from the trust account. Based

on these findings, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee found that respondent negligently violated duties owed to his client and the legal profession. His misconduct caused actual and potential harm. Respondent failed to communicate appropriately with Ms. Lucore and negligently delayed the dismissal of her matter. Respondent did not deposit Ms. Lucore's funds into his client trust account, but he used funds from his trust account to make a refund to Ms. Lucore. While there is no evidence of financial harm to Ms. Lucore, respondent's poor accounting and allocation of funds caused potential harm to other clients. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee found the following aggravating factors are present: a prior disciplinary record (1998 and 2002 admonitions, both involving violations related to diligence and communication) and substantial experience in the practice of law (admitted 1988). The committee found the following mitigating factors are present: absence of a dishonest or selfish motive (he accepted the matter at a discounted rate), personal or emotional problems,<sup>1</sup> timely good faith effort to make restitution, cooperative attitude toward the proceedings, remorse, and remoteness of prior offenses. In addition, the committee added that respondent has a substantial litigation practice but does not normally handle client funds or hourly personal injury defense litigation. Respondent testified that his primary practice involves criminal defense, juvenile defense, and charity work for the courts.

Based on these findings, the committee recommended that respondent be suspended for one year and one day, fully deferred, subject to a concurrent period of

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<sup>1</sup> The committee noted that respondent has ongoing health issues, which require him to take several medications that cause extreme tiredness. He also is the sole caretaker for his mother who lives with him and suffered increased health issues during the relevant time period. During that time, respondent underwent diagnostic tests for his own health issues.

supervised probation with the condition that he attend classes on trust accounting and law office management and engage a CPA to perform a monthly accounting and report quarterly to a practice monitor. The committee also recommended that he be assessed with the costs and expenses 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 determined that the hearing committee's findings of fact are supported by the evidence and are not manifestly erroneous. The parties stipulated to a majority of the facts prior to the hearing. Effect must be given to these stipulations unless they are withdrawn. *In re: Torry*, 10-0837 (La. 10/19/10), 48 So. 3d 1038. In addition to the factual allegations, the parties stipulated that respondent violated Rules 1.3, 1.4, 1.5(f)(4), 1.15(a), 1.16(d), and 8.4(a). Likewise, these stipulations must be given effect. *Id.* The committee also found that respondent violated Rule 1.15(f) by using an ATM card to withdraw funds from his trust account. The board found this conclusion is supported by the record.

The board determined that respondent negligently violated a duty owed to his client. He caused actual harm to Ms. Lucore by prolonging the litigation and by failing to refund the unearned fee for several months after he was terminated. This harm does not appear to be significant. Respondent also caused potential harm to his clients by misusing his trust account. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension. The board agreed with the aggravating and mitigating factors found by the committee.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended that respondent be suspended from the practice

of law for one year and one day, fully deferred, followed by a one-year period of supervised probation, during which he should be required to attend the Louisiana State Bar Association's ("LSBA") Trust Accounting School and Law Office Management Assistance Program and submit trust account statements to the ODC for review on a quarterly basis. The board also recommended that respondent 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. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The formal charges in this case allege that respondent neglected his client's legal matter, failed to communicate with his client, and failed to promptly refund an unearned fee. Respondent subsequently stipulated to the truthfulness of these facts. The record also supports a finding that respondent mishandled his trust account. Based on these facts, respondent has violated 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).

The record further supports a finding that respondent negligently violated duties owed to his client, causing potential and actual harm. The aggravating and mitigating factors found by the hearing committee are supported by the record. The baseline sanction for this type of misconduct is suspension.

In its report, the board cited cases in which this court has imposed fully deferred suspensions for trust account mismanagement when there was little or no actual harm. *See, e.g., In re: Cicardo*, 04-0828 (La. 7/2/04), 877 So. 2d 980 (fully deferred one-year suspension, subject to a two-year period of probation with conditions, imposed upon an attorney who mishandled his client trust account by keeping personal funds in the account, which he occasionally borrowed to fund his operating account, but caused no actual harm to his clients or to third parties). In the instant matter, respondent’s misconduct is similar to *Cicardo* in that he mismanaged his trust account, which created the potential for harm to clients and third parties.

The board also cited a case in which this court imposed a fully deferred suspension upon an attorney who neglected a legal matter, failed to communicate with a client, and failed to refund an unearned fee. *See In re: Donald*, 13-2056 (La. 11/01/13), 127 So. 3d 918. In the instant matter, respondent’s misconduct is similar to *Donald* in that he neglected his client’s legal matter, failed to communicate with his client, and failed to promptly refund an unearned fee upon the client’s request.

Considering the totality of the misconduct in light of the aforementioned jurisprudence, we agree that the appropriate sanction in this case is a one year and one day suspension, fully deferred, followed by a one-year period of supervised probation, with the following conditions: (1) respondent shall successfully complete the LSBA's Trust Accounting School; (2) respondent shall successfully complete the LSBA's Law Office Management Assistance Program; and (3) respondent shall submit trust account statements to the ODC for review on a quarterly basis. Accordingly, we will adopt the board's recommendation.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Timon V. Webre, Louisiana Bar Roll number 19205, be and he hereby is suspended from the practice of law for a period of one year and one day. It is further ordered that this suspension shall be deferred in its entirety and that respondent shall be placed on supervised probation for a period of one year, subject to the conditions set forth in this opinion. 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. 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.