

SUPREME COURT OF LOUISIANA

NO. 2019-B-1461

IN RE: MITCHEL M. EVANS, II

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Mitchel M. Evans, II, an attorney licensed to practice law in Louisiana, but currently suspended from practice.

**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 1989. In 1997, he was admonished for taking a recorded statement from a criminal defendant despite the defendant’s attorney prohibiting same. Then, in 2016, we considered a formal charge matter, wherein respondent was found to have neglected numerous legal matters, failed to communicate with numerous clients, failed to provide competent representation, failed to refund unearned fees, failed to provide accountings to clients, failed to reduce contingency fee agreements to writing, failed to properly supervise non-lawyer assistants, failed to keep one client’s information confidential, and failed to cooperate with the ODC in two investigations, all of which occurred between 2005 and 2012. For this misconduct, we suspended respondent from the practice of law for three years, with two years deferred, followed by two years of supervised probation with conditions. *In re: Evans*, 16-1115 (La. 12/6/16), 218 So. 3d 1015 (“*Evans I*”). In 2018, we

considered a second formal charge matter, wherein respondent, while representing a couple in a child custody case in 2015, failed to provide competent representation to the clients, took action contradictory to the clients' wishes, failed to communicate with the clients, failed to refund an unearned fee, and engaged in conduct prejudicial to the administration of justice. For this misconduct, we suspended respondent from the practice of law for one year and one day and ordered him to refund the \$1,200 fee, plus legal interest, to his clients. *In re: Evans*, 18-0976 (La. 10/8/18), 253 So. 3d 1268 ("*Evans II*"). Respondent has not sought reinstatement from his suspension. As such, he remains suspended from the practice of law.

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

## **FORMAL CHARGES**

17-DB-069

### *The Tellis Matter*

Marvin Tellis hired respondent to represent him in a workers' compensation matter stemming from an April 24, 2011 injury he suffered while working for Ash Timber Company. The employment contract between Mr. Tellis and respondent set forth the following regarding the fee arrangement:

As a consideration for legal services rendered or to be rendered, client agrees to pay Mitchel M. Evans, II, Attorney at Law, the fee 20% of the first \$20,000.00 collected and 10% of all amounts recovered in excess of \$10,000.00, or the maximum fee authorized by law, whichever is greater. Any legally allowable award for attorney's fees under the provisions of R.S. 22:658, R.S. 23:1201.2, or any other statute of Louisiana, shall accrue to Mitchel M. Evans, II, Attorney at Law.

Upon respondent's advice, Mr. Tellis settled the indemnity portion of his workers' compensation claim for \$55,000. This settlement did not include any

claims for compensable medical treatment. The partial settlement was approved in an order dated October 15, 2014, but this order did not reference attorney's fees.

On January 9, 2015, Mr. Tellis received correspondence from respondent outlining the proposed disbursement of the settlement funds. In this correspondence, respondent listed "Statutory Attorney Fee (20% of \$202,187.48) = \$40,437.49." The correspondence did not specify how respondent reached these amounts.

Mr. Tellis hired another attorney to contest the amount respondent claimed as attorney's fees. The new attorney sent respondent correspondence requesting a return of the fee. In response, respondent filed a Motion to Determine Attorney's Fees. Mr. Tellis' attorney then filed a Motion for Return of Funds Held as Attorney's Fees. Both matters came before the Office of Workers' Compensation on July 7, 2015. During the hearing, respondent explained that his proposed fee came from taking the statutorily-approved 20% from the \$55,000 settlement and from Mr. Tellis' past weekly indemnity benefits. The workers' compensation hearing officer found that respondent did not comply with La. R.S. 23:1143(B)(2) and ordered him to return the entire \$40,437.49 to Mr. Tellis. Respondent appealed to the Louisiana Third Circuit Court of Appeal, which affirmed the ruling of the workers' compensation hearing officer. Respondent's writ application to this court was denied. *Tellis v. Ash Timber Co.*, 15-1052 (La. 4/27/16), 190 So. 3d 821, writ denied, 16-1023 (La. 9/16/16), 206 So. 3d 207.

Meanwhile, in September 2015, Mr. Tellis filed a disciplinary complaint against respondent. On November 30, 2016, the ODC requested a status update from respondent, who responded on December 14, 2016 that he would be filing a Petition for a Writ of Certiorari with the United States Supreme Court. He filed the petition on December 20, 2016, but the clerk's office for the United States Supreme Court returned the petition to respondent on February 17, 2017 because it contained numerous errors and omissions, and gave him sixty days to make corrections. On

June 6, 2017, the ODC requested another status update from respondent, but he never provided an update. On July 26, 2017, the clerk's office for the United States Supreme Court informed the ODC that respondent never refiled his Petition for Writ of Certiorari.

Respondent still has not refunded the \$40,437.49 fee to Mr. Tellis, as ordered by the workers' compensation hearing officer.

The ODC alleged respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.5(a) (charging an unreasonable fee), 1.5(c) (contingency fee agreements), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

#### 18-DB-039

##### *The King Matter*

On April 22, 2016, Carol King paid respondent \$1,025 plus \$325 for court costs to file a lawsuit on her behalf against her neighbor, Eric Smith. According to Ms. King, after respondent filed the lawsuit, he constantly changed the reason why the matter was taking so long to resolve. At some point in August 2016, respondent informed Ms. King that a survey revealed a disputed tree was on Mr. Smith's property. Respondent also indicated that Mr. Smith's attorney told him that Mr. Smith was considering countersuing Ms. King.

Thereafter, Ms. King went to South Carolina to take care of her mother. When she returned from South Carolina in November 2016, respondent's office was closed, and she could not reach him by telephone. According to Ms. King, respondent dismissed her lawsuit against Mr. Smith without her knowledge or

permission, and the matter has not been resolved. Nevertheless, respondent only refunded \$53.96 of the fee she paid him.

In August 2017, Ms. King filed a disciplinary complaint against respondent. Notices of the complaint sent via certified mail to respondent at two different addresses were returned unclaimed or not deliverable as addressed.

### *The Mattes Matter*

In April 2016, Paul Mattes hired respondent to represent him in a wrongful termination lawsuit against his former employer. According to Mr. Mattes, he paid respondent a \$50 consultation fee, \$1,000 in attorney's fees, and \$300 for court costs. Thereafter, Mr. Mattes did not hear from respondent for nine months, but he did speak to respondent's staff, who told him respondent was working on his case.

Two months before Mr. Mattes' claim was set to prescribe, respondent requested that Mr. Mattes come to his office to finalize and sign the petition. Respondent informed Mr. Mattes that he would file the petition that same day, but he failed to do so.

A couple of weeks later, respondent informed Mr. Mattes of his possible suspension from the practice of law and that he was bringing in another attorney to represent his current clients. He also informed Mr. Mattes that he would draft the petition so Mr. Mattes could file it *pro se* until the new attorney could take over.

Thereafter, Mr. Mattes heard nothing from respondent or the new attorney. As such, several weeks later, Mr. Mattes went to respondent's office, and respondent informed Mr. Mattes he had to rewrite the petition and would file it that day. Again, respondent failed to file the petition.

Later, Mr. Mattes attempted to telephone respondent's office, but the telephone number was disconnected. Mr. Mattes went to respondent's office again

only to learn that respondent had closed it down. He then checked the local clerks of courts in the area and learned that no petition had been filed on his behalf.

In August 2017, Mr. Mattes filed a disciplinary complaint against respondent. Notices of the complaint sent via certified mail to respondent at two different addresses were returned unclaimed or not deliverable as addressed.

### *The Stout Matter*

Jimmie Stout hired respondent to represent his son in a criminal matter. According to Mr. Stout, respondent instructed the private investigator to cease his investigation even though the investigator was finding information helpful to his son's case, did not provide adequate representation to his son, and coerced his son into pleading guilty by assuring him he would not receive the maximum sentence. Despite respondent's assurances, Mr. Stout's son was sentenced to thirty years in prison.

Respondent then charged Mr. Stout \$10,000 to file an appeal on his son's behalf. According to Mr. Stout, respondent instructed him to go to court for the appeal. He did so, but respondent was not present. The clerk's office informed Mr. Stout that respondent had already lodged the appeal. Then, when Mr. Stout hired a new attorney for his son, he claimed respondent attempted to overcharge him for a copy of his son's file.

In October 2017, Mr. Stout filed a disciplinary complaint against respondent. Notices of the complaint sent via certified mail to respondent at two different addresses were returned unclaimed or not deliverable as addressed.

### *The Kite Matter*

On July 21, 2014, Robert Kite made a construction loan to respondent. To secure the loan, respondent prepared a mortgage and note on his father's home,

indicating to Mr. Kite that he owned 100% of the property. However, respondent only owned a portion of the home because he inherited it with his siblings when their father passed away.

Furthermore, Mr. Kite indicated that respondent never completed his father's succession; thus, respondent did not have actual possession of any portion of the home. According to Mr. Kite, respondent also deceived him about the amount of the mortgage, prepared the mortgage incorrectly, and told the realtor with whom he listed the mortgaged property for sale that he owned 100% of the property.

In a second matter, Mr. Kite reported that respondent represented him in a lawsuit against his son, who owed him money. According to Mr. Kite, respondent neglected this matter and took legal action of which Mr. Kite was unaware and did not approve, resulting in a judgment against Mr. Kite.

In a third encounter with respondent, Mr. Kite indicated that respondent sold him property for \$10,000 on July 7, 2014 and then requested Mr. Kite deed the property back to him because he could sell it. Mr. Kite stated he did as requested because respondent was supposed to pay him \$11,372.89 when he sold the property, but respondent failed to pay him upon the sale of the property.

Finally, Mr. Kite indicated that, on July 25, 2017, he sent respondent a certified letter requesting his entire file and an accounting of all funds he paid respondent. According to Mr. Kite, respondent failed to claim the letter and never provided the requested documents.

In December 2017, Mr. Kite filed a disciplinary complaint against respondent, which he supplemented in January 2018. Notices of the complaint and the supplement sent via certified mail to respondent were returned unclaimed.

The ODC alleged respondent's conduct, as set forth in the four counts above, violated the following provisions of the Rules of Professional Conduct: Rules 1.1(a) (failure to provide competent representation to a client), 1.2(a) (scope of the

representation), 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), 1.8(a) (a lawyer shall not enter into a business transaction with a client), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a), 8.4(c), and 8.4(d).

## **DISCIPLINARY PROCEEDINGS**

In November 2017, the ODC filed formal charges against respondent in 17-DB-069, as set forth above. Respondent failed to file an answer. 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). In May 2018, the ODC filed formal charges against respondent in 18-DB-039, as set forth above. Again, respondent failed to file an answer, and the factual allegations of the formal charges were deemed admitted and proven by clear and convincing evidence.

The matters were considered by separate hearing committees, neither of which held a formal hearing in light of respondent's failure to answer the formal charges. The parties, however, were given an opportunity to file with the hearing committees written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for either hearing committee's consideration.

The matters were then consolidated by order of the disciplinary board. On September 13, 2019, the board filed with this court its report and recommendation encompassing both sets of formal charges.

### *Hearing Committee Report*

#### 17-DB-069

After considering the ODC's deemed admitted submission, the hearing committee found that respondent entered into a vague contingency fee contract with



Mr. Tellis. After the settlement of the indemnity portion of Mr. Tellis' workers' compensation claim, respondent improperly calculated the amount of attorney's fee withheld from the settlement. Mr. Tellis was forced to retain another attorney to demand the return of respondent's fee. The workers' compensation hearing officer ordered respondent to return the fee to Mr. Tellis. Rather than return the fee as ordered, respondent filed what amounts to several frivolous "appeals" of the order. To date, respondent has failed to return the fee to Mr. Tellis and cannot be located.

Based on these facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges. The committee then determined respondent violated duties owed to his client, the public, the legal system, and the legal profession. He acted at least negligently in drafting a vague and confusing contingency fee contract, and he acted knowingly and intentionally in assessing an exorbitant fee and in failing to return the fee as ordered by the workers' compensation hearing officer. The committee further determined respondent caused actual and significant harm to Mr. Tellis; he also caused harm to the public by filing frivolous appeals, to the legal system by deliberately flouting a court order, and to the legal profession by engaging in multiple acts of misconduct.

After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment. The committee then determined that 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 indifference to making restitution. The committee found no mitigating factors present.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be permanently disbarred.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

18-DB-039

After considering the ODC's deemed admitted submission, the hearing committee found that in general, respondent neglected legal matters, failed to provide competent representation, and failed to refund unearned fees. In the King matter, respondent dismissed Ms. King's lawsuit without her knowledge or consent. In the Mattes matter, respondent acted dishonestly and failed to timely file Mr. Mattes' petition. In the Stout matter, respondent provided grossly incompetent legal services in a serious criminal matter, resulting a significant prison term for Mr. Stout's son and financial hardship for Mr. Stout. Finally, in the Kite matter, respondent grossly neglected Mr. Kite's legal matter and took legal action that Mr. Kite was unaware of and did not approve.

Based on these facts, the committee determined respondent violated the Rules of Professional Conduct as follows: Respondent violated Rule 1.1(a) by failing to provide competent representation in all four counts of misconduct. He violated Rule 1.2(a) in the Mattes matter by failing to abide by his client's objectives of the representation. In all four counts, respondent neglected his clients' legal matters, in violation of Rule 1.3, and failed to keep his clients reasonably informed about the status of their legal matters, in violation of Rule 1.4. Respondent failed to refund unearned fees, in violation of Rule 1.5(f)(5), in the King, Mattes, and Stout matters. In the Kite matter, respondent violated Rule 1.8(a) by entering into a prohibited business transaction with Mr. Kite. Finally, in all four matters, respondent violated Rules 8.4(a), 8.4(c), and 8.4(d) by engaging in dishonest conduct and conduct prejudicial to the administration of justice.

The committee then determined that respondent violated duties owed to his clients, the public, the legal system, and the legal profession. He acted negligently, knowingly, intentionally, and dishonestly. His conduct caused actual harm as

follows: (1) to Ms. King by failing to resolve her legal matter and failing to refund the unearned fee; (2) to Mr. Mattes by failing to resolve his legal matter, resulting in his claim prescribing, and failing to refund the unearned fee; (3) neglecting the criminal matter of Mr. Stout's son, resulting in a significant prison sentence for his son, and failing to refund the unearned fee; and (4) acting dishonestly with Mr. Kite and engaging in a clear conflict of interest, resulting in significant financial injury to Mr. Kite.

After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment. The committee then determined that 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 indifference to making restitution. The committee found no mitigating factors present.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be permanently disbarred.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

### *Disciplinary Board Recommendation*

#### 17-DB-069 & 18-DB-039

After reviewing these consolidated matters, the disciplinary board determined that, with one exception, the deemed admitted factual allegations in both sets of formal charges are supported by the evidence submitted by the ODC. The exception found by the board involves the Stout matter, wherein the factual allegations alleged that Mr. Stout paid the requested \$10,000 fee for the appeal; in fact, the evidence in the record reveals that Mr. Stout only paid \$2,000 of the \$10,000 respondent requested for the appeal. Based on the deemed admitted facts as modified, the board

determined respondent violated the Rules of Professional Conduct as alleged in both sets of formal charges, including Rule 8.1(c) in 18-DB-039, which the hearing committee did not discuss in its report.

The board then determined respondent violated duties owed to his clients, the public, the legal system, and the legal profession. Respondent's conduct was largely knowing and intentional and caused actual harm. Most significant were the loss by multiple clients of considerable amounts of money in unreasonable or unearned fees and the imposition of a criminal sentence upon Mr. Stout's son that was twenty years longer than the sentence respondent indicated would be imposed if Mr. Stout's son pleaded guilty. Citing the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction for respondent's misconduct is disbarment.

In aggravation, the board found the following: a prior disciplinary record, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, vulnerability of the victims, substantial experience in the practice of law (admitted 1989), and indifference to making restitution. Based on the record presented, the board found no mitigating factors present.

Considering respondent's misconduct in light of the permanent disbarment guidelines and the prior jurisprudence of this court, the board recommended he be permanently disbarred. The board further recommended respondent be ordered to make restitution to the clients who are the subjects of the formal charges and the Client Assistance Program, as appropriate. Finally, the board recommended 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.

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 of these consolidated matters, both of which have been deemed admitted, supports a finding that respondent charged an excessive fee, failed to refund unearned fees to several clients, failed to provide competent representation to clients, took action on behalf of clients without their consent, neglected legal matters, failed to communicate with clients, improperly entered into a business transaction with a client, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, engaged in conduct prejudicial to the administration of justice, and failed to cooperate with the ODC in several investigations. This misconduct is a clear violation of the Rules of Professional Conduct as alleged in both sets of 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 knowingly and intentionally violated duties owed to his clients, the legal system, and the legal profession, causing significant actual harm. The baseline sanction is disbarment. Aggravating factors include a prior disciplinary record, 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 victim, substantial experience in the practice of law, and indifference to making restitution. No mitigating factors are evident from the record.

In their respective reports, the hearing committees and the disciplinary board have concluded respondent’s offenses are so egregious that he should be permanently prohibited from applying for readmission to the bar. We agree. In Appendix D to Supreme Court Rule XIX, we set forth guidelines illustrating the types of conduct that might warrant permanent disbarment. For purposes of the instant case, Guidelines 1 and 9 are relevant. These guidelines detail the following conduct:

GUIDELINE 1. Repeated or multiple instances of intentional conversion of client funds with substantial harm.

GUIDELINE 9. Instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime. Serious crime is defined in

Rule XIX, Section 19. Serious attorney misconduct is defined for purposes of these guidelines as any misconduct which results in a suspension of more than one year.

Respondent has engaged in numerous instances of failure to refund unearned fees, effectively converting those fees to his own use. The most egregious instance of conversion of fees is the \$40,437.49 respondent has failed to refund to Mr. Tellis since 2015; however, respondent also owes a refund of fees to three other clients. This misconduct triggers Guideline 1. Respondent's conduct in this matter also constitutes serious attorney misconduct and was preceded by respondent's suspension in *Evans II* for prior instances of serious attorney misconduct, triggering Guideline 9.

Accordingly, we will adopt the board's recommendation and permanently disbar respondent. We will also order respondent to make restitution to his victims and/or the Client Assistance Fund, as appropriate.

### **DECREE**

Upon review of the findings and recommendations of the hearing committees and disciplinary board, and considering the record, it is ordered that Mitchel M. Evans, II, Louisiana Bar Roll number 19322, 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 make restitution to his victims and/or 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.