

SUPREME COURT OF LOUISIANA

NO. 2019-B-1420

IN RE: DANIEL G. ABEL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Daniel G. Abel, an attorney licensed to practice law in Louisiana, but currently on interim suspension for threat of harm to the public. *In re: Abel*, 14-2239 (La. 11/6/14), 150 So. 3d 887.

FORMAL CHARGES

Count I

In June 2016, Veronica Gordon retained respondent to represent her in an adoption matter. At the time, respondent was interimsly suspended and had been so since November 2014; however, Ms. Gordon was not aware of this fact. At all relevant times, respondent held himself out to be a licensed attorney and he never advised his client that he had been suspended from practice. Respondent quoted Ms. Gordon a fixed fee of \$4,000 for the representation, which sum she wire transferred to a bank account that respondent designated and identified as his account.

Thereafter, respondent and another attorney, Matthew McCarthy, met with Ms. Gordon at her home and both provided legal advice concerning the adoption. Like Ms. Gordon, Mr. McCarthy was not aware that respondent had been suspended. Mr. McCarthy also did not know that Ms. Gordon had previously paid a fee to respondent for his services.

In March 2018, after learning of respondent's suspension, Ms. Gordon filed a complaint against respondent with the ODC.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rule 5.5 (engaging in the unauthorized practice of law).

Count II

In March 2013, Geoffrey Lutz retained respondent to represent the 929 Development Group, LLC in litigation filed against the LLC in Orleans Parish Civil District Court. The intended scope of the representation included defense of the plaintiffs' claims against the LLC and filing a reconventional demand against the plaintiffs on behalf of the LLC. Shortly after the representation commenced, the LLC paid respondent \$20,000, intended as an advance deposit against hourly fees to be earned in the future.¹

The case concluded by consent judgment in September 2013. On August 10, 2015, Mr. Lutz sent respondent an e-mail asking for an accounting of fees. Respondent did not respond. Consequently, on August 25, 2015, Mr. Lutz filed a disciplinary complaint seeking an accounting of earned fees and a refund of any unearned fees from the advanced retainer. Respondent answered the complaint but he did not address the "failure to account" allegations of the complaint, or alternatively, provide Mr. Lutz with an accounting of the paid retainer.

¹ The formal charges allege that the fees advanced to respondent totaled \$40,000. However, according to the complaint, 929 Development Group, LLC "**paid the plaintiffs \$40,000 to settle and dismiss all claims on 9/23/13.**" [Emphasis added.] As to respondent's fees, the complaint states that the LLC paid respondent the following sums toward his fees: \$2,500 and \$7,500 in March 2013 and \$10,000 in April 2013. These sums total \$20,000.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rule 1.15 (safekeeping property of clients or third persons).

Count III

In May 2006, attorney Gregory Guth filed suit on his own behalf against an electrical contractor in Orleans Parish Civil District Court for allegedly faulty electrical work performed at Mr. Guth's home. Respondent represented the defendant. In September 2006, after issue was joined, Mr. Guth filed interrogatories and a motion for production of documents. Respondent failed to respond to this discovery despite the filing of a motion to compel.

By February 2008, respondent still had not answered Mr. Guth's discovery requests, causing Mr. Guth to file a second motion to compel. In April 2008, following a show cause hearing, respondent was sanctioned by the court, held in contempt, and ordered to pay \$500 in attorney's fees to Mr. Guth. Nevertheless, respondent failed to provide the discovery or to pay the attorney's fees as ordered, requiring Mr. Guth to file a third motion to compel in January 2009. The motion to compel was set for a show cause hearing in March 2009, but it was later continued without date.

In April 2010, Mr. Guth filed a motion for contempt and sanctions which was fixed for hearing in June 2010. The day before the hearing, respondent finally filed discovery responses into the record – more than four years after Mr. Guth originally filed the discovery requests.

Respondent ultimately paid the \$500 in attorney's fees ordered by the trial court, although not in a timely fashion. Furthermore, he failed to supplement the discovery requests as later ordered by the court.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client), 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Count IV

Carr and Associates was a "public adjusting" firm that represented homeowners after Hurricane Katrina by negotiating their property damage claims directly with their casualty insurers. In 2006, the Louisiana State Bar Association ("LSBA") sued the company in Orleans Parish Civil District Court, claiming it was unlawfully engaged in the unauthorized practice of law. The LSBA asked the court to enjoin the company from doing business in the State of Louisiana.

Earl Carr, the company's owner, retained respondent to defend the company in the injunction action. Following a hearing, the trial court issued the requested preliminary injunction. Mr. Carr instructed respondent to appeal the trial court's decision, but respondent failed to do so timely, and ultimately the preliminary injunction against the company was made permanent. In 2007, Mr. Carr sued respondent for legal malpractice.

In May 2009, respondent filed suit against Mr. Carr and Carr and Associates on behalf of a group of its former clients for damages arising out of the public adjusting practice. The asserted cause of action was based on Mr. Carr's allegedly illicit activities and the suit specifically referenced the permanent injunction rendered against Carr and Associates during the time in which respondent had represented the company. Upon service of the suit, Mr. Carr filed a motion to disqualify respondent. The trial court granted the motion in December 2009 and disqualified respondent from further representation of the plaintiffs.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.9(a) (a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client) and 8.4(d).

Count V

On May 13, 2011, ASAP Court Reporting Services, Inc. filed a petition styled "Suit on Open Account" against respondent in the 22nd Judicial District Court for the Parish of St. Tammany for failure to pay for court reporting services. Plaintiff was represented by attorney Charles Hughes of the firm of Talley, Anthony, Hughes, & Knight, LLC. After respondent failed to answer the suit timely, Mr. Hughes sought a preliminary default against respondent, which was granted in August 2011. Following respondent's continuing failure to file responsive pleadings, on December 15, 2011, Mr. Hughes moved to confirm the preliminary default. The trial judge, Judge Peter Garcia, signed a judgment confirming the default on December 19, 2011.

Much later, respondent appealed the trial court's judgment. The First Circuit Court of Appeal affirmed on December 28, 2012. *ASAP Court Reporting Services, Inc. v. Abel*, 12-0784 (La. App. 1st Cir. 12/28/12) (not designated for publication). Following the denial of the appeal, respondent filed a writ application with the Louisiana Supreme Court in January 2013 in which he knowingly made false statements impugning the character and integrity of members of the judiciary without a factual or legal basis to do so.

First, in his writ application, respondent falsely asserted that Judge Garcia had "a personal and longstanding relationship" with Mr. Hughes and his law firm, without possessing any identifiable facts or evidence to suggest that this allegation

was true. Respondent also claimed that he had filed a judicial conduct complaint against Judge Garcia prior to the granting of the default judgment, falsely implying that the pendency of the complaint had motivated the judge to grant the default judgment. However, the actual facts indicate that although respondent did file a judicial conduct complaint against Judge Garcia, he did not do so until eight months after the confirmation of the default.

On March 15, 2013, this court denied respondent's writ application. *ASAP Court Reporting Services, Inc. v. Abel*, 13-0273 (La. 3/15/13), 109 So. 3d 385 (Hughes, J., recused).

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of fact or law previously made to the tribunal by the lawyer) and 8.2(a) (a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge).

Count VI

Respondent represented Richard Sharp in a criminal case pending in the 22nd JDC for the Parish of St. Tammany. The charges arose after Mr. Sharp was accused of criminal conduct in his dealings with GDH International, Inc. During the case, respondent made false and defamatory statements in pleadings and on the public record attacking the character and integrity of judges and prosecutors in the 22nd JDC, without any identifiable evidence to substantiate his claims.

First, in an application for supervisory writs filed with the First Circuit Court of Appeal, respondent falsely accused the trial judge, Judge Peter Garcia, of signing an order attaching and seizing property belonging to Mr. Sharp, alleging that he did

so to preclude Mr. Sharp from posting bail, and conspired with officers of GDH International to keep Mr. Sharp incarcerated. In truth, the order of seizure was signed by another judge, and respondent provided no substantive evidence to support his defamatory claims against Judge Garcia.

Similarly, in the brief filed with the First Circuit in the matter respondent accused both Judge Garcia and Judge William Knight of improper *ex parte* communications by meeting with prosecutors alone to discuss the case, all without any evidence to support his false claims. In addition, he accused Judge Knight of altering court transcripts and other documents.

On November 27, 2012, following Judge Knight's denial of a motion to recuse Judge Raymond Childress which respondent filed in the matter, respondent was granted the opportunity to file a writ application and request for a stay to the First Circuit Court of Appeal. He did so, but failed to attach appropriate supporting documentation. Accordingly, the court of appeal refused to consider the request for a stay but did grant respondent an extension until April 12, 2013 to perfect a new application. Respondent never filed a second application and the delay for filing a second writ expired.

After his efforts to recuse Judge Childress proved unsuccessful, respondent then sought to convince Judge Childress that the judge had previously agreed to the appointment of an *ad hoc* judge to hear the case. When Judge Childress resisted, respondent falsely told the judge he had filed a timely application in response to the court of appeal's April 12, 2013 deadline. Asked to provide documentary proof of such, respondent was unable to do so. During a recess, Judge Childress instructed his staff to contact the First Circuit and learned that no responsive filing had been made.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.3(a), 8.2(a), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count VII

Respondent represented a criminal defendant, Shane Gates, who was charged in St. Tammany Parish with the criminal offense of aggravated flight. The case was assigned to Judge Richard Swartz. On August 5, 2013, respondent filed a civil complaint in the United States District Court for the Middle District of Louisiana falsely accusing Judge Swartz of treason, and of conspiring with the district attorney, clerk of court, and others to conceal evidence, tamper with the jury, and suborn perjury in connection with the prosecution and trial of Mr. Gates.

Four days later, on August 9, 2013, respondent filed a motion to recuse Judge Swartz in the state court criminal action, again falsely alleging conspiracy and treason by the judge and other officials. He attached a copy of the federal court complaint as an exhibit to the motion to recuse. Based on these events, Judge Swartz was compelled to withdraw as the presiding judge in the Shane Gates case because of the appearance of impropriety created by respondent's filing of the federal court complaint.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.3(a), 8.2(a), and 8.4(c).

Count VIII

In March 2012, respondent filed a *pro se* civil action against Doug Handshoe in a Hancock County, Mississippi state court seeking to make a foreign judgment executory. The award of damages was secured in a judgment obtained by respondent in a Canadian court against Mr. Handshoe, a Mississippi resident, based on allegedly

defamatory statements posted by Mr. Handshoe on his blog, www.Slabbed.org. Mr. Handshoe was represented in the Mississippi case by St. Tammany Parish attorney Jack Truitt.

The case was subsequently removed to the United States District Court for the Southern District of Mississippi, and in December 2012, it was dismissed on Mr. Handshoe's motion for summary judgment.² Thereafter Mr. Handshoe filed a motion in the district court seeking to recover attorney's fees under Mississippi's Anti-SLAPP statute allowing damages for improperly using litigation to impinge upon free speech. The district court granted the motion in December 2013 and awarded Mr. Handshoe \$48,000. That judgment is now final, but remains unpaid.

Following the dismissal of his claim in Mississippi, respondent filed a libel and defamation action against Mr. Handshoe in the United States District Court for the Eastern District of Louisiana. Respondent also named Jefferson Parish lawyer Anne Marie Vandenweghe as a defendant in this suit. Both defendants were represented by Mr. Truitt, along with lawyers from the New Orleans law firm of Baldwin, Haspel, Burke & Mayer.

Before the defendants could answer the federal court libel suit, respondent filed a voluntary motion to dismiss without prejudice, which the district court granted. Respondent then immediately re-filed the lawsuit in the Orleans Parish Civil District Court and named as additional defendants the Baldwin Haspel firm and the lawyers who represented Mr. Handshoe and Ms. Vandenweghe. He also named Mr. Truitt, Mr. Handshoe's original counsel, as a defendant. Although in actuality Mr. Truitt and the Baldwin Haspel lawyers did nothing more than represent

² On appeal, the United States Fifth Circuit Court of Appeals affirmed, holding that under applicable law, a United States court cannot recognize or enforce a foreign judgment for defamation unless it satisfies both First Amendment and due process considerations, and that many of Mr. Handshoe's statements, while offensive, are simply not actionable under United States defamation law. *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481 (5th Cir. 2013).

their clients before the bar, in his CDC suit respondent alleged that these lawyers independently and intentionally sought to defame him, purportedly by the presence of advertisements for the law firms on the Slabbed blogsite.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.1 (meritorious claims and contentions) and 4.4 (respect for rights of third persons).

Count IX

Respondent has engaged in a pattern and practice of filing frivolous and vexatious actions. In three separate cases, respondent was cited by the United States Fifth Circuit Court of Appeals for filing frivolous appeals. In the 2010 case of *Chisesi v. Auto Club Family Insurance Co.*, respondent was found to have filed a baseless appeal from a district court order dismissing his client's case with prejudice for repeated failures to comply with the discovery orders of the court. The court of appeals imposed a \$2,500 sanction on respondent's client. In reviewing respondent's 2012 appeal in *Martin v. Magee*, the court found the appeal was "devoid of legal merit and present[ed] no cognizable basis for reversal." For filing a clearly frivolous appeal, the court imposed \$3,000 in sanctions against respondent personally. Finally, in 2013, in *Webb v. Morella*, the court of appeals affirmed sanctions against respondent for "a continued pattern of filing frivolous, vexatious appeals that waste judicial resources," citing the prior *Chisesi* and *Martin* decisions. The court remanded the matter to the district court for a determination of the amount of reasonable attorney's fees and costs incurred by the defendant in connection with the appeal.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.1 and 4.4(a).

DISCIPLINARY PROCEEDINGS

In January 2019, the ODC filed formal charges against respondent as set forth above. Respondent failed to answer the formal charges. 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). 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 acknowledged that the factual allegations in the formal charges were deemed admitted and proven by clear and convincing evidence. The committee concluded that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee found that respondent violated duties owed to his client, the court, and other lawyers. He acted knowingly and intentionally. His misconduct caused actual harm to judges and attorneys who were forced to waste public resources and time dealing with respondent's unethical conduct. Furthermore, pecuniary damages were suffered by clients who paid unearned fees. The applicable baseline sanction is disbarment.

In aggravation, the committee found the following factors are supported by the record: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, substantial experience in the practice of law (admitted 1984), and indifference to making restitution. In mitigation, the committee found that respondent has no prior disciplinary record and has suffered the imposition of other

penalties or sanctions in connection with the civil contempt orders issued against him.

Considering the prior jurisprudence of this court in similar cases, the committee recommended that respondent be permanently disbarred. The committee also recommended that respondent be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.³

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,

³ As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that “[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee’s report to the court.”

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 engaged in serious attorney misconduct, including converting client funds, engaging in the unauthorized practice of law, and making false statements impugning the character and integrity of judges without a factual or legal basis to do so. As such, he 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).

Respondent knowingly and intentionally violated duties owed to his clients, the legal system, and the legal profession, causing actual harm. The applicable baseline sanction is disbarment.

In its report, the hearing committee concluded that respondent's offenses are so egregious that he should be permanently prohibited from applying for readmission to the bar. We agree. After respondent was placed on interim suspension, he held himself out to be a licensed attorney and accepted a fee for handling Veronica Gordon's legal matter. Such conduct falls under Guideline 8 of the permanent disbarment guidelines set forth in Supreme Court Rule XIX,

Appendix D, which provides that permanent disbarment may be warranted in instances in which a lawyer “engag[es] in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer is suspended from the practice of law or disbarred.”

This egregious misconduct does not stand alone, however. There is also clear and convincing evidence that respondent has converted the \$20,000 fee paid to him by Geoffrey Lutz. He delayed for more than four years in responding to Gregory Guth’s discovery requests. He sued his former client, Earl Carr, forcing the trial court to disqualify him. He made knowingly false statements about the character and integrity of judges without a factual or legal basis to do so. He has engaged in a pattern of filing frivolous and vexatious claims and lawsuits, and he has not been deterred despite the imposition of sanctions and attorney’s fees against his clients and him personally.

Taken together, the misconduct set forth in the formal charges clearly demonstrates that respondent lacks the fitness to engage in the practice of law in this state. In the face of this indisputable evidence of a fundamental lack of moral character and fitness, we can conceive of no circumstance under which we would ever grant readmission to respondent. Therefore, he must be permanently disbarred.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Daniel G. Abel, Louisiana Bar Roll number 8348, be and he 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 pay restitution

of \$4,000 plus legal interest to Veronica Gordon and \$20,000 plus legal interest to Geoffrey Lutz. 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.