Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **25th day of March, 2022** are as follows:

PER CURIAM:

2021-B-01198 IN RE: LANE NORWOOD BENNETT

SUSPENSION IMPOSED. SEE PER CURIAM.

Crichton, J., additionally concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

NO. 2021-B-1198

IN RE: LANE NORWOOD BENNETT

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Lane Norwood Bennett, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

Count I – The Walters Matter

Respondent and Chadwick Travis Walters are first cousins. In 2002, Mr. Walters loaned $80,000 to respondent. As security for the loan, respondent gave Mr. Walters a debenture[1] in the amount of $80,000 executed on April 3, 2002 by RealVest, LLC. Respondent is the sole member and registered agent of RealVest and the guarantor of the debenture.

In 2006, Mr. Walters purchased a house in Bogalusa, Louisiana (the "Property"). Respondent, whose law practice is primarily confined to real estate matters, was the closing attorney on the transaction.

In 2009, Mr. Walters received an offer from a third party to buy the Property, but the offer was not high enough to allow Mr. Walters to pay off the two mortgages encumbering the Property. Accordingly, Mr. Walters asked respondent to make a $10,000 principal payment on the debenture. Respondent told Mr. Walters that he

[1] A debenture is a type of debt-creating instrument, such as a promissory note, that is not secured by a physical asset or other collateral. https://www.law.cornell.edu/wex/debenture

could not repay, and that instead of selling the Property, Mr. Walters should rent it out for a few years. Respondent offered to manage the rental and take care of repairs, with the intent of buying the Property himself sometime in the future. Respondent also recommended that the Property be transferred to a limited liability company to shield Mr. Walters from personal liability for any claims or lawsuits that might be brought by tenants or third parties. At no time did respondent inform Mr. Walters that he should seek the advice of independent legal counsel on the transaction.

Mr. Walters accepted respondent's advice. On April 8, 2009, respondent created and registered Chadwick Travis Walters, LLC ("Walters LLC") with the Louisiana Secretary of State. According to respondent, he named the limited liability company in this fashion because he did not want the mortgagees to discover the transfer of the Property to Walters LLC and accelerate repayment of the mortgages by invoking the "due on sale" clause. The sole member of Walters LLC is Louisiana Real Estate Portfolio, LLC ("LREP"). Respondent is LREP's registered agent, and LREP's only members are Central Portfolio, LLC ("CPLLC") and Bogalusa Portfolio, LLC ("BPLLC"). Respondent is the sole member of BPLLC and its registered agent; respondent's real estate business partner, Harry O. Mills, III, is the sole member and registered agent of CPLLC. Mr. Walters had no ownership interest in Walters LLC, nor was he aware of the existence of LREP, BPLLC, or CPLLC, although they were all created on April 8, 2009 for the purpose of the transfer of the Property to Walters LLC.

Five days later, on April 13, 2009, Mr. Walters executed a "Cash Sale Subject to Mortgage" by which he conveyed all of his right, title, and interest in the Property to Walters LLC.[2] Respondent was the closing attorney on the transaction. Based

[2] Under the terms of the sale, the mortgages encumbering the Property were not satisfied and Mr. Walters remained personally liable for repayment. Mr. Walters understood this fact at the time of the closing, though he believed respondent would make the mortgage payments from the rental proceeds. This arrangement was not reduced to writing.

upon respondent's advice, which was not reduced to writing, Mr. Walters believed he (Walters) was the owner of Walters LLC. Mr. Walters did not know that after the sale he would retain no ownership in the Property. Furthermore, Mr. Walters was not aware that Walters LLC was named as it was for the purpose of preventing the mortgagees from discovering the transfer and invoking the due on sale clause. Mr. Walters testified that if respondent had advised him of any of these facts, he would not have agreed to the sale.

For approximately five years after the sale of the Property, respondent collected rents on the Property and paid the mortgage notes and expenses, amounting to approximately $40,000. However, in 2013, Mr. Walters began receiving notices from the mortgage holders that payments were not being made timely. As a result, Mr. Walters had to begin making payments on occasion because respondent had not made them. Respondent's habit of making late payments resulted in late fees and charges imposed by the lenders and caused Mr. Walters to become concerned that his credit might be impaired.

During 2013, Mr. Walters sent emails to respondent asking for information and advice concerning the Property so that he could refinance it. Respondent did not respond to the emails, but eventually he told Mr. Walters he could not refinance the Property because he no longer owned it. Respondent also refused Mr. Walters' request to repay the debenture in full.[3] After consulting with an attorney, Mr. Walters confirmed that he had no ownership interest in Walters LLC or in any of the several limited liability companies respondent had created. In April 2014, Mr. Walters filed suit against respondent and his business entities seeking to rescind the sale of the Property, for an accounting and damages, and for repayment of the debenture.

[3] The balance due was disputed but ranged from $32,000 to $35,000.

While the suit was pending, respondent unilaterally and without notice to Mr. Walters or his counsel executed a "Transfer of Property with Vendor's Lien" on behalf of LREP. This act purported to transfer title of the Property to Mr. Walters subject to a vendor's lien of an undetermined amount in favor of LREP.[4] The Property was also conveyed with a waiver of redhibitory defects. Mr. Walters did not sign this act and was unaware it had been prepared and recorded until after a copy was provided to his attorney in September 2014. After receiving the recorded act, Mr. Walters inspected the Property and found it to be uninhabitable. The parties settled the civil suit in February 2015 upon respondent's agreement to pay Mr. Walters $42,030 and to execute a release of the vendor's lien.

The ODC alleges that respondent's conduct violated Rules 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct. The ODC further alleges that respondent and Mr. Walters maintained a continuous attorney-client relationship following Mr. Walters' purchase of the Property in 2006, and therefore that respondent represented a client when there exists a concurrent conflict of interest, in violation of Rule 1.7(a) (a lawyer shall not represent a client if there is a significant risk that the representation will be materially limited by a personal interest of the lawyer), and engaged in a prohibited business transaction with a client, in violation of Rule 1.8(a) (a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client).

[4] LREP had apparently obtained ownership of the Property by way of a *dation en paiement* from Walters LLC recorded in March 2014. Mr. Walters was unaware of this transaction.

Count II(a) – The Ashton Vidrine Matter

Vidrine Insurance Agency, LLC was registered with the Louisiana Secretary of State on December 17, 2007. The limited liability company had one member, Ashton Vidrine. Several years later, Ashton enrolled in graduate school and closed the insurance agency. In February 2015, the Secretary of State revoked the articles of organization of Vidrine Insurance Agency, LLC for failure to file an annual report for three consecutive years.[5]

In June 2015, Ashton received a telephone call from his brother, Kyle Vidrine, and respondent. Kyle and respondent asked Ashton to sign over ownership of Vidrine Insurance Agency, LLC to them. Ashton did not immediately agree to this request, but he ultimately told Kyle he would sell the company for $500. Ashton did not hear anything from his brother or from respondent after this conversation.

A few months later, Ashton heard through family members that Kyle had passed the casualty insurance exam. Out of curiosity, Ashton checked the website of the Louisiana Secretary of State to find out whether Kyle had started his own insurance company. Instead, Ashton discovered that documents had been filed with the Secretary of State on February 15, 2016 to reinstate Vidrine Insurance Agency, LLC, with Kyle as the manager and respondent as the member and registered agent. This filing was made without Ashton's knowledge or consent. On April 27, 2016, a limited liability company was registered under the name of Vidrine Insurance, LLC. The next day, and again without Ashton's knowledge or consent, an affidavit was submitted to the Secretary of State to dissolve Vidrine Insurance Agency, LLC. According to Kyle, respondent was aware of these transactions and gave his approval to affix his name on the filings with the Secretary of State.

[5] Pursuant to La. R.S. 12:1308.2, the articles of organization could be reinstated within three years upon the LLC's compliance with the applicable filing requirements.

The ODC alleges that respondent's conduct violated Rules 8.4(a), 8.4(b) (commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) of the Rules of Professional Conduct.

Count II(b) – The Glenda Vidrine Matter

Glenda Vidrine is the mother of Ashton Vidrine and Kyle Vidrine in Count II(a). Respondent performed legal services for Ms. Vidrine, including drafting her will and handling closings for her finance company. On April 15, 2015, respondent created and registered Glenda Beth, LLC with the Louisiana Secretary of State. Ms. Vidrine is the manager of the limited liability company, and the Bennett Law Firm, LLC is Glenda Beth's registered agent. Respondent is the sole member/manager and registered agent for the Bennett Law Firm. On April 16, 2015, respondent filed the organization documents for Storage Industrial, LLC. Storage Industrial has two members/managers, Glenda Beth, LLC and Bogalusa Real Estate Portfolio, LLC ("BREP"). Respondent is the sole member and registered agent of BREP.

In 2014, Ms. Vidrine obtained a $150,000 home equity line of credit from Whitney Bank for the purpose of funding a used car dealership operated by her son Kyle. Respondent was not involved in this venture, which soon failed. In 2015, Ms. Vidrine agreed to obtain an advance on her line of credit in the amount of $55,000 so that Kyle and respondent could start a storage business. To evidence the debt, BREP gave Ms. Vidrine a hand note in which it agreed to make the payments she was required to make to the bank as a result of the advance. BREP also executed a $150,000 collateral mortgage in favor of Ms. Vidrine which gave her a security interest in commercial real estate owned by BREP in Baton Rouge. The collateral mortgage note, which was prepared by respondent, was paraphed *ne varietur* with the hand note, also prepared by respondent. BREP was the only obligor on the

indebtedness; neither respondent nor Kyle was personally obligated to repay the debt to Ms. Vidrine. Further, Ms. Vidrine was not protected against the foreclosure of her home in the event that respondent, through BREP, failed to make the payments due to the bank. At no time did respondent inform Ms. Vidrine that she should seek the advice of independent legal counsel on the transaction.

In 2019, respondent prepared a "replacement" hand note which contained terms that were more favorable to Ms. Vidrine than those contained in the original note. Respondent replaced the original $55,000 hand note with a hand note in the amount of $87,284, bearing interest at 7% per annum from date until paid. The mortgage on the commercial property remained in place but in addition, respondent agreed to be personally liable on the note in solido with BREP. The replacement note was not solicited by Ms. Vidrine; rather, respondent prepared and executed the note following the filing of formal charges against him. Ms. Vidrine accepted the replacement note after she consulted with an attorney concerning the matter.

The ODC alleges that respondent's conduct violated Rules 1.7(a), 1.8(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct.

DISCIPLINARY PROCEEDINGS

In April 2014, the ODC received a complaint from Mr. Walters' attorney. In November 2016, Ashton Vidrine filed a complaint with the ODC. In December 2018, the ODC filed formal charges against respondent as set forth above. Respondent answered the formal charges, essentially denying he engaged in any misconduct. Accordingly, the matter proceeded to a formal hearing on the merits.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee found that respondent violated the Rules of Professional Conduct as charged, and recommended he be disbarred.

The committee made findings of fact relating to Count I, including those set forth in the underlying facts section above. The committee also found the following:

1. Respondent's testimony is clear that deceiving the mortgagees was one of his reasons for placing the Property into an LLC with the same name as Mr. Walters, the named debtor on the mortgages. Respondent saw "no problem" with doing this. He set up Walters LLC, registered it with the Secretary of State, and recorded the sale of the Property from Mr. Walters to the LLC which bore his name, but in which Mr. Walters had no ownership, unbeknownst to him. Regardless of whether respondent's conduct rose to the level of fraud, the committee found he knowingly engaged in conduct involving dishonesty, deceit, and misrepresentation.
2. In April 2014, Mr. Walters, through his attorney James White, filed a disciplinary complaint against respondent alleging that respondent had conditioned rescission of the sale of the Property upon Mr. Walters' agreement to forgive the debt represented by the debenture. Respondent denied this claim at the hearing but acknowledged advising Mr. Walters that he would consider rescinding the sale if Mr. Walters would "just reimburse us our materials" that respondent and Mr. Mills put into the house. Regardless of whether respondent conditioned the return of the Property on forgiveness of the debenture or upon recovering the money he had invested, it is clear and undisputed that respondent placed a condition of some sort upon returning the Property to Mr. Walters. Further, it is clear that whether due to inability or

unwillingness to repay the debenture when Mr. Walters demanded it, respondent failed to pay money that was clearly due and owing to Mr. Walters.

3. An attorney-client relationship existed between respondent and Mr. Walters. Although respondent contended the mere closing of a real estate transaction does not create such a relationship, the committee noted that pursuant to La. R.S. 37:212, activities performed in connection with closings are in fact the "practice of law." Further, *Louisiana State Bar Ass'n v. Bosworth*, 481 So. 2d 567 (La. 1986), holds that the existence of an attorney-client relationship "turns largely on the client's subjective belief that it exists." Here, Mr. Walters repeatedly testified that he sought respondent's assistance because he is an attorney. Although Mr. Walters freely admitted that he did not consider respondent to be acting as his attorney when respondent borrowed money from him, he did consider respondent to be doing legal work for him when respondent had him transfer the Property to an LLC, ostensibly to avoid liability and to prevent the acceleration of the mortgages on the Property by invocation of the due on sale clause. In giving this advice and acting to carry out his recommendation, the committee agreed that respondent became Mr. Walters' attorney. Later, when Mr. Walters wanted to unwind the transaction and requested payment of the debt, respondent's actions in resisting payment of the debenture made the debt inextricably intertwined with the Property scheme, such that these actions were performed in respondent's role as Mr. Walters' attorney.

Based upon these factual findings, the committee determined that respondent's conduct in Count I violated Rules 1.7(a), 1.8(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct. Respondent did not obtain Mr. Walters' informed consent to the Walters LLC transaction and did not advise him to seek independent counsel. Respondent also structured the transaction so as to deceive the

mortgage lenders. Accordingly, he violated the Rules of Professional Conduct as charged.

The committee made findings of fact relating to Count II(a), including the following:

1. Respondent knew of the transaction with Ashton Vidrine and that he and Kyle Vidrine were taking Ashton's business from him without compensation, and despite having knowledge that Ashton either did not want to sell his business or wanted to be compensated for selling the business.
2. Respondent authorized Kyle to sign his name electronically on documents filed with the Secretary of State's office.

Based upon these factual findings, the committee determined that respondent's conduct in Count II(a) violated Rules 8.4(a), 8.4(b), and 8.4(c) of the Rules of Professional Conduct. Respondent's actions furthered Kyle's wrongful attempt to deprive Ashton of his interest in Vidrine Insurance Agency, LLC. Accordingly, he violated the Rules of Professional Conduct as charged.

The committee made findings of fact relating to Count II(b), including those set forth in the underlying facts section above. The committee also found the following:

1. Respondent did not recommend to Ms. Vidrine that she obtain independent counsel to review the original hand note. Respondent's failure to pay Ms. Vidrine's mortgage could have led to the foreclosure of her home. The loan from Ms. Vidrine personally benefitted respondent, as a portion of the money was being spent to benefit his business operations and those of the LLC he operated and controlled. Nevertheless, respondent did not advise Ms. Vidrine, orally or in writing, of his conflict of interest.
2. Respondent was insulated from personal liability on the original note. In addition, the original note did not include any provision whereby Ms. Vidrine

was compensated for loaning the money to BREP. Although Ms. Vidrine may not have wanted to earn interest on the loan, she waived her rights unknowingly and without receiving unbiased legal counsel about the terms of the agreement she executed with respondent.

3. The terms of the replacement hand note were more favorable to Ms. Vidrine, thereby revealing the inequities of the original note. Respondent prepared the replacement hand note after the filing of formal charges in an effort to influence a future review of the evidence, and not in an attempt to mitigate damages to Ms. Vidrine.
4. Ms. Vidrine sought legal counsel from another law firm to review the replacement hand note.

Based upon these factual findings, the committee determined that respondent's conduct in Count II(b) violated Rules 1.7, 1.8(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct. Respondent did not obtain Ms. Vidrine's informed consent to the loan transaction and did not advise her to seek independent counsel. Respondent also structured the transaction in such a way that he was not personally obligated to repay the loan and Ms. Vidrine was deprived of fair interest on the loan. Accordingly, he violated the Rules of Professional Conduct as charged.

The committee further determined that respondent violated duties owed to his clients, the public, and the legal profession. His conduct was intentional and knowing. He caused actual and serious harm to Mr. Walters and potential harm to Ms. Vidrine. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

In aggravation, the committee found the following: 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 1999), and indifference to making restitution. In

mitigation, the committee acknowledged that respondent has no prior disciplinary record.

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

Respondent filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board adopted most of the hearing committee's factual findings, and agreed with its findings of rule violations. The board agreed that respondent intentionally and knowingly violated duties owed to his clients, the public, and the legal profession. His conduct caused actual harm to Mr. Walters, Ms. Vidrine, and Ashton Vidrine. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment. The board agreed with the aggravating and mitigating factors found by the committee.

Like the committee, after further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be disbarred.

Respondent filed an objection to the board's recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

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.

Although the underlying facts of this matter are complex, respondent does not dispute the allegation that he engaged in dishonest conduct and conduct constituting a conflict of interest, in violation of Rules 1.7(a), 1.8(a), 8.4(a), 8.4(b), and 8.4(c) of the Rules of Professional Conduct. Accordingly, the only issue before us is a determination of the appropriate sanction for respondent's actions.

In considering the sanction issue, 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 public, and the legal profession. His conduct caused actual harm to Mr. Walters, Ms. Vidrine, and Ashton Vidrine. The applicable baseline sanction is disbarment.

The record supports the following aggravating factors: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, vulnerability of the victims, and substantial experience in the practice of law. In mitigation, respondent has no prior disciplinary record. We also note that respondent has made substantial efforts to make Mr. Walters and Ms. Vidrine whole.

Under the unique circumstances of this case, we conclude that the sanction of disbarment recommended by the board is too harsh. Accordingly, we will reject the recommendation and impose a three-year suspension from the practice of law.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Lane Norwood Bennett, Louisiana Bar Roll number 25982, be and he hereby is suspended from the practice of law for a period of three years. 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.

SUPREME COURT OF LOUISIANA

No. 2021-B-01198

IN RE: LANE NORWOOD BENNETT

Attorney Disciplinary Proceeding

Crichton, J., additionally concurs and assigns reasons.

I agree with the per curiam. I write separately to note that the Court's departure from the disciplinary board's recommendation results from several unique circumstances, including respondent's lack of prior disciplinary history and his substantial efforts to make restitution, as highlighted by respondent's attorney during argument. *See*, *e.g.*, *La. State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984) (discipline imposed in each matter depends upon "the facts and circumstances of each case"); *La. State Bar Ass'n v. Elbert*, 512 So. 2d 398 (La. 1987) ("Since each case is unique, the discipline imposed depends upon the seriousness of the alleged offense and the circumstances surrounding it.").