

Supreme Court of Louisiana

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NEWS RELEASE #053

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 9th day of December, 2022 are as follows:

PER CURIAM:

2022-B-00783

IN RE: RICHMOND C. ODOM

DISCIPLINE IMPOSED. SEE PER CURIAM.

SUPREME COURT OF LOUISIANA

NO. 2022-B-0783

IN RE: RICHMOND C. ODOM

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Richmond C. Odom, an attorney licensed to practice law in Louisiana under emeritus status.¹

UNDERLYING FACTS

Respondent served as trustee of the Theodore A. Hardaway Charitable Remainder Unitrust (“CRUT”). Following the death of the settlor, respondent received \$472,613.97 in distributions from the settlor’s retirement accounts. Respondent deposited these funds into his client trust account and then began transferring the funds into his law firm operating account. From July 2004 to April 2006, respondent systematically converted \$260,334.24 in principal funds belonging to the CRUT. In total, he committed 160 separate acts of conversion. Respondent used the converted funds to pay his credit card bills, rent, and salaries.

As trustee, respondent was required to make distributions on a quarterly basis to the settlor’s children, Nancy Hardaway Lutz, Barbara Hardaway Murray, and

¹ Respondent elected emeritus status with the Louisiana State Bar Association as of July 1, 2020. Supreme Court Rule XVIII, § 3 permits any lawyer in good standing who no longer desires to engage in the full time active practice of law to apply to transfer to emeritus status if, at the time of application, the lawyer: (i) is otherwise eligible to actively practice law in Louisiana; (ii) is fifty years of age or older; and (iii) has actively practiced law in Louisiana for a minimum of ten years. Upon being transferred to emeritus status, the lawyer is generally not eligible to practice law, but may engage in limited activities such as performing pro bono legal work and representing immediate family members on an uncompensated basis.

Carey J. Hardaway (hereafter referred to as the “income beneficiaries”). In 2005, the income beneficiaries should have received a total of \$33,721.20 in quarterly distributions, but respondent failed to make the distributions.

In March 2006, Nancy Hardaway Lutz and her husband, Keith Lutz, met with respondent to discuss the matter. During the meeting, respondent informed the Lutzes that \$212,279.73 of the CRUT funds remained in his client trust account, but \$260,334.24 had been transferred into his operating account and converted to his own use. Thereafter, in an undated email to Mr. Lutz, respondent admitted that he owed \$260,334.24 in principal funds to the CRUT and \$33,721.20 in distributions to the income beneficiaries. He offered to sign a promissory note for the total balance due (\$294,055.44), at 6% interest, payable to the income beneficiaries on demand, with a due date in August 2007. He also offered to secure the debt with a life insurance policy, an assignment of rights to a publishing contract, and an assignment of rights to an outstanding attorney’s fee. The promissory note and security never came to fruition.

Respondent resigned as trustee in April 2006. In October 2006, he provided the income beneficiaries with an accounting and an acknowledgement that he owed restitution in the principal amount of \$260,334.24. He also warned that he was in bankruptcy and that any lawsuit filed against him would be subject to an automatic stay. He further warned that if a disciplinary complaint were to be filed against him, he would likely lose his law license, which would render him unable to pay the debt.

Respondent subsequently remitted \$212,279.73 to Mrs. Lutz, representing the portion of the CRUT funds which had remained in his client trust account. In November 2006, he tendered \$6,000.00 to Mrs. Lutz in partial payment of the misappropriated funds.

In May 2007, the income beneficiaries filed both a disciplinary complaint and a civil suit against respondent. Shortly thereafter, respondent purchased a cashier’s

check in the amount of \$260,334.00, made payable to the CRUT, and tendered the check to David Koch, the attorney for the income beneficiaries. Thereafter, respondent, the income beneficiaries, and the successor trustee executed a settlement agreement and general release. Pursuant to that agreement, and in consideration of the \$260,334.00 payment, the income beneficiaries agreed to withdraw the disciplinary complaint and dismiss the civil suit with prejudice. By letter to the ODC dated May 25, 2007, Mr. Koch, on behalf of the income beneficiaries, requested that the disciplinary complaint against respondent be withdrawn. He also moved to dismiss the civil suit against respondent.

DISCIPLINARY PROCEEDINGS

In August 2008, 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 1.15(a) (safekeeping property of clients or third persons), 1.15(g) (failure to create and maintain a client trust account), 5.3(b)(c) (failure to properly supervise a non-lawyer assistant), 8.4(a) (violation of the Rules of Professional Conduct), 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) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

In 2009, respondent filed a petition for transfer to disability inactive status, asserting that he suffered from health problems and was incapable of defending the formal charges. By order dated September 30, 2009, we granted the petition and transferred respondent to disability inactive status. *In re: Odom*, 09-0491 (La. 9/30/09), 18 So. 3d 56. This order operated to stay all disciplinary proceedings against respondent. On February 2, 2018, respondent was reinstated to active status, and the pending proceedings resumed.

Approximately eleven years after the filing of the disciplinary complaint, respondent notified the ODC that his client trust account was exclusively managed by his paralegal. In May 2019, the ODC filed amended and supplemental formal charges against respondent which alleged that he failed to properly supervise a non-lawyer assistant. Respondent filed an answer to the charges in June 2019, in which he denied any criminal conduct, dishonesty, fraud, deceit, or misrepresentation. He explained that his paralegal, Tina Cook, had operated, balanced, and managed his client trust account. Respondent indicated that he did not personally balance the firm's accounts or review the checks and deposits, but instead allowed Ms. Cook to handle these matters. Respondent stated that his "inattention" in this regard was caused by personal problems he was experiencing at the time. Respondent maintained that he had no actual knowledge of the improper transfers, but admitted that his law practice paid large amounts of monthly expenses from his trust account. He also admitted that he was negligent and careless in his failure to oversee and manage the account. Respondent further admitted that he periodically asked for checks, which he then made out to "cash" or to other personal payees. Finally, he indicated that Ms. Cook was unaware of the impropriety of these transactions.

In light of respondent's answer, the matter proceeded to a formal hearing on the merits.

Hearing Committee Report

After considering the testimony and other evidence presented at the hearing, the committee made factual findings consistent with the underlying facts sets forth above. Based on these facts, the committee found the following with respect to each alleged violation of the Rules of Professional Conduct:

Respondent violated Rule 1.15(a) by commingling and mismanaging the CRUT funds which he was entrusted to keep secure, and he violated Rules 5.3(b)(c)

by failing to properly supervise his employees who failed to keep the CRUT funds separate from the personal or operating expenses of the law firm. However, respondent did not violate Rules 8.4(b) or 8.4(c), as he did not engage in any criminal or fraudulent misrepresentation, and respondent did not violate Rule 8.4(a), as his explanations for the mismanagement appeared to be credible and sincere.²

The committee determined that respondent negligently violated duties owed to the CRUT. His misconduct caused no actual harm to the CRUT or to his clients.³ All funds were accounted for and respondent readily reimbursed the mismanaged funds. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The sole aggravating factor found by the committee is a pattern of misconduct (mismanagement of the CRUT occurred over a long period of time.) The committee determined the following mitigating factors are present: personal or health problems, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and the imposition of other penalties or sanctions (settlement of a civil suit).

The committee concluded:

... [T]he Committee finds that the Respondent commingled and mismanaged the funds of the trust and thereby breached his fiduciary duty to his clients. However, Respondent immediately acknowledged his errors, made restitution to the trust, and has been cooperative in the proceedings by the [disciplinary board]. Additionally, Respondent is now sixty-eight years old, took a medical leave from the practice of law for approximately ten years, and is now in emeritus status with a very limited practice restricted to *pro bono* work for family and friends...

² The committee made no finding with regard to the alleged violation of Rule 1.15(g).

³ In its report, the committee referred to the CRUT and the income beneficiaries as respondent's clients.

For his misconduct, the committee recommended respondent be suspended from the practice of law for one year, fully deferred, with six months of supervised probation, and that he be required to remain in emeritus status for the remainder of his legal career. Then, after noting that this matter has been long pending, that respondent has been very cooperative throughout the process, and that he has suffered other penalties and sanctions, the committee also recommended the costs and expenses of this matter be waived “in the interests of justice.”

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 factual findings are not manifestly erroneous, except for the finding that respondent had an attorney-client relationship with the CRUT and/or its beneficiaries. The board also made its own factual findings, as follows:

1. Respondent did not have an attorney-client relationship with the CRUT, the income beneficiaries of the trust, or the charitable beneficiaries of the trust.
2. Respondent admitted that he did not follow fair or reasonable procedures when he “borrowed” funds from the CRUT and that he did not act as a prudent attorney or true trustee.
3. Respondent acknowledged that he failed to properly supervise his legal assistant in the handling and administering of the CRUT funds.
4. Respondent improperly delegated primary responsibility for oversight and management of the trusts he administered, including the CRUT, to Ms. Cook.
5. Respondent did not give prior notice to the income beneficiaries of the “loans” he was making to himself from the CRUT funds. He did not advise the Lutzes of the amount he “borrowed” or the deficiency until March 2006.

6. Respondent did not formally document the loans (160 separate transfers) he made to himself from the CRUT funds. He did not prepare any promissory notes or other documents or instruments reflecting the terms of the loans, their repayment, or the interest on the loans.
7. After the defalcations came to light, respondent told the income beneficiaries that he was in Chapter 13 bankruptcy and thus any lawsuit filed against him would be subject to the automatic stay. He falsely told them that he had “no assets to speak of” other than a life insurance policy, a publishing contract, and attorney’s fees expected from a pending case. In fact, respondent had \$500,000.00 in a security account under the name of an LLC, with his former wife designated as the sole member. Respondent admitted that he had access to the funds and could have immediately repaid the “loans” with those funds. He had transferred the funds to the LLC during the timeframe in which he filed Chapter 13, apparently to avoid claiming the funds as his assets during the bankruptcy proceeding.
8. Between the time respondent revealed his defalcation to the Lutzes (March 2006) and the time he repaid the CRUT funds to the income beneficiaries (May 2007), with the exception of the \$6,000.00 payment in November 2006, respondent failed to unconditionally tender the funds he “borrowed” back to the income beneficiaries. The filing of the lawsuit by the income beneficiaries prompted him to liquidate his assets in the LLC account and pay the debt he owed. At the time the funds were tendered, a civil settlement was executed absolving respondent of further liability and requiring the income beneficiaries to send a letter to the ODC retracting the disciplinary complaint.

Based on these factual findings, the board determined respondent’s conduct violated Rules 5.3(b)(c), 8.4(a), and 8.4(c) of the Rules of Professional Conduct. Regarding Rules 5.3(b) and 5.3(c), the board explained that respondent had direct

supervisory authority over Ms. Cook but failed to make reasonable efforts to ensure her conduct was compatible with his professional obligations. Her actions aided in his conversion of funds and were known to respondent at a time when consequences could have been avoided, but he failed to take reasonable remedial action to prevent the conversion.⁴ Regarding Rule 8.4(c), the board noted that respondent misrepresented his financial situation to the income beneficiaries by failing to make them aware of his assets in the security account. He was also dishonest and deceitful in his initial conversion of funds and delay in repayment. Regarding Rule 8.4(a), the board noted that the multiple rule violations, as discussed above, established this derivative violation.

The board did not find violations of Rules 1.15(a)(g) or 8.4(b). The board explained that the ODC failed to prove that an attorney-client relationship existed between respondent and the CRUT and/or its beneficiaries, which is a prerequisite for proving a violation of Rule 1.15. *See In re: Austin*, 06-0630 (La. 11/29/06), 943 So. 2d 341. Regarding Rule 8.4(b), the board explained that the ODC failed to prove the specific elements of a crime or allege a specific criminal act committed by respondent.

⁴ The board noted that respondent moved the CRUT funds from his trust account into his operating account on numerous occasions, and then converted \$260,334.24 of the funds to his own personal use. Respondent argued that he simply “borrowed” the funds in accordance with the terms of the CRUT instrument, but he offered no legal authority or expert testimony in support. Instead, he relies on Article 4(A)(3) of the CRUT instrument:

A. GENERAL POWERS: The Trustee shall have all of the powers set forth in the Louisiana Code (including the Louisiana Trust Code) as in effect on the date hereof, and as amended in the future, the provisions of which are hereby expressly incorporated herein by reference. The Trustee shall also have the following powers ... which may be exercised at any time by the Trustee without approval from any court:

3. Borrowing Funds: To borrow money for any purpose, with or without security and to pledge securities or other property, without regard for the term of the trust(s).

The board noted that the powers given to the trustee in Article 4(A)(3) are subject to the trustee’s fiduciary obligations. The board added that a logical interpretation of Article 4 gives the trustee the power to borrow money on behalf of the trust, not on the trustee’s personal behalf. The board further noted that the argument that respondent could borrow money from the trust without any fiduciary obligation to the trust, for any purpose, and for his personal benefit is beyond reason and not supported by the CRUT instrument.

The board determined respondent violated duties owed to the CRUT and its income beneficiaries. He did so by failing to act as an appropriate fiduciary to the CRUT, by failing to be forthright with the income beneficiaries, and by failing to properly supervise his employee. Respondent acted knowingly, if not intentionally, and his conduct caused actual harm to the CRUT and to the income beneficiaries. Payment was delayed and restitution consisted only of the principal amount owed; respondent did not pay any interest or any earnings generated on the principal to the income beneficiaries. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

The board determined that the following aggravating factors are present: a prior disciplinary record,⁵ a dishonest or selfish motive, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law (admitted 1986). The board determined that the following mitigating factors are present: personal or emotional problems and full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings.

After further considering this court's prior jurisprudence addressing similar misconduct, a majority of the board recommended respondent be suspended from the practice of law for three years. One board member dissented and would recommend a two-year suspension. The board also recommended that respondent be assessed with the costs and expenses of these proceedings.

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).

⁵ In 2005, respondent was publicly reprimanded for engaging in a conflict of interest. *In re: Odom*, 05-0355 (La. 3/11/05), 896 So. 2d 9.

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 respondent's actions did not occur in the context of an attorney-client relationship, he clearly violated fiduciary duties owed to the CRUT and the income beneficiaries. The failure of a lawyer to safeguard the property of third persons constitutes a clear violation of Rule 1.15(a). Additionally, he violated Rule 5.3 by failing to properly supervise the action of his non-lawyer assistant, thereby allowing CRUT funds to be commingled with the personal or operating expenses of the law firm. These violations are serious in nature and warrant a baseline sanction of suspension.

Nonetheless, we find several mitigating factors are supported by the record. In particular, respondent suffered from health problems, which prompted us to transfer him to disability inactive status for a significant period of time. Respondent also made a timely good faith effort to rectify the consequences of the misconduct by making substantial payments of restitution.⁶ The hearing committee made a factual finding that respondent's actions were negligent rather than intentional, and

⁶ Respondent owed \$260,334.24 in principal funds to the CRUT and \$33,721.20 in distributions to the income beneficiaries, for a total due of \$294,055.44. He has repaid \$260,334.00 to the CRUT and \$6,000.00 to Mrs. Lutz, for a total repayment to date of \$266,334.00. These payments leave the amount of \$27,721.44 due and owing to the income beneficiaries.

on balance, respondent does not appear to have acted with a dishonest motive. Finally, we recognize that respondent voluntarily elected to take emeritus status, which limits his ability to practice law.

Considering the facts as a whole, we conclude the appropriate sanction for respondent's misconduct is a three-year suspension. We will also order respondent to pay the remaining restitution to the income beneficiaries in the amount of \$27,721.44.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Richmond C. Odom, Louisiana Bar Roll number 17339, be and he hereby is suspended from the practice of law for a period of three years. Respondent is ordered to pay restitution to Nancy Hardaway Lutz, Barbara Hardaway Murray, and Carey J. Hardaway in the amount of \$27,721.44 plus legal interest. 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.