# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **27th day of January, 2023** are as follows:

**PER CURIAM:**

*2022-B-01357* *IN RE: ALTON BATES, II*

SUSPENSION IMPOSED. SEE PER CURIAM.

Weimer, C.J., concurs in part and dissents in part and assigns reasons.

Crichton, J., concurs in part and dissents in part and assigns reasons.

Genovese, J., concurs in part and dissents in part for the reasons assigned by Chief Justice Weimer.

Crain, J., concurs.

SUPREME COURT OF LOUISIANA

NO. 2022-B-1357

IN RE: ALTON BATES, II

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

**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 2001.

On November 11, 2015, respondent and the ODC filed with this court a joint petition for consent discipline, wherein respondent admitted to neglecting a legal matter, failing to communicate with a client, mishandling his client trust account, which resulted in commingling and conversion of client funds, and notarizing an affidavit outside the presence of the signatory. Respondent's admitted misconduct occurred between 2011 and late 2014. For this misconduct, the parties proposed that respondent be suspended from the practice of law for one year and one day, fully deferred, subject to a two-year period of supervised probation with conditions. On January 15, 2016, we accepted the petition for consent discipline and imposed upon respondent the parties' proposed sanction. *In re: Bates*, 15-2102 (La. 1/15/16), 184 So. 3d 670 ("*Bates I*").

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

## UNDERLYING FACTS

In September 2011, Aljilia Prelow was involved in a three-car accident. In January 2012, Ms. Prelow hired respondent to represent her in a personal injury matter stemming from the accident.[1] In September 2012, respondent filed a petition for damages on Ms. Prelow's behalf. In February 2014, respondent settled Ms. Prelow's claim for $300.

The record contains no evidence that respondent consulted Ms. Prelow about the settlement, and she denied agreeing to the settlement. When he received the settlement check, respondent deposited the check into his operating account instead of his client trust account. Ms. Prelow also confirmed that the endorsement on the settlement check is not hers. Moreover, respondent did not prepare a written disbursement statement, and Ms. Prelow did not receive any of the proceeds from the settlement.

On March 26, 2014, the judge signed an order dismissing Ms. Prelow's case. Nevertheless, for several years thereafter, respondent continued to communicate with Ms. Prelow without disclosing to her that the case had settled and was dismissed. For example, on March 14, 2019, Ms. Prelow and respondent engaged in the following text message exchange:

Ms. Prelow: Is my accident case still pending???

Respondent: Sorry, I can't talk right now.
I'm still in with client

Ms. Prelow: I just need to know if my case still pending I know if it is not messed with after three years they close it. The accident was in 2011

[1] Respondent was the third attorney Ms. Prelow hired to handle the matter.

Respondent: It's three years from the last time something transpired.... will explain when I'm free

Ms. Prelow: Yall really messed over me and someone is going to pay. I will not let yall get away with this

Respondent: What are you talking about I have been paying you because she messed up the case.... haven't I been paying you
And your insurance company settled with the other people

Ms. Prelow: My insurance company paid the lady I got ran into because Chenetra [respondent's secretary] signed the letter to okay it. You knew when you was trying to so call settle it with me you didn't have enough funds to pay me. That money you have paid me didn't even pay for my car. I waited 5 years before I bought another car

Four days later, on March 18, 2019, the ODC received a disciplinary complaint against respondent from Ms. Prelow. In the complaint, Ms. Prelow alleged that respondent did not work her case and that respondent's secretary forged her signature on documents. She also indicated that she did not know if her case was still open. In response to the complaint, respondent provided the ODC with documentary evidence proving he worked extensively on Ms. Prelow's case, including documentation of the $300 settlement. He also denied that his secretary forged Ms. Prelow's signature on any documents.

## DISCIPLINARY PROCEEDINGS

In July 2021, the ODC filed formal charges against respondent, alleging that his misconduct violated the following provisions of the Rules of Professional Conduct: Rules 1.4 (failure to communicate with a client), 1.5(c) (contingency fee agreements), 1.15(a) (safekeeping property of clients or third persons), 1.15(d) (failure to timely remit funds to a client or third person), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent filed an answer to the formal charges, admitting to negligently failing to deposit the settlement check into his client trust account and negligently

failing to prepare a written disbursement statement. He also admitted that he did not pay Ms. Prelow any money from the settlement. However, he denied the remainder of the alleged misconduct and asserted the existence of factors that would mitigate his actual misconduct.

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

*Formal Hearing*

The hearing committee conducted the hearing on November 5, 2021. The ODC introduced documentary evidence and called Ms. Prelow to testify before the committee. Respondent did not introduce any documentary evidence or call any witnesses,[2] but he did testify on his own behalf and on cross-examination by the ODC.

RESPONDENT'S TESTIMONY

Respondent testified that Ms. Prelow's accident involved three vehicles, and her insurance company ultimately admitted liability and settled with the other two drivers. At that point, respondent believed Ms. Prelow's lawsuit would not go anywhere. Therefore, he claimed he accepted $300 from the defendant insurance company to pay the cost of filing a motion to dismiss Ms. Prelow's lawsuit. However, he acknowledged a letter from opposing counsel indicated that the $300 was to settle Ms. Prelow's claim and that the defendant insurance company would pay the cost of filing the motion to dismiss. Respondent further acknowledged that

[2] Respondent's secretary, Chenetra Hall, appeared at the hearing because respondent's counsel intended to call her as a witness. Ultimately, respondent's counsel decided not to have her testify and "cut her loose" without informing the ODC or the committee. The ODC relied upon respondent's counsel's indication that he would call Ms. Hall as a witness and did not subpoena her. Therefore, the ODC did not have an opportunity to question Ms. Hall.

he should have withdrawn from the representation when he determined Ms. Prelow's lawsuit was fruitless.

Respondent recalled telling Ms. Prelow there was a problem with her case due to the fact that her insurance company settled with the other two drivers. However, he did not recall asking Ms. Prelow if he could settle her case for $300 and could not locate a disbursement statement in Ms. Prelow's file. He also could not recall if Ms. Prelow endorsed the back of the settlement check. While he acknowledged it was possible that his secretary, Chenetra Hall, forged Ms. Prelow's endorsement without his knowledge, he indicated he has never questioned her about it. Additionally, he acknowledged that he did not deposit the $300 into his client trust account but, instead, deposited it into his operating account. He further acknowledged that he did not disburse any of the $300 to Ms. Prelow because it all went to pay the costs of her lawsuit.

Respondent could not recall ever telling Ms. Prelow that her case had settled for $300. He also could not remember if he ever told Ms. Prelow her case had been dismissed. Nevertheless, despite his inability to remember what occurred, petitioner acknowledged there was a lack of communication.

Finally, respondent indicated that he represented Ms. Prelow in multiple criminal matters on a pro bono basis. After Ms. Prelow filed her disciplinary complaint against him, she asked him to represent her in an additional criminal matter, but he did not respond to her request.

## ALJILIA PRELOW'S TESTIMONY

Ms. Prelow testified that she did not authorize respondent to settle her case for $300. She also did not endorse the settlement check and did not authorize anyone else to endorse it on her behalf. Respondent never told her that her case had settled and never provided her with a disbursement statement. Ms. Prelow indicated that

she learned her case had settled after she filed her disciplinary complaint against respondent and the ODC conducted an investigation.

Ms. Prelow claimed that respondent's secretary signed a letter authorizing Ms. Prelow's insurance company to accept liability and settle with the other two drivers involved in the accident. She further claimed that respondent's secretary forged her endorsement on the $300 settlement check. According to Ms. Prelow, respondent admitted his secretary messed up her case, and he was paying her to make up for it. She claimed that, beginning in 2016 or 2017, he paid her a total of approximately $1,000, which payments she believed were advances on any settlement amount she received in the future.

Ms. Prelow also confirmed that respondent handled multiple criminal matters for her and did not require her to pay him for those cases. She further indicated that, even though they were communicating about her criminal cases after the February 2014 settlement of her accident case, he never told her the case had settled.

*Hearing Committee Report*

After considering the testimony and evidence presented at the hearing, the hearing committee found that respondent was the third attorney retained by Ms. Prelow, and he ultimately filed a petition for damages in 2012, which included a motion to proceed *in forma pauperis*. Three months later, respondent filed a second petition, this time requesting service. In 2014, respondent settled Ms. Prelow's claim for $300 without any evidence that he consulted with her about same. The committee further found that there are questions related to the actual endorser of the settlement check. Moreover, the settlement funds were not deposited into respondent's trust account. The evidence additionally shows that respondent continued to communicate with Ms. Prelow for several years without disclosing the settlement.

Based on these facts, the committee determined respondent violated Rule 1.4 by not informing his client of his intentions to settle her claim. He did not consult with her regarding the settlement, and it is somewhat baffling why he would settle the claim for $300. Respondent could not provide the committee with any reason why he would settle the case for such a small amount. The committee also determined respondent violated Rule 1.5(c) by not having a written contingency fee agreement for this case. With respect to Rule 1.15(a), the committee determined respondent violated this rule when he deposited the settlement funds into his operating account and not into his trust account. Even though $300 may seem like a paltry amount, respondent had a duty to deposit the funds into his trust account, which did not happen. When respondent received the settlement funds, he also had a duty to promptly notify his client, which he did not do. The committee found no evidence to show that respondent provided any information to his client regarding the settlement. Accordingly, the committee determined respondent violated Rule 1.15(d). The committee then noted that one of the most perplexing things about this matter relates to the endorsement on the settlement check. The committee determined that Ms. Prelow did not endorse the settlement check. Therefore, a question remains as to who actually endorsed the settlement check before it was deposited into respondent's operating account. Because respondent is responsible for the actions of his office and staff, the committee determined this conduct violated Rule 8.4(c).

The committee then determined respondent knowingly violated duties owed to his client and the legal profession, causing actual harm to Ms. Prelow. Citing the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee cited only respondent's prior disciplinary record. In mitigation, the committee cited only respondent's personal or emotional

problems, specifically noting that respondent's father, who was also his law partner, was disbarred in 2010, which led to serious financial issues for respondent.

After also considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee further recommended that respondent be ordered to repay Ms. Prelow for any expenses she may have incurred during these proceedings and make restitution to Ms. Prelow in the amount of $300.

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

*Disciplinary Board Recommendation*

After review, the disciplinary board adopted the hearing committee's factual findings. Based on those facts, the board agreed with the committee's findings regarding rule violations with two exceptions. First, while the board agreed with the committee that respondent violated Rule 1.5(c), it disagreed with the committee's reason for finding this rule violation. Instead of finding this rule violation based upon respondent's failure to have a written contingency fee agreement with Ms. Prelow, the board determined respondent violated Rule 1.5(c) by failing to provide Ms. Prelow with a written disbursement statement concerning the outcome of her case. Second, while the board agreed with the committee that respondent violated Rule 8.4(c), it disagreed with the committee's reason for finding this rule violation. Instead of finding this rule violation based upon respondent's failure to supervise his staff with respect to the endorsement of the settlement check, the board determined respondent violated Rule 8.4(c) by settling Ms. Prelow's lawsuit without informing her and then depositing the settlement funds into his operating account. The board further determined that, since respondent did not tell Ms. Prelow about the settlement, he knew someone other than Ms. Prelow endorsed the settlement check.

The board then determined respondent knowingly violated duties owed to his client and the legal profession, causing actual harm to Ms. Prelow. The board agreed with the committee that the baseline sanction is suspension. In aggravation, the board noted only that respondent has substantial experience in the practice of law. The board agreed with the committee that the sole mitigating factor is respondent's personal or emotional problems.

Turning to the issue of an appropriate sanction, the board determined respondent's instant misconduct should be considered together with his misconduct that was the subject of *Bates I* using the analysis established in *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (1991). In *Chatelain*, the court determined that it is generally inappropriate to impose additional discipline upon an attorney for misconduct that occurred before or concurrently with violations that resulted in a prior disciplinary sanction; rather, the overall discipline to be imposed should be determined as if both proceedings were before the court simultaneously. Using the *Chatelain* approach, the board determined that the misconduct in *Bates I* occurred between 2011 through late 2014, while the instant misconduct occurred from February 2014 until Ms. Prelow filed a disciplinary complaint against him in March 2019. Although respondent's instant misconduct extends beyond the misconduct in *Bates I*, the board determined there is some overlap in the misconduct. Therefore, the board concluded that, had the 2014 misconduct in the instant matter been considered together with the misconduct in *Bates I*, it is likely that a more severe sanction, including an active period of suspension, would have been imposed.

Considering the combined misconduct and the court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day. The board further recommended that respondent be ordered to make restitution to Ms. Prelow in the amount of $300.

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.

The record of this matter supports a finding that respondent settled a case without his client's knowledge or consent, failed to deposit the settlement funds into a client trust account, failed to prepare a disbursement statement, failed to disburse the client's portion of the funds to her, and failed to inform the client of the settlement for years. Based on these facts, respondent violated the Rules of Professional Conduct as charged. More specifically, respondent violated Rule 1.4 by settling Ms. Prelow's case without discussing the settlement with her and then by failing to inform her of the settlement for years. He violated Rule 1.5(c) by failing to prepare a disbursement statement, and he violated Rule 1.15(d) by failing to disburse Ms. Prelow's portion of the settlement to her. He violated Rule 1.15(a) by failing to deposit the settlement funds into his trust account. Additionally, he violated Rule 8.4(c) by settling Ms. Prelow's case without informing her and depositing the settlement funds into his operating account instead of his trust

account. He also violated Rule 8.4(c) since he knew or should have known Ms. Prelow's endorsement on the settlement check was forged given that he never informed her of the settlement.

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 violated duties owed to his client and the legal profession, which caused actual harm. Therefore, the baseline sanction is suspension. The aggravating and mitigating factors found by the board are supported by the record.

Turning to the issue of an appropriate sanction, we agree with the disciplinary board that, based upon *Chatelain*, the misconduct in the instant matter should be considered along with the misconduct in *Bates I*. Accordingly, the appropriate sanction in this matter would address respondent's misconduct in allowing his trust account to become overdrawn, paying personal bills from his trust account, failing to promptly pay funds owed to a third-party medical provider, depositing funds belonging to two clients into his operating account instead of his trust account, neglecting one legal matter, failing to communicate with two clients, notarizing an affidavit outside the presence of the signatory, settling a case without the client's knowledge or consent, and failing to disburse the client's portion of the settlement proceeds.

The board determined that, had the court considered the instant misconduct together with the misconduct in *Bates I*, the court would have imposed a more severe sanction than the fully deferred suspension imposed in *Bates I*. We agree. Considering the totality of respondent's misconduct, we find a one year and one day suspension, with all but six months deferred, is appropriate. We will also order respondent to make restitution to Ms. Prelow in the amount of $300.

**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 Alton Bates, II, Louisiana Bar Roll number 27372, be and he hereby is suspended from the practice of law for a period of one year and one day, with all but six months deferred. Any misconduct during the period of deferral may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. It is further ordered that respondent shall make restitution to Aljilia Prelow in the amount of $300 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.

**SUPREME COURT OF LOUISIANA**

**NO. 2022-B-01357**

**IN RE: ALTON BATES, II**

*ATTORNEY DISCIPLINARY PROCEEDING*

**WEIMER, C.J.**, concurring in part and dissenting in part.

I respectfully dissent regarding the sanction.

As recognized by the majority, respondent has a prior disciplinary record. He received a one year and one day suspension, fully deferred, subject to a two year period of supervised probation with conditions in a prior disciplinary proceeding. **In re: Bates**, 15-2102 (La. 1/15/16), 184 So.3d 670. The conduct at issue in that proceeding overlapped with the conduct currently at issue.

Given this history and the facts of the current proceeding, I would impose a one year and one day suspension as recommended by both the hearing committee and the disciplinary board. The fact that the endorsement of the settlement check was forged establishes the recommended sanction is the appropriate sanction. See La. R.S. 14:72.

**SUPREME COURT OF LOUISIANA**

**No. 2022-B-01357**

**IN RE: ALTON BATES, II**

Attorney Disciplinary Proceeding

**CRICHTON, J., concurs in part and dissents in part and assigns reasons:**

As indicated by my rejection of respondent's previous discipline (a fully deferred suspension of one year and one day) as unduly lenient in *In re: Bates,* 15-2102 (La. 1/15/16), 184 So. 3d 670, in my view, respondent's present misconduct also warrants a period of actual suspension. However, while I agree the allegations against respondent have been proven, I disagree with the majority's imposition of one year and one day suspension with all but six months deferred, as I believe the circumstances of this case merit a one year and one day suspension with all but forty-five days deferred.

When determining the appropriate sanction in attorney disciplinary matters, underlying misconduct that occurs within the same general time period as the misconduct forming the basis of a previously imposed sanction should be considered together. *Louisiana State Bar Ass'n v. Chatelain*, 573 So. 2d 470 (La. 1991). In other words, this Court will generally not impose additional discipline upon an attorney for misconduct that occurred before or concurrently with violations that resulted in a prior disciplinary sanction. Rather, the overall discipline to be imposed by this Court shall be determined as if both proceedings were before the court simultaneously. *See also, In re Fazande,* 20-1415 (La. 3/20/21), 312 So. 3d 571 (after respondent had been disbarred, the Court considered additional and similar misconduct as part of a continuing series of professional breaches and permanently disbarred respondent), citing *Chatelain, supra*; *In re: Wilson*, 18-1800 (La. 1/14/19),

260 So. 3d 1203 (after respondent had been disbarred, this Court determined further misconduct which occurred during the same general time period in which the first misconduct occurred, should be considered with the original misconduct, if and when respondent applies for readmission from her disbarment), citing *Chatelain, supra*; *In re: Fradella*, 15-981 (La. 8/28/15), 177 So. 3d 119 (in applying *Chatelain*, this Court's "overriding consideration has been to determine the appropriate overall sanction for the lawyer's misconduct, ignoring any distortions which may be caused by the timing of the formal charges."); *In re: Hebert*, 12-2102 (La. 11/16/12), 125 So. 3d 1074 (applying *Chatelain*, the Court found no additional discipline was necessary for misconduct, but additional misconduct should be considered with underlying misconduct when respondent files an application for reinstatement); *In re: Szuba*, 04-1571 (La. 2/4/05), 896 So. 2d 976 (applying *Chatelain*, finding misconduct before the Court was nearly identical to and occurred within the same relevant time frame as previously considered misconduct, and noted the Court will adjudge respondent guilty of additional violations which will be added to his record for consideration in the event he applies for reinstatement). *But see, In re: Tyson*, 22-1607 (La. 1/18/23), -- So. 3d -- (Crichton, J., concurring, noting the *Chatelain* analysis did not apply where the respondent's recent misconduct did not occur in the same time frame as the misconduct in his previous disciplinary matter). Thus, notwithstanding respondent's serious misconduct involved herein, the peculiar circumstances in this matter dictate the application of the rule and spirit of *Chatelain* per the above jurisprudence.

As the per curiam explains, a majority of respondent's misconduct leading to his 2016 fully deferred suspension occurred between 2011 and 2014. The instant misconduct occurred from February 2014 until complainant filed a disciplinary complaint against respondent in March, 2019. Although respondent's misconduct presently before the Court extends beyond his original misconduct, I find the overlap

nonetheless material. The original accident for which complainant retained respondent to represent her occurred in 2011. Despite not receiving complainant's permission to settle her case, the record reveals respondent was the third attorney complainant retained and respondent did inform complainant that her case was problematic due to the fact her insurance company had settled with the other two drivers involved. Moreover, the record also reveals that during 2016 or 2017, complainant received a total of approximately $1,000 in advances from respondent, which complainant believed were advances on any settlement amount she would receive in the future. While these facts certainly do not excuse respondent's behavior, they should be taken into consideration.

Finally, and most notably, the record establishes that respondent represented complainant in multiple criminal matters on a *pro bono* basis both before and during the time frame at issue herein. Even after complainant filed her disciplinary complaint against respondent in 2019, she asked respondent to represent her in an additional criminal matter. Thus, even though she felt respondent's lack of communication regarding the settlement of her personal injury matter warranted filing a disciplinary complaint, she apparently believed respondent still competent to represent her again in another case.

To be clear, I do not make light of respondent's serious misconduct as alleged and proven by clear and convincing evidence, but I do not agree with the majority's imposition of a one year and one day suspension with six months deferred. In my view, respondent should receive a one year and one day suspension, with all but forty-five days deferred. Furthermore, in addition to this period of suspension, I would also require that respondent attend educational seminars regarding trust accounts, ethics, and professionalism during a probationary period.