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-01439 *IN RE: ROBERT BARTHOLOMEW EVANS III*

DISBARMENT IMPOSED. SEE PER CURIAM.

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

McCallum, J., concurs in part and dissents in part for the reasons assigned by Justice Crichton.

SUPREME COURT OF LOUISIANA

NO. 2022-B-1439

IN RE: ROBERT BARTHOLOMEW EVANS III

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Robert B. Evans III, an attorney licensed to practice law in Louisiana, but currently on interim suspension for threat of harm to the public.

UNDERLYING FACTS

Count I

Respondent and Cesar R. Burgos practiced law together in a law firm known as Burgos & Evans, LLC until May 1, 2015, when their partnership terminated. On June 4, 2015, Mr. Burgos filed suit against respondent for breach of contract. *Cesar R. Burgos, et al. v. Robert B. Evans III, et al.*, No. 2015-05337, Div. "N", Civil District Court for the Parish of Orleans. Mr. Burgos was represented in the litigation by attorneys Richard C. Stanley and William M. Ross. Respondent was represented in the litigation by attorneys E. John Litchfield and Carey B. Daste.

On July 8, 2015, the parties entered into a Settlement and Release Agreement which was intended to resolve all disputes between them. In 2016, with the approval of the district court, Mr. Burgos deposited funds into the registry of the court which represented certain sums that were disputed under the Agreement. After hearing competing motions filed by respondent and Mr. Burgos, the court released some of

the funds in the registry to Mr. Burgos,[1] leaving a balance of $207,394.48 remaining for administration.

On June 6, 2018, respondent filed an *ex parte* motion to withdraw the balance of the disputed funds from the registry of the court. Respondent filed the motion on his own behalf, despite the fact that he was represented by counsel in the litigation. Respondent's motion represented that "[c]ounsel for the plaintiffs have been contacted and have not expressed any opposition to this Motion." Respondent's motion also included a certificate of service indicating that he had served the pleading upon all counsel of record. Both of these representations by respondent were false – *i.e.*, plaintiffs' counsel were not contacted in advance about the motion and did not receive a service copy of the motion, and Mr. Burgos would have vigorously opposed any such motion and the removal of disputed funds from the registry of the court.

On June 12, 2018, based on respondent's false representations in the motion, Judge Ethel Simms Julien signed an order granting the motion and releasing the disputed funds to respondent. On June 14, 2018, a check in the amount of $207,394.48 was issued to respondent by the clerk of Civil District Court. Respondent immediately deposited the check into his personal bank account and spent the funds.

On June 15, 2018, plaintiffs' counsel learned about the motion for the first time as a result of an online search by their paralegal. After that discovery, Mr. Ross contacted the court's chambers and spoke to Judge Julien's law clerk, who stated that an order releasing the funds had already been signed. Mr. Ross then called Ms.

[1] Respondent sought review of this ruling by filing a writ application with the Fourth Circuit Court of Appeal. The writ was denied. *Burgos v. Evans*, 17-0023 (La. App. 4th Cir. 2/15/17) (unpublished).

Daste to discuss the matter. Ms. Daste advised that she had no prior knowledge of the filing of the motion by her client, respondent.

Later on June 15, 2018, Judge Julien held a telephone conference with Mr. Ross and Ms. Daste. Following the call, Ms. Daste sent a letter to Judge Julien reiterating that neither she nor Mr. Litchfield was aware that respondent "would be filing or had filed" the motion to withdraw funds from the registry of the court, and that they had not received a copy of the motion from respondent. Ms. Daste further advised:

> I spoke with Mr. Evans after our telephone conference to let him know that you advised that his actions would be considered contempt of court, and could potentially subject him to criminal charges. I also asked Mr. Evans whether the check he received from the Clerk of Court yesterday had been negotiated. He told me the check had been negotiated. Apparently the Clerk of Court's registry account is with Chase Bank, and Mr. Evans also has an account with Chase. Mr. Evans said that the funds have already been spent, and that he cannot return the funds.

On June 15 and 18, 2018, plaintiffs' counsel filed multiple motions objecting to respondent's withdrawal of the disputed funds from the registry of the court. In an opposition to one of the motions, respondent represented that Ms. Daste had previously advised him that plaintiffs did not object to his withdrawal of the disputed funds. This representation was false.

On July 5, 2018, Judge Julien issued an order which set the hearing on plaintiffs' motions for August 17, 2018. Following the issuance of the order, respondent filed an application for supervisory writs with the Court of Appeal, Fourth Circuit, seeking reversal of the trial court's ruling and a remand to reset the hearing on the pending motions "for a date no earlier than October 1, 2018." Respondent sought expedited attention and a decision by the court of appeal no later than July 15, 2018. The writ application contained an affidavit in which respondent swore under oath that a copy of the application had been "emailed and mailed to all

counsel of record this 11th day of July." This affidavit was false, as plaintiffs' counsel did not receive a copy of the writ application via e-mail on July 11, 2018. Instead, plaintiffs' counsel only received a mailed copy of the writ application on July 18, 2018, two days *after* the Fourth Circuit had already denied in part and granted in part the writ application.

The hearing on plaintiffs' motions was finally scheduled to take place on April 17, 2019. Just prior to the start of the hearing, respondent agreed to return $207,394.48 to the registry of the court in four installment payments, the last of which would occur on August 15, 2019, and to pay $10,000 in attorney's fees and costs to plaintiffs.[2] On May 8, 2019, Judge Julien signed a judgment to this effect and dismissed plaintiffs' motions as moot.

In 2019, respondent and Mr. Burgos again filed competing motions seeking the release of certain funds from the registry of the court. Following a hearing on the motions, Judge Julien ruled in favor of Mr. Burgos. On January 31, 2020, Judge Julien signed a judgment ordering the clerk of Civil District Court to release the sum of $180,000 from the registry of the court to Mr. Burgos.[3]

The ODC alleges that respondent's conduct violated 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 material fact or law previously made to the tribunal by the lawyer), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.

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[2] Respondent repaid the funds to the registry of the court as agreed. He also paid the attorney's fees and costs.

[3] Respondent's appeal of this judgment was dismissed based on a finding by the court of appeal that the judgment was not appealable. *Burgos v. Evans*, 20-0326 (La. App. 4th Cir. 12/16/20), 312 So. 3d 1145.

Count II

In August 2018, the ODC filed a petition in this court seeking respondent's immediate interim suspension for threat of harm to the public. At our request, respondent filed a response to the petition for interim suspension. After considering the positions of both parties, we remanded the matter for a hearing. However, prior to the hearing, respondent and the ODC filed a "Joint Consent Petition for Interim Suspension Pursuant to Louisiana Supreme Court Rule XIX, § 19.2," in which respondent stated that he withdrew his opposition to the ODC's petition and consented to the entry of an order of interim suspension. On September 28, 2018, we granted the petition and placed respondent on interim suspension for threat of harm to the public. *In re: Evans*, 18-1433 (La. 9/28/18), 253 So. 3d 133.

Notwithstanding our order of interim suspension, respondent has continued to engage in the practice of law. The ODC alleges that respondent received, disbursed, and otherwise handled client funds through his law firm's trust account; negotiated with opposing counsel in pending client legal matters (the Vaughn, Alexander, and Ogbor matters); corresponded with opposing counsel to advance the prosecution of pending client legal matters (the Faucheaux and Barre matters); and corresponded with opposing counsel to advance discovery in pending client legal matters (the Alexander and Arriaga matters).[4]

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

[4] The ODC also alleged that while respondent was on interim suspension, he maintained a website presence so as to hold himself out as a lawyer authorized to practice law. The hearing committee and the disciplinary board did not find this allegation was proven by clear and convincing evidence, and the ODC has not objected to this finding in its brief filed in this court. Accordingly, this opinion contains no further discussion of respondent's website.

DISCIPLINARY PROCEEDINGS

In March 2019, the ODC filed formal charges against respondent as set forth above. Respondent answered the formal charges and denied any intentional misconduct. He admitted that he filed an *ex parte* motion to withdraw funds from the registry of the court, but stated that he had discussed the motion with his attorneys prior to the filing and believed, based on those conversations, that the motion was unopposed. Respondent attributed his "genuine misunderstanding" in this regard to his mental state at the time.[5] Likewise, respondent indicated that "any misrepresentations" he subsequently made in pleadings or communications with the courts were a result of his mental impairment and misunderstanding. Finally, respondent denied that he practiced law after he was placed on interim suspension.

In light of respondent's answer, 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 made findings of fact, including the following:

1. At 12:22 p.m. on June 6, 2018, respondent emailed Ms. Daste asking her to ask opposing counsel if Mr. Burgos would agree that respondent could withdraw $207,394.48 that remained in the registry of the court. This email establishes that respondent knew that Mr. Burgos had not consented to the withdrawal of the funds since he was asking *his* counsel to seek that agreement.

[5] Respondent suggested that he suffered from generalized anxiety disorder and depressive disorder, in addition to physical health problems (including chronic back problems) that necessitated the use of narcotic pain medicine. Nevertheless, respondent specifically denied that he suffered from a mental disability or chemical dependency during the time frame at issue.

2. Nevertheless, within hours of sending the email, respondent prepared and filed the *ex parte* motion to withdraw the entire $207,394.48 from the registry of the court. Notably, respondent filed the motion on his own behalf even though he was at that time (and had been since the inception of the litigation) represented by counsel.

3. In the *ex parte* motion, respondent affirmatively advised the court that "[c]ounsel for the plaintiffs have been contacted and have not expressed any opposition to this Motion." Respondent admitted during the hearing that this statement was false and that although he assumed it to be true, he did not have personal knowledge that the motion was unopposed. Additionally, the email respondent sent to Ms. Daste earlier that day prior to filing the motion directly contradicts respondent's testimony that he "believed" that Mr. Burgos did not object to his request to withdraw the funds based on his prior communications with his counsel.

4. Respondent also attempted to blame others for his actions. He claimed that the actions and communications by Ms. Daste to him prior to June 6, 2018 led him to believe that Mr. Burgos did not oppose his motion to withdraw the funds. Ms. Daste did not play any role in preparing the *ex parte* motion, was unaware that respondent was going to file the motion, and did not receive a copy of the motion from respondent to review prior to his filing it. Ms. Daste testified that she had not contacted plaintiffs' counsel to obtain their agreement to release the funds and did not tell respondent at any time that counsel for the plaintiffs had been contacted and that they did not oppose the motion.

5. Ms. Daste testified that respondent had been actively involved in his case since its beginning. She had been preparing a motion for partial summary judgment seeking to withdraw funds that Mr. Burgos had deposited, but the

motion would have been filed as contested. She was never able to complete the motion because respondent continually failed to provide original affidavits to be used with the motion. Ms. Daste also testified that her drafting the motion for partial summary judgment was further complicated because respondent on his own had filed two other suits in two separate forums and she was concerned about making sure all the allegations lined up so there would not be any inconsistencies.

6. Based upon her impression of the dispute gained throughout her years of handling the matter, Ms. Daste did not believe that Mr. Burgos would have ever consented to respondent's withdrawal of the funds. Likewise, Mr. Ross found it to be completely implausible that anyone at Mr. Litchfield's office would make that representation because no lawyer who had been involved in the case would believe that Mr. Burgos would consider agreeing to disburse the funds to respondent.

7. By the time Ms. Daste first learned of the *ex parte* motion, it had been filed, the judge had granted the motion, the funds had been disbursed to respondent, and respondent had spent nearly all of the money. Upon learning of the motion, Ms. Daste immediately prepared a memorandum to contemporaneously document what had occurred. This memorandum supports Ms. Daste's testimony.

8. In the memorandum Ms. Daste explains why respondent's June 6, 2018 email to her proves that respondent made intentional misrepresentations to the district court:

> Why would I need to have [Mr. Ross] agree to release the money, if I already supposedly have been told by plaintiffs' counsel that they do not oppose a motion for [respondent] to withdraw the funds? So [respondent] has already contradicted himself and this is clear evidence that he is lying. And if he thinks I need to call [Mr. Ross] at 12:22 p.m. on June 6 in order to have him agree to release

> the funds to [respondent], why would [respondent] then file a motion three hours later claiming that plaintiffs don't oppose the motion.

9. On June 12, 2018, based on respondent's false representations in the *ex parte* motion, the judge granted the motion and signed an order releasing all of the disputed funds to respondent. Two days later, the clerk of Civil District Court issued a check in the amount of $207,394.48 to respondent. Respondent picked up the check that day and immediately deposited it into his bank account. Because the funds were immediately available, he transferred the funds to other accounts and immediately spent the money.

10. Respondent admitted in his pre-hearing memorandum and in his testimony to the committee that he filed the *ex parte* motion because he "needed" money. He also testified in his sworn statement that he had substantial outstanding debts at or around the time of his filing of the motion. Ms. Daste confirmed that respondent had confided in her that he was "officially broke."

11. Upon learning of the filing of the *ex parte* motion, counsel for Mr. Burgos filed a Motion to Vacate Order Releasing Funds and Stop Payment on Check in an effort to prevent the removal of the funds. (At the time this motion was filed, Mr. Burgos' counsel was unaware that the check had already been issued and the funds spent by respondent.) Respondent, on his own and not through his counsel of record, filed an opposition to this motion in which he again represented to the court that the *ex parte* motion was unopposed. He contended in his memorandum that in a conversation that occurred at some point in the months leading up to his filing of the *ex parte* motion, a "Litchfield associate" (referring to Ms. Daste) told him that the plaintiffs had communicated that they did not object to respondent withdrawing the money from the court's registry. This representation to the court was also false.

12. The *ex parte* motion included a certificate of service signed by respondent in which he certified to the court that he had served the motion upon all counsel of record. This certification was also false, which meant that respondent's counsel and opposing counsel were entirely unaware that the motion had been filed until after it was granted and the funds disbursed to and spent by respondent.

13. Respondent blamed one of his assistants, Doris Nasthas, for not serving the motion. He claimed that he had delivered a copy of the filed motion to her with instructions to send out the service, but for "whatever reason" she did not do so. Ms. Nasthas vehemently denied this claim. She testified that contrary to respondent's contention, he did not physically hand her a folder containing a copy of the filed *ex parte* motion for service; he did not leave a folder at her desk with a copy of the motion with a "sticky note" instructing her to file the motion; and he did not otherwise instruct her to serve the motion. Respondent conceded in his sworn statement and during the formal hearing that he alone was responsible for the motion not being served.

14. Ms. Nasthas confirmed respondent's testimony that he had been out of the office since May 2018 due to health issues, and that during that time, to the extent that she communicated with respondent, it was by email or telephone.

15. Contrary to respondent's testimony that he terminated Ms. Nasthas' employment for failing to serve the motion, she testified that she left respondent's firm to take a better paying job with her former employer – not because respondent had terminated her.

16. Mr. Litchfield also confirmed that he did not receive a copy of the *ex parte* motion before it was filed and that he never contacted Mr. Burgos' counsel to seek consent to withdraw the disputed funds from the registry of the court. Mr. Litchfield agreed that ownership of the funds was a heavily contested

issue, and he described the litigation as "contentious." He did not believe that Mr. Burgos would ever agree to respondent's request to withdraw funds.

17. Neither Mr. Ross nor Mr. Stanley received a service copy of the *ex parte* motion when it was filed. Neither one was aware of the motion until June 15, 2018 – nine days after it was filed and after it had been granted and the funds disbursed and spent – when Mr. Ross' paralegal found it on the court's website while looking at the docket. Neither respondent nor his counsel contacted Mr. Ross or Mr. Stanley regarding the motion prior to its filing.

18. On June 18, 2018, after learning that the funds had been disbursed to respondent, counsel for Mr. Burgos filed a Motion for New Trial and a Motion for Contempt, Sanctions, and Judgment Compelling the Restoration of the Funds to Court Registry. The court initially set the hearings on those motions for July 3, 2018, but because of ongoing medical issues, respondent sought to continue the hearings until October 2018. However, the court only continued the hearings until August 17, 2018. Respondent therefore prepared and filed an application seeking supervisory review of the court's decision regarding the continuance. The application sought expedited consideration by July 15, 2018.

19. On July 11, 2018, respondent verified under oath that the writ application had been emailed and mailed to all counsel of record on that day. This representation was untrue. Neither Mr. Ross nor Mr. Stanley received an emailed copy of the writ application at any time, much less in time to oppose the request. Although counsel for Mr. Burgos did ultimately receive a copy of the writ application in the mail, the copy arrived after the appellate court had granted supervisory relief and ordered the trial court to select a new hearing date. Respondent admitted that he failed to adequately instruct his assistant to serve opposing counsel of record.

20. Plaintiffs' motions were ultimately set to be heard in April 2019. In response to the motions, respondent agreed to return the money to the registry of the court over a certain scheduled period of time. He also agreed to contribute $10,000 to the plaintiffs for attorney's fees and expenses, but Mr. Ross testified that this amount was not sufficient to fully reimburse Mr. Burgos for the fees and expenses he incurred as a result of respondent's false representations to the court in the *ex parte* motion. The court reduced respondent's agreement to an order.

21. After respondent returned the funds to the registry of the court, Mr. Burgos obtained a judgment ordering the clerk to release $180,000 of that amount to him.

22. Respondent consented to be placed on interim suspension effective September 28, 2018.

23. Respondent represented Joel Vaughn in her personal injury claim against Walmart. The case settled before respondent's interim suspension, but thereafter respondent engaged in a series of email exchanges with Walmart's counsel that lasted several weeks in an attempt to negotiate the final settlement distribution in a light of a partial waiver by Medicare of its lien. Respondent also threatened Walmart with a motion to enforce the settlement with an allegation of bad faith.

24. Respondent represented Kelly Faucheaux in her personal injury matter arising out of an automobile accident. On October 11, 2018, while under suspension, respondent sent an email to opposing counsel regarding his client's request that the defendant stipulate to liability and, if not, Ms. Faucheaux would file a motion for summary judgment. Respondent and opposing counsel thereafter exchanged emails regarding potential settlement of the matter.

25. Respondent represented Magnolia Alexander in a medical malpractice matter. On October 14, 2018, while under suspension, respondent sent an email to defendant's counsel recapping his interpretation of the facts and evidence that had been adduced in the matter, requesting that the defendant stipulate to liability, and asking counsel to tender his client's limits. A few minutes later, respondent sent another email to opposing counsel apparently answering a question from him and requesting that he amend the defendant's answer to a request for admission. On October 17, 2018, defendant's counsel sent respondent an email questioning whether he should be negotiating matters while he was suspended. Respondent admitted that opposing counsel was correct and that he had been told by his attorney that he should not negotiate.

26. Respondent represented Rosa and Anthony Barre in a personal injury matter arising out of an automobile accident. On October 13, 2018, while under suspension, respondent sent an email to opposing counsel asking what his intentions were after the depositions were completed. The email indicated that it had been sent from another attorney, Nicholas Holton, to whom respondent testified that he was referring cases. Respondent denied it was his intention to represent that Mr. Holton was the sender of the email, but Mr. Holton replied to the defense attorney clarifying that he had directed respondent to "discontinue using my name in his emails" and that "any emails from [respondent] are from [respondent] not me."

27. Respondent represented Nadia Ogbor with respect to an on-the-job accident. On November 1, 2018, while under suspension and well after he was told he should not negotiate matters, respondent received an email from opposing counsel asking if he was interested in trying to resolve the matter expeditiously or if counsel should move forward with discovery. Rather than communicate that he could not negotiate because he was suspended from the

practice of law, respondent engaged in settlement negotiations and agreed to settle the matter for whatever opposing counsel could get in authority. Respondent conceded that these communications "appeared" to be a negotiation.

28. Respondent represented Ivy Arriaga in a personal injury matter arising out of an automobile accident. On November 28, 2018, while under suspension, respondent sent an email to opposing counsel in an effort to obtain copies of discovery documents. He did so despite acknowledging a few weeks earlier that he should not be engaging in communications with opposing counsel regarding pending legal matters.

29. While on interim suspension, respondent received, disbursed, and otherwise handled client funds by way of his trust account. Respondent was the only signatory on his trust account. He admitted to signing numerous checks out of that account to disburse settlement funds to clients and third parties during the period of interim suspension. His trust account records and corresponding checks confirm that respondent handled client funds over the course of multiple months while on interim suspension. The evidence submitted by the ODC shows funds moving in and out of respondent's trust account while he was suspended from the practice of law.

30. Respondent testified that he signed blank trust account checks prior to being placed on interim suspension and gave them to his father, who operated as his office manager and was of counsel with his firm. Respondent testified that his father used the pre-signed checks while he was on interim suspension and that he therefore did not "handle" client funds while suspended.

31. Respondent made this contention for the first time at the hearing. His sworn statement, taken on January 9, 2019, approximately 3½ months after he was placed on interim suspension, tells a different tale. When asked about the trust

account activity in his statement, respondent spoke in the present tense with regard to the check writing. For example, with respect to the matters that settled while he was under suspension, respondent stated under oath:

- "I just write the checks. That's all I do."
- "I'm just signing checks."
- "My father facilitated talking to the client and the distribution and I cut the checks."
- "All I did is sign the check."

In addition, when he was informed by deputy disciplinary counsel during the statement that signing checks from the trust account constitutes the unauthorized practice of law, respondent did not explain or contend that he had simply signed the checks prior to being placed on interim suspension.

Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges. Specifically, as to Count I, the committee concluded that respondent violated Rules 3.3(a)(1), 8.4(a), 8.4(c), and 8.4(d) of the Rules of Professional Conduct by (1) filing the *ex parte* motion to withdraw disputed funds from the registry of the court under false pretenses upon his representation to the court that the motion was unopposed, (2) falsely certifying that the motion was served on all counsel, (3) continuing to falsely represent to the court in an opposition that his counsel advised him that the plaintiffs did not oppose the withdrawal of the disputed funds; and (4) falsely swearing under oath that the writ application, which sought expedited consideration, was emailed to all counsel on the day that it was filed. As to Count II, the committee concluded that respondent violated Rule 5.5 by engaging in the unauthorized practice of law while on interim suspension.

The committee determined respondent violated duties owed to his clients, the legal system, and the legal profession. He acted intentionally. His misconduct caused both actual and potential harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee determined the following aggravating factors are present: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted 1995). The committee found the only mitigating factor present is the absence of a prior disciplinary record.

Based on these findings, and considering the prior jurisprudence in similar cases, the committee recommended respondent be disbarred.

Both respondent and the ODC filed objections 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 and adopted same. Based on these factual findings, the board determined respondent's conduct violated the Rules of Professional Conduct as charged in the formal charges.

The board determined respondent violated duties owed to his clients, the legal system, and the legal profession. Respondent acted intentionally, and his conduct caused both actual and potential harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment.

The board determined that the following aggravating factors are present: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. The board determined that the following mitigating factors are present: the absence of a prior disciplinary record and personal or emotional problems (health problems during the time of the misconduct).

Turning to the issue of an appropriate sanction, the board found that respondent's overall misconduct warrants permanent disbarment. In Count I,

respondent filed the *ex parte* motion under false pretenses by representing the motion was unopposed. He also falsely certified the motion had been served upon all counsel of record. These misrepresentations facilitated respondent's conversion of $207,394.48 in disputed funds held in the registry of the court. Respondent then continued his pattern of misconduct by making false representations in an opposition memorandum filed with the district court and in a writ application filed with the court of appeal. Respondent's multiple misrepresentations of fact clearly qualify as the intentional corruption of the judicial process, which is a ground for permanent disbarment under Supreme Court Rule XIX, Appendix D, Guideline 2.

In Count II, respondent was suspended by order of this court dated September 28, 2018. He nevertheless continued to practice law after this date. Indeed, respondent's intentional violation of Rule 5.5 began the very next day after he was placed on interim suspension. His misconduct involved at least six client matters and the extensive use of his client trust account. He also impersonated another attorney, Mr. Holton, when communicating with opposing counsel in one of those client matters, and his unauthorized practice of law continued even after his own prior counsel in this disciplinary matter expressly advised him not to negotiate in any cases. Respondent's unauthorized practice of law is a ground for permanent disbarment under Rule XIX, Appendix D, Guideline 8.

The board determined that respondent's conduct shows that he fails to respect the authority of the courts of this state and is so egregious as to demonstrate a convincing lack of fitness to practice law. Furthermore, respondent's misconduct was deliberate, intentional, and repetitive, indicating that there is no reasonable expectation of significant rehabilitation in his character in the future.

Based on these findings, the board recommended respondent be permanently disbarred. The board further recommended that respondent be assessed with the costs and expenses of this matter.

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 establishes by clear and convincing evidence that respondent made multiple misrepresentations in connection with the filing of an *ex parte* motion to withdraw more than $200,000 in disputed funds from the registry of the court. Specifically, respondent represented to the trial court that his former law partner had no opposition to the withdrawal of the funds, when respondent knew this was not the case. Furthermore, respondent did not serve a copy of the motion on his former law partner or his counsel of record, contrary to his representations to that effect in the certificate of service. Respondent then filed two additional pleadings – an opposition filed in the trial court and a writ application filed in the court of appeal – in which he made additional misrepresentations of fact. Finally, respondent repeatedly engaged in the unauthorized practice of law after he was placed on interim suspension. Under these circumstances, respondent violated the Rules of Professional Conduct as charged 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 acted intentionally, and violated duties owed to his clients, the legal system, and the profession, causing both actual and potential harm. The applicable baseline sanction is disbarment. The aggravating and mitigating factors found by the board are supported by the record.

Respondent's misconduct was undoubtedly egregious. However, we see no compelling reason to deviate from the baseline sanction in this matter. Accordingly, we will impose disbarment, retroactive to September 28, 2018, the date of respondent's interim suspension.

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 Robert B. Evans III, Louisiana Bar Roll number 23473, be and he hereby is disbarred, retroactive to September 28, 2018, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. 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-01439

IN RE: ROBERT BARTHOLOMEW EVANS III

Attorney Disciplinary Proceeding

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

On May 4, 2022, this Court amended the provisions of Supreme Court Rule XIX related to permanent disbarment to state that permanent disbarment shall only be imposed upon "an express finding of the presence of the following factors: (1) the lawyer's misconduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future." Respondent's misconduct in this matter satisfies two of the permanent disbarment guidelines as found in Appendix D of Supreme Court Rule XIX (intentional corruption of the judicial process and, following notice, engaging in the unauthorized practice of law during a period of suspension), and in my view, his behavior also clearly falls within the recently amended aforementioned factors. For the reasons below, while I agree with the majority that the allegations against respondent have been proven, I dissent from the imposition of regular disbarment and would permanently disbar respondent.

As the majority's opinion reflects, respondent prepared an *ex parte* motion to withdraw disputed funds amounting to over $200,000 deposited in the court registry and represented to the court that the motion was unopposed when, in fact, respondent had no personal knowledge that the motion was unopposed. Moreover, respondent included with his motion a certificate of service certifying he had served the motion on all counsel of record. This certification was also patently false. Based upon

respondent's false representations to the court, the court released the deposited funds to respondent, who immediately deposited the check and spent the money. Upon receiving a later-filed opposition to the motion to withdraw, respondent *again* represented to the court that his original motion to withdraw was unopposed. Respondent also verified under oath that, following the trial court's refusal to continue a hearing on his opponent's Motion for New Trial regarding restoration of the funds to the court registry, he had emailed and mailed a copy of his writ application to the court of appeal to all counsel of record. Again, this representation was false. Opposing counsel only received a copy of the application in the mail after the appellate court had granted supervisory relief and ordered the trial court to select a new hearing date. When ultimately confronted about these repeated falsities, respondent consistently attempted to shift blame to others, primarily his non-lawyer support staff. As the Disciplinary Board noted, respondent's intentional corruption of the judicial process in this regard most certainly qualifies under our amended rule as well as the guidelines for permanent disbarment.

Further, despite respondent's 2018 suspension as a result of this serious misconduct, *In re: Evans*, 18-1433 (La. 9/28/18), 253 So. 3d 133, respondent continued to communicate with opposing counsel in several pending matters, engaged in settlement negotiations, and received, disbursed, and otherwise handled client funds by way of his trust account (upon which he was the only signatory) during his suspension. Although respondent claimed his unauthorized practice of law was based upon "an honest misunderstanding of the terms of his suspension," I find his behavior falls within the guidelines for permanent disbarment (unauthorized practice of law) and demonstrates that there is no reasonable expectation for a rehabilitation of respondent's character in the future.

Respondent's continued lack of remorse for his egregious behavior, his multiple intentional misrepresentations to the trial court and the court of appeal, and

his flagrant disregard for this Court's authority by continuing to practice law after being prohibited from doing so demonstrate a clear lack of ethical and moral fitness to practice law. Accordingly, I find the only appropriate sanction under these circumstances is permanent disbarment from the practice of law. I therefore dissent.