

SUPREME COURT OF LOUISIANA

NO. 2019-B-1007

IN RE: CAROL E. PARKER

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Carol E. Parker, an attorney licensed to practice law in Louisiana.

**UNDERLYING FACTS**

On July 15, 2010, Cathy Williams retained respondent to complete litigation pertaining to the partition of community property. That day, respondent contacted opposing counsel, Roy H. Maughan, Jr., to request a continuance for a rule to show cause hearing that was scheduled for July 26<sup>th</sup>. Respondent explained to Mr. Maughan that she needed additional time to review the file history and that her mother, who was having major surgery on July 19<sup>th</sup>, required her assistance. For these reasons, Mr. Maughan agreed to a continuance. Respondent did not make any formal arrangements to secure the continuance until Friday, July 23<sup>rd</sup> at 5:30 p.m., at which time she faxed a letter to the judge’s office.

Despite her representations to Mr. Maughan and her filing of the untimely after-hours fax, respondent appeared in court on Monday, July 26<sup>th</sup>. Mr. Maughan did not appear, having relied on respondent’s representation that she required the continuance and had taken the proper and necessary steps to request the continuance from the court. As a result of his failure to appear, his client’s rule was dismissed.

In October 2010, the attorneys appeared before Judge Zorraine Waguespack for a status conference, at which time the parties were given a pre-trial conference date of November 22, 2010, at 2:00 p.m. During the pre-trial conference, Judge Waguespack set trial for the following day, at 9:00 a.m. Respondent asked for a continuance, but Judge Waguespack denied her request.

On the morning of trial, respondent failed to appear and she fax-filed a motion to recuse Judge Waguespack. The court initially found her in contempt; however, prior to the court's first recess, respondent made an appearance, and the contempt was set aside. After the recess, respondent went on the record to inform the court that she would withdraw the motion to recuse provided she receive her discovery from opposing counsel or if the court would hear her motion to compel discovery, which she had prepared to file that day. Judge Waguespack denied the motion and advised that the recusal matter would be set for hearing.

The recusal motion was allotted to Judge Bruce Bennett and set for a hearing, for which he had to rearrange his docket and request a special court reporter. After receiving notice that the hearing would be held on December 6<sup>th</sup>, respondent filed a motion to continue and reset the hearing to recuse Judge Waguespack. Judge Bennett denied the motion. Two days later, respondent filed a motion to dismiss the motion to recuse Judge Waguespack. Judge Bennett denied the motion.

At the recusal hearing, respondent informed Judge Bennett that, earlier on that day, she had fax-filed a motion to recuse him. Judge Bennett then voluntarily recused himself. Also on that day, respondent filed a notice of intention to apply for emergency writs of review from the First Circuit Court of Appeal, with stay order requested, regarding the allotment procedure for the 21<sup>st</sup> Judicial District Court.

On December 14<sup>th</sup>, two days before the second scheduled recusal hearing, respondent filed a motion to dismiss the motion to recuse Judge Bennett. The property matter was then placed back on the original docket of Judge Waguespack.

## DISCIPLINARY PROCEEDINGS

In January 2011, Judge Bennett filed a complaint against respondent with the ODC. In May 2011, Mr. Maughan filed a complaint against respondent with the ODC. In November 2017, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.1 (meritorious claims and contentions), 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).

Respondent answered the formal charges, denying any misconduct. The matter then proceeded to a formal hearing on the merits.

### *Hearing Committee Report*

After considering the testimony and evidence presented at the hearing, the committee made factual findings that are generally consistent with the underlying facts set forth above and made the following additional findings:

Respondent testified that she appeared in court that Monday morning as a precautionary measure because she had faxed the continuance letter to the judge's office on a Friday evening. Mr. Maughan, who did not appear, was understandably upset upon learning that the matter had been dismissed. He also incurred additional costs and time by having to file to reset the rule to show cause.

Presumably, all counsel agreed with the trial date and advised the judge of their availability. Respondent testified that she was missing discovery and could not be prepared for trial, but she failed to file any pleadings to have the alleged discovery deficiencies addressed prior to trial.

At the December 6<sup>th</sup> recusal hearing, respondent notified Judge Bennett that she filed a motion to recuse him and filed a notice of intention to apply for

emergency writs with a stay order. Understandably angry, Judge Bennett then voluntarily recused himself and made a record of the circumstances surrounding the recusal motions. Respondent testified that this second motion to recuse was also filed to buy time for her writ to be considered. The partition matter was effectively delayed due to the motions to recuse that she filed.

Based on these factual findings, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges. In support of this determination, the committee explained that respondent had filed several frivolous and baseless motions to recuse judges in order to “buy time” and delay the community property partition trial. Respondent testified that she was unprepared and felt she had to file a motion to recuse Judge Waguespack to delay proceedings and allow her time to obtain discovery. She filed the motion to recuse Judge Bennett for dilatory purposes and so the First Circuit could consider her writ. Even if respondent had valid reasons to ask for a continuance the day of trial, other procedural mechanisms are in place to ensure that she could obtain whatever she needed to present her case. A motion to recuse at the eleventh hour could conceivably only be considered in good faith if information regarding Judge Waguespack’s impartiality had just been discovered. Otherwise, the motion was filed for one reason – to delay. Respondent was simply unprepared and did not follow the appropriate procedure to seek a delay. She filed a motion to recuse, knowing it would trigger an immediate stay so a third-party judge could review the motion. If she did not have enough time to prepare for trial, she should have declined representation. Compounding this error of judgment, the subsequent motions to recuse and dismiss clearly exhibit that she was not filing motions on a good faith basis. The allegations in respondent’s pleadings do not provide a good faith basis

for recusal under the La. Code Civ. P. art. 863.<sup>1</sup> With twenty years of experience as an attorney, respondent should have known better than to file pleadings with no legal or good faith basis. She did so anyway, not once, but twice. These dilatory antics delayed legal proceedings, cluttered the record, and presumably cost all parties additional fees and expenses. Respondent admitted that she filed the recusal motions without any valid grounds evident in the Louisiana Code of Civil Procedure. She also showed no remorse until prodded by the committee at the end of the hearing. She continued to assert that, because Judge Waguespack's ruling had a "prejudicial effect" on her client, she was not in bad faith in filing the motion. It was not until the end of the proceedings that she finally stated she was wrong.

The committee determined respondent violated duties owed to her client, the public, the legal profession, and "opposing counsel." She acted knowingly and intentionally. She caused actual harm by delaying a matter that was set for trial by filing frivolous motions and wasting judicial resources. The quantification of actual harm is speculative as the misconduct occurred almost eight years ago and witnesses could not recall with absolute certainty some of the facts, but it is clear from the testimony and evidence presented that respondent's conduct was disruptive and harmful. After considering the ABA's *Standard for Imposing Lawyer Sanctions*, the committee determined Standard 6.2 is the applicable baseline sanction for the misconduct.<sup>2</sup>

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<sup>1</sup> La. Code Civ. P. art. 863 provides in pertinent part as follows:

A. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading, and that to the best of his knowledge, information and belief formed after reasonable inquiry, he certifies all of the following:

(1) The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

<sup>2</sup> Standard 6.2, entitled "Abuse of the Legal Process," provides:

In aggravation, the committee found the following factors: refusal to acknowledge the wrongful nature of the conduct and substantial experience in the practice of law (admitted 1990). In mitigation, the committee found the following factors: absence of a prior disciplinary record, a cooperative attitude toward the proceedings, and delay in the disciplinary proceedings.

With regard to an appropriate sanction, the committee primarily took guidance from *In re: Harvin*, 13-0685 (La. 5/24/13), 117 So. 3d 907, wherein the court imposed a three-month suspension, with all but thirty days deferred, upon an attorney who had obtained an improper default judgment and filed an improper notice of lis pendens.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for three months, with all but thirty days deferred. The committee further recommended respondent be assessed with the costs of this proceeding.

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Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

Respondent filed a brief in opposition to the committee's report.

*Disciplinary Board Recommendation*

After review, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and are supported by the record. The board also determined that the committee correctly found respondent violated the Rules of Professional Conduct as charged.

The board determined that respondent violated duties owed to the public, the legal system, and the legal profession. She acted knowingly and intentionally. She caused actual harm by delaying the litigation, wasting judicial resources, and causing inconvenience and expense to Mr. Maughan and his client. She caused the potential for harm to the reputations of judges she sought to recuse. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board agreed that Standard 6.2 is instructive in considering the sanction to be imposed for respondent's conduct.

The board agreed with the committee's determination of aggravating factors and determined that the following mitigating factors are present: absence of a prior disciplinary record, full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings, and delay in the disciplinary proceedings. The board added that, although respondent claimed to be remorseful, she never genuinely acknowledged the wrongful nature of her conduct.

With regard to an appropriate sanction, the board took guidance from *In re: Nugent*, 17-1856 (La. 12/5/17), 231 So. 3d 19, wherein the court accepted a petition for consent discipline imposing an eighteen-month suspension upon an attorney who filed two judicial complaints against a judge and a petition for damages against the judge and the attorney's former wife, although the filings did not have a factual basis.

Considering the above findings and the aforementioned jurisprudence, the board recommended respondent be suspended from the practice of law for six months, with all but thirty days deferred. The board added that any misconduct

during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. The board also recommended respondent be assessed with the costs and expenses of this matter.

Neither respondent nor the ODC filed an objection to the disciplinary board's recommendation.

## **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.

In this matter, the record supports a finding that respondent filed frivolous and dilatory motions to recuse two judges and misused the legal process in order to delay proceedings. This misconduct amounts to a violation of the Rules of Professional Conduct as charged.

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 violated duties owed to the public, the legal system, and the legal profession. She acted knowingly and intentionally, causing actual harm. The baseline sanction for this type of misconduct is suspension.

Aggravating factors include refusal to acknowledge the wrongful nature of the conduct and substantial experience in the practice of law. Mitigating factors include the absence of a prior disciplinary record, a cooperative attitude toward the proceedings, and delay in the disciplinary proceedings.

The filing of a frivolous motion to recuse a judge is serious misconduct which unduly burdens the judicial system. We caution all members of the bar that such tactics raise serious ethical concerns and will not be tolerated by this court.

Nonetheless, we acknowledge there are some significant mitigating factors in this case, including a lengthy and unexplained delay in the institution of disciplinary proceedings.<sup>3</sup> But for this factor, we might be inclined to impose a harsher sanction. However, considering the matter as whole, we find the board's recommendation is appropriate.

Accordingly, we will accept the board's recommendation and suspend respondent from the practice of law for six months, with all but thirty days deferred.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Carol E. Parker, Louisiana Bar Roll number 20317, be and she hereby is suspended from the practice

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<sup>3</sup> The misconduct at issue took place in 2010, and the complaints were filed in early 2011. According to respondent, the ODC made an offer of consent discipline in 2014, which she ultimately rejected. However, there is no explanation in the record as to why the ODC failed to institute charges until late 2017.

of law for a period of six months, with all but thirty days deferred, subject to the condition that any misconduct during this period may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. 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.