

SUPREME COURT OF LOUISIANA

NO. 2019-B-1412

IN RE: QUIANA MARIE HUNT

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

**FORMAL CHARGES**

On February 13, 2017, the ODC received notice that respondent's client trust account held insufficient funds on February 2, 2017 to honor a check in the amount of \$1,500. On February 15, 2017, the ODC sent notice of the overdraft to respondent with a request for an explanation. Respondent failed to claim the ODC's notice sent via certified mail. The ODC sent a second notice to respondent via certified mail on March 7, 2017. In response, respondent faxed some of her banking records to the ODC. However, this response only partially satisfied the ODC's request for documents. On April 18, 2017, the ODC gave respondent two weeks to gather the remaining documents.

Having received no response, on July 14, 2017, the ODC wrote to respondent in an attempt to schedule her sworn statement. Again, the ODC received no response. Thereafter, the ODC issued a subpoena directing respondent to produce the documents by September 26, 2017 and to appear for a sworn statement on October 10, 2017. Respondent was personally served with the subpoena on August

28, 2017. Nevertheless, she failed to produce the documents or appear for the sworn statement.

The ODC rescheduled respondent's sworn statement for October 13, 2017 and asked respondent to bring the requested documents at that time. Respondent appeared for the sworn statement but did not fully comply with the document request.

During the sworn statement, respondent indicated the overdraft occurred because the check presented for payment was issued several months previously, and she had withdrawn funds to pay an expert witness, leaving insufficient funds to cover the check. When the overdraft occurred, respondent deposited funds into her trust account to cover the insufficiency and issued a new check with extra money for the payee's inconvenience.

Respondent also indicated that she reconciles her trust account every two to three months. However, during the time period at issue, she was experiencing health issues and was preoccupied with federal litigation. Respondent did not provide the ODC with any reconciliations, computer records, or ledger sheets.

Regarding trust account payments made to Office Depot, respondent indicated they were for office supplies used for trial preparation for a specific client. Although she stated she had receipts to verify these purchases, she failed to provide copies of them to the ODC. With respect to cash withdrawals from the trust account, respondent indicated the following: \$1,000 withdrawn on November 1, 2016 was to pay a cash down payment to an expert witness; \$100 withdrawn on February 8, 2017 was to pay a paralegal to do research for a client's case; and \$150 withdrawn on February 13, 2017 was a legal fee for representing her client, Bridgette McCoy. Regarding Ms. McCoy, whom respondent was representing on a contingency basis, respondent explained that she had raised \$3,900 on Ms. McCoy's behalf and deposited the funds into her trust account in "bits and pieces" for use to pursue Ms.

McCoy's case. Respondent stated that she had records to reflect the receipt and distribution of funds on behalf of Ms. McCoy and other clients; however, she failed to provide the documents to the ODC. Finally, respondent agreed to pay the costs of the previously scheduled sworn statement as well as the current one. She also agreed to provide the ODC with the requested documents within two weeks. Respondent failed to pay the costs or provide the documents.

Using the limited documents provided by respondent, the ODC's forensic auditor prepared an audit report of respondent's trust account for September 2016 through March 2017. The audit identified misuse of respondent's trust account as follows: checks payable to cash; cash withdrawals; payment of operating expenses (office supplies); absence of bank reconciliations; obviously varied signatures for respondent's endorsement on checks; and inability or unwillingness to provide documents and information (client agreements, settlement statements, billing records, proof of deposits, identification of transactions, etc.) necessary for completion of the audit.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.15(a)(f) (safekeeping property of clients or third persons), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a) (violation of the Rules of Professional Conduct).

### **DISCIPLINARY PROCEEDINGS**

The ODC filed the aforementioned formal charges against respondent in February 2018. Respondent failed to answer the formal charges. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing

committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the hearing committee's consideration.

### *Hearing Committee Report*

After considering the ODC's deemed admitted submission, the hearing committee adopted the deemed admitted factual allegations as its factual findings. Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged.

The committee then determined that respondent violated duties owed to her clients and the legal system. She acted negligently with respect to the handling of her trust account and knowingly in her failure to cooperate with the ODC. Having specifically determined there is no evidence of misappropriated client funds, the committee concluded that respondent's misconduct caused no actual harm to her clients; however, she did cause harm by failing to cooperate with the ODC.

After 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 respondent be assessed with all costs and expenses.

Respondent objected to the hearing committee's report and recommendation. She also requested the matter be remanded for a formal hearing, arguing that she never received notice of the formal charges. The ODC opposed respondent's request to remand the matter, arguing that it made numerous attempts to notify respondent of the disciplinary proceedings at several different addresses. An adjudicative panel of the disciplinary board denied respondent's request for remand.

In her pre-argument brief to the board, respondent explained that the \$1,500 check at issue was written on December 15, 2016 to pay expert witness Dr. Shael Wolfson. However, Dr. Wolfson did not try to negotiate the check until February 2,

2017. Respondent further explained that, on November 1, 2016, she withdrew \$1,000 in cash from her trust account to pay Dr. Wolfson an advance fee to expedite the expert report. Dr. Wolfson agreed to expedite the report but did not accept the advance payment, instead instructing respondent to pay in full after the report was finished. According to respondent, the \$1,000 in cash remained in a locked box in her assistant's desk drawer. She admitted that she acted negligently when she did not ensure the \$1,000 was re-deposited into her trust account prior to writing the \$1,500 check to Dr. Wolfson. When respondent was notified of the insufficient funds issue, she claimed she immediately contacted Dr. Wolfson and provided him with a \$1,500 cashier's check plus a \$100 check from her personal funds for his inconvenience.

Regarding her failure to receive notices from the ODC, respondent claimed an independent contractor she hired to do paralegal work for her had fraudulently changed her primary address with the Louisiana State Bar Association ("LSBA") to an office location that she used for meetings and depositions but not to receive mail. She claimed this was why she never received the formal charges and never filed an answer. On July 16, 2018, respondent changed her primary and secondary addresses with the LSBA to her home address because she began working primarily from home due to severe medical complications. She further claimed that, prior to the filing of formal charges, she cooperated with the ODC's investigation. However, she was unable to locate certain client files requested by the ODC because the independent contractor stole them from her office. As such, respondent argues any discipline imposed should not be enhanced by a perceived failure to cooperate.

Finally, respondent argued that the deemed admitted facts do not support the imposition of an actual period of suspension. She asserted that, without the enhancement of the sanction for failure to cooperate, the appropriate sanction is probation.

### *Disciplinary Board Recommendation*

After review, the disciplinary board adopted the hearing committee's determination that the factual allegations in the formal charges were deemed admitted. However, the board disagreed with the committee's finding that there was no evidence of misappropriated client funds. Instead, the board found respondent converted client funds under the principle set forth in *Louisiana State Bar Ass'n v. Krasnoff*, 488 So. 2d 1002 (La. 1986), in which the court held:

Indeed, when an attorney relies upon a "black box" defense, viz., that he kept client funds secretly but securely in a private safe or similar unregulated depository, the likelihood of actual embezzlement is so great, and the policy of professional responsibility in protecting the client from such risks so strong, that it should be presumed that the attorney is guilty of embezzlement unless he successfully carries both the burden of going forward with the evidence and the burden of persuasion otherwise.

Based on these facts, the board determined that respondent violated the Rules of Professional Conduct as alleged. Specifically, the board noted that respondent failed to identify the clients associated with certain deposits during the audit period, and no disbursements could be matched with the deposits. According to the board, this activity amounted to commingling in violation of Rule 1.15(a). Respondent also violated this rule when she kept \$1,000 in cash withdrawn from her trust account in a locked box in her assistant's desk drawer, which is tantamount to conversion of client funds pursuant to the court's holding in *Krasnoff*. The board determined respondent violated Rule 1.15(f) when she issued trust account checks payable to cash, made cash withdrawals from her trust account, paid office expenses from the trust account, and failed to use proper recordkeeping practices. The board further determined that respondent's failure to cooperate with the ODC's investigation was a violation of Rule 8.1(c). Finally, the board determined respondent violated Rule 8.4(a) by violating the above rules.

The board then determined that respondent violated duties owed to her clients, the legal system, and the legal profession. The board agreed with the committee that respondent acted negligently in mishandling her trust account but knowingly in failing to cooperate with the ODC. Although respondent caused only potential harm to her clients, she caused actual harm to the attorney disciplinary system and minimal harm to Dr. Wolfson. After considering the ABA's *Standards for Imposing Lawyer Sanctions* as well as the baseline sanctions for conversion of client funds established by the court in *Louisiana State Bar Ass'n v. Hinrichs*, 486 So. 2d 116 (La. 1986), the board determined that the baseline sanction for respondent's misconduct is suspension.

In aggravation, the board found multiple offenses and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency. In mitigation, the board found the absence of a prior disciplinary record and inexperience in the practice of law (admitted 2014).

In determining an appropriate sanction, the board noted that the ODC, during oral argument before the board panel, acknowledged respondent is an excellent candidate for the LSBA's Practice Assistance and Improvement Programs, including Trust Accounting School, making deferment of part of the sanction appropriate. The board also considered this court's prior jurisprudence addressing similar misconduct and emphasized the lack of actual harm to respondent's clients as well as respondent's inexperience in the practice of law at the time of the misconduct.

In light of the above, the board recommended respondent be suspended from the practice of law for one year and one day, fully deferred, subject to two years of supervised probation with the conditions that she attend the LSBA's Trust Accounting School and Ethics School. The board also recommended respondent be assessed with all costs and expenses.

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.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The evidence in the record of this deemed admitted matter supports a finding that respondent mishandled her client trust account and failed to fully cooperate with the ODC in its investigation. As such, she has violated 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 her clients, the public, and the legal profession. We agree with the hearing committee and the disciplinary board that she acted negligently with respect to the mishandling of her trust account and knowingly with respect to her failure to cooperate with the ODC. Her conduct caused actual and potential harm. Notably, though, no clients were harmed by her conduct. We also agree with the board that the applicable baseline sanction is suspension. The record supports the aggravating and mitigating factors found by the board.

Turning to the issue of an appropriate sanction, we find that a fully deferred suspension is appropriate discipline in this matter. Respondent's misconduct occurred at a time when she was a solo practitioner and was relatively new to the practice of law, having been admitted to the bar for less than three years. She appears to have been overwhelmed and in need of the guidance and education provided by the LSBA's Practice Assistance and Improvement Programs. Under these circumstances, we will adopt the board's recommendation and suspend respondent from the practice of law for one year and one day, fully deferred, subject to two years of supervised probation with the conditions that she attend the LSBA's Trust Accounting School and Ethics School.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Quiana Marie Hunt, Louisiana Bar Roll number 35835, be and she hereby is suspended from the

practice of law for one year and one day. It is further ordered that this suspension shall be deferred in its entirety and that respondent shall be placed on supervised probation for a period of two years, subject to the conditions recommended by the disciplinary board. The probationary period shall commence from the date respondent, the ODC, and the probation monitor execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred 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.