

SUPREME COURT OF LOUISIANA

NO. 2019-B-1459

IN RE: SALLY HARRISON LONGMIRE HINGEL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Sally Harrison Longmire Hingel, an attorney licensed to practice law in Louisiana, but currently ineligible to practice.<sup>1</sup>

**FORMAL CHARGES**

In September 2016, a client hired respondent to represent her in a divorce proceeding and to file a reconventional demand for spousal support, child custody, and child support.<sup>2</sup> The client paid respondent a \$3,000 retainer for the representation.

A court date concerning the incidental matters was set for October 12, 2016, falling on Yom Kippur, a Jewish holiday. The client, who is Jewish, requested that respondent file a motion for a continuance. Respondent later represented to the client that her court date had been continued to November 18, 2016.

On November 18, 2016, the client, as well as her mother, who had flown in from Philadelphia for the hearing, and respondent appeared at the courthouse, only to find that their matter was not on the docket and that the opposing party and his

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<sup>1</sup> On June 1, 2017, respondent was declared ineligible to practice law for failing to comply with mandatory continuing legal education requirements. She is also ineligible for failing to pay bar dues and the disciplinary assessment and for failing to file a trust account disclosure statement.

<sup>2</sup> The client is referred to in the record of these proceedings only as “Ms. M.”

attorney were not present. Respondent explained to the client that she believed the opposing party was filing the continuance, but the client could not reconcile this explanation since she had requested the continuance for religious reasons. Respondent told the client that she was “going straight upstairs” to file the necessary pleadings to have the matter reset. Upon her return, respondent represented to the client that the new court date was set for January 18, 2017.

The client later discovered that respondent had not filed the pleadings to have the matter reset. The client also discovered that respondent failed to file anything in the matter. As a result, the client was divorced by default, without her issues of child custody, child support, or spousal support being addressed by the court.

Also, on two occasions, respondent requested prescription drugs from the client. On the first, respondent telephoned the client and requested to purchase Xanax. Hours later, she appeared at the client’s home with a pauper application and affidavit. Respondent purchased the Xanax and asked the client to sign the application and affidavit, although the \$3,000 retainer had already been paid. Respondent never filed the completed application and affidavit with the court.

Then, in December 2016, the client contacted respondent regarding a fight she had with her ex-spouse. She requested an appointment to discuss the matter and what she believed to be an upcoming hearing. In response, respondent stated that “she hurt her toe” and asked if the client had any codeine, Vicodin, or Percocet that she could either purchase or have in exchange for a “discount” on legal services. The client advised that she did not have any of the requested drugs. The client later provided the ODC with text messages showing respondent’s request for prescription drugs.

The client terminated the representation after respondent, who had agreed to meet with her on December 16, 2016, at 10:00 a.m., cancelled the meeting at 10:05 a.m., and asked if the meeting could be conducted over the telephone instead. In

response, the client fired respondent and requested a refund of unearned fees as well as her file. Respondent failed to provide the client with an accounting and failed to return the file, but she did return \$2,500 of the \$3,000 retainer.

In April 2017, the client filed a complaint against respondent with the ODC. Respondent failed to respond to the complaint, necessitating the issuance of a subpoena to obtain her sworn statement. Respondent failed to appear for the sworn statement.

### **DISCIPLINARY PROCEEDINGS**

In March 2018, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1(a) (failure to provide competent representation to a client), 1.1(b) (failure to comply with MCLE requirements), 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 1.4(a)(4) (failure to promptly comply with reasonable requests for information), 1.5(f)(5) (failure to refund an unearned fee), 1.16 (obligations upon termination of the representation), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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 submission on sanctions, the hearing committee accepted that the factual allegations contained in the formal charges were deemed admitted based upon respondent's failure to file an answer. Based upon the client's sworn statement, the committee found her testimony to be credible. The committee determined that respondent violated Rules 1.1(a), 1.1(b), 1.3, 1.4(a)(4), 1.5(f)(5), 1.16, 8.1(c), 8.4(b), and 8.4(c) of the Rules of Professional Conduct.

The committee determined that respondent violated duties owed to her client and the legal profession. She acted knowingly and intentionally. Her misconduct caused actual harm. The client had no representation in her divorce litigation. As a result, and to the client's significant detriment, important issues in the domestic proceeding were never adjudicated. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is either suspension or disbarment.

The committee found the following aggravating factors are supported by the record: a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted 2002). In addition, the committee included respondent's failure to participate "whatsoever" in the disciplinary investigation. The committee found no mitigating factors present.

After considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be disbarred. The committee also recommended that respondent be assessed with the costs and expenses associated with this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

### *Disciplinary Board Recommendation*

After review, the disciplinary board determined that the factual allegations in the formal charges were deemed admitted and proven, with one exception relating to the return of the client's file. The formal charges allege that respondent failed to return the file, but according to the client's sworn statement, her file was eventually returned to her. Based on these findings, the board determined that, with the exception of Rule 1.16, respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The board determined that respondent violated duties owed to her client, the public, and the legal profession. She acted knowingly and intentionally. Her conduct caused actual harm. In addition to the harm that she caused to the client in the divorce proceeding, respondent also placed the client at risk of being charged with a crime. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is disbarment.

The board found the following aggravating factors are supported by the record: a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. The sole mitigating factor found by the board is the absence of a prior disciplinary record.

After considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be disbarred. The board further recommended respondent be ordered to make restitution to the client in the amount of \$500. Finally, the board recommended that she be assessed with the costs and expenses associated with this proceeding.

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 record in this deemed admitted matter supports a finding that respondent failed to perform any services for a client, misled a client about the status of her case, solicited and purchased prescription medication from a client, and failed to cooperate with the ODC in an investigation. This misconduct amounts to a violation of the Rules of Professional Conduct as alleged in the formal charges and modified by the disciplinary board.

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 client, the public, the legal system, and the legal profession, causing actual harm. Her conduct was both knowing and intentional. Considering the ABA's *Standards for Imposing Lawyer Sanctions*, the baseline sanction in this matter is disbarment.

The record supports the following aggravating factors: a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and substantial experience in the practice of law. The sole mitigating factor supported by the record is the absence of a prior disciplinary record.

Turning to the issue of an appropriate sanction, we note that the ODC, the hearing committee, and the disciplinary board took guidance from the case of *In re: Mecca*, 16-1116 (La. 1/20/17), 214 So. 3d 827. In *Mecca*, this court issued a one-year suspension to an attorney who had accepted high-grade marijuana in exchange for his legal services, resulting in his arrest on charges of possession with intent to distribute marijuana and his conviction of possession of marijuana. After self-reporting his arrest to the ODC, Mr. Mecca enrolled in a ninety-day inpatient treatment program at Palmetto Addiction Recovery Center and executed a five-year recovery agreement with the Judges and Lawyers Assistance Program.

For the remaining misconduct, the board cited *In re: Aucoin*, 17-0451 (La. 5/26/17), 220 So. 3d 710. In *Aucoin*, a deemed admitted matter, this court suspended an attorney for one year and one day, fully deferred, for neglecting a legal matter, failing to communicate with a client, and failing to refund an unearned fee. Mr. Aucoin had been hired to handle the expungement of a criminal record, and although

he collected \$800 in fees from the client, he failed to take any action in the matter, which caused the client actual harm.

Like the attorney in *Mecca*, respondent's conduct includes both the soliciting and purchasing of prescription medication from a client. However, unlike the attorney in *Mecca*, respondent has taken no responsibility for her actions and there is no indication that she has ever sought treatment for her drug use. Like the attorney in *Aucoin*, respondent failed to perform legal services for her client, which caused injury to her client, and failed to refund unearned fees. Considering the totality of her misconduct, along with her failure to cooperate with the ODC in its investigation, we agree that disbarment is the appropriate sanction in this case.

Accordingly, we will adopt the disciplinary board's recommendation and impose disbarment.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Sally Harrison Longmire Hingel, Louisiana Bar Roll number 28125, be and she hereby is disbarred. Her name shall be stricken from the roll of attorneys and her license to practice law in the State of Louisiana shall be revoked. It is further ordered that respondent pay restitution, with legal interest, to her client subject of the formal charges. 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.