

Supreme Court of Louisiana

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NEWS RELEASE #049

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **10th day of December, 2021** are as follows:

PER CURIAM:

2021-B-01007

IN RE: DWAN S. HILFERTY

SUSPENSION IMPOSED. SEE PER CURIAM.

SUPREME COURT OF LOUISIANA

NO. 2021-B-1007

IN RE: DWAN S. HILFERTY

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

Count I

In 1991, Joseph Duplessis, Sr. and his three brothers hired respondent to handle an employment discrimination lawsuit against their employer. According to Mr. Duplessis, their legal matter appeared to be progressing until Hurricane Katrina in 2005. Thereafter, respondent failed to return Mr. Duplessis’ telephone calls or otherwise keep him informed of the status of the case. When respondent did speak to Mr. Duplessis, she offered what he considered to be excuses as to why the case had not progressed. In 2011, respondent sent discovery requests to the defendant but received no response. She never confirmed that the defendant was served with the discovery requests and never filed a motion to compel the defendant to respond.

In March 2015, Mr. Duplessis filed a disciplinary complaint against respondent. In November 2015, respondent provided the ODC with a sworn statement, during which she admitted she had never communicated directly with her clients except Mr. Duplessis. She also acknowledged the litigation had been ongoing for approximately twenty-four years, with no action being taken since 2011.

In May 2018, the ODC requested that respondent provide an update on the status of the litigation. In response, respondent indicated she would soon be filing a motion to set the matter for trial. The docket report indicates that the last pleading filed was a motion to continue the trial filed on February 29, 2016.

In July or August 2018, the ODC met with respondent and her counsel to discuss the status of the litigation. At that time, the ODC requested respondent provide a copy of her client file and a timeline explaining why the case had been neglected for so long. When respondent failed to provide the documents, the ODC sent her a November 2, 2018 follow-up email. Again, respondent did not provide the documents. The ODC then served her with a subpoena duces tecum to produce her client file by December 3, 2018. When the ODC later filed these formal charges against respondent, she still had not responded to the subpoena.

Count II

In 1994, Austin Okuarume hired respondent to handle an employment contract dispute. In 2002, Mr. Okuarume filed a disciplinary complaint against respondent, alleging she had failed to conclude his case. He also alleged she had stopped communicating with him and failed to return his file. After investigating the complaint, the ODC determined respondent violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client) and 1.4 (failure to communicate with a client) of the Rules of Professional Conduct and offered respondent diversion to conclude the matter. Respondent agreed and went through the Louisiana State Bar Association's ("LSBA") diversion program. The complaint was then closed in 2004.

Thereafter, respondent continued to represent Mr. Okuarume. However, in September 2012, he filed another disciplinary complaint against her. In response, respondent indicated that she filed lawsuits on Mr. Okuarume's behalf in both

federal and state court in July 1995. The federal court lawsuit was dismissed later that year for lack of jurisdiction. In the state court proceeding, respondent sent discovery requests to the defendant in 1997 and attended a pre-trial conference in 1998. The defendant only partially responded to the discovery requests. As such, respondent sent additional discovery requests in 2001, 2004, 2007, 2010, and 2013. The defendant failed to respond to any of these requests. When the ODC asked respondent why she had not filed a motion to compel discovery in the roughly nineteen-year history of the litigation, she apologized for not moving the case along and acknowledged she could have filed a motion to compel. Respondent admitted she failed to expedite the litigation and failed to communicate with Mr. Okuarume or opposing counsel. Nevertheless, she never sought to withdraw from the representation.

Several months later, on July 18, 2016, respondent filed a motion to compel discovery. The docket report indicated that the last filing prior to this filing was a motion to set a trial on the merits filed by respondent on May 29, 1998. On May 7, 2018, respondent notified the ODC that the defendant had filed a motion for summary judgment and had prevailed. She indicated she had appealed this ruling but had been unsuccessful. Her subsequent writ of certiorari to this court was denied.

In July or August 2018, the ODC met with respondent and her counsel and requested that respondent provide a copy of her client file. When respondent failed to provide the file, the ODC sent her a November 2, 2018 follow-up email. Again, respondent did not provide the file. The ODC then served her with a subpoena duces tecum to produce the file. When the ODC later filed these formal charges against respondent, she still had not responded to the subpoena.

DISCIPLINARY PROCEEDINGS

In May 2019, the ODC filed formal charges against respondent, alleging she violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 3.2 (failure to make reasonable efforts to expedite litigation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). Respondent initially failed to answer the formal charges, and the factual allegations therein were deemed admitted. Respondent subsequently filed a motion to set aside the deemed admitted order, claiming she did not receive service of the formal charges. The motion was denied by the hearing committee chair in August 2019.

In December 2019, the matter proceeded to a hearing in mitigation. Respondent was the only witness to testify at the hearing. During her testimony, respondent stated that she does not contest the ODC's allegations of misconduct against her. In mitigation, she claimed she lacked a dishonest or selfish motive and made a good faith effort to rectify the consequences of her misconduct. She pointed to the numerous character letters in the record as evidence of her good character and reputation. She also expressed remorse for her misconduct. However, respondent acknowledged that she still had not provided the ODC with a copy of either the Duplessis file or the Okuarume file in response to the subpoenas duces tecum served on her in 2018.

Hearing Committee Report

After noting that the factual allegations set forth in the formal charges have been deemed admitted, the hearing committee determined respondent violated the Rules of Professional Conduct as charged. Regarding the Rule 8.4(d) violation, the committee specifically referenced respondent's failure to respond to the ODC's subpoenas duces tecum, which it considered to be a failure to cooperate with the ODC in its investigations.

After considering the testimony and evidence presented at the mitigation hearing, the committee determined respondent's conduct caused no actual harm to her clients. In particular, the committee found both the Duplessis case and the Okuarume case lacked sufficient facts and/or evidence to support a viable claim. However, the committee further found that the lack of evidence partly stemmed from respondent's failure to compel discovery and/or subpoena documents in the cases. The committee also noted respondent still has not complied with the ODC's subpoenas duces tecum for her client files, and she provided no reasonable explanation for her failure to respond to those subpoenas.

In mitigation, the committee determined the following factors are present: the absence of a dishonest or selfish motive, character or reputation, and remorse. In aggravation, the committee found a prior disciplinary record (diversion in the Okuarume matter) and a pattern of misconduct. In further aggravation, the committee found respondent demonstrated a "knowing indifference" to her obligations under Rules 1.3, 1.4, and 3.2 of the Rules of Professional Conduct. Additionally, the committee found respondent's explanation for her failure to answer the formal charges to be "unconvincing" and determined that her failure to maintain a proper address with the LSBA for service purposes showed her further indifference to her obligations under the rules.

The committee determined respondent violated duties owed to her clients, the legal system, and the legal profession. She acted negligently in the Duplessis matter. She acted knowingly in the Okuarume matter in light of her prior diversion in the matter.

After further considering this court's prior jurisprudence addressing similar misconduct and determining that the aggravating factors outweigh the mitigating factors, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee further recommended that all but

ninety days of this suspension be deferred, followed by two years of supervised probation.

The ODC filed an objection to the committee's findings and recommendation.

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous, with one exception relating to her failure to maintain a proper address with the LSBA. The board noted that no evidence was presented to suggest, nor did the ODC allege, that respondent failed to properly maintain her address with the LSBA. As such, the board determined the committee erred in its finding that respondent's failure to answer the formal charges was a result of her failure to maintain a proper address with the LSBA. In all other respects, the board adopted the committee's factual findings.

Based on those facts, the board determined respondent violated the Rules of Professional Conduct as alleged in the formal charges. Specifically, the board determined both the Duplessis case and the Okuarume case were fairly straightforward cases that, nevertheless, languished for decades because of respondent's neglect, triggering a violation of Rules 1.3 and 3.2. The board also determined respondent violated Rule 1.4 by failing to adequately communicate with her clients. Finally, the board determined respondent violated Rule 8.4(d) by causing excessive delays in her clients' litigation and by failing to cooperate with the ODC.

The board then determined respondent violated duties owed to her clients and the legal system. Her conduct was negligent with respect to the Duplessis matter but knowing with respect to the Okuarume matter, and it caused actual harm to her clients due to the excessive delays in the cases. Based on the ABA's *Standards for*

Imposing Lawyer Sanctions, the board determined the baseline sanction is suspension.

In aggravation, the board found the following: a prior disciplinary record, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law (admitted 1982). In mitigation, the board found the absence of a dishonest or selfish motive, personal or emotional problems, character or reputation, and remorse.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day.

Respondent filed an objection to the board's recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The record of this matter supports a finding that respondent neglected two legal matters and failed to communicate with her clients over the course of

approximately two decades. Respondent also failed to fully cooperate with the ODC in its investigation of the two disciplinary complaints. Accordingly, she has violated the Rules of Professional Conduct as alleged in the formal charges.

Disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *In re: Hingel*, 20-0992 (La. 11/10/20), 303 So. 3d 1029. 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. *In re: Smothers*, 20-0244 (La. 6/22/20), 297 So. 3d 743. The purpose of lawyer disciplinary proceedings is not so much to punish the attorney as it is to maintain appropriate standards of professional conduct in order to protect the public and the administration of justice. *Louisiana State Bar Ass'n v. Powell*, 439 So. 2d 415 (La. 1983).

Considering the extensive length of time respondent neglected her clients' legal matters and failed to communicate with them, we find she acted knowingly in violating duties owed to those clients as well as the legal system and the legal profession. The extended delays resulting from her conduct and her failure to fully cooperate with the ODC's investigations caused actual harm. The baseline sanction for this misconduct is suspension. The record supports the disciplinary board's findings regarding aggravating and mitigating factors.

We do not minimize the significance of the delay in respondent's resolution of the two legal matters at issue, which resulted in harm to her clients. Nevertheless, we recognize that respondent did not cause her clients to lose a right or remedy in their legal matters. In light of this fact, as well as the mitigating factors present, we find the appropriate sanction for respondent's misconduct is a one year and one day suspension, with six months deferred, followed by one year of probation. This

sanction will give respondent an opportunity to correct the problems which caused the misconduct, while at the same time protecting the public from future misconduct.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Dwan S. Hilferty, Louisiana Bar Roll number 1416, be suspended from the practice of law for one year and one day. It is further ordered that six months of the suspension shall be deferred. Following the active portion of the suspension, respondent shall be placed on probation for one year. The probationary period shall commence from the date respondent and the ODC execute a formal probation plan. Any misconduct during the probationary 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.