

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DESHA M. GAY

DOCKET NUMBER: 23-DB-034

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel (“ODC”) against Desha M. Gay (“Respondent”), Louisiana Bar Roll Number 36855.¹ ODC alleges that Respondent violated Rules of Professional Conduct 1.8(e) (conflict, financial assistance to client, documented expenses necessary for subsistence); 8.1(c) (failure to cooperate); 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation).²

PROCEDURAL HISTORY

The formal charges were filed on May 15, 2023. The charges were sent via certified mail on May 19, 2023 to Respondent’s primary registration address (received and signed for by “Ryan Pack” on May 24, 2023) and to Respondent’s Louisiana State Bar Association (“LSBA”) registered secondary address (received and signed for by Respondent on June 6, 2023).³ Because Respondent failed to file an answer or otherwise respond to the charges, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, Section 11(E)(3)⁴ on June 19, 2023. By order filed July 3, 2023, the factual allegations contained in the

¹ Respondent was admitted to the practice of law in Louisiana on May 12, 2016.
² See the attached Appendix for the text of these Rules.
³ Primary address: 7350 Jefferson Hwy Ste 485-213, Baton Rouge, LA 70806; and secondary address: 1935 Ory Drive, Brusly, LA 70719.
⁴ This rule states:

formal charges were deemed admitted. Respondent was given 20 days from the mailing of the order “to demonstrate good cause why the imposition of this order would be improper or would result in a miscarriage of justice.” On July 21, 2023, Respondent filed a motion to recall the deemed admitted order. ODC filed an opposition to Respondent’s motion on July 26, 2023. On August 3, 2023, Hearing Committee No. 15 (“the Committee”)⁵ denied Respondent’s motion to recall the deemed admitted order. In the interim, on July 25, 2023, Respondent filed an answer to the formal charges with several exhibits attached thereto.⁶

On August 25, 2023, ODC filed its brief on sanctions with ODC Exhibits 1-30. On October 16, 2023, the Committee issued its report, finding that Respondent violated Rules 1.8(e), 8.1(c) 8.4(a), and 8.4(c) of the Rules of Professional Conduct. The Committee recommended that Respondent be suspended for six months, fully deferred, followed by one year of probation to include attendance at the LSBA Ethics School within the first six months of the period of probation. The Committee also recommended that Respondent be assessed with costs and expenses of the proceeding pursuant to Rule XIX, Section 10.1.

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

⁵ Members of the Committee included Bobby J. Delise (Chair), Jonathan Blake (Lawyer Member), and Bridgette Hardy (Public Member).

⁶ ODC did not move to strike Respondent’s answer and exhibits. Instead, it treated Respondent’s answer and exhibits as Respondent’s submission on sanctions.

On November 6, 2023, Julie Brown White enrolled as counsel of record and filed an objection to the Committee’s report on behalf of Respondent. ODC filed its pre-argument brief on December 20, 2023. The Respondent did not file a brief in advance of oral argument. This matter was originally set for oral argument on January 25, 2024 before Panel “A” of the Disciplinary Board, but due to the closure of the office building where the Board offices are located,⁷ the matter was continued until Thursday, March 7, 2024. Thereafter, the matter was reset and oral argument was held on February 29, 2024 at the Double Tree by Hilton, 2150 Veterans Boulevard., Royal Room, Kenner, Louisiana 70062, before Panel “B”⁸ of the Board.⁹ Deputy

⁷ The Board’s offices were closed because of a break in a water main outside the Jefferson Parish East Bank Water Treatment Plant on January 23, 2024 which caused a lack of water services to the East Bank of the Parish.

⁸ Members of Panel “B” included Erica J. Rose (Chair), R. Alan Breithaupt (Lawyer Member), and M. Todd Richard (Public Member).

⁹ At the oral argument, counsel for Respondent urged the Board to remand this matter for an evidentiary hearing before the Committee, particularly to address the issue of Respondent’s cooperation with ODC in its investigation. Similarly, in Respondent’s objection to the Committee’s report, Respondent references “her motion to remand these proceedings to the Hearing Committee for an evidentiary hearing on the merits.” Respondent’s Notice of Objection to Hearing Committee Report, p. 2, filed November 6, 2023. The Board notes that no motion to remand has been filed into the record by Respondent. Moreover, to the extent that Respondent’s request at the oral argument constitutes a motion to remand, Respondent’s motion is denied for the reasons stated below.

In the matter of *In re Whitehead*, 2009-1868, p. 7 (La. 1/29/10), 28 So.3d 249, 253, a deemed admitted order was entered in the case when the respondent failed to answer or otherwise reply to the formal charges. Subsequently, the Board denied a motion for remand filed by the respondent, which would have effectively set-aside the deemed admitted order. *Id.*, 2009-1868, pp. 9-10, 28 So.3d at 254. When considering the matter, the Court described how the respondent received service of formal charges, notices, and pleadings but “purposely chose to ignore the disciplinary proceeding and simply waited until the eleventh hour to ask the board to remand the matter for a hearing.” As a result, the Court stated, “that was respondent’s choice, and we will not relieve him of the consequences of it.” The Board’s denial of Respondent’s motion to remand was upheld by the Court. *Id.*, 2009-1868, pp. 11-12, 240 So.3d at 256.

In this instance, the formal charges properly were served upon Respondent in accordance with Rule XIX, Section 13(A) by “mailing the petition by registered or certified mail to the primary address shown in the registration statement filed by respondent pursuant to Section 8(C).” In her motion to recall the deemed-admitted order, Respondent claimed that because she traveled in-state from May 22, 2023 through May 26, 2023, and from May 30, 2023 to June 2, 2023, she “could not have received the copy of the formal charges [at her LSBA-registered primary/preferred address] on May 24, 2023 because she was in Shreveport.” Respondent wrote in her motion that her “law office mailing address is a mailbox located inside of a UPS store. Employees of the UPS store sign for certified mail delivered.” Respondent offered that she does “not check her law office mail box frequently” due to her new employment with the Office of Workers’ Compensation and because she was no longer accepting new clients.

Rule XIX, Section 13(A) only requires that service of the formal charges be sent to a respondent’s LSBA-registered primary address. However, ODC made every effort to ensure that Respondent received actual notice of the formal charges. At ODC’s request, the Board also sent a copy of the formal charges to Respondent’s LSBA-registered secondary address. United States Postal Tracking information reflects that notice was left at Respondent’s LSBA-registered secondary address on May 24, 2023, and again on May 25, 2023. Respondent, however, did not retrieve her certified mail until June 6, 2023. Respondent chose to delay retrieving, reading, and acting upon the mail that she

Disciplinary Counsel Susan C. Kalmbach appeared on behalf of ODC. Ms. White appeared on behalf of Respondent, who was also present.

FORMAL CHARGES

The formal charges read, in pertinent part:

On April 13, 2022, the Office of Disciplinary Counsel received a complaint from Felicia Picard, and the matter was opened for investigation as ODC 0039958.

The ODC placed Respondent on notice of the complaint and took the following steps to obtain Respondent's cooperation with the disciplinary investigation.

1. On May 4, 2022, the ODC sent Respondent notice of the complaint and a request for an initial response via certified mail to Respondent's Louisiana State Bar Association ("LSBA") registered primary/preferred address. United States Postal Service tracking information and the signed certified mail receipt reflect delivery on May 5, 2022. The ODC's correspondence was not returned to the ODC, further indicating delivery. Respondent did not submit an initial response to the complaint.
2. On June 1, 2022, the ODC sent Respondent a second request for an initial response via United States mail to Respondent's LSBA-registered primary/preferred and secondary addresses. The correspondence was not returned to the ODC, indicating receipt. The correspondence also was emailed to Respondent at her LSBA-registered email address. The ODC received delivery confirmation for the emailed correspondence, and Respondent acknowledged receipt.
3. On June 10, 2022, an individual identifying herself as Andrea Scott contacted the ODC on Respondent's behalf and indicated that Respondent's initial response would be hand-delivered to the ODC on Monday, June 13, 2022. The initial response was not delivered to the ODC.
4. On June 22, 2022, the ODC sent Respondent written notice that her initial response had not been received. This correspondence, sent to Respondent's LSBA-registered primary/preferred address was not returned to the ODC, indicating receipt. The correspondence also was emailed to Respondent at her LSBA-registered email address. The ODC received delivery

received from the Board. Similarly, the certificate of service on ODC's motion to deem-admit reflects service of the motion upon Respondent at her LSBA-registered primary/preferred, secondary, and email address. It is Respondent's own inaction that led to the entry of the deemed admitted order. Further, upon notice that her motion to recall the deemed admitted order had been denied, she failed to file any other pleadings for the Committee's consideration. Following her objection to the Committee's report, she failed to file a pre-argument brief or a motion to remand prior to oral argument. Based upon Respondent's inaction, the Board finds any motion for remand asserted at the oral argument to be without merit.

- confirmation for the emailed correspondence, but the requested read receipt was not returned.
5. On June 26, 2022, Respondent wrote to the ODC, advising that her initial response would be emailed and hand-delivered to the ODC on June 28, 2022. On July 1, 2022, Respondent emailed the ODC her initial response, which was dated June 28, 2022. Respondent indicated a hard copy of the initial response would be hand-delivered to the ODC; however, it never was received.
 6. After reviewing Respondent's July 1, 2022, electronic submission, on July 6, 2022, the ODC sent to Respondent at her LSBA-registered primary/preferred address a request for a supplemental response, which included a request for specified information and/or documentation. If the requested information and/or documentation were not available, Respondent was asked to provide the ODC with an explanation. The correspondence was not returned to the ODC, indicating receipt. Respondent did not submit the requested supplemental response.
 7. On August 2, 2022, Respondent personally was served with a subpoena to appear at the ODC on September 8, 2022, for the purpose of providing a sworn statement. The subpoena included an order to bring specified documentation to the sworn statement.
 8. On the day of the sworn statement, Respondent appeared. Respondent had with her what she indicated was a copy of Picard's client file. Respondent indicated to the ODC that she had retained counsel and that she, therefore, needed a continuance of the sworn statement. Respondent declined to deliver the client file to the ODC. The ODC indicated that the matter would be held in abeyance for two weeks to allow Respondent's counsel to enroll for purposes of the disciplinary investigation.
 9. On September 8, 2022, after Respondent's sworn statement had concluded, the ODC received a telephone message from counsel for Respondent confirming the legal representation and indicating that written confirmation of the legal representation was forthcoming.
 10. Written confirmation of the legal representation was not received, and on September 23, 2022, the ODC wrote to counsel for Respondent, asking for written confirmation on or before September 30, 2022.
 11. On September 30, 2022, counsel for Respondent called and emailed the ODC, confirming the legal representation and asking for an electronic copy of all documentation exchanged between Respondent and the ODC. Respondent set forth suggested dates for Respondent's to-be-rescheduled sworn statement. The ODC responded, acknowledging the request.
 12. On October 4, 2022, the ODC attempted to comply with Respondent's request for an electronic copy of the documents that the ODC previously provided to Respondent; however, Respondent's email would not accept the transmittal. On October 5, 2022, the ODC attempted to contact Respondent by telephone for instruction.
 13. On October 7, 2022, Respondent returned the ODC's telephone call and sent the ODC an email.

14. On October 10, 2022, the ODC emailed Respondent seeking instructions on how to transmit the requested documents. Respondent indicated that the documents would be retrieved in person from the ODC.
15. On October 11, 2022, the ODC emailed Respondent indicating that the documents were available for retrieval. Included therewith was October 11, 2022, correspondence from the ODC. The ODC's correspondence detailed the ODC's July 6, 2022, request for a supplemental response, as well as the documentation that Respondent was ordered to produce at the September 8, 2022, sworn statement.
16. The prepared packet of materials was not retrieved so, on October 18, 2022, the ODC forwarded the documents to Respondent via United States mail, postage prepaid. Included therewith was a request for Respondent's supplemental response and for a date for Respondent's rescheduled sworn statement.
17. On November 4, 2022, Respondent emailed the ODC, asking if the ODC was available to take Respondent's sworn statement on February 22, 2023. Respondent also requested an additional 60 days to submit a response to the ODC's July 6, 2022, request for a supplemental response.
18. On November 7, 2022, the ODC wrote to Respondent indicating that the ODC was not available on February 22, 2023, and asking for another date and time. Respondent did not respond to the ODC's email.
19. On November 18, 2022, Respondent forwarded to the ODC correspondence indicating that Respondent no longer was represented.
20. On January 31, 2023, Respondent telephoned the ODC. Unable to contact Respondent by return telephone call, on February 15, 2023, the ODC, again, wrote to Respondent detailing the documentation that Respondent was ordered to produce as part of the subpoena to appear. The correspondence was mailed to Respondent's LSBA-registered primary/preferred address and emailed to Respondent's LSBA-registered email address. The correspondence sent via regular United States mail was not returned to the ODC, indicating receipt. The ODC received a delivery confirmation on the emailed correspondence, and on February 15, 2023, Respondent confirmed receipt of the email. That same day, Respondent contacted the ODC by telephone and indicated that she was leaving the country but that her supplemental response was forthcoming.
21. On February 28, 2023, Respondent forwarded to the ODC her supplemental response to the complaint; the supplemental response was incomplete, and Respondent did not provide an explanation for the missing documentation. Respondent indicated that additional documentation was forthcoming; however, Respondent has not contacted the ODC since the February 28, 2023, email transmittal.

The ODC investigation reflects that Respondent represented Picard in three distinct legal matters: a personal injury matter; a family law matter; and a criminal law matter.

On June 11, 2018, Respondent filed suit on behalf of Picard and Picard's minor son for injuries allegedly sustained in a 2017 accident. *Felicia Picard, Individually and on Behalf of Her Minor Child M. P. v. Kenneth J. Zacharie, Z&T Trucking, LLC, and Progressive Casualty Insurance Company*, 670,209, 19th J.D.C., Parish of East Baton Rouge. Respondent failed to provide the ODC with a copy of a signed contingency fee agreement. During the term of the legal representation, Respondent provided Picard with extensive financial assistance. Respondent, however, failed to provide the ODC with documentation establishing that Picard consented, in writing, to the terms and conditions under which such financial assistance was made. Many of the payments to Picard are not supported by documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other expenses necessary for subsistence. The conflict caused by this extensive financial assistance and the delay in resolution of Picard's legal matter is documented in exchanges between Respondent and Picard. In a January 27, 2022, text exchange, Picard texted Respondent: "I'm settling for whatever i owe you and blue." Respondent wrote, "So you wanna settle so we can get our money back and you walk away with nothing???" Picard's desire was clear: "Settle for what I owe ya'll." On June 9, 2022, after this complaint was filed, Respondent obtained leave of court to withdraw from Picard's representation. On April 27, 2023, Picard's lawsuit was dismissed.

On March 19, 2018, Respondent and Picard entered into *Fee Agreement and Authority to Represent* in regard to a "Divorce and Custody" proceeding. The nature of the family law matter is not further detailed. The agreement provides for a \$2,500.00 "Attorney Fee." No hourly fee is identified, and Picard was responsible to pay "ALL court costs directly to the Clerk of Court's office." A September 13, 2019, text exchange between Respondent and Picard reflects Respondent's representations to Picard that a petition had been filed. Respondent writes: "It's already filed Felicia." Despite this representation to Picard, the ODC could not confirm that a petition for divorce had been filed on Picard's behalf. In her initial response, Respondent offered that after the September 13, 2019, text exchange with Picard, Respondent "immediately contacted the court to notify them of [Picard not wanting to proceed with the divorce] so the paperwork would not be processed."

On March 19, 2018, Respondent and Picard also entered into a *Fee Agreement and Authority to Represent* in a "Criminal proceeding;" however, the nature of the criminal matter is not detailed. The contract provides for a \$1,200.00 "Attorney Fee." No hourly fee is identified, and Picard was responsible to pay "ALL court costs directly to the Clerk of Court's office." The ODC independently identified the matter of *State v. Felicia Picard*, 18-CR-85, 16th J.D.C., Parish of Iberia, wherein Respondent is identified as Picard's counsel of record. The criminal prosecution was "*nolle prossed*" on January 16, 2020. In association with the Iberia Parish prosecution, on October 12, 2017, Respondent paid \$635 to Mike's Bail Bonding to secure a \$2,500 bond for Picard.

The ODC respectfully submits that the evidence is clear and convincing, as a matter of law, that Respondent has violated the Rules of Professional Conduct, Rules 1.8(e) (conflict, financial assistance to client, documented expenses necessary for subsistence); 8.1(c) (failure to cooperate); 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation).

THE HEARING COMMITTEE'S REPORT

As noted above, the Committee issued its report on October 16, 2023. In its report, the Committee noted that it reviewed ODC Exhibits 1-30 that were submitted by ODC. It also noted that Respondent did not submit evidence or argument for its consideration nor did she request to be heard in mitigation pursuant to Rule XIX, Section 11(E)(4).

The Committee then issued the following findings of fact:

The Committee finds that in light of the earlier Order of Committee No. 15 denying Respondent's motions to set aside the deemed-admitted order this Committee must accept the facts as presented by the ODC.

As to the alleged rule violations, the Committee determined as follows:

The rules violated by Respondent are Rules 1.8(e), 8.1(c) and 8.4(a) and (c). Rule 1.8(e) generally prohibits financial assistance to clients except when certain conditions are met. One of these conditions is that the lawyer must provide the full text of Rule 1.8 to the client who is to receive financial assistance. Respondent did not provide this to her client. Rule 8.1(c) states that a lawyer shall not fail to cooperate with ODC's investigation of a complaint. As extensively detailed in the formal charges, Respondent failed to cooperate with ODC's investigation of this matter. Rule 8.4(c) states that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Here, Respondent misrepresented the status of the divorce petition to her client. Finally, Rule 8.4(a) states that it is misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct. Respondent has done so here by violating the Rules discussed above.

As to the sanction, the Committee analyzed the Rule XIX, Section 10(C) factors and found that Respondent violated duties owed to her client, the public, and the profession. It also concluded

that Respondent's conduct was negligent with regard to Rule 1.8(e), and knowing and intentional with regard to Rules 8.1(c) and 8.4(a) and (c).

The Committee also determined that Respondent's actions caused actual harm to her client and to the profession. The Committee did not find any aggravating or mitigating factors. As the appropriate sanction, the Committee recommended that a six-month suspension, fully deferred, followed by one year of probation including attendance at the LSBA Ethics School within the first six months of the period of probation, be imposed upon Respondent. The Committee also recommended that Respondent be assessed with costs and expenses of the proceeding pursuant to Rule XIX, Section 10.1.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in Section 2 of Rule XIX. Rule XIX, Section 2(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

A. The Manifest Error Inquiry

The factual allegations in the formal charges have been deemed admitted and proven pursuant to Rule XIX, Section 11(E)(3). The Committee made its findings of fact based on the deemed admitted facts of the formal charges. The findings of the Committee are not manifestly erroneous and are adopted by the Board.

B. De Novo Review

The Committee found that ODC established that Respondent had violated the Rules of Professional Conduct as charged. These legal conclusions of the Committee are supported by the factual allegations asserted in the formal charges and/or by the evidence submitted in support of the allegations. *See In re Donnan*, 2001-3058 (La. 1/10/03), 838 So.2d 715. The Board adopts the Committee's findings and reasons therefor. The Board also finds that Rule 1.8(e)(5)(v) was violated by Respondent. Respondent failed to provide ODC with documentation establishing that Ms. Picard consented, in writing, to the terms and conditions under which she received financial assistance from Respondent.¹⁰ Respondent's statement in Paragraph VI of her answer conclusively admits this infraction. Her statement reads:

Respondent admits she provided Felicia Picard financial assistance during the term of legal representation. Respondent further admits she failed to provide the ODC with documentation establishing that Felicia Picard consented, in writing, to the terms and conditions under which financial assistance was made. Respondent was unaware of this requirement . . . [.]

Respondent's Answer to Formal Charges, Para. VI, filed July 25, 2023.

Further, Respondent violated Rule 1.8(e) by improperly securing a bond on Ms. Picard's behalf. Louisiana Code of Criminal Procedure article 327 expressly provides that a person "shall not be released on bail for which an attorney at law . . . becomes a surety or provides money or

¹⁰ *See, generally*, ODC Exhibit 27; ODC Exhibit 29, pp. 375-78 for records of the financial assistance provided to Ms. Picard by Respondent.

property for bail.” In the matter of *State v. Felicia Picard*, 18-CR-85, 16th JDC, Parish of Iberia. Respondent is identified as Ms. Picard’s counsel of record. The criminal prosecution was “nolle prossed” on January 16, 2020. In association with this prosecution, on October 12, 2017, Respondent paid \$635 to Mike’s Bail Bonding to secure a \$2,500 bond for Ms. Picard. ODC Exhibit 29. This action was clearly in violation of Code of Criminal Procedure article 327. Moreover, this action is in violation of Rule 1.8(e) as Respondent was providing improper financial assistance to a client in connection with a pending or contemplated litigation. Her paying of the \$635 to the bail bondsman does not fall within any of the exceptions to this rule.

As discussed above, Respondent claims to have not been familiar with Rule 1.8. The disciplinary rules set forth the minimum level of conduct below which no lawyer may fall without being subject to disciplinary action, and ignorance of the Rules of Professional Conduct is not an excuse. *In re Grevemberg*, 2002-2721, pp. 7-8 (La. 1/25/03), 828 So.2d 1283, 1288. Similarly, “[n]o one may avail himself of ignorance of the law.” La. Civ. Code art. 5.

II. The Appropriate Sanction

A. The Rule XIX, Section 10(C) Factors

Rule XIX, Section 10(C), states that when imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer’s misconduct; and
- (4) the existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to her client and to the profession. The deemed admitted facts and the record establish that Respondent’s conduct was negligent with regards to

Rule 1.8(e), and knowing and intentional with regard to Rule 8.4(c) (her misrepresentations) and Rule 8.1(c) (her failure to cooperate with ODC), and she caused actual harm to her client and to the profession.

Respondent's misrepresentation to Ms. Picard regarding the status of the petition for divorce, as well as her failure to procure Ms. Picard's written consent to the terms and conditions under which financial assistance was provided to her, eroded Ms. Picard's trust in her, and in the legal profession. In addition, Respondent's refusal to respond to ODC's repeated requests for documents and/or information, despite personal service of a subpoena to appear and produce, caused actual harm to the legal profession as ODC spent additional time and resources investigating these matters without Respondent's cooperation or assistance. While there are no aggravating factors present, the Board finds the absence of a prior disciplinary record as a mitigating factor.

B. ABA Standards and Case Law

In reviewing the ABA Standards, Standard 7.2 is applicable and provides that the baseline sanction in this matter is suspension. Standard 7.2 provides that suspension generally is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury to the legal system.

The Court has long held that an attorney's failure to cooperate with ODC, standing alone, is sufficient to warrant a period of actual suspension. *See, e.g., In re Augustine*, 97-1570 (La. 9/26/97), 707 So. 2d 1 (thirty-day suspension imposed upon an attorney who knowingly failed to cooperate with ODC in two investigations).

In the matter of *In re Bellaire*, 2022-01084 (La. 9/27/22), 347 So. 3d 143, Bellaire engaged in a conflict of interest involving dual representation of a buyer and seller in a real estate

transaction without obtaining a conflict waiver and, then, failed to respond to the disciplinary complaint filed against him. Bellaire acted negligently in engaging in the conflict of interest and knowingly in failing to cooperate with ODC in its disciplinary investigation. The court referenced ODC's several requests for documentation and/or information and, ultimately, ODC's issuance of a subpoena. Several documents requested by ODC never were produced. Aggravating circumstances included a pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. Mitigating circumstances included absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal problems, and character or reputation. For the established violations of Rules 1.7(a), 1.9(a), 8.1(b), and 8.1(c), Bellaire was suspended for six months, with all but 90 days deferred.

Similar to the respondents in *Augustine* and *Bellaire*, Respondent has failed to cooperate with ODC in its investigation. Further, like the respondent in *Bellaire*, Respondent also has engaged in a conflict of interest. The mitigating factor of absence of a prior disciplinary record is found in both cases. Numerous aggravating factors were present in *Bellaire*, including a pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. None of these factors are present in the matter at hand, warranting a lesser sanction.

The Committee recommended that a six month fully deferred suspension, followed by one year of probation to include attendance at the LSBA Ethics School within the first six months of the period of probation, as the sanction in this matter. ODC noted in its pre-argument brief that it has no objection to the Committee's recommended sanction. Based on the above, the Board adopts the Committee's recommendation that Respondent be suspended from the practice of law for six months, fully deferred, followed by one year of probation to include attendance at the LSBA Ethics

School. The Board recommends that Respondent attend Ethics School by the end of her probationary period, instead of within the first six months of the probationary period.¹¹ The Board also adopts the Committee's recommendation that Respondent be assessed with all costs and expenses of this proceeding pursuant to Rule XIX, Section 10.1.

CONCLUSION

The Board adopts the findings of fact of the Committee. The Board also adopts the Committee's finding that Respondent violated Rules of Professional Conduct 1.8(e), 8.1(c), 8.4(a) and 8.4(c), with the additional reasons noted for a finding of a violation of Rule 1.8(e). Additionally, the Board adopts the Committee's recommendation that Respondent be suspended from the practice of law for six months, fully deferred, followed by one year of probation to include attendance at the LSBA Ethics School. The Board recommends that Respondent attend Ethics School by the end of her probationary period, instead of within the first six months of the probationary period as recommended by the Committee. The Board also adopts the Committee's recommendation that Respondent be assessed with all costs and expenses of this proceeding pursuant to Rule XIX, Section 10.1.

RECOMMENDATION

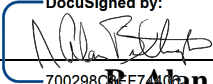
Based on the above, the Board recommends that Respondent, Desha M. Gay, be suspended from the practice of law for six months, fully deferred, followed by one year of probation to include attendance at the LSBA Ethics School by the end of her probationary period. Any failure of Respondent to comply with the conditions of probation, or any misconduct by Respondent from the date of the Court's imposition of sanction through completion of her probationary period, will

¹¹ The Board is uncertain as to whether Ethics School will be held within the first six months of Respondent's recommended probationary period, and therefore, recommends that she attend Ethics School before the end of the probationary period.

be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. *In re Sauzer*, No. 2024-00125, 2024 WL 1521562, at *5 (La. 4/9/24). The Board also recommends that Respondent be assessed with all costs and expenses of this proceeding pursuant to Rule XIX, Section 10.1.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**Todd S. Clemons
Albert R. Dennis III
Valerie S. Fields
James B. Letten
Ronald J. Miciotto
M. Todd Richard
Erica J. Rose
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FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

...

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.

With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.

With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

(4) In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.

- (i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.
- (ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.

- (iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.
 - (iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.
- (5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.
- (i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.
 - (ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to any federally insured bank, savings and loan association, savings bank, or credit union where the lawyer's ownership, control and/or security interest is less than 15%.
 - (iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.
 - (iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.
 - (v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.
 - (vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time

of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.

- (vii) For purposes of Rule 1.8(e), the term "financial institution" shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

...

- (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

...

- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

...