

ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JESSE P. LAGARDE

NUMBER: 23-DB-048

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

INTRODUCTION

.....

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Jesse P. Lagarde (Respondent”), Louisiana Bar Roll Number 36538.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3 (diligence), 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(b) (communication), 1.16(a) (declining or terminating representation), 3.2 (expediting litigation); and 8.4(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).² On motion of ODC, the formal charges were deemed admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).³ The hearing committee (“Committee”) assigned to this matter concluded Respondent violated Rules 1.3, 1.4(a)(2),

¹ Respondent was admitted to the Louisiana Bar on October 22, 2015. Respondent’s primary registration address is 118 N. Cypress St., Hammond, LA 70401. His secondary registration address is in Amite, LA. Respondent is currently eligible to practice law in Louisiana. He has been the subject of prior disciplinary proceedings which are summarized later herein.

² See attached Appendix for full text of the Rules.

³ This rule states:

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 or electronic transmission 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.

1.4(a)(3), 1.4(a)(4), 1.4(b), 1.16(a), 3.2, and 8.4(a). The Committee recommended that Respondent be suspended for six months and be ordered to refund the fee paid by Complainant, Mr. Ledet.

For the following reasons, the Board makes the factual findings and conclusions regarding rule violations as outlined herein. The Board recommends that Respondent be suspended for one year and one day and that he be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

PRIOR DISCIPLINARY HISTORY

Respondent was admitted to practice law in Louisiana on October 22, 2015.

On September 27, 2021, pursuant to a joint petition for consent discipline, Respondent was suspended for six months, fully deferred. *In re Lagarde*, 2021-00797 (La. 9/27/21), 323 So.3d 862 (Mem); Ex. ODC-1. (“*Lagarde I*”). The record in *Lagarde I* demonstrated that Respondent was retained to represent Michael Scott Hollis in his pending child custody case. Respondent failed to appear in court for a scheduled hearing, resulting in a judgment being entered against Mr. Hollis. Thereafter, Respondent ignored the many attempts made by Mr. Hollis and his wife to communicate with him. Respondent also failed to cooperate with ODC in its investigation of the disciplinary complaint filed against him.

Prior to the filing of formal charges in the Hollis matter, Respondent and ODC filed a joint petition for consent discipline with the Court. Respondent admitted in the petition that his conduct violated Rules 1.3, 1.4, 1.16(d) (obligations upon termination of representation), 3.2, and 8.1(c) (failure to cooperate in ODC investigation) of the Rules of Professional Conduct. The petition for consent discipline was accepted by the Court in *Lagarde I* on September 27, 2021. Respondent was suspended for six months, fully deferred, subject to a one-year period of probation governed

by the conditions that during the period of probation Respondent complete the LSBA Ethics School and complete six of his MCLE hours in the area of law office/practice management. The order of discipline also provided that “[a]ny 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.”

Respondent’s probation commenced on November 3, 2021, when he executed a formal probation agreement with ODC. The probation agreement required that Respondent promptly respond to all requests of ODC and provided that any violation of the Rules of Professional Conduct may result in the revocation of probation and/or the imposition of additional discipline.

After Respondent was placed on probation in *Lagarde I*, ODC received disciplinary complaints from Patrick Ledet (who is also Complainant herein) and Michael and Cynthia Bourg. On October 5, 2022, ODC filed a motion to revoke probation, alleging that Respondent failed to promptly respond to Mr. Ledet’s complaint and violated additional Rules of Professional Conduct in both the Ledet and Bourg matters. ODC prayed for the revocation of Respondent’s probation and the imposition of the previously deferred six-month suspension. Respondent did not file a response with the Board to ODC’s motion to revoke probation at any time prior to a hearing on the matter.

The matter proceeded to a hearing before an adjudicative panel of the Board on October 27, 2022. At the outset of the hearing, the parties submitted written Joint Stipulations agreeing that Respondent violated his probation agreement and the Rules of Professional Conduct. The parties jointly recommended a modified probation sanction as a result of these violations. No testimony was presented. In its decision in the probation revocation matter, the Court summarized the pertinent stipulations regarding probation violations and recommended sanction as follows:

The parties jointly stipulated that respondent violated his probation in the following ways:

- 1) In the Patrick Ledet matter, respondent failed to promptly respond to all requests of the ODC and committed additional violations of the Rules of Professional Conduct.
 - a. The ODC sent a copy of Mr. Ledet's complaint to respondent on April 4, 2022 and requested a response within fifteen days. Respondent was served with the complaint at his primary registration address on April 6, 2022, but he did not timely respond. Respondent finally provided a response to Mr. Ledet's complaint on May 9, 2022.
 - b. On June 22, 2022, the ODC provided respondent with a copy of a supplemental complaint received from Mr. Ledet and requested a response within fifteen days. Respondent did not timely respond. Respondent finally provided an additional response on July 21, 2022.
 - c. Respondent's failure to provide timely responses to the ODC violated Rule 8.1(c) (failure to cooperate) of the Rules of Professional Conduct.
- 2) In the Michael and Cynthia Bourg matter, respondent committed additional violations of the Rules of Professional Conduct.
 - a. Respondent failed to diligently represent the Bourgs in connection with a writ application to the Third Circuit Court of Appeal, in violation of Rule 1.3 (neglect of a legal matter) of the Rules of Professional Conduct.
 - b. Respondent failed to communicate with the Bourgs on June 28, 2022, June 30, 2022, July 11, 2022, July 13, 2022, and July 19, 2022, in violation of Rule 1.4 (failure to communicate) of the Rules of Professional Conduct.
- 3) For the stipulated violations, additional discipline is appropriate, as follows:
 - a. Respondent's probation shall be extended for an additional year;
 - b. Respondent agrees to participate in the Louisiana State Bar Association's Law Practice Management Program, with a requirement that he attend the Solo and Small Firm Conference;
 - c. Respondent will surrender any papers and property in his possession to which Michael and Cynthia Bourg are entitled. In the alternative, respondent will make a diligent effort to obtain such papers and property and/or have them returned to Michael and Cynthia Bourg, to the extent they have not already been returned; and
 - d. Respondent will be cast to pay all costs associated with these proceedings.

In re Lagarde, 2022-01635 (La. 1/25/23), 353 So.3d 720, 721-722 (“*Lagarde II*”).

In light of the Joint Stipulations presented in *Lagarde II*, the Court extended Respondent’s probation for an additional year, commencing from the date of the finality of the Court’s judgment (February 8, 2023), and also imposed the additional requirements set forth in Paragraph 3 of the stipulations stated above. In reaching its decision, the Court noted that although Respondent’s “new misconduct” was relatively minor, the new misconduct was very similar to the misconduct for which he was originally placed on probation. Justice Crichton dissented and would have revoked Respondent’s probation, noting that he had dissented from the acceptance of the original petition for consent discipline because the discipline imposed was too lenient. Justice Genovese also dissented and would have revoked probation. Respondent’s extended probation ended in February 2024.

PROCEDURAL HISTORY

The formal charges in the present matter were filed on July 17, 2023. The charges state, in pertinent part:

3.

ODC 39892

Patrick James Ledet, Complainant

On January 23, 2023, the Office of Disciplinary Counsel (hereinafter “ODC”) received a supplemental complaint from Patrick James Ledet (“Mr. Ledet” or “Complainant”), in 39892.

4.

A copy of the complaint was forwarded to Respondent on January 25, 2023. No response was requested of the Respondent, but he was cautioned there were concerns with respect to his representation of Mr. Ledet which warranted additional investigation by ODC.

5.

ODC conducted a preliminary investigation, which included taking the sworn statement of the Complainant.

6.

Following his sworn statement, on March 8, 2023, Complainant called ODC and advised that additional misconduct had occurred. Specifically, Complainant advised that Respondent continued in his pattern of failing to communicate with him. At the request of ODC, Complainant was advised to place his concerns in writing to ODC.

7.

On March 24, 2023, a copy of the January 23, 2023 complaint was forwarded to Respondent, with a request that he respond within five (5) days.

8.

On March 30, 2023, Respondent provided a response to the January 23, 2023 complaint.

9.

On April 5, 2023, a copy of the March 30, 2023 response was provided to Complainant, with a request for comment. On April 12, 2023, ODC received a supplement to the complaint.

FACTUAL ALLEGATION SUPPORTING RULE VIOLATIONS:

10.

Mr. Ledet hired Respondent in November, 2018, to represent him in connection with his community property litigation, for which he paid an attorney fee of \$3,000. Respondent enrolled in the matter, *Annette Rogers Ledet v. Patrick James Ledet, Sr.*, 24th Judicial District Court, Parish of Jefferson, docket number 686-931, on January 14, 2019. At the same time, Respondent filed a *Petition to Partition Former Community Property*.⁴

11.

On July 6, 2021, Respondent filed a *Motion to Set a Status Conference*. A status conference was set for August 9, 2021 at 1:00. The court minutes reflect the status was “to be reset” due to no service, presumably on Annette Rogers. The court records reflect this status conference has never been reset.

12.

No pleadings have been filed since the July 6, 2021 motion. Respondent has never appeared in court on this matter.

13.

Complainant attempted to contact Respondent, by phone and at his office, several times prior to the January 23, 2023 supplemental complaint.

14.

Specifically, Complainant attempted to communicate with Respondent in October 2022, but Respondent did not respond. Complainant attempted to communicate with Respondent in November of 2022, but Respondent did not respond. Complainant attempted to communicate with Respondent, via text in December of 2022, but Respondent did not reply.

15.

Despite receiving the supplemental complaint in January 2023 and being cautioned by ODC, Respondent had no contact with Complainant until March 30, 2023, the date that Respondent’s response was due to ODC.

16.

To date, Respondent has failed to contact the complainant despite making repeated assurances to do so throughout the course of the representation. Most recently, after receiving the January 23, 2023 supplemental complaint, on March 30, 2023, Respondent assured Complainant he would meet with him the following

⁴ This allegation appears to contain a typographical error. The record reflects that the *Petition to Partition Former Community Property* was filed on January 11, 2019, not January 14, 2019. See Ex. ODC 10.

week. Respondent failed to meet with Complainant as promised, and as of the date of this filing, he has not called or made any attempts to meet with, or speak to, the Complainant.

17.

To date, Respondent has failed to withdraw from the representation. To the extent that Respondent relies on a lack of office staff, a busy court schedule, and/or a physical injury to justify his failure to communicate and to diligently represent his client, Respondent was required to withdraw from the representation yet has failed to do so.

18.

Respondent violated the following Rules:

- 1) Rule 1.3 by failing to take any action in the underlying litigation in almost two (2) years; by failing to make efforts to proceed with promptness in representing Mr. Ledet;
- 2) Rule 1.4 by failing to communicate with his client throughout the course of the representation; by failing to meet with his client.
- 3) Rule 1.16 by failing to withdraw from the representation when the Rules required him to do so;
- 4) Rule 3.2 by failing to expedite litigation consistent with his client's interests; and
- 5) Rule 8.4(a) by violating or attempting to violate the Rules of Professional Conduct for the reasons stated herein.

By letter dated July 21, 2023, the formal charges were mailed via USPS certified mail to Respondent's primary registration address.⁵ On August 17, 2023, Respondent filed an unopposed motion for an extension of time until September 5, 2023 to respond to the charges. The motion was granted by an order signed on August 17, 2023.

Respondent failed to file an answer to the charges. Accordingly, on September 12, 2023, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). On September 18, 2023, an order was signed granting the motion and allowing Respondent twenty days from the mailing or electronic transmission of the order to

⁵ Louisiana Supreme Court Rule XIX, §13(A) provides that "service upon the respondent of the petition in any disciplinary or disability proceeding shall be made by ... or by mailing the petition by registered or certified mail to the primary address shown in the registration statement filed by respondent pursuant to Section 8C or other last known address." Rule XIX, §8(C) provides that "service or proof of attempted service at the lawyer's primary registration statement address shall constitute adequate notice for purposes of these disciplinary rules." It is further noted that Rule XIX, §8(C) also provides that both the primary and secondary registration addresses "shall each be a physical address and not a post office box."

demonstrate good cause why the imposition of the order would be improper or result in a miscarriage of justice and providing the parties sixty days to file written arguments and documentary evidence on the issue of sanctions.

On November 16, 2023, ODC filed its memorandum setting forth its documentary evidence and arguments on the issue of sanctions. ODC recommended that Respondent be suspended for one year and one day. ODC's submission included twenty exhibits (ODC 1 through ODC 20).

Hearing Committee No. 28 filed its report on November 28, 2023.⁶ The Committee made findings of fact and conclusions regarding rule violations and provided analysis regarding its sanction recommendation as follows:

FINDINGS OF FACT & RULES VIOLATED

The record in this matter clearly states and proves with clear and convincing evidence that the Respondent did not communicate with the client timely, meet with the client, or withdraw from the representation of the client, and/or comply with reasonable requests from the client. With that said, the allegations made were deemed admitted due to Respondent's failure to timely respond. Based upon these deemed admitted facts and the file in this matter, Respondent violated the Rules of Professional Conduct, Sections 1.3; 1.4(a)(2-4) & (b); 1.16(a); 3.2; and 8.4(a).

In this matter, Respondent violated duties owed to Patrick James Ledet. He acted either negligently, knowingly, or intentionally, or all three. [FN5] Respondent was given multiple opportunities to communicate with the client and either intentionally, knowingly, or negligently chose to act in a fashion contrary to a reasonable and normal professional person. Respondent's misconduct caused actual harm to his client who paid in advance for the representation services expected and anticipated and did not receive the level of representation and communication required to be provided to a client. The following aggravating factors are supported by the record: prior disciplinary offenses (*supra*) and pattern of misconduct.

[FN5 Given Respondent's lack of participation in this matter, the Committee does not have enough evidence to make a clear finding on this element of §10(C).]

The *ABA Standards for Imposing Lawyer Sanctions* suggest that a suspension is the baseline sanction in this matter. Standard 4.42 states, "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in

⁶ Hearing Committee No. 28 was comprised of J.H. Campbell, Jr. (Committee Chair), James A. Taylor (Lawyer Member), and Lorin Gaudin (Public Member).

a pattern of neglect causes injury or potential injury to a client.” Here, the length of time Respondent neglected Mr. Ledet’s matter indicates a pattern, which as discussed above, caused actual harm.

In the case of *In re Donald* is [sic] instructive in this matter. 2013-2056 (La. 11/1/2013), 127 So.3d 918. Mr. Donald knowingly, if not intentionally, neglected a client matter for over two years. When the clients requested a status on the matter, Mr. Donald falsely claimed he was still working on the matter. He also offered to refund the fee paid by the clients if they wished to hire another attorney. Despite the clients’ request for a refund, Mr. Donald failed to provide it. The following aggravating factors were present: prior disciplinary record (2001 diversion), a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law (admitted 1984), and indifference to making restitution. In mitigation, the Court found personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and the remoteness of the prior disciplinary offense.

The facts of the present matter are similar to those in *Donald*. However, unlike *Donald*, there are no mitigating factors present here. Thus, deferral of the suspension is not warranted. Accordingly, the Committee recommends a suspension of six months.

CONCLUSION

The Committee recommends a six-month suspension from the practice of law. The Committee also recommends that Respondent refund the fee paid by Mr. Ledet, which was not earned, and that Respondent cover all costs and expenses of the proceeding pursuant to Rule XIX, section 10.1.

This opinion is unanimous and has been reviewed by each committee member, who fully concur ...

Committee Report, pp. 4-6.

On December 11, 2023, ODC filed an objection to the Committee’s report. ODC asserted that the recommended six-month suspension is too lenient and that a suspension of one year and one day is more consistent with the Court’s jurisprudence.

ODC filed its brief in support of its objection on December 20, 2023. Respondent did not file a brief to the Board.

Oral argument of this matter was held on February 29, 2024, before Board Panel “B.”^{7,8} Former Chief Disciplinary Counsel Charles B. Plattmier appeared on behalf of ODC. Respondent did not appear.

After business hours on March 6, 2024, Respondent filed by facsimile transmission a motion for a continuance of the Board argument which he asserted was scheduled for March 7, 2024. A copy of the January 26, 2024 email from the Board to Respondent enclosing the January 26, 2024 order rescheduling oral argument to February 29, 2024 was included in the attachments to Respondent’s motion. After consideration, the motion to continue was denied as moot.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §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 petitions for reinstatement and readmission, 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

⁷ Board Panel “B” was composed of Erica J. Rose (Chair), R. Alan Breithaupt (Lawyer Member), and M. Todd Richard (Public Member).

⁸ Oral argument was originally scheduled for January 25, 2024. Due to a major water outage on the entire East Bank of Jefferson Parish where the Board offices are located and continuing issues with water service thereafter, the docket for January 25, 2024 had to be canceled. By an order signed January 24, 2024 (filed January 25, 2024), argument was rescheduled for March 7, 2024. By a subsequent order signed January 26, 2024 (filed January 26, 2024), argument in the matter was rescheduled from March 7, 2024, to February 29, 2024. The January 24, 2024 order was mailed and emailed to Respondent on January 25, 2024 and the January 26, 2024 order was mailed and emailed to him on January 26, 2024. Both orders were mailed to Respondent at both his primary and secondary registration addresses. The emails were sent to his registered email address.

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 Louisiana Supreme Court Rule XIX, §11(E)(3).

B. De Novo Review

The record, including the factual allegations in the formal charges which have been deemed admitted and the additional evidence presented, supports the Committee's conclusion that Respondent committed the charged rule violations. *See In re Donnan*, 2001-3058 (La. 1/10/03), 838 So.2d 715.

Respondent failed to take any action on the record of Mr. Ledet's community property proceeding for over two years. He had only very limited, sporadic contact with Mr. Ledet during this time. These contacts generally seemed to be precipitated only by continued complaints by Mr. Ledet to ODC. By his inaction, Respondent failed to act with reasonable diligence and promptness in violation of Rule 1.3 and failed to make reasonable efforts to expedite litigation consistent with the interests of the client in violation of Rule 3.2.

Respondent failed to respond to numerous attempts by his client to communicate with him. He failed to maintain regular contact with his client even after being cautioned by ODC. By this conduct, Respondent has failed to reasonably consult with his client about the means by which the client's objectives are to be accomplished in violation of Rule 1.4(a)(2); has failed to keep the client reasonably informed about the status of his matter in violation of Rule 1.4(a)(3); has failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and has failed to give the client sufficient information to participate intelligently in decisions

concerning the objective of the representation and the means by which they were to be pursued in violation of Rule 1.4(b).

Rule 1.16(a) provides that where representation has commenced, a lawyer shall withdraw from the representation of a client if the representation will result in a violation of the rules of professional conduct (Rule 1.16(a)(1)) or the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client (Rule 1.16(a)(2)). In one of his responses to ODC regarding his client's complaint, Respondent informed ODC that Mr. Ledet had attempted to contact him at a time when Respondent was out of the office due to an injury which affected his mobility and ability to work. If Respondent was physically impaired to the point that he was unable to even communicate with his client as required by the Rules of Professional Conduct, he was required to withdraw from the representation of the client. In failing to withdraw, Respondent violated Rule 1.16(a).

Finally, the violations of Rules 1.3, 1.4, 1.16(a), and 3.2 establish the derivative violation of Rule 8.4(a) which provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct.

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, §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 actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

By his misconduct, Respondent violated his duty to his client. Considering Complainant's repeated attempts to communicate and obtain updated status information from Respondent and the communications from ODC to Respondent emphasizing Respondent's need to address his client's concerns, the Board finds that Respondent's misconduct was at least knowing, if not intentional. Respondent's misconduct has caused actual damage to Complainant in the prolonged delay that has occurred in Respondent's attempt to partition his community property.

Aggravating factors present are prior disciplinary offenses; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; and vulnerability of victim. The only mitigating factor present is inexperience in the practice of law.⁹

B. The ABA Standards and Case Law

Standard 4.42 of the *ABA Standards for Imposing Lawyer Sanctions* provides guidance in determining the appropriate sanction to be imposed for Respondent's misconduct:

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

The above standard and the jurisprudence suggest that suspension is the baseline sanction for Respondent's misconduct. While the jurisprudence reflects that the length of suspension imposed for misconduct similar to that committed by Respondent can vary depending on the circumstances involved, considering all of the circumstances presented here, the Board finds that the Committee's recommendation of a six-month suspension is too lenient.

⁹ Respondent was admitted to the Bar in 2015, three years before Mr. Ledet initially hired him in 2018.

In *In re Donald*, 2013-2056 (La. 11/1/13), 127 So.3d 918, relied upon by the Committee, respondent knowingly, and possibly intentionally, neglected a legal matter, failed to communicate with his clients, and failed to refund a \$600 unearned fee. The client filed a disciplinary complaint after making numerous attempts to obtain information from the respondent over a period of two and a half years, to no avail. The respondent was found to have violated Rules 1.3, 1.4, and 1.5(f)(5) (unearned fee). Aggravating factors included a prior disciplinary record (diversion), a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution. Mitigating factors present were personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and remoteness of the prior disciplinary offense. The Court suspended the respondent for six months, fully deferred, with a one-year probationary period, refund of the fee within thirty days, and required attendance at the LSBA Ethics School.

The circumstances in *Donald* are less egregious than those presented in this matter. Respondent here has exhibited a pattern of misconduct and has a more involved disciplinary history. Additionally, while Mr. Donald participated in all stages of the disciplinary proceeding, other than filing one extension of time to file an answer, Respondent did not participate in this proceeding, allowing the charges against him to be deemed admitted.

In *In re Robertson*, 2017-1169 (La. 11/28/17), 230 So.3d 193, the Court suspended the respondent for one year and one day. As in the present matter, in *Robertson*, the respondent did not answer or otherwise respond to the formal charges, which were deemed admitted. The respondent in *Robertson* provided incompetent representation to a client, neglected her legal matter causing a portion of the client's case to be dismissed, and failed to communicate with the client. The respondent's conduct was both negligent and knowing and caused actual harm. Aggravating

factors included a prior disciplinary record and substantial experience in the practice of law. The only mitigating factor present was absence of a dishonest or selfish motive. The respondent's prior disciplinary record included a one-year suspension, fully deferred, subject to a one-year probationary period with conditions, for neglecting his client's legal matter, causing the case to be dismissed, failing to communicate with his client, failing to return the client's file, failing to respond to opposing counsel's requests, and failing to comply with federal court orders. *Id.* at 193-94.

The respondent in *In re Montgomery*, 2018-0637 (La. 8/31/18), 251 So.3d 401, another deemed admitted matter, was also suspended for one year and one day. The *Montgomery* case arose out of complaints filed by two clients, both of whom had retained and paid the respondent to represent them in divorce matters. The Court found that the respondent failed to comply with bar obligations, neglected legal matters, failed to communicate with clients, failed to account for fees, and failed to cooperate with the ODC in its investigations. The respondent knowingly violated duties owed to his clients, the legal system, and the legal profession, causing actual harm. The respondent had failed to take any action or respond to his client in one matter. In the other matter, his misconduct included among other things, waiving his client's right to support against the client's interest, failing to file a detailed descriptive list of assets, failing to communicate with the client, failing to appear at the divorce hearing, and failing to notify the client that a final divorce judgment had been granted. Aggravating factors included multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, substantial experience in the practice of law, and indifference to making restitution. The only mitigating factor was absence of a prior disciplinary record.

Considering all of the above, the Board finds that the Committee's recommended sanction of a six-month suspension is too lenient. Respondent's misconduct here reflects a continuing pattern of neglecting client matters even after Respondent was previously allowed a deferred suspension, then allowed a second chance with the extension of the probationary period, and then was cautioned by ODC after Mr. Ledet had to complain again to ODC after the probationary period was extended. Respondent has also shown repeated indifference to the disciplinary process. In this proceeding, Respondent did not answer the formal charges, allowing the factual allegations to be deemed admitted, did not file a memorandum addressing sanction with the hearing committee, did not file a brief to the Board, and did not appear for argument before the Board panel. In the probation revocation proceeding, Respondent did not file any response to ODC's motion to revoke probation or make any other contact with the Board prior to the day of the hearing on the motion. In light of all of the circumstances presented here, the Board finds that Respondent should be suspended for one year and one day.

Finally, the Committee recommended that Respondent be ordered to refund the fee paid by Mr. Ledet. First, it is pointed out that Respondent was not charged with a Rule 1.5 violation of charging an unreasonable fee or of failing to refund an unearned fee. Further, the evidence in the record shows that he did perform some work on Mr. Ledet's case. *See, e.g.*, Exs. ODC 5, pp. 15-22; ODC 10; ODC 11; and ODC 12. The Board has insufficient evidence before it to determine whether some or all of the fee paid by Mr. Ledet should be returned. However, the Board recommends that Respondent be ordered to participate in the LSBA's Fee Dispute Resolution Program and pay any amounts awarded to Mr. Ledet by decision rendered as a result.

CONCLUSION

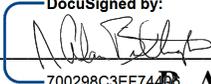
Considering all of the above, the Board makes the factual findings and conclusions regarding rule violations as outlined herein. The Board concludes that the one-year and one-day suspension recommended by ODC is appropriate under the facts and circumstances presented in this matter. The Board recommends that Respondent be ordered to participate in the LSBA's Fee Dispute Resolution Program and pay any amounts awarded to Mr. Ledet by decision rendered as a result. The Board further recommends that Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

RECOMMENDATION

For the foregoing reasons, the Board recommends that Jesse P. Lagarde be suspended for one year and one day. The Board further recommends that Respondent be ordered to participate in the LSBA's Fee Dispute Resolution Program and pay any amounts awarded to Mr. Ledet by decision rendered as a result. Finally, the Board further recommends that he be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

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
Lori A. Waters

By:  **Alan Breithaupt**
700298C3EF744
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4. Communication

(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

...

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the lawyer is discharged.

...

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

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;

...