

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: TONI RACHELLE MARTIN

NUMBER: 23-DB-049

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 Toni Rachelle Martin (“Respondent”), Louisiana Bar Roll Number 21949.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.5(f)(5) (failure to promptly return unearned fees) and 1.16(d) (obligations upon termination of representation; failure to return unearned fees).² The hearing committee (“Committee”) assigned to the matter concluded that Respondent violated Rules 1.5(f)(5) and 1.16(d), as charged. The Committee recommended that Respondent be suspended for six months, with three months deferred, that Respondent be placed on probation for a period of one year, and that she be ordered to attend the LSBA Ethics School and Trust Account.

For the following reasons, the Board concludes that Respondent violated Rules 1.5(f)(5) and 1.16(d), as charged. The Board recommends that Respondent be suspended for six months, with three months deferred, that the active portion of the suspension be followed by a one-year period of probation, and that Respondent be ordered to attend the LSBA Ethics School prior to the

¹ Respondent was admitted to the Louisiana Bar on October 16, 1992. Her primary registration address is 2508 Valleyview Dr., Pineville, LA 71360. Respondent is currently eligible to practice law in Louisiana. Respondent accepted a private admonition in November of 2012 for failure to comply with payment of bar dues and disciplinary assessment and with disclosure of trust account information and for the unauthorized practice of law when ineligible for failure to comply with those professional obligations. Since being admonished in 2012, Respondent remained ineligible until 2013 (trust account), 2014 (MCLE), and November 2015 (bar dues and disciplinary assessment). Additionally, Respondent was ineligible to practice law during the following periods for failure to comply with professional requirements: 9/9/14-12/14/15 (trust account); 3/9/15-12/2/15 (disciplinary costs); 10/19/20-10/27/20 (trust account); and 9/12/23-10/5/23 (bar dues and disciplinary assessment).

² See attached Appendix for full text of the Rules.

completion of the probation period. Additionally, the Board recommends that Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

PROCEDURAL HISTORY

The formal charges were filed on July 27, 2023. The charges state, in pertinent part:

1.

Respondent ... was admitted to practice law on October 16, 1992. The respondent has prior discipline. On November 27, 2012, Respondent was admonished for violations of the Rules of Professional Conduct 1.1(c) for failing to comply with Supreme Court's Rules [sic] regarding payment of bar dues, payment of disciplinary assessment and disclosure of trust account information, and Rule 5.5 for practicing law while ineligible to do so. ...

2.

Respondent was hired by David Walker in August of 2019 to interdict his mother. Mr. Walker's mother died before pleadings were filed and Mr. Walker requested a refund of the \$1500 fee he had paid to Respondent. Although she agreed to return the money, Respondent repeatedly delayed doing so. After over 2 years without a refund, Mr. Walker filed suit in Alexandria City Court and got a judgment against Respondent on June 29, 2022. Respondent agreed to a payment plan to resolve this debt and made a \$300 payment shortly thereafter, but then no further payments occurred. Mr. Walker filed a complaint with ODC on February 14, 2023. Respondent returned the remainder of the unearned fee shortly after her sworn statement was taken by ODC.

3.

By her acts and omissions, respondent has knowingly violated Rule of Professional Conduct 1.5(f)(5) (failure to promptly return unearned fees) and RPC 1.16(d) (failure to return unearned fees upon termination of representation).

Respondent answered the formal charges on August 11, 2023. Respondent admitted that in approximately May of 2020, she told Complainant that she would refund his full fee. She asserted that she delayed in returning the fee because she was unable to do so. She also asserted that she did not appear at the hearing in the Alexandria City Court due to a death in her family. She did not directly respond to the allegations of rule violations.³

³ Respondent filed an amended answer on August 29, 2023 simply to correct typographical errors.

The hearing in this matter was held on November 15, 2023, before Hearing Committee No. 7.⁴ Deputy Disciplinary Counsel Harrel L. Wilson, Jr. appeared on behalf of ODC. Respondent did not appear. The Committee heard testimony from one witness, David Walker, Jr., Complainant. Exhibits ODC 1 through ODC 4 were admitted into evidence.

The Committee filed its report on December 11, 2023. On January 2, 2024, the Board received a letter from Deputy Disciplinary Counsel Susan C. Kalmbach, enclosing correspondence dated December 20, 2023 which Ms. Kalmbach had received from Respondent.⁵ Ms. Kalmbach suggested that the letter from Respondent could be interpreted as an appeal from the Committee's report and recommendation. In the enclosed letter, Respondent stated that her mother had attempted, without success, to contact Mr. Wilson on the day before the hearing and that her mother did speak to Mr. Wilson on the morning of the hearing to request a continuance based on Respondent's medical incapacity to participate as a result of recent seizures she had experienced. She asserted that Mr. Wilson would not consent to a continuance. She further represented that she has medical records to support the occurrence of the seizures and other health problems she had experienced in the several months prior to the hearing. In light of the letters from both Ms. Kalmbach and Respondent, the matter was docketed for argument before a panel of the Board.⁶

⁴ Hearing Committee No. 7 was comprised of Michael D. Hislop (Committee Chair), Loreta LeSage Thibodeaux (Lawyer Member), and Dinah M. Robinson (Public Member) (via Zoom). On the day before the hearing, someone contacted the Board office stating that Respondent wanted a continuance. The person was informed that a motion to continue would have to be filed and ODC contacted regarding the motion. No motion was filed. Due to communications related to this call, the public member (who is located in Westlake, LA) was confused regarding the status of the hearing and had not traveled to Alexandria for the hearing.

⁵ On November 22, 2023, Ms. Kalmbach was substituted as counsel for ODC.

⁶ The argument was originally scheduled for March 7, 2024, with briefs due thirty days prior to the argument date. Notice of the March 7 argument date and briefing schedule were mailed to Respondent at her primary registration address and her then secondary registration address on January 3, 2024. By a subsequent order dated January 26, 2024, argument was rescheduled for February 29, 2024, with initial briefs due on February 6, 2024. The January 26, 2024 order was mailed to Respondent at her primary registration address and her then secondary registration address on January 26, 2024. On the same date, the order was also emailed to Respondent at her registered email address.

Briefs from the parties were due on February 6, 2024. On January 22, 2024, ODC filed its brief to the Board in support of the Committee's recommendation. Respondent did not file a brief.

At close of business on the day before the scheduled February 29, 2024 oral argument, Respondent sent an email to the Board with a copy of a letter to Ms. Kalmbach from Respondent dated February 21, 2024. Respondent stated in the letter that while she disagreed with the Committee's decision, she was not interested in prolonging the disciplinary process. Also attached to the email and referenced in Respondent's letter, was a copy of correspondence from an insurance company confirming approval of Respondent's claim for disability benefits but also stating that Respondent was allowed to work part-time under the policy. In the letter to Ms. Kalmbach, Respondent stated that she had two remaining cases in Louisiana and asked that she be "allowed to complete the current cases prior to suspension if such can and will be allowed."

Oral argument of this matter was held on February 29, 2024, before Board Panel "B."⁷ Ms. Kalmbach appeared on behalf of ODC. Respondent did not appear.

HEARING COMMITTEE REPORT

In its report filed on December 11, 2023, the Committee provided a summary of the evidence and made findings of fact, as follows:

ODC's evidence:

Mr. Walker's mother was in the early stages of dementia in 2019. His sister knew of Respondent, and she and Mr. Walker met separately with Respondent for the purpose of interdicting their mother. Mr. Waker [sic] and his sister signed affidavits Respondent prepared for the interdiction filings. Mr. Walker paid respondent \$400.00 on August 16, 2019 and \$1,100.00 on September 6, 2019, the date he executed the affidavit. (ODC-3, p. 49). Respondent agreed to handle the case on a flat-fee basis for the \$1,500.00.

Mr. Walker followed up with Respondent, who told her [sic] that the pleadings had been filed. In a text message to Mr. Walker (ODC-4, p. 71), Respondent told him, "As I told Ms. Mary, once anything leaves my hands, I don't

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

have control on how long it takes to get reviewed and signed by the judge. When I hear something you will be notified and if the court request [sic] or requires additional information.”

Mr. Walker’s sister checked at the courthouse and discovered that no pleadings had been filed. Mr. Walker testified that this was “more time than enough” after Respondent was retained, probably two to three months. (Transcript at p. 28)

Mr. Walker then called Respondent, who, when confronted with the fact that the pleadings had not been filed, told him that the paperwork may have been lost when she relocated her office. (Transcript at p. 29). She indicated that she would need to prepare other affidavits and would file the interdiction. (*Id.*)

Mr. Walker’s mother passed away on April 28, 2020. (Transcript at p. 7). Her interdiction was never filed. Mr. Walker testified that the lack of an interdiction complicated his mother’s affairs. (Transcript at pp. 23-4.) After Respondent offered to prepare affidavits to replace those lost during the move, Mr. Walker had no further communication with Respondent until late 2021,⁸ when he texted⁹ Respondent demanding a refund of the \$1,500.00. (Transcript at p. 11).

Respondent indicated that she was in necessitous circumstances, as she had been furloughed from her position as a public defender due to the COVID-19 shutdowns.

Unwilling to further accommodate Respondent, Mr. Walker filed suit in the Small Claims Division of Alexandria City Court on February 18, 2022. (ODC-4, p. 66). As noted above, Respondent, on that same day, caused to be issued to the order of Mr. Walker a cashier’s check drawn on Chase Bank, No. 911628365,¹⁰ in the amount of \$300.00. The memo on the check states, “Fee Refund. [sic] (ODC-2, p. 10). Mr. Walker did not negotiate this check as he feared it might be argued that he compromised his claim. (Transcript at p. 14).

Respondent answered Mr. Walker’s suit and indicated that she owed the money and wished to work out a payment plan. (ODC-4, p. 72). The small claim suit went to trial on June 29, 2022. The Alexandria City Court signed a judgment the same day in favor of Mr. Walker for \$1,500.00 plus judicial interest. (ODC-1, p. 5).¹¹ Respondent does not seem to have worked out a payment plan with the court, and she did not work one out with Mr. Walker.

On February 14, 2023, Mr. Walker filed an Ethical Conduct Complaint with ODC. (ODC-1, p. 1). On March 3, 2023, Respondent addressed a letter to Mr. Butch Wilson, Deputy Disciplinary Counsel, in which she explained that she did not immediately refund Mr. Walker’s fee because she had been furloughed from her job from April 1, 2020 through June 1, 2020. (ODC-2, p. 8-9). She also pointed out that she had sent \$300.00 in the form of the cashier’s check to Mr. Walker. Respondent explained that she was unable to attend court the day of the small claim

⁸ The evidence appears to reflect that these communications may have begun in 2020, not 2021.

⁹ The record reflects that these communications were emails, not text messages. T.9.

¹⁰ The number on the check was 9116228365, not 911628365. Ex. ODC 2, p. 10.

¹¹ The evidence reflects that the small claim suit was tried on June 27, 2022, and the judgment was signed on June 29, 2022. Exs. ODC 1, pp.4-5; ODC 4, p. 75, 77-78.

trial because of a death in the family. She offered to pay Mr. Walker \$200.00 per month over six months in order to satisfy his demand for a refund.

Respondent's sworn statement:

Respondent appeared at ODC's offices for her sworn statement on April 5, 2023. (ODC-3, pp. 12-47). Respondent indicated that she is in her thirtieth year as an attorney. She is employed by the Southern Poverty Law Center and will be practicing in Atlanta, Georgia.

Respondent was retained by Mr. Walker's sister, Mary, to interdict their mother. She and Mary agreed to a flat-fee arrangement whereby Respondent would receive \$400.00 for filing the interdiction and \$1,100.00 for the remainder. (*Id.* at p. 19). "[A]t a later date, after the work had been completed, then he [Mr. Walker] gave me the remaining 1100 [sic]." (*Id.*). Respondent did not deposit the funds into a client trust account because she does not maintain one.¹² (*Id.* at p. 20). At the time, Respondent was employed as an indigent defender in the Ninth and Seventh Judicial Districts. Her private practice was extremely limited.

Respondent wanted to file the interdiction earlier but was delayed because Mary did not come in to sign her paperwork until sometime in late October 2019. (*Id.* at p. 23). During this time, Respondent was relocating her office. She thought the interdiction had been filed. (*Id.*).

According to the Formal Charges, Respondent returned the fee to Mr. Walker shortly after her recorded statement was taken. That fact is conceded in ODC's prehearing memorandum.

Findings of fact:

The committee finds that Mr. Walker presented credible testimony regarding the events surrounding Respondent's representation. He candidly admitted that his recollection of some of the facts is cloudy. It is evident that Mr. Walker was deeply dissatisfied with the level of representation he received. He was very unhappy with the inordinate delay in refunding his fee. There is no dispute regarding the timing of Mr. Walker's fee; he only got his money back after he demanded it, filed suit, obtained a judgment, and filed a disciplinary complaint. Nothing short of the stern warning from Mr. Wilson during Respondent's sworn statement convinced her that this was a serious matter. In the meantime, Mr. Walker, a retired, disabled veteran, had to wait three and a half years for a refund.

Committee Report, pp. 2-6.

The Committee further provided the following analysis regarding rule violations and sanction recommendation:

¹² Respondent testified that she did not believe she needed a trust account for matters such as the interdiction in question. Deputy Disciplinary Counsel confirmed that she did not have to put the flat fee into a trust account. ODC 3, pp. 20-21.

Violations and sanctions:

The committee finds that Respondent violated Rules of Professional Conduct 1.5(f)(5) and 1.16(d). ...

In the present case, Respondent does not contest the earning of the fee. She concedes that Mr. Walker was due the entire \$1,500.00. In such a case, subsection (f)(5) required her to *immediately* refund the amount she and Mr. Walker agreed was unearned. ODC proved by clear and convincing evidence that Respondent did not immediately refund the fee she admits was not earned.

Similarly, Rule 1.16(d) provides that upon termination of her representation, an attorney shall “take steps to the extent reasonably practicable protect [sic] a client’s interest,” including “refunding any advance payment of fee or expense that has not been earned or incurred.” The committee finds that ODC proved by clear and convincing evidence that Respondent’s refund of the unearned fee was not effected to the extent reasonably practicable.

By her inactions, Respondent knowingly violated a duty to Mr. Walker and to the profession. Mr. Walker was deprived of his funds from the onset of the COVID-19 pandemic through 2023. Respondent’s recalcitrance in not repaying the fee also cast the legal profession in a bad light. This resulted in actual harm.

The committee finds that Respondent was admitted to practice law in October 1992 and had substantial experience in the practice of law. Respondent has been subjected to prior discipline, having been admonished in 2012 for failing to pay bar dues, disciplinary assessments, failing to disclose trust account information, and practicing law while ineligible, but the committee finds that this discipline was remote. The committee also finds that Respondent was indifferent to making restitution. The committee further finds that Respondent refuses to accept the seriousness of the charges.

Respondent submits in her prehearing memorandum that she should be credited with full and free disclosure to the disciplinary board and a cooperative attitude toward the disciplinary process. We make no such finding. In fact, the day before this hearing was held, communications were exchanged between Respondent and the board regarding continuing the hearing, but no motion was filed. This exchange resulted in the committee’s public member believing that the hearing would not take place. The public member was thus forced to participate in the hearing by Zoom. The proceedings were substantially delayed while the committee’s host arranged to technically accommodate the meeting. Respondent further failed to attend the hearing without explanation for her absence. Respondent was certainly not cooperative when it came time for the hearing of her case.

Respondent indicated to Mr. Walker that the interdiction must not have been filed because the pleadings were misplaced during an office move. ... Also according to her prehearing memorandum, Respondent failed to appear in Alexandria City Court when Mr. Walker’s suit came to trial because she had to attend a family funeral. While Respondent admitted that she owed a refund, she also urges that:

her failure to act diligently resulted in Respondent’s failure to file the Petition for Interdiction. Respondent made a good faith effort to

rectify the oversight by requesting that new Affidavits of Verification be signed though the Petition could have been filed as first prepared. Mr. Walker refused to sign the affidavit, did not state that his mother had passed away, and requested a refund.

Throughout the saga of Respondent's representation of Mr. Walker, continuing into Mr. Walker's pursuit of a refund of unearned fees, right through the disciplinary process, every untoward event has been excused by Respondent: Mr. Walker and his sister delayed signing the initial paperwork; the pleadings were lost; COVID-19; her phone was hacked; she had to attend a funeral; FedEx took over a month to deliver papers from Pineville to Baton Rouge. Somehow, even Mr. Walker is to blame— at least in part— for not telling Respondent his mother had died (seven months after Respondent undertook the representation). The committee is convinced that Respondent does not really, genuinely, accept responsibility for either her lack of diligence (for which no formal charges were brought) or her failure to refund Mr. Walker's money.

We also find that Respondent selfishly failed to refund Mr. Walker's money. As stated earlier, nothing beyond a \$300.00 cashier's check inscribed with a memo that could be interpreted as a compromise of Mr. Walker's claim was paid until after ODC explained to Respondent the gravity of her situation. Had Respondent maintained that the fee had been earned in part, she was still required to refund the unearned portion. In her prehearing memo, Respondent urges that she was unable to refund the money because she had been furloughed from her IDB job for three months, but that was in 2020 (ODC-2, p. 8), and she took no steps toward refunding the money until 2022.

In mitigation, the committee only finds that Respondent's prior discipline occurred long ago and should be considered remote.

The baseline sanction, per the American Bar Association *Standards for Imposing Lawyer Sanctions*, §4.12, is suspension: "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." In *In re Wheeler*, 08-616 (La. 6/20/08), 983 So.2d 1250, the attorney was retained by a client to negotiate a reduction in payments it was making to Medicare. The attorney pursued the matter unsuccessfully. When the client terminated her representation, it asked the attorney for an accounting. The attorney provided no accounting but informed the client's new attorney that she would be mailing a refund of \$1,800.00 in unearned fees. The attorney failed to cooperate with the ODC's investigation.

The attorney was charged with violating seven provisions of the Rules of Professional Conduct: "Rules 1.4 [sic] (failure to communicate with a client), 1.5(f)(3) (failure to provide an accounting), 1.5(f)(5) (failure to refund an unearned fee), 1.15(a)(c) (safekeeping property of clients or third persons), 1.16(d) (obligations upon termination of the representation), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation)" *Id.* at 1251. The hearing committee found that she had violated four: 1.4, 1.5(f)(3), 1.16(d), and 8.1(c). It recommended that she be suspended for

a year and a day, fully deferred, two years' probation, and entry into a three-year contract with the Lawyer's Assistance Program. The disciplinary board agreed, and further recommended that the attorney's practice be limited to government service or supervised practice for three years. The supreme court suspended the attorney for a year and a day, fully deferred, imposed five years of supervised probation, and ordered the attorney to enter into a contract with LAP for five years.

The respondent in *In re Fradella*, 13-461 (La. 4/26/13), 116 So.3d 649, had been retained to represent several insurers in the collection of nine loans to the same debtors. The Respondent billed costs and fees of \$17,550.00. However, after the respondent's representation was terminated, his final bill only totaled \$8,418.00. He never refunded the difference, despite demand that he do so. The attorney was suspended for two years, with no deferral.

The committee has diligently researched and found no cases directly on point. This is due, in part, to the fact that in most cases of unrefunded fees, the respondent has been charged with violating Rule 1.3, and Respondent in this case was not. However, we consider Respondent's conduct, with the exception of failing to cooperate with ODC, to rival the conduct in *Wheeler* but not *Fradella*. However, we feel that suspension for a year and a day unduly harsh, and recommend that Respondent be suspended for six months, with three months deferred. We further recommend that Respondent be placed on probation for a period of one year, and that she be ordered to attend LSBA Ethics School and Trust Account [sic]. Additionally, the committee recommends that Respondent be assessed with the cost and expenses of this matter pursuant to Louisiana Supreme Court Rule XIX, §10.1.

Committee Report, pp. 6-13.

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

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 Committee provided an accurate summary of the evidence presented with the exception of the clarifications mentioned in footnotes 8 through 12 above. The Committee's findings of fact do not appear to be manifestly erroneous, are supported by the record, and are adopted by the Board.

B. De Novo Review

The Board concludes that Respondent violated Rules 1.5(f) and 1.16(d), as charged. These conclusions are supported by the evidence for the reasons stated in the Committee's report quoted above.

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.

Respondent knowingly violated a duty owed to her client. Complainant was harmed in that he was deprived of his funds for over three years. Respondent's failure to return the fee which resulted in a public court claim against her potentially caused damage to the public's image of the profession.

Aggravating factors include prior disciplinary offenses; dishonest or selfish motive; refusal to acknowledge wrongful nature of the conduct; substantial experience in the practice of law (admitted in 1992); and indifference to making restitution. The only mitigating factor present is remoteness of prior offenses.

B. The ABA Standards and Case Law

The following *ABA Standards for Imposing Lawyer Sanctions* provide guidance in determining the appropriate sanction to be imposed for Respondent's misconduct:

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

While the sanction for misconduct similar to that involved in this matter can vary, considering the above standards and the jurisprudence, the Board finds that the Committee's recommended sanction of a six-month suspension, with three months deferred, is appropriate under the circumstances presented here.

In *In re Donald*, 2013-2056 (La. 11/1/13), 127 So.3d 918, the complainants paid the respondent \$600.00 to have a judgment which had been recorded against their property canceled. The complainants made numerous attempts to obtain information from the respondent over a period of two and a half years and then requested a refund of the fee, all to no avail. They then filed a disciplinary complaint against the respondent. The respondent was found to have violated Rules 1.3 (diligence), 1.4 (communication), and 1.5(f)(5). The respondent knowingly, and possibly intentionally, violated duties owed to his clients and caused harm in that they were deprived of the use of the unearned fee. Aggravating factors included a prior disciplinary record

(diversion), 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. The mitigating factor of personal and emotional problems was also present. The Court suspended the respondent for six months, fully deferred, with a one-year probation period, refund of the fee within thirty days, and required attendance at the LSBA Ethics School.

In *In re Barry*, 2001-1722 (La. 10/26/01), 799 So.2d 479, a deemed admitted matter, the respondent was retained by the complainant for \$1,500.00 to complete a post-conviction matter for the complainant's friend who was incarcerated. The respondent failed to take any action or subsequently communicate with the complainant or his friend. The respondent failed to respond to numerous requests for information by ODC, but did appear pursuant to a subpoena for a sworn statement. The respondent subsequently made restitution to the complainant after the hearing in the disciplinary matter. The respondent was found to have violated Rules 1.3, 1.4, 1.5, 1.16(d), 8.1 (false statement of material fact in disciplinary proceeding), 8.4(a) (violating or attempting to violate the Rules of Professional Conduct), 8.4(c) (conduct involving deceit, dishonesty, fraud, or misrepresentation), 8.4(d) (conduct prejudicial to the administration of justice), and 8.4(g) (failure to cooperate with ODC).¹³ The Court concluded that the respondent's actions caused potential harm in delay of the resolution of the post-conviction matter and deprivation of at least \$1,500.00 in legal fees for an extended period of time. The Court emphasized that the respondent's underlying misconduct was compounded by his intentional misrepresentations to ODC that he would complete the matter or return the fee which caused ODC to close the matter temporarily at one point in the investigation. Aggravating factors included a prior admonition for similar

¹³ Rule 8.4(g) was subsequently amended. At the time of the *Barry* proceeding, Rule 8.4(g) provided that it was professional misconduct to fail to cooperate with ODC except upon the expressed assertion of a constitutional privilege.

misconduct, failure to cooperate in the proceedings, vulnerability of the incarcerated victim, and substantial experience in the practice of law. There were no mitigating factors. The respondent was suspended for six months followed by a one-year period of supervised probation and was required to complete the LSBA Ethics School.

The respondent in *In re Peters*, 2008-2423 (La. 2/20/09), 2 So.3d 420 (*Peters II*), was hired by the complainant to file a bankruptcy proceeding. The complainant paid the respondent a flat fee of \$600.00 plus \$209.00 for filing costs. The respondent failed to file the proceeding by the date desired by the complainant. The complainant filed a disciplinary complaint and, like Mr. Walker in the present matter, also filed a lawsuit against the respondent seeking a refund of unearned fees and costs.¹⁴ In the disciplinary matter, the respondent stipulated to violations of Rules 1.5(f)(4) (failure to deposit advanced payment of costs into a trust account), 1.5(f)(5), 1.15(a) (failure to hold client funds separate from the lawyer's own funds), 1.15(c) (failure to deposit and maintain advance payment of costs in a trust account), 1.16(d), 8.4(a), and 8.4(c). The respondent was found to have knowingly, if not intentionally, violated duties owed to his client and the legal profession. His conduct caused significant injury in that the client was deprived of \$209.00 in filing fees for more than nine months and potentially deprived of \$600.00 or less in unearned fees for approximately two years or more and the client was forced to hire another attorney to file a lawsuit against the respondent to try to recover her funds. Aggravating factors present were dishonest or selfish motive, pattern of misconduct, vulnerability of the victim, and substantial experience in the practice of law. There were no mitigating factors.

Approximately six months before the complainant in *Peters II* hired Mr. Peters, other separate formal charges, which included sixteen counts of misconduct, had been filed against Mr.

¹⁴ Unlike the present matter in which a court judgment was rendered in favor of Mr. Walker, there is no indication whether or not a judgment was issued in the lawsuit in *Peters*.

Peters. Two months after the formal charges were filed in *Peters II*, the Court suspended Mr. Peters in the earlier proceeding for three years for misconduct which included failure to refund unearned fees, failure to place disputed funds into a trust account, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, similar to the charged misconduct in *Peters II*. See *In re Peters*, 2007-0349 (La. 6/29/07), 959 So.2d 846 (“*Peters I*”). In *Peters II*, the Court suspended Mr. Peters for one year, to run consecutively to the three-year suspension in *Peters I* and ordered the respondent to attend the LSBA Ethics School and submit the fee dispute to arbitration. In imposing the sanction in *Peters II*, the Court emphasized that the respondent continued to engage in similar misconduct in *Peters II* when he was aware of the pending allegations of misconduct against him in *Peters I*.

In *In re Howay*, 2020-0117 (La. 10/6/20), 340 So.3d 897, another deemed admitted matter, the complainant paid the respondent \$3,000.00 to represent his step-daughter in the succession of her natural father. After several months, the matter had not been resolved and the complainant learned that the respondent had never filed anything with the court to progress or advance the matter. The complainant eventually requested a refund of the fee he paid which was never returned by the respondent. The complainant hired new counsel who resolved the succession in two days. The complainant also filed a civil claim against the respondent for the \$3,000.00 fee and for attorney fees, both of which resulted in a default judgment in favor of the complainant and against the respondent. The respondent failed to respond to the disciplinary complaint and failed to appear for a sworn statement after being served with a subpoena for same. Additionally, the respondent was ineligible to practice law during the entire time of her representation of the complainant for failure to meet MCLE and trust accounting requirements and failure to pay bar dues and disciplinary assessment. The Court found that the respondent knowingly, if not intentionally,

violated duties owed to her client and the legal profession, causing actual harm. Aggravating factors included a prior disciplinary record (one-year and one-day suspension for conversion of \$1,800.00 belonging to her law firm), dishonest or selfish motive, pattern of misconduct, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules and orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, and indifference to making restitution. In mitigation, the Court recognized that at pertinent times, the respondent was pregnant and was hospitalized with complications following the premature birth of her baby. The respondent was suspended for two years and ordered to refund the \$3,000.00 fee.

Considering all of the above, the Committee's recommended sanction of a six-month suspension with three months deferred appears to be reasonable. The Board finds that the facts and circumstances presented here are most similar to those presented in the *Donald* and *Barry* cases. The misconduct here is more egregious than that in *Donald* because Respondent here continued to ignore her obligation to return the unearned fee even after acknowledging that the refund was owed and after Complainant had obtained a civil judgment against her. However, Respondent's misconduct in this matter was less egregious than that in *Barry* in that Mr. Barry's misconduct included making false statements of material fact in a disciplinary proceeding and failing to cooperate with ODC which violations are not present here. The Board concludes that the Committee's recommendation of an active suspension period is appropriate particularly because Respondent ignored the civil court judgment, did not participate in the disciplinary hearing, did not file a brief to the Board or engage in any communication with the Board until close of business the day before oral argument, and did not appear for the scheduled oral argument.

CONCLUSION

In light of the above, the Board concludes that Respondent violated Rules 1.5(f)(5) and 1.16(d), as charged. The Board recommends that Respondent be suspended for six months, with three months deferred, that the active portion of the suspension be followed by a one-year period of probation, and that Respondent be ordered to attend the LSBA Ethics School prior to the end of the probationary period. 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


The Board recommends that Toni Rachelle Martin be suspended for six months, with three months deferred, subject to the following conditions:

- (1) Upon completion of the active suspension period, Respondent shall be subject to a one-year period of probation;
- (2) Respondent shall complete the LSBA Ethics School prior to the end of the probationary period;
- (3) Any failure of Respondent to comply with the conditions of probation or any misconduct by Respondent during the period from the date of the Court's imposition of sanction through completion of his probationary period will be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate.

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).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

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By:  **Erica J. Rose**
74F80591386D4F7 **Erica J. Rose**
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 1.5. Fees

...

(f) Payment of fees in advance of services shall be subject to the following rules:

(1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Rule 1.16. Declining or Terminating Representation

...

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's

new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.