

The Supreme Court of the State of Louisiana

IN RE: JESSE P. LAGARDE

No. 2024-B-00646

IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

October 01, 2024

Suspension imposed. See per curiam.

JLW

SJC

JTK

WJC

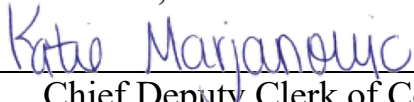
JBM

PDG

Hughes, J., dissents and would impose a lesser sanction.

Supreme Court of Louisiana

October 01, 2024



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2024-B-0646

IN RE: JESSE P. LAGARDE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 2015. In 2021, respondent and the ODC filed with this court a joint petition for consent discipline, wherein respondent admitted to neglecting a legal matter, failing to communicate with his client, and failing to cooperate with the ODC in its investigation. For this misconduct, the parties proposed that respondent be suspended from the practice of law for six months, fully deferred, subject to a one-year period of probation with conditions. On September 27, 2021, the court accepted the petition for consent discipline and imposed the requested sanction. *In re: Lagarde*, 21-0797 (La. 9/27/21), 323 So. 3d 862 (“*Lagarde I*”).

After respondent was placed on probation in *Lagarde I*, the ODC received complaints from Patrick Ledet and Michael and Cynthia Bourg. On October 5, 2022, the ODC filed a motion to revoke probation, alleging respondent failed to promptly respond to Mr. Ledet’s complaint and violated additional Rules of Professional Conduct in the Ledet and Bourg matters. The parties entered a joint stipulation

regarding respondent's violations and jointly recommended respondent's probation be extended for one year with additional conditions. On January 25, 2023, the court granted the petition and extended respondent's probation. *In re: Lagarde*, 22-1635 (La. 1/25/23), 353 So. 3d 720 ("*Lagarde IP*").

On January 23, 2023, two days prior to the court's decision in *Lagarde II*, the ODC received a supplemental complaint from Patrick Ledet.¹ We now turn to consideration of the misconduct alleged in that supplemental complaint.

FORMAL CHARGES

In 2018, Patrick Ledet hired respondent to represent him in connection with community property litigation, for which he paid a \$3,000 attorney's fee. In 2019, respondent enrolled in the matter captioned, *Annette Rogers Ledet v. Patrick James Ledet, Sr.*, No. 686-931 on the docket of the 24th Judicial District Court, Parish of Jefferson and filed a petition to partition community property.

In July 2021, respondent filed a motion to set a status conference. A status conference was set for August 9, 2021, but court minutes reflect that it was "to be reset" due to no service, presumably on Annette Rogers. The court records reflect that the status conference was never reset. No pleadings were filed since the filing of the motion. Respondent has never appeared in court for the matter.

Respondent failed to contact Mr. Ledet despite making repeated assurances to do so throughout the course of the representation. Mr. Ledet attempted to contact respondent on several occasions between October and December 2022, but he did not respond. Despite receiving the supplemental complaint and being cautioned by

¹ The only aspect of Mr. Ledet's complaint included as a ground for the revocation of probation was respondent's failure to cooperate with the ODC, based on his failure to provide timely responses to the complaint. The court did not consider the substantive allegations and facts of the complaint.

the ODC, respondent had no further contact with Mr. Ledet until the latter part of March 2023.² Mr. Ledet never heard from respondent again.

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

The ODC alleged that respondent violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.16 (failure to withdraw from the representation of a client), 3.2 (failure to make reasonable efforts to expedite litigation), and 8.4(a) (violation of the Rules of Professional Conduct).

DISCIPLINARY PROCEEDINGS

In May 2024, the ODC filed formal charges against respondent. Although respondent was given an extension of time to file an answer to the formal charges, he ultimately failed to do so. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the committee's consideration.

² The formal charges allege that respondent had no contact with Mr. Ledet until March 30, 2023, when respondent's response was due to the ODC, and that respondent failed to meet with Mr. Ledet the following week, as he had promised. However, Mr. Ledet's follow-up letter to the ODC is somewhat different. In the letter, Mr. Ledet noted that he spoke with respondent on the phone on March 31, 2023, at which time, respondent indicated that he would call Mr. Ledet back on April 3, 2023, but as of April 10, 2023, the date of Mr. Ledet's letter to the ODC, Mr. Ledet still had not heard back from respondent.

Hearing Committee Report

After considering the ODC's deemed admitted submission, the hearing committee acknowledged that the factual allegations set forth in the formal charges were deemed admitted when respondent failed to file an answer. Based upon the deemed admitted facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated a duty owed to his client and acted either negligently, knowingly, or intentionally, or all three. The committee explained that due to respondent's lack of participation in this matter, there is not enough evidence to make a clear finding on the mental element involved. He was given multiple opportunities to communicate with his client, but respondent chose to act in a fashion contrary to a reasonable and normal professional person. He caused actual harm to a client who paid in advance for the representation. The client did not receive a level of representation and communication required to be provided to a client. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is suspension.

The committee determined that the following aggravating factors are present: a prior disciplinary record and a pattern of misconduct. The committee determined that no mitigating factors are present.

After further considering the court's prior jurisprudence addressing similar misconduct, the committee recommended that respondent be suspended from the practice of law for six months. The committee also recommended that he be ordered to refund the unearned fee to Mr. Ledet. The committee further recommended that respondent be assessed with all costs and expenses of this proceeding.

The ODC filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board acknowledged that the factual allegations of the formal charges have been deemed admitted and proven. The record, based on the deemed admitted allegations and the additional evidence presented, supports the conclusion that respondent violated the Rules of Professional Conduct, as charged. The board addressed each rule violation as follows:

Rules 1.3 and 3.2 – Respondent failed to take any action in the community property proceeding for over two years. He had only limited and sporadic contact with Mr. Ledet during this time, and the contacts generally seemed precipitated only by Mr. Ledet’s continued complaints to the 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.

Rule 1.4 - Respondent failed to respond to Mr. Ledet’s numerous attempts to communicate with him and failed to maintain regular contact with Mr. Ledet, even after being cautioned by the ODC. Respondent failed to reasonably consult with his client about the means by which the client’s objectives were to be accomplished, in violation of Rule 1.4(a)(2); failed to keep the client reasonably informed about the status of his matter, in violation of Rule 1.4(a)(3); failed to promptly comply with client’s reasonable requests for information, in violation of Rule 1.4(a)(4); and 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) - Where representation has commenced, a lawyer shall withdraw from the representation of a client if the representation will result in the violation of the Rules of Professional Conduct (Rule 1.16(a)(1)) or if the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client (Rule

1.16(a)(2)). In his response to the complaint, respondent informed the ODC that Mr. Ledet attempted to contact him when he (respondent) was out of the office due to an injury that affected his mobility and ability to work. If physically impaired such that respondent was unable to even communicate with his client, respondent was required to withdraw from the representation. In failing to do so, he violated Rule 1.16(a).

Rule 8.4(a) – Respondent’s violation of the foregoing rules establishes the derivative violation of Rule 8.4(a).

The board determined that respondent violated a duty owed to his client. Considering Mr. Ledet’s repeated attempts to communicate with respondent, Mr. Ledet’s efforts to obtain updated status information from respondent, and the ODC’s communications to respondent emphasizing his need to address the concerns of Mr. Ledet, respondent’s conduct was at least knowing, if not intentional. The prolonged delay that occurred in respondent’s attempt to partition the community property caused actual damage to Mr. Ledet. Relying on the ABA’s *Standards for Imposing Lawyer Sanctions*, the board determined that the baseline sanction is suspension.

The board determined that the following aggravating factors are present: a prior disciplinary record, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and vulnerability of the victim. The board determined that the only mitigating factor present is inexperience in the practice of law (admitted in 2015).

Considering all the above, the board determined that the hearing committee’s recommended sanction of a six-month suspension is too lenient. After further considering the court’s prior jurisprudence addressing similar misconduct, the board recommended that respondent be suspended from the practice of law for one year and one day. The board also noted that the evidence is not sufficient to determine whether any of the attorney’s fee paid by Mr. Ledet should be returned, and therefore

recommended that respondent be ordered to participate in the Louisiana State Bar Association's ("LSBA") Fee Dispute Resolution Program and pay any amounts awarded to Mr. Ledet. The board further recommended that respondent be assessed with all costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the board's report and recommendation.

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The record of this matter supports a finding that respondent neglected a legal matter, failed to communicate with a client, failed to withdraw from a representation, and failed to make reasonable efforts to expedite litigation. Based upon these facts, respondent violated the Rules of the Rules of Professional Conduct as alleged.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent knowingly, if not intentionally, violated a duty to his client. He also caused actual harm to his client by repeatedly ignoring the client's requests for information and by failing to secure the partition of the client's property. We agree with the disciplinary board that the baseline sanction is suspension. We further agree with the board's assessment of aggravating and mitigating factors.

Turning to the issue of an appropriate sanction, we take guidance from *In re: Robertson*, 17-1169 (La. 11/28/17), 230 So. 3d 193, wherein we imposed a one year and one day suspension upon an attorney who failed to provide competent representation to a client, neglected a legal matter, and failed to communicate with a client. Like respondent, Mr. Robertson did not answer or otherwise respond to the formal charges, and thus, the charges were deemed admitted. Also, like respondent, Mr. Robertson had a prior disciplinary record for similar misconduct, and for that prior misconduct, he received the benefit of a fully deferred suspension.

Considering the similarities between this case and *Robertson*, the sanction imposed in *Robertson* is appropriate for this matter. Accordingly, we will adopt the board's recommendation and suspend respondent from the practice of law for one year and one day. We will further order respondent to participate in the LSBA's Fee Dispute Resolution Program and pay any amounts awarded to Mr. Ledet.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, it is ordered that Jesse B. Lagarde, Louisiana Bar Roll number 36538, be and he hereby is suspended from the practice of law for one year and one day. It is further ordered that respondent shall participate in the Louisiana State Bar Association's Fee Dispute Resolution Program with respect to the fees paid by Patrick Ledet, and pay any amounts awarded to Mr. Ledet by the arbitrator. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.