

ORIGINAL

Louisiana Attorney Disciplinary Board	
FILED by:	<i>Donna P. Burgess</i>
<u>Docket#</u>	<u>Filed-On</u>
24-DB-003	10/15/2024

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: PAUL H. HATTAWAY

DOCKET NO. 24-DB-003

REPORT OF HEARING COMMITTEE #1

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Paul H. Hattaway (“Respondent”), Louisiana Bar Roll Number 36870.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.1(a), 1.3, 1.4(a), 1.16(a) & (d), 3.2, 5.5(a) & (e)(3), 8.4(a) (c) & (d).²

PROCEDURAL HISTORY

The formal charges were filed on January 23, 2024. Respondent filed an answer to the charges on May 30, 2024. The hearing of this matter was held on August 14, 2024. Deputy Disciplinary Counsel Christopher Kiesel appeared on behalf of ODC. Respondent appeared with counsel, Donald Hodge, Jr.

For the following reasons, the Committee finds that Respondent violated the following Rules of Professional Conduct: 1.1(a) (competence), 1.3 (diligence), 1.4(a) (communication), 1.16(a) (terminating representation) & (d), 3.2 (expediting litigation), 5.5(a) & (e)(3) (unauthorized practice of law), 8.4(a) (c) & (d) (misconduct). The Committee recommends that the respondent be suspended for sixty days, fully deferred.

¹ Respondent was admitted to the practice of law in Louisiana on May, 12, 2016. Respondent is also admitted to the practice of law in Alabama, Washington, and Oregon. Respondent is currently eligible to practice law in Louisiana.

² See the attached Appendix for the text of these Rules.

FORMAL CHARGES

The formal charges read, in pertinent part:

On October 26, 2022, the ODC received a complaint ("Complaint") from Sarah Watson ("Ms. Watson") regarding Respondent. Ms. Watson is the Legal Director for the Louisiana Fair Housing Action Center, Inc. ("LFHAC"). The Complaint was opened for investigation as ODC 40476.

On November 3, 2022, the ODC sent a letter and a copy of the Complaint to Respondent to his Louisiana State Bar Association ("LSBA") primary bar registration address of 4148 Palm Street, Baton Rouge, Louisiana 70808. On November 4, 2022, delivery of the same was accepted on Respondent's behalf. Respondent's response to the Complaint was due within fifteen (15) days from receipt of the same. Respondent failed to provide a response to the Complaint by that deadline.

On November 29, 2022, the ODC sent an email to Respondent to his then LSBA-registered public/service email address of hh@heathhattaway.com. Delivery of that email to Respondent was confirmed via Microsoft Outlook on the same day. The email attached a copy of the Complaint and a second letter requesting that Respondent provide a response to the Complaint within twenty (20) days of the date of that letter, or by December 19, 2022. On November 29, 2022, the ODC also mailed a copy of that correspondence to Respondent to his LSBA-registered secondary address of 965 NE Weist Way, Unit 1, Bend, Oregon 97701. On December 16, 2022, the ODC granted Respondent an extension of time to submit his response to the Complaint.

On January 13, 2023, the ODC received Respondent's response to the Complaint. Therein, Respondent acknowledged: "I admit I should have contacted my client when I became aware of the negative information surrounding his matter. I accept responsibility for this failure on my part."

On January 23, 2023, Respondent supplemented his response to the Complaint. On June 7, 2023, the ODC took Respondent's sworn statement. On July 17, 2023, Respondent produced additional records to the ODC.

Respondent represented Kevin Belton ("Mr. Belton") in the civil litigation matter of *Clifford Osborne, III et al. v. Kevin Belton*, No. 3:20-cv-208-TAD-KDM (W.D. La.) ("Litigation"). On February 17, 2020, the Litigation was initiated by LFHAC attorneys on behalf of Clifford Osborne, III ("Mr. Osborne") and Deborah Olsen ("Ms. Olsen") (together, "Plaintiffs"). Plaintiffs sought relief for alleged housing discrimination under the federal Fair Housing Act ("FHA") based on Mr. Belton's refusal to provide reasonable accommodation for Mr. Osborne's assistance animal and subsequent interference with Plaintiffs' fair housing rights by threats of eviction and other intimidation. Prior to representing Mr. Belton in the Litigation, Respondent had no experience or expertise in defending FHA claims.

On May 18, 2020, Respondent filed a Waiver of Service of Summons ("Waiver") in the Litigation on Mr. Belton's behalf. The Waiver acknowledged that Mr. Belton's answer was due within sixty (60) days from April 3, 2020, or by June

3, 2020. Plaintiffs' counsel granted Respondent an extension of time until June 8, 2020 to file Mr. Belton's answer. Respondent failed to do so.

On June 19, 2020, Plaintiffs moved for entry of default against Mr. Belton. On June 22, 2020, the Clerk of Court issued a Notice of Entry of Default against Mr. Belton. Respondent thereafter took no action on Mr. Belton's behalf in the Litigation for over one year. On June 29, 2021, Plaintiffs moved for entry of default judgment. On July 21, 2021, Respondent filed a Motion to Set Aside Entry of Default ("Motion to Set Aside"). Therein, Respondent represented, in pertinent part:

[U]ndersigned counsel was diagnosed with "Institutional Betrayal Trauma" manifesting symptoms of high anxiety, post-traumatic stress disorder, and other symptoms which prohibited and made difficult his ability to practice law at a level normal attorneys are able to do so. These symptoms began manifesting in late 2019 and were treated beginning in June 2020. These symptoms severely inhibited the undersigned's ability to practice law through December of 2020.

On July 22, 2021, the district court granted Respondent's Motion to Set Aside. On September 7, 2021, Respondent filed an Answer on Mr. Belton's behalf in the Litigation.

On November 8, 2021, the district court issued a Scheduling Order in the Litigation. Among other things, that order set a May 23, 2022 discovery completion deadline, with written discovery required to be served more than thirty (30) days before that deadline.

On January 24, 2022, Respondent was served with Plaintiffs' First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Responses to those discovery requests were due on February 23, 2022. Respondent failed to provide responses by that deadline. As a result, Plaintiffs' Requests for Admissions were automatically deemed admitted. Respondent knew that there was a procedure available within the Federal Rules of Civil Procedure to "undo those admissions," but Respondent failed to take any action in that regard.

Respondent failed to serve any discovery requests on Plaintiffs until nearly 11:00 p.m. on May 23, 2022, the discovery completion deadline. Respondent admits that those requests were untimely, as they were not submitted more than thirty (30) days before that deadline:

[T]here's a calendar that you get in PayServ, and I misread it and I did serve it by the deadline date that was on there. Where I messed up is that it's actually not the deadline. The deadline's 30 days prior to that. And so that was a mistake that I made on my calendaring.

On June 28, 2022, Plaintiffs filed a Motion for Summary Judgment ("MSJ") in the Litigation. On June 29, 2022, the Clerk of Court issued a Notice of Motion Setting which confirmed that Mr. Belton's opposition to the MSJ was due by July

20, 2022. Respondent failed to file an opposition to the MSJ. Respondent states that the notice was emailed to him, but he missed it because he failed to regularly check his email account.

On August 3, 2022, the district court issued a Memorandum Ruling which granted the MSJ. That ruling noted, in pertinent part:

Osborne served Belton with requests for admission, requests for production of documents, and interrogatories on January 24, 2022. Belton failed to respond by February 23, 2022, as required by the Federal Rules of Civil Procedure. Belton responded on March 4, 2022. At this point, the Court determined that the requests for admission were automatically deemed admitted due to Belton's untimely response.

The discovery completion set for May 23, 2022 has since passed. Discovery requests were to be served at least thirty days prior to the deadline to allow sufficient time for responses. Belton served discovery requests at 11:00 p.m. on May 23, 2022 - the day of the discovery competition deadline. Plaintiffs objected to the requests in their entirety as untimely.

* * * *

Plaintiffs assert three arguments for why summary judgment should be granted in their favor. The first is that Belton failed to timely respond to Plaintiffs' requests for admission, so he is deemed to have admitted those statements

* * * *

Benton [sic] failed to make a motion for withdrawal or amendment of his admission. Further, he did not direct answers or object to the matter of the requests for admission within the proper thirty-day time period. If Benton [sic] had filed a response or opposition to Plaintiffs' Motion for Summary Judgment as to why he did not submit answers to the requests for admission within the thirty-day allotted time period, perhaps the Court would be more considerate. However, as Benton [sic] has not responded, and furthermore he is not pro se, the Court sees it reasonable that Benton [sic] is deemed to have admitted to the statements made in the requests for admissions and is bound by those statements.

Accordingly, Plaintiffs Motion for Summary Judgment on the fact that Belton's failure to timely respond to the requests for admissions causes them to be deemed admitted is GRANTED.

On August 3, 2022, the district court issued a Judgment which granted the MSJ and ordered that "Plaintiffs file a motion to enforce judgment with specific demands against Defendant within thirty (30) days of this Memorandum Ruling and Judgment." Respondent failed to timely appeal from, or otherwise seek reconsideration, of, that Judgment. Respondent became aware of those negative

decisions after the fact, but then failed to disclose the same to Mr. Belton. Respondent testified, in pertinent part:

And so I guess what I'm trying to say is, I wasn't intentionally not trying to communicate to the client, I just didn't, and that's where I messed up. I should have just figured it out and did it, and I just didn't.

On September 2, 2022, Plaintiffs filed a Motion to Enforce Judgment ("Motion to Enforce"). Therein, Plaintiffs justified their request for \$50,000 in compensatory damages as follows:

Finally, Plaintiff[s] has [sic] increased their demand for compensatory damages from \$35,000 requested in the Motion for Default Judgment to \$50,000. This increase reflects the additional year that Plaintiffs have not received timely relief for their injuries due to Defendant's continued and willful disregard for this Court's orders and the legal process. Despite successfully moving this Court to set aside the Entry of Default, Defendant has failed to timely respond to discovery, timely issue discovery requests, and did not even submit an opposition to Plaintiffs' motion for summary judgment. Considering Defendant had not appeared or defended the lawsuit in any way prior to Plaintiff's Motion for Default Judgment, Plaintiffs could have obtained relief nearly a year ago. Instead, Plaintiffs were forced to wait a year for relief as Defendant and defense counsel continued to waste the time and resources of both this Court and the parties by failing to participate.

On September 6, 2022, the Clerk of Court issued a Notice of Motion Setting which confirmed that Mr. Belton's opposition to the Motion to Enforce was due by September 27, 2022. On September 13, 2022, Ms. Watson spoke to Respondent and asked him whether he planned to file an opposition to the Motion to Enforce. Respondent replied in the affirmative, but then failed to do so.

On September 16, 2022, Respondent was declared ineligible to practice law in Louisiana due to his failure to pay LSBA dues and the disciplinary assessment. Despite his ineligibility, Respondent remained enrolled as Mr. Belton's counsel in the Litigation after that date, and Respondent otherwise held himself out as an attorney authorized to practice law in Louisiana. Even though Respondent no longer represents Mr. Belton today, Respondent has not filed a motion to withdraw as counsel in the Litigation.

On September 29, 2022, the district court issued a Memorandum Ruling which granted in part and denied in part Plaintiffs Motion to Enforce. On the same day, the district court issued a Judgment which ordered that Mr. Belton pay Plaintiffs \$89,991.80 in total damages, consisting of \$29,991.80 in attorney's fees, \$50,000.00 in compensatory damages, and \$10,000.00 in punitive damages. Respondent failed to timely appeal from, or otherwise seek reconsideration, of, that

Judgement. Respondent also failed to disclose those negative decisions to Mr. Belton.

On October 10, 2022, Ms. Watson spoke to Respondent by telephone. Ms. Watson describes that conversation and her frustration regarding Respondent's misconduct as follows:

After several attempts, I hear back from [Respondent] on October 10, 2022, at which time he informed me that he was just seeing the judgment, and that he had not spoken with his client about the judgment at all. I asked whether his client knew that he had not filed a response to our [MSJ and Motion to Enforce], and he said that he could not answer that "on advice of counsel." He further told me that the client would likely no longer want his representation when he was informed of all of this. Finally, Mr. Hattaway told me that he would call me to let me know whether he would be staying on the case, if there was a new attorney we should contact, or if Mr. Belton would be unrepresented so we could contact him directly. He never did. Since then, I have tried to call both Mr. Hattaway's provided number and that of his new law firm, without response. I have tried emailing both his ECF provided email address, his Baxter Harder email address, and that of his assistant at Baxter Harder. Finally, on October 25, 2022, the receptionist at Baxter Harder informed me that [Respondent] told her "he would not be accepting any calls from Louisiana." We are now forced to pursue additional enforcement action to secure payment for our client.

At every turn, Mr. Hattaway has deliberately and continuously failed to meet the standards of our profession. He has failed to meet nearly every deadline, failed to be available to communicate with counsel, failed to update his contact information, and failed to withdraw from a case here in Louisiana when he clearly intends to practice only in Oregon from here out. Additionally, from his own admission he has engaged in serious neglect of his own client. ... [H]is conduct has delayed relief for our client and continues to impede our ability to resolve this case.

On November 1, 2022, Ms. Watson sent Respondent a letter which further detailed her efforts to communicate with him regarding the Judgment on the Motion to Enforce.

On December 1, 2022, Mr. Belton filed a pro se Motion for a Hearing in the Litigation. As a basis for that request, Mr. Belton stated therein: "Change in legal counsel - The former attorney, Paul Heath Hattaway, moved out-of-state [sic] during the course of the year and since has been non-responsive to any correspondence regarding this case, including his withdrawal. Therefore, I will be proceeding pro se."

On August 2, 2023, Mr. Belton's new counsel filed a Motion for USCS FRCP Rule 60 Relief from Summary Judgment ("Motion for Relief"). On October 5, 2023, the district court issued a Memorandum Ruling which denied the Motion for Relief.

In his response to the Complaint, Respondent suggests that he suffers from one or more mental conditions which materially impaired his ability to represent Mr. Belton in the Litigation:

Beginning in the fall of 2019, I began to experience panic attacks, loss of confidence in myself (including my judgment), and other symptoms of extreme anxiety as it related to my work in Louisiana. . . . I reached out the [sic] JLAP for assistance. Then [Covid] lockdown occurred and I was confined to my residence, without staff, and surrounded by everyone's problems. I was unable to open the mail, answer calls, or text messages due to extreme anxiety.

* * * *

In December of 2020, I moved to Bend, Oregon. I took time away from the practice of law to recover

During his sworn statement, Respondent also testified that he "had diminished capacity," "was a disabled attorney that wasn't capable of providing answers to anyone," and was "not in a place to handle" the representation of Mr. Belton. To the extent that Respondent suffered from a mental condition prior to February 2020, he should not have agreed to represent Mr. Belton in the Litigation. To the extent that a mental condition manifested during the Litigation which materially impaired his ability to represent Mr. Belton thereafter, Respondent should have immediately withdrawn as Mr. Belton's counsel.

The ODC respectfully submits that there is clear and convincing evidence that Respondent has violated Rules 1.1(a), 1.3, 1.4(a), 1.16(a) and (d), 3.2, 5.5(a) and (e)(3), and 8.4(a), (c) and (d) of the Louisiana Rules of Professional Conduct.

EVIDENCE

ADMITTED EXHIBITS

ODC 1 respondent's current registration information with the LSBA

ODC 2 LSBA membership directory for respondent as of July 26, 2023

ODC 3 October 26, 2022 complaint filed by Ms. Watson

ODC 4 November 3, 2022 letter from ODC to respondent with related documents

ODC 5 November 29, 2022 email and letter from ODC to respondent with attachments

ODC 6 transcript of respondent's June 7, 2023 sworn statement

ODC 7 December 16, 2022 emails between ODC and respondent

ODC 8 January 13, 2023 emails between ODC and respondent with attachments

ODC 9 January 23, 2023 emails between ODC and respondent with attachment

ODC 10 July 17, 2023 emails between ODC 25 and respondent with attachment

ODC 25 September 6, 2022 Notice of Motion Setting the Litigation

ODC 26 September 29, 2022 Memorandum Ruling in the Litigation

ODC 27 September 29, 2022 Judgment in the Litigation

ODC 28 December 1, 2022 Motion for a hearing filed in the Litigation

ODC 29 October 5, 2023 Memorandum Ruling in the Litigation 12

ODC 30 October 6, 2020 JLAP cover letter and records provided by ODC (SEALED EXHIBIT)

PHH-001 WSBA Discipline History Certificate

PHH-002 WSBA Status History Certificate

PHH-003 WSBA Current Status Certificate

PHH-004 OSBA Comity Certificate of MCLE Compliance

PHH-005 OSBA Certificate of Good Standing

PHH-006 OSBA Certificate of Disciplinary History

PHH-007 OSBA Certificate of Status History

PHH-008 ASBA Disciplinary History and Status

PHH-009 LSBA/LADB Bar Dues 2022-2024 and MCLE Compliance

PHH-010 JLAP Correspondence and Evaluation 24 from 2020 (SEALED)

PHH-011 Clinical Summary from S. DeLuca (Respondent's Current Therapist)
(SEALED)

PHH-012 Letter from Karen Hooper (Respondent's Current Paralegal)

PHH-013 Letter from Hayden Burket (Respondent's Former Paralegal)

PHH-014 Letter from David Haskett (Attorney in Bend, Oregon)

PHH-015 Letter from Catherine Rutherford (Attorney in Baton Rouge, Louisiana)

PHH-016 Letter from Nicole Mitchell (Respondent's former head paralegal)

TESTIMONY

The following persons provided testimony during the formal hearing:

1. Paul Hattaway – Respondent
2. Shawn Eves - Respondent’s Character Witness
3. Michael Conner - Respondent’s Character Witness
4. Joseph Harder - Respondent’s Character Witness
5. Tim Williams - Respondent’s Character Witness
6. Sarah Harlos - Respondent’s Character Witness

FINDINGS OF FACT

Respondent stipulated to the facts and conclusions of law as set forth in the partes’ Joint Stipulations. Joint Stipulations (filed 7/22/2024). The Committee must accept these stipulations. *See In re Torry*, 2010-0837 (La. 10/19/10), 48 So.3d 1038.³ These stipulations include the negligent, in part, and knowing, in part, violations of the following Rules of Professional Conduct: 1.1(a) (competence), 1.3 (diligence), 1.4(a) (communication), 1.16(a) (terminating representation) & (d), 3.2 (expediting litigation), 5.5(a) & (e)(3) (unauthorized practice of law), 8.4(a) (c) & (d) (misconduct). Further, the parties stipulated to two aggravating factors: a pattern of misconduct and the existence of multiple offenses. Finally, the parties stipulated to five mitigating factors: the absence of prior disciplinary record, personal and/or emotional problems, full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings, relative inexperience in

³ In *Torry*, the Court rejected the Board’s conclusion that the Board was not required to accept the stipulations of the parties. The Court held that “effect must be given to [the stipulations of the parties] unless they are withdrawn.” *Torry* at 1041.

the practice of law at the time of the misconduct, and remorse. The Respondent also presented evidence of his character or reputation, through the testimony of those individuals listed above, as a further mitigation to the stipulated misconduct.

Specifically, the Respondent elicited the testimony of Joseph Harder, an Oregon attorney and the Respondent's first employer in Oregon. Mr. Harder testified that the Respondent was well respected by both colleagues and local judges during his two-year employment at Mr. Harder's firm. Mr. Harder further testified that the Respondent produced good results as a clerk and consistently received positive feedback from other attorneys during his tenure.

Tim Williams, the Respondent's current Oregon employer since December of 2023, testified that the Respondent, Mr. Hattaway, came to the firm highly recommended, was candid regarding his Louisiana disciplinary issues during the hiring process, and that Mr. Williams has been very satisfied with the Respondent's performance to-date.

Sarah Harlos, an Oregon attorney with whom the Respondent has been acquainted since August of 2022, testified that Mr. Hattaway is a zealous advocate, always prepared, honest, and forthright with an excellent reputation. Ms. Harlos and the Respondent have been opposing counsel on several Family Law cases in the Bend, Oregon region.

The testimony of Michael Conner, the Respondent's landlord, and Shawn Eves, the Respondent's former counselor, supported Mr. Hattaway's representations to the Hearing Committee, including the Respondent's declaration to the Committee that he would not move back to Louisiana to practice law. The Hearing Committee found the testimony of the Respondent and the Respondent's witnesses to be credible. The Respondent and the Respondent's witnesses reliably asserted the Respondent's excellent reputation and good work on behalf of his clients in his new home state. The Hearing Committee reviewed the extent of and weight to be afforded to

the aggravating and mitigating factors present and the actual injury caused by Respondent to arrive at an appropriate sanction for Respondent's misconduct.

RULES VIOLATED

In addition to the factual allegations, Respondent stipulated to violating Rules 1.1(a), 1.3, 1.4(a), 1.16(a)(2) & (d), 3.2, 5.5(a) & (e)(3), and 8.4(a) (c) & (d), which the Board must accept. *See Torry, supra.*

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

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

Here, Respondent violated duties owed to his client, the profession, and the legal system. The parties stipulated that Respondent acted negligently in part and knowingly in part with regard to all the Rule violations, except Rule 5.5. The parties stipulated that Respondent's violation of Rule 5.5 was purely negligent. Respondent's misconduct caused actual harm. Respondent's neglect of Mr. Belton's legal matter resulted in a judgment of \$89,991.80 being issued against his client.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. 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 a pattern of neglect causes injury or potential injury to a client." Here, Respondent, knowingly failed to perform services for his client and caused injury to his client. Furthermore, the Court has held that the baseline sanction for the neglect,

failure to communicate, and failure to properly terminate representation in one client matter is a one-year suspension. *See In re Casanova*, 2002-2155 (La. 11/22/02); 847 So.2d 1169, 1175, *citing In re Trichel*, 2000-1304 (La. 8/31/00); 767 So.2d 694.

The following aggravating factors are present: pattern of misconduct and multiple offenses. The following mitigating factors are present: absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude towards the proceedings, inexperience in the practice of law, remorse, as well as, good character and reputation.

In *In re Rachal*, 2022-01636 (La. 2/14/23), 354 So.3d 1224, the respondent was suspended for sixty days, fully deferred. The Court found that the respondent neglected his client's medical malpractice lawsuit, which resulted in its dismissal by summary judgment, and then for nine months failed to communicate to his client that his malpractice caused the dismissal. The Court concluded that the respondent violated Rules 1.3, 1.4, and 8.4(c). Aggravating factors included dishonest and selfish motive, multiple offenses, submission of a false statement during the disciplinary process, and substantial experience in the practice of law. Mitigating factors were absence of a prior disciplinary record, personal or emotional problems (as to his failure to oppose the motion for summary judgment), and remorse.

In *In re Claiborne*, 2022-0492 (La. 10/21/22), 351 So.3 684, the respondent neglected a legal matter, resulting in the dismissal of a client's lawsuit due to abandonment, failed to communicate with the client and opposing counsel, failed to advise the client of the potential malpractice claim against him, and knowingly made a false statement of fact when responding to the client's disciplinary complaint. The Court concluded that the respondent violated Rules 1.3, 1.4, 1.7, 8.1(a), 8.4(a), and 8.4(c). Aggravating factors included a prior disciplinary record

(diversion program), submission of false evidence, false statements, or other deceptive practices during the disciplinary process, and substantial experience in the practice of law. Mitigating factors were absence of a dishonest or selfish motive, character or reputation, and delay in the disciplinary proceedings.⁴ The respondent was suspended for six months with all but thirty days deferred.

In *In re Dirks*, 2017-0067 (La. 6/29/17), 224 So.3d 346, the respondent was suspended for sixty days for violating Rules 1.4 and 8.4(c). The respondent filed suit on behalf of his client and later learned during the discovery process that his client had not provided him with all of the facts surrounding the case. He then informed the client that, in his opinion, the case would likely be dismissed. The defendant filed a motion for summary judgment. The respondent did not oppose the motion because he did not believe he had any evidence to contradict the motion. The motion was granted and the respondent received the judgment dismissing the case approximately one week after it was rendered. During approximately one year after the court dismissed the case, the client contacted the respondent on numerous occasions to check on the status of the case and the respondent repeatedly advised that he had not heard anything and would check on it. In the course of the disciplinary proceedings the respondent ultimately explained that he was upset with his client because she misled him about the true facts of the case. Although the viability of the client's cause of action was doubtful, she nevertheless lost her right of appeal as a result of the respondent's failure to notify her of the true status of her case. Further, in addition to misleading his client, the respondent initially provided false information to the ODC during its investigation as to when he first received the judgment. The Court in *Dirks* found the respondent knowingly violated duties to his client and the profession, causing the potential for serious harm, and stated that the baseline

⁴ The delay in the disciplinary proceedings was considered a substantial mitigating factor.

sanction for the misconduct was suspension. Aggravating factors included substantial experience in the practice of law, dishonest or selfish motive, and submission of false statements during the disciplinary process. Mitigating factors were absence of a prior disciplinary record and sincere remorse.

In *In re Gilley*, the Court suspended Mr. Gilley for six months, with all but ninety days deferred, for failing to pursue a client's parental rights matter. 2023-0989 (La. 12/5/2023), 373 So.3d 704. Mr. Gilley misled his client about the status of the matter, leading the client to believe that suit had been filed, when it had not. Mr. Gilley's neglect contributed to his client losing parental rights. The Court found Mr. Gilley's conduct was negligent in part and knowing in part. The only aggravating factor present was substantial experience in the practice of law. The only mitigating factor was the absence of a prior disciplinary record.

In *In re Bullock*, the Court imposed a one year and one day suspension, with six months deferred, based upon Ms. Bullock's failure to file a petition for damages within the prescriptive period for her client and subsequently misleading her client regarding the issue. 2016-0075 (La. 3/24/2016), 187 So. 3d 986. Rather, Ms. Bullock wired funds to the client from her personal account and failed to inform her client of the true status of the matter. The following aggravating factors were present: vulnerability of the victim, substantial experience in the practice of law, and dishonest and selfish motive. The following mitigating factors were present: absence of a prior disciplinary record, timely and good faith effort to make restitution or to rectify the consequences of her misconduct, full cooperation with the disciplinary proceeding, character and reputation, and remorse.

The facts in the present matter are similar to those in *Rachal*. However, unlike *Rachal*, Respondent lacked the following aggravating factors: a dishonest or selfish motive, submission

of a false statement during the disciplinary process, or substantial experience in the practice of law. Notwithstanding the foregoing, the Hearing Committee confirms an actual and substantial injury to the client. Accordingly, the Committee recommends a sixty-day suspension, fully deferred.

CONCLUSION

The Committee recommends a sixty-day suspension from the practice of law, fully deferred. The Committee also recommends that the respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.]

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Lawyer Member Lisa C. Smith to sign on their behalf.

Baton Rouge, Louisiana, this 10th day of October, 2024.

**Louisiana Attorney Disciplinary Board
Hearing Committee #1**

**H. Price Mounger, Committee Chair
Lisa C. Smith, Lawyer Member
Vance J. Normand, Jr., Public Member**

BY: 
91DA69EEEF374F6...
**Lisa C. Smith, Lawyer Member
For the Committee**

APPENDIX

Rule 1.1. Competence

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

...

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.

...

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.

...

(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.

Rule 3.2. Expediting Litigation

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

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

...

(e) ...

(3) For purposes of this Rule, the practice of law shall include the following activities: (i) holding oneself out as an attorney or lawyer authorized to practice law; (ii) rendering legal consultation or advice to a client; (iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law; (iv) appearing as a representative of the client at a deposition or other discovery matter; (v) negotiating or transacting any matter for or on behalf of a client with third parties; (vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

...

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

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

...

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

(d) Engage in conduct that is prejudicial to the administration of justice;

...