

The Supreme Court of the State of Louisiana

**IN RE: CARL JOSEPH RACHAL**

No. 2022-B-01636

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IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations  
(Formal Charges);  
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**February 14, 2023**

Suspension imposed. See per curiam.

JBM

JLW

JDH

SJC

WJC

PDG

Genovese, J., dissents and would reject the disciplinary board's recommendation.

Supreme Court of Louisiana

February 14, 2023



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Chief Deputy Clerk of Court  
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1636

IN RE: CARL JOSEPH RACHAL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

**UNDERLYING FACTS**

By way of background, in August 2016, Donna Turner underwent a hair transplant procedure performed by Dr. Frank Campisi at Bosley Medical Institute, Inc. (“Bosley”). Following the procedure, Ms. Turner developed an open wound on the back of her head.

Dissatisfied with the results of the procedure, in September 2016, Ms. Turner hired respondent to represent her with respect to a medical malpractice claim against Dr. Campisi and Bosley. On July 27, 2017, respondent fax-filed a petition for damages against Dr. Campisi and Bosley on Ms. Turner’s behalf. He then physically filed the petition into the court record on August 1, 2017.

Thereafter, respondent failed to conduct any discovery. On August 23, 2018, Dr. Campisi and Bosley filed a motion for summary judgment. In an October 3, 2018 email to respondent, Ms. Turner asked him about the status of the motion, indicating he had informed her of same. Ultimately, though, respondent failed to file an opposition to the motion and failed to attend the October 9, 2018 hearing on the motion. As a result of respondent’s failures, on October 18, 2018, the judge

signed a judgment granting the motion and dismissing Ms. Turner's lawsuit with prejudice.

On December 18, 2018, respondent filed a motion and order to appeal the judgment. In April 2019, respondent filed his appellate brief. He then attended oral argument, which was scheduled for September 11, 2019. On October 16, 2019, the court of appeal affirmed the dismissal of Ms. Turner's lawsuit.

Meanwhile, on February 21, 2019, respondent met with Ms. Turner for the first time since the motion for summary judgment was granted. Although respondent indicated he discussed with Ms. Turner the granting of the motion, he admitted that he did not tell her why the motion had been granted and did not disclose his failures to her either prior to this meeting or during the meeting.

On March 7, 2019, Ms. Turner sent respondent an email, in which she requested a copy of her file. Respondent mailed Ms. Turner a copy of the file sometime between April 8, 2019 and April 12, 2019.

On March 30, 2019, the ODC received a disciplinary complaint against respondent from Ms. Turner. In her complaint, Ms. Turner alleged that respondent did not inform her of the appeal he had filed until their meeting on February 21, 2019, at which time he did not explain why the appeal was necessary. She also alleged that, during the representation, he ignored her repeated requests for a status update and missed three scheduled appointments with her.

The ODC received a supplemental complaint from Ms. Turner on April 17, 2019. In the supplement, Ms. Turner indicated that she had received a copy of her file from respondent on April 15, 2019. In reading over the file materials, Ms. Turner learned for the first time that respondent did not appear at the hearing on the motion for summary judgment.

On April 25, 2019, the ODC received respondent's response to Ms. Turner's complaint. In his response, respondent admitted that he failed to show up for one

scheduled meeting with Ms. Turner. He also claimed that, during the February 21, 2019 meeting, he informed Ms. Turner of the granting of the motion for summary judgment and his appeal of same.

Although respondent answered the complaint, the ODC took his sworn statement on July 15, 2019. During the sworn statement, respondent provided the following relevant testimony:

1. With respect to his failure to perform discovery, respondent stated, “I guess, in retrospect, I can’t tell you a reason why or not.”
2. Regarding his failure to file an opposition to the motion for summary judgment or appear for the hearing, respondent stated, “[I]t was an error in scheduling... I got served with the motion at my home... I don’t know what happened at that time as to why that was missed... I didn’t calendar the deadlines, nor did I calendar the hearing date.”
3. Regarding the alleged missed appointments with Ms. Turner, respondent again admitted missing only one meeting, stating, “There was one that I missed that I had scheduled... I just missed the meeting.” He also admitted canceling one meeting shortly before it was scheduled to take place.
4. Respondent admitted that, as of the date of the sworn statement, he had not yet informed Ms. Turner of the reason why the motion for summary judgment was granted and had not yet disclosed to her his failures regarding the motion.

On July 23, 2019, respondent finally sent Ms. Turner a letter, in which he disclosed that he had failed to file an opposition to the motion for summary judgment and had failed to attend the hearing on the motion. In the letter, respondent also informed Ms. Turner of the potential malpractice claim she had against him, provided her with the contact information for his malpractice insurer, and advised her to consult another attorney regarding the malpractice claim.

Ms. Turner subsequently filed a malpractice lawsuit against respondent. On September 28, 2020, Ms. Turner and respondent's malpractice insurer settled the lawsuit.

## **DISCIPLINARY PROCEEDINGS**

In February 2020, the ODC filed formal charges against respondent alleging that his conduct violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct. Respondent filed an answer to the formal charges, denying that he violated the Rules of Professional Conduct and requesting that the charges be dismissed. Accordingly, the matter proceeded to a formal hearing on the merits.

### *Hearing Committee Report*

After considering the evidence and testimony presented at the hearing, the hearing committee made the following factual findings:

1. Respondent represented Ms. Turner under a contingency fee agreement in connection with a personal injury lawsuit involving allegations of medical malpractice;
2. During the representation, respondent failed to communicate to Ms. Turner that the defendants had filed a motion for summary judgment on August 23, 2018;
3. Respondent failed to file any pleadings in response to the motion for summary judgment;
4. Respondent failed to appear at the hearing on the motion for summary judgment on October 9, 2018;

5. Because respondent failed to oppose the motion for summary judgment and failed to appear at the hearing, the trial court granted the motion and dismissed Ms. Turner's lawsuit;
6. During the representation, respondent appealed the judgment of the trial court, and oral argument on the appeal was set for September 11, 2019;
7. During the representation, respondent met with Ms. Turner on February 21, 2019 to discuss, among other things, the pending appeal;
8. During the February 21, 2019 meeting to discuss the pending appeal, respondent failed to disclose to Ms. Turner that her lawsuit was dismissed on summary judgment because he failed to oppose the motion and failed to appear at the hearing;
9. Ms. Turner first learned of respondent's failure to oppose the motion for summary judgment when she received a copy of her file from him during the disciplinary process;
10. July 23, 2019 was the first time respondent disclosed to Ms. Turner that he had failed to oppose the motion for summary judgment;
11. July 23, 2019 was the first time respondent acknowledged his failure to disclose to Ms. Turner that he had not opposed the motion for summary judgment;
12. July 23, 2019 was the first time respondent acknowledged he should have disclosed his failure to oppose the motion for summary judgment earlier;
13. On appeal, the court of appeal affirmed the trial court's judgment granting the motion for summary judgment; and
14. Between the time of the dismissal of Ms. Turner's lawsuit via summary judgment and respondent's first disclosure to her of his failure to oppose the motion for summary judgment on July 23, 2019, he repeatedly and intentionally failed to inform her that the reason for the dismissal was his

failures to oppose the motion and appear at the hearing. Respondent also failed, without excuse, to appear for at least one scheduled meeting with Ms. Turner. After he received Ms. Turner's disciplinary complaint, he spoke to her via telephone on more than one occasion but still did not disclose his failures with respect to the motion for summary judgment, testifying that the disciplinary complaint did not address these failures. The committee found this explanation not credible and unreasonable because respondent did not explain how Ms. Turner's disciplinary complaint could have included mention of his failures when she did not have any knowledge of them when she filed the complaint. Respondent used the same justification to explain why he did not inform Ms. Turner of his failures prior to her disciplinary complaint against him, which the committee likewise found not credible because respondent admitted he had a duty to disclose his failures to Ms. Turner. Therefore, respondent clearly, repeatedly, and intentionally decided not to fulfill his duty to disclose his failures during numerous communications with Ms. Turner. His further justification that he would have disclosed his failures only if Ms. Turner specifically asked or complained indicated an adversarial relationship with her instead of a fiduciary one.

Based on these factual findings, the committee determined respondent violated the Rules of Professional Conduct as charged. Specifically, the committee determined respondent violated Rule 1.3 by negligently failing to file an opposition to the motion for summary judgment and appear at the hearing. The committee determined respondent violated Rule 1.4 by knowingly failing to promptly notify Ms. Turner of the granting of the motion for summary judgment. He also violated Rule 1.4 by intentionally failing to promptly disclose to Ms. Turner his failures with respect to the motion for summary judgment. Finally, the committee determined respondent violated Rule 8.4(c) by repeatedly engaging in communications with Ms.

Turner about her case while intentionally withholding critical information from her about his own professional negligence.

The committee then determined respondent intentionally violated duties owed to Ms. Turner as his client. His conduct caused Ms. Turner actual harm, in that she was deprived of the opportunity to confront her alleged tortfeasor. The committee specifically disagreed with respondent's argument that Ms. Turner's settlement with his malpractice insurer has made her whole because no evidence exists to show the settlement amount equates to the amount Ms. Turner could have received had respondent not failed to oppose the motion for summary judgment. Furthermore, the real harm to Ms. Turner of not being able to confront her surgeon was not and could not have been addressed by the settlement. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found a dishonest or selfish motive, substantial experience in the practice of law (admitted 1996), and "his lack of candor during the disciplinary process when he represented to the ODC that he had done his best to be truthful with his client during the handling of her case." In mitigation, the committee found the absence of a prior disciplinary record and remorse. The committee also considered the deaths of respondent's mother-in-law and father at the time of the misconduct but ultimately determined there was no evidence presented as to how those events directly affected his performance of his duties in Ms. Turner's case.

After further considering this court's prior case law addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for sixty days.

Respondent filed an objection to the committee's report and recommendation.



### *Disciplinary Board Recommendation*

After review, the disciplinary board adopted the hearing committee's factual findings, with two exceptions. First, the board determined the record does not support the committee's finding no. 2, in which it concluded that respondent had failed to notify Ms. Turner of the filing of the motion for summary judgment. Instead, the board found that respondent did, in fact, inform Ms. Turner of the filing of the motion prior to the hearing date because she referenced said motion in her October 3, 2018 email to respondent. Second, the board determined the record does not support the committee's finding no. 11, in which it found respondent did not acknowledge his failure to inform Ms. Turner that he did not oppose the motion for summary judgment until July 23, 2019. Instead, the board found that respondent, in fact, acknowledged this failure during his sworn statement, which took place several days earlier on July 15, 2019.

Based on these facts, the board determined respondent violated the Rules of Professional Conduct as charged. Specifically, the board found that respondent violated Rule 1.3 by failing to file an opposition to the motion for summary judgment and failing to appear at the hearing. The board also determined respondent violated Rules 1.4 and 8.4(c) by failing to inform Ms. Turner that the motion for summary judgment was granted because of these failures. The board also noted that, in his pre-argument brief, respondent admitted to violating these three rules.

The board then determined respondent negligently and knowingly violated duties owed to his client. Regarding the harm caused by respondent's misconduct, the board stated,

Respondent's negligence in failing to oppose the motion resulted in the underlying lawsuit being dismissed, which caused worry to his client over the dismissal of the case, caused the loss of his client's cause of action directly against the defendants in the underlying lawsuit, and caused delay in her pursuit of compensation for the damages caused by those defendants, which she then had

to seek from Respondent and his insurer in the legal malpractice lawsuit. However, in the legal malpractice action, the client was still able to pursue from Respondent and his insurer compensation for the same damages caused by the original defendants in the underlying lawsuit, and the client ultimately received a settlement in the malpractice lawsuit.

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The only harm caused by Respondent's knowing prolonged delay in revealing to his client his negligence in failing to oppose the motion for summary judgment was a delay in his client's ability to make a fully informed decision as to how to proceed in light of the dismissal of her underlying case by summary judgment.

The board agreed with the committee that the baseline sanction is suspension.

In aggravation, the board found a dishonest or selfish motive, multiple offenses, submission of a false statement during the disciplinary process (respondent stated that he had "done [his] best to be truthful with Ms. Turner during the handling of her case"), and substantial experience in the practice of law. In mitigation, the board found the absence of a prior disciplinary record, personal or emotional problems (only as to respondent's failures to oppose the motion for summary judgment and appear at the hearing), and remorse.

After further considering this court's prior case law addressing similar misconduct, the board recommended respondent be suspended from the practice of law for sixty days, fully deferred, subject to the condition that any misconduct by respondent during the deferral period may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate.

Neither respondent nor the ODC filed an objection to the disciplinary board's 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. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The record of this matter supports a finding that respondent neglected Ms. Turner's legal matter, which resulted in the dismissal of her lawsuit. He then failed to promptly communicate to Ms. Turner that his malpractice caused the dismissal. Based on these facts, respondent has violated the Rules of Professional Conduct as alleged in the formal charges.

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 negligently and knowingly violated duties owed to his client, causing her actual harm. We agree with the hearing committee and the disciplinary

board that the baseline sanction is suspension. We also agree with the board with respect to the applicable aggravating and mitigating factors.

Turning to the issue of an appropriate sanction, we find that a short period of suspension, fully deferred, as recommended by the board, is appropriate for respondent's misconduct. Respondent's lack of diligence with respect to the motion for summary judgment was negligent and occurred at a time of personal hardships in his life. Had respondent notified Ms. Turner of his negligence and referred her to his malpractice insurer immediately, then this matter would arguably not be before us. Instead, for approximately nine months, respondent knowingly kept Ms. Turner in the dark about his failures to oppose the motion for summary judgment and to attend the hearing. We find this ongoing deception, even while facing a disciplinary complaint by Ms. Turner, is the heartland of respondent's misconduct and warrants discipline.

We considered similar misconduct in two recent cases, *In re: Claiborne*, 22-0492 (La. 10/21/22), \_\_\_ So. 3d \_\_\_, and *In re: Charles*, 21-1853 (La. 5/13/22), 340 So. 3d 901. In *Claiborne*, an attorney 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. For this negligent and knowing misconduct, we suspended the attorney from the practice of law for six months, with all but thirty days deferred. In *Charles*, an attorney failed to file her state income tax return, which resulted in her disqualification as a judicial candidate, neglected a client's legal matter, and then misled the client regarding the status of the client's case. For this negligent and knowing misconduct, we suspended the attorney from the practice of law for nine months, with six months deferred, followed by a two-year period of probation with conditions. Arguably, respondent's misconduct is not as egregious

as the misconduct in either *Claiborne* or *Charles*. Unlike in *Claiborne*, respondent eventually informed his client of his malpractice and advised her to seek independent counsel to pursue a claim against him, which she was able to do. Unlike in *Charles*, respondent did not engage in the additional misconduct of failing to file his state income tax return. Under these circumstances, we conclude a fully deferred suspension, as recommended by the board, is reasonable in this matter.

Accordingly, we will adopt the board's recommendation and suspend respondent from the practice of law for sixty days, fully deferred, subject to the condition that any misconduct by respondent during the deferral period may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate.

#### **DECREE**

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, it is ordered that Carl Joseph Rachal, Louisiana Bar Roll number 24731, be and he hereby is suspended from the practice of law for a period of sixty days. This suspension shall be deferred in its entirety, with the condition that any misconduct during the deferral period may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. 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.