Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **11th day of December, 2020** are as follows:

PER CURIAM:

2020-B-00916 *IN RE: JOSLYN RENEE ALEX*

DISCIPLINE IMPOSED. SEE PER CURIAM.

Retired Judge James H. Boddie, Jr., heard this case as Justice pro tempore, sitting in the vacant seat for District 4 of the Supreme Court. He is now appearing as an ad hoc for Justice Jay B. McCallum.

Crichton, J., concurs in part, dissents in part and assigns reasons.

12/11/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-0916

IN RE: JOSLYN RENEE ALEX

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM[*]

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Joslyn Renee Alex, 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 1988.

In 2003, we suspended respondent from the practice of law for thirteen months, fully deferred, subject to a two-year period of supervised probation with conditions. *In re: Alex*, 02-1289 (La. 1/14/03), 835 So. 2d 455 ("*Alex I*"). The misconduct at issue involved respondent's failure to timely pay third-party medical providers, as well as commingling and conversion of client and third-party funds, arising out of the gross mismanagement of her law practice's financial affairs.

In 2016, we suspended respondent from the practice of law for one year and one day, with all but thirty days deferred, followed by a two-year period of supervised probation with conditions. *In re: Alex*, 16-1020 (La. 11/15/16), 205 So.

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3d 895 ("*Alex II*"). The misconduct at issue again involved respondent's gross mismanagement of her client trust account.

Against this backdrop, we now turn to a consideration of the misconduct at issue in the present proceeding.

UNDERLYING FACTS

In May 2011, Kyle Jordan and Riley Mouton were driver and passenger, respectively, in a vehicle involved in an automobile accident.[1] Because respondent had previously represented Mr. Jordan, he contacted her to represent both him and Mr. Mouton as plaintiffs in a personal injury case.

Ultimately, respondent only took on the representation of Mr. Mouton. In May 2012, respondent filed a lawsuit on Mr. Mouton's behalf against Mr. Jordan and other parties, including EAN Holdings, LLC (commonly known as Enterprise Rent-A-Car). Attorney Donna Green, who is licensed to practice law in both Louisiana and Mississippi, filed an answer to the lawsuit on behalf of Mr. Jordan and EAN.

In addition to filing an answer on Mr. Jordan's behalf, Ms. Green also filed exceptions and propounded discovery on Mr. Jordan's behalf. Respondent was sent copies of all pleadings filed by Ms. Green on Mr. Jordan's behalf as required by the Louisiana Code of Civil Procedure. On all such pleadings, Ms. Green was unambiguously identified as Mr. Jordan's counsel.

Furthermore, Ms. Green took Mr. Mouton's deposition in respondent's presence at respondent's office on October 5, 2015. During the deposition, Ms. Green identified herself as counsel for defendants, and the deposition transcript identifies Ms. Green as Mr. Jordan's counsel. Respondent also communicated with

[1] The accident occurred when another vehicle tried to enter Mr. Jordan's lane and sideswiped his vehicle. When he swerved away from the other vehicle, his vehicle flipped several times. The other vehicle did not stop.

Ms. Green about a possible settlement of the case and e-mailed Ms. Green on October 26, 2015 asking for available dates to depose Mr. Jordan.

In March 2016, based on Mr. Mouton's deposition testimony, Ms. Green filed a motion for summary judgment seeking to dismiss Mr. Mouton's claims against Mr. Jordan and EAN. Pursuant to the Louisiana Code of Civil Procedure, Ms. Green mailed to respondent a copy of the motion and accompanying memorandum, both of which identified her as Mr. Jordan's counsel. Nevertheless, respondent communicated with Mr. Jordan and had him sign an affidavit on April 22, 2016 without Ms. Green's knowledge or consent. Because the affidavit provided information against Mr. Jordan's interests, respondent included it as support for her opposition to the motion for summary judgment.

When Ms. Green received a copy of respondent's opposition, she confronted respondent about communicating with Mr. Jordan without her knowledge or consent. Respondent explained that she did not realize Mr. Jordan was represented and indicated she would withdraw the opposition and affidavit. On May 26, 2016, respondent filed a motion to strike her response to the motion for summary judgment and a motion to withdraw as Mr. Mouton's counsel.

On May 27, 2016, Ms. Green submitted a disciplinary complaint against respondent. In her complaint, Ms. Green advised the ODC that (1) respondent inappropriately communicated with and obtained an affidavit from Mr. Jordan while he was represented by counsel, and (2) Mr. Jordan consulted with respondent about representation related to the subject automobile accident prior to respondent filing a lawsuit against him on Mr. Mouton's behalf.

Thereafter, Ms. Green had the hearing on the motion for summary judgment reset to June 27, 2016. On that date, she drove from her office in Hattiesburg, Mississippi to the courthouse in Crowley, Louisiana for the hearing. Respondent did not appear at the hearing, and all pending motions were continued to August 29,

2016. At that time, respondent was allowed to withdraw. On October 31, 2016, the judge granted the motion for summary judgment.

DISCIPLINARY PROCEEDINGS

In June 2017, the ODC filed formal charges against respondent, alleging that her conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.18 (duties to prospective clients) and 4.2 (communication with persons represented by counsel). Respondent answered the formal charges, first arguing that an attorney-client relationship was never established between Ms. Green and Mr. Jordan. Respondent then denied ever being aware Mr. Jordan was represented by Ms. Green because he answered no when she asked him if he had an attorney before getting him to sign the affidavit. When she learned he did have an attorney, respondent immediately withdrew as Mr. Mouton's counsel so as not to prejudice the litigation with this error. In light of respondent's answer to the formal charges, 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 factual findings consistent with the underlying facts set forth above. Based on these facts, the committee determined respondent violated Rule 4.2 of the Rules of Professional Conduct but did not violate Rule 1.18.

Regarding Rule 4.2, the committee found respondent admitted to this violation. Respondent also admitted that her justification for communicating with Mr. Jordan when he was represented by counsel has no basis in law or fact. In addition to these admissions, the committee found that the un-contradicted evidence proves respondent communicated with Mr. Jordan when she knew he was represented by Ms. Green and without Ms. Green's consent.

Regarding Rule 1.18, the committee found the evidence to be conflicting, but after carefully considering all evidence, the committee found the ODC failed to prove by clear and convincing evidence that respondent violated her duty to Mr. Jordan as a prospective client. According to Mr. Jordan, he told respondent the details of the accident, and she never told him that she did not represent him. However, according to respondent and Mr. Mouton, respondent told Mr. Jordan that she could not represent him. They also agreed that Mr. Mouton never told respondent the details of the accident.

The committee then determined that respondent knowingly and intentionally violated duties owed to Ms. Green, the legal system, and the legal profession. According to the committee, respondent knew Ms. Green represented Mr. Jordan at least by late 2015 when she asked Ms. Green for available dates to take Mr. Jordan's deposition. Because Mr. Jordan was represented, the only ethical way to elicit sworn testimony from him was by deposing him. Instead, she contacted Mr. Jordan directly to have him sign an affidavit, in clear violation of Rule 4.2. Respondent's conduct caused actual harm to Mr. Jordan and EAN by delaying the granting of the motion for summary judgment, requiring Ms. Green to appear an additional time in court, and causing her clients to incur additional defense costs. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension. In aggravation, the committee noted only respondent's prior disciplinary record. In mitigation, the committee found a timely good faith effort to rectify the consequences of the misconduct and remorse.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year, with six months deferred, followed by six months of probation. The committee further recommended that, during the probationary

period, respondent reimburse the entity that paid Ms. Green's fees incurred after May 31, 2016.

Respondent filed an objection to the committee's report, arguing that the recommended sanction was too harsh.

Disciplinary Board Recommendation

After review, the disciplinary board determined the hearing committee's factual findings are not manifestly erroneous and adopted same. Additionally, the board found the following:

1. Mr. Jordan's testimony that respondent represented him in a social security matter when the accident occurred but that respondent transferred the social security matter to attorney Jo Ann Nixon so respondent could represent him in connection with the accident is not credible; respondent's testimony that she did not represent Mr. Jordan in connection with the social security matter at any time is credible. Accordingly, Mr. Jordan was not respondent's client at the time she filed Mr. Mouton's lawsuit against him;
2. Respondent represented Mr. Jordan in a past criminal matter, but the representation had ended prior to her filing Mr. Mouton's lawsuit. The ODC did not charge respondent with violating a duty owed to Mr. Jordan as a former client, only as a prospective client;
3. After the accident, Mr. Jordan approached respondent in the courthouse, handed her a copy of the police report, and asked her to represent him as a plaintiff in connection with the accident. Respondent told him she would review the report and determine whether she would represent him. However, when she reviewed the report, she determined Mr. Jordan was liable because he overcorrected. Respondent, therefore, decided she would represent Mr. Mouton as the plaintiff in a lawsuit against Mr. Jordan;

4. Mr. Jordan, Mr. Mouton, and respondent never formally met to discuss how the accident occurred. Instead, they briefly convened in respondent's office lobby, at which time respondent told Mr. Jordan she could not represent him, and then took Mr. Mouton back to her office to discuss the accident;
5. Respondent did not discuss the details of the accident with Mr. Jordan before filing the lawsuit and did not obtain any of the information contained in the affidavit from Mr. Jordan. Moreover, when she called Mr. Jordan to ask him to sign the affidavit, she only read it to him, and he agreed the information contained therein was accurate; and
6. Respondent did not inform Mr. Jordan that the affidavit contained information against his interest.

Based on these facts, the board agreed with the committee that respondent violated Rule 4.2 of the Rules of Professional Conduct but did not violate Rule 1.18.

The board then determined respondent knowingly and intentionally violated duties owed to Ms. Green, the legal system, and the legal profession. Her conduct caused significant actual harm. The board agreed with the committee that the baseline sanction is suspension. The board also agreed with the aggravating and mitigating factors found by the committee. In additional aggravation, the board found respondent has substantial experience in the practice of law (admitted 1988).

After further considering this court's prior jurisprudence addressing similar misconduct and finding that no portion of the suspension should be deferred in light of the aggravating factors present and the seriousness of the misconduct, the board recommended respondent be suspended from the practice of law for one year. Additionally, the board recommended respondent be required to reimburse the entity responsible for paying the defense costs incurred after May 31, 2016. One board member dissented and would recommend imposing the sanction recommended by the committee.

Respondent filed an objection to the disciplinary board's recommendation, asserting that the recommended sanction is too severe. Pursuant to Supreme Court Rule XIX, § 11(G)(1)(b), the case was set on our docket. Thereafter, the parties agreed to waive oral argument and submit the matter on briefs; however, respondent ultimately did not file a brief. Accordingly, we now consider the case based upon the record and the brief filed by the ODC.

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.

In this matter, respondent communicated with and obtained an affidavit regarding the subject of ongoing litigation from a represented party without the knowledge or consent of the party's counsel. This is clearly a violation of Rule 4.2 of the Rules of Professional Conduct as charged. However, we agree with the hearing committee and the disciplinary board that the ODC did not prove a violation of Rule 1.18 as Mr. Jordan never communicated the details of the accident to respondent; instead, she used the police report and Mr. Mouton's statements and deposition to draft the affidavit in question.

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 duties owed to the opposing party, the legal system, and the legal profession. Her conduct caused actual harm and had the potential to cause even more significant harm. The baseline sanction is suspension. The record supports the aggravating and mitigating factors found by the board.

Turning to the issue of an appropriate sanction, we note that prior cases addressing a Rule 4.2 violation also addressed other misconduct. For example, in *In re: DeBose-Parent*, 03-2422 (La. 2/20/04), 869 So. 2d 80, an attorney communicated with a person known to be represented by counsel, failed to timely pay a third-party medical provider in a client's personal injury case, and failed to properly maintain her trust account; for this misconduct, we suspended the attorney from the practice of law for six months, with all but two months of the suspension deferred, followed by one year of probation with conditions. In *In re: Williams-Bensaadat*, 15-1535 (La. 11/6/15), 181 So. 3d 684, an attorney communicated with a party known to be represented by counsel, mishandled a fee dispute, and filed a frivolous lawsuit against her former client to recover her attorney's fees; for this misconduct, we suspended the attorney from the practice of law for one year, with six months deferred, followed by two years of supervised probation with conditions. In *In re: Juakali*, 97-1460 (La. 9/5/97), 699 So. 2d 361, an attorney improperly charged curator fees to a party without court approval, directly contacted the party in an

attempt to collect the curator's fees after the party retained counsel, delayed resolution of the case, and failed to cooperate with the ODC in its investigation; for this misconduct, we suspended the attorney from the practice of law for one year, with six months deferred, followed by two years of probation with conditions. Finally, in *In re: Nguyen*, 17-0214 (La. 4/13/17), 215 So. 3d 668, an attorney, while admitted *pro hac vice*, inappropriately communicated with a criminal defendant without the permission of the defendant's counsel and failed to cooperate with the ODC in its investigation; we held that the attorney was guilty of conduct warranting a one-year suspension from the practice of law if he were a member of the Louisiana bar and enjoined the attorney for a period of one year from seeking full admission to the Louisiana bar or seeking admission to practice in Louisiana on any temporary or limited basis.

Although the instant matter does not involve any misconduct other than the Rule 4.2 violation, respondent's conduct was extremely reckless, if not intentional, and caused actual harm. Her actions in obtaining an affidavit from Mr. Jordan when she could have just as easily obtained the same affidavit from her client, or more properly by deposing Mr. Jordan, borders on gross incompetence. This misconduct coupled with the aggravating factors present justify the one-year suspension recommended by the board.

Accordingly, we will adopt the board's recommendation and suspend respondent from the practice of law for one year. We will further order respondent to reimburse the entity responsible for paying the defense costs incurred after May 31, 2016.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record and the brief filed by the ODC, it

is ordered that Joslyn Renee Alex, Louisiana Bar Roll number 18760, be and she hereby is suspended from the practice of law for one year. It is further ordered that respondent shall reimburse the entity responsible for paying the defense costs incurred after May 31, 2016. 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.

12/11/20

SUPREME COURT OF LOUISIANA

No. 2020-B-00916

IN RE: JOSLYN RENEE ALEX

Attorney Disciplinary Proceeding

CRICHTON, J., concurs in part and dissents in part and assigns reasons:

I agree with the majority's finding that respondent has violated Rule 4.2 of the Rules of Professional Conduct, in that she communicated with and obtained an affidavit concerning the subject of ongoing litigation from a represented party without the knowledge or consent of the party's counsel. However, I disagree with the sanction imposed by the Court, as I find it too lenient given the circumstances of respondent's misconduct. Specifically, respondent has twice been previously suspended by this Court for mismanagement of client funds and her law practice's financial affairs, and as a result, is no stranger to our lawyer disciplinary process. *See In re: Alex*, 02-1289 (La. 1/14/03), 835 So.2d 455 and *In re: Alex*, 16-1020 (La. 11/15/16), 205 So.3d 895. Moreover, notwithstanding her familiarity with said process, respondent has chosen now to all but abandon any regard for her license to practice law, noticeably failing to file a brief on her behalf in this Court, despite requesting an extension of time to do so. In my view, her history of careless office practices, present violation of Rule 4.2, and such blatant unconcern for the disciplinary process clearly demonstrate her indifference to the consequences of her actions. As I have stated before, I find such apathy troubling. *See, e.g.*, *In re Gaubert*, 18-1980 (La. 2/11/19), 263 So.3d 408 (Crichton, J. additionally concurring, noting the troublesome nature of any attorney refusing to participate meaningfully in disciplinary proceedings); *In re: Reid*, 18-0849 (La. 12/5/18), —— So.3d ——, 2018 WL 6382109 (Crichton, J. dissenting, noting "lack of cooperation

with ODC, the Hearing Committee, the Disciplinary Board, and this Court demonstrates [a] stunning indifference to this noble profession"); and *In re: Klaila*, 18-0093 (La. 3/23/18), 238 So.3d 949 (Crichton, J., additionally concurring, emphasizing respondent's failure to cooperate warranted the suspension imposed). For these reasons, I would impose a suspension of one year and one day, with no time deferred, thus requiring that respondent must apply for readmission to the bar pursuant to La. Sup. Ct. Rule XIX, § 24 (A), (B).