

Supreme Court of Louisiana

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NEWS RELEASE #023

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 13th day of May, 2022 are as follows:

PER CURIAM:

2021-B-01853

IN RE: MICHELLE ANDRICA CHARLES

SUSPENSION IMPOSED. SEE PER CURIAM.

SUPREME COURT OF LOUISIANA

NO. 2021-B-1853

IN RE: MICHELLE ANDRICA CHARLES

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

Count I

The following facts are not in dispute, having been stipulated to by the parties.

On July 20, 2018, respondent executed and filed a notice of candidacy to be a candidate for Judge of Division B of the Jefferson Parish Juvenile Court. By executing the notice of candidacy, respondent certified “that for each of the previous five tax years, I have filed my federal and state income tax returns, have filed for an extension of time for filing either my federal or state income tax return or both, or was not required to file either a federal or state income tax return or both.” The Louisiana Department of Revenue (“LDR”) could not confirm that respondent filed a state income tax return for 2015.

Thereafter, Stephen Michael Petit, Jr. filed in the 24th Judicial District Court for the Parish of Jefferson a petition objecting to respondent’s candidacy. During a July 30, 2018 hearing, respondent acknowledge that the signature on the notice of candidacy was hers and that her signature had been notarized. Respondent testified that she “had no knowledge that there was no 2015 state tax return.” When asked if

she had proof of filing her 2015 state tax return, respondent indicated she did not “at this time.” She also indicated she “never received any notification that [she] hadn’t filed.” Later, respondent indicated she had “no reason to think that a state income tax wasn’t completed and filed.” An attorney with the policy services division of the LDR confirmed that there was no 2015 state tax return under the names (or social security number) provided by respondent. Based on this evidence, respondent was disqualified as a candidate for public office, with the judge stating “there is no evidence that her 2015 state tax return was ever received by the [LDR].”

Count II

On September 13, 2018, Herbert Jones wrote a \$750 check to respondent for “legal fees.” According to Mr. Jones, he hired respondent “to file a contempt rule against my ex-wife for failing to honor a court order of visitation and mishandling of child support.” Mr. Jones also claimed that respondent’s fee included the cost of various meals for respondent and her assistant, which Mr. Jones quantified at approximately \$250 to \$300. According to respondent, the \$750 fee she received was for her to help Mr. Jones look into renegotiating his previous community property settlement with his ex-wife and to assist Mr. Jones’ friend, Ocie Sherrod, regarding a felony charge pending in Jefferson Parish.

Respondent did not file any pleadings in Mr. Jones’ divorce case and did not produce any evidence regarding the representation of Mr. Sherrod. However, she indicated she drove to the courthouse in St. Tammany Parish to examine Mr. Jones’ divorce case record and applied for St. Tammany Parish online records’ access to complete her review. Although there is no written evidence of respondent’s research efforts regarding renegotiation of Mr. Jones’ community property settlement, respondent indicated she met with Mr. Jones to share her findings.

On September 24, 2018, respondent appeared at a hearing with Mr. Jones in a matter regarding his non-payment of child support. According to respondent, she agreed to accompany Mr. Jones to the hearing as a “favor” and the representation was not part of the \$750 fee. At the conclusion of the hearing, the hearing officer made a recommendation unfavorable to Mr. Jones. Respondent advised the hearing officer and Mr. Jones that she would file an objection to the recommendation. After the hearing, she again confirmed to Mr. Jones that she would file an objection. According to respondent, her assistant prepared the objection, and she signed it and then directed her assistant to file it. Nevertheless, respondent could produce no documentary evidence of the objection. Respondent spoke with Mr. Jones several times following the hearing and informed him the objection had been filed. However, respondent did not follow up to verify the objection had been filed, and the court record indicated no objection was filed.

DISCIPLINARY PROCEEDINGS

In June 2019, the ODC filed formal charges against respondent. The formal charges alleged that, with respect to Count I, respondent violated Rules 3.3(a)(1) (candor toward the tribunal), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct. With respect to Count II, the formal charges alleged that respondent violated Rules 1.2(a)(c) (scope of the representation), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(b) (fee arrangements), 1.16(b)(d) (declining or terminating representation), 8.4(a), and 8.4(c) of the Rules of Professional Conduct.

Respondent filed an answer to the formal charges, and the matter proceeded to a formal hearing on the merits. Just prior to the hearing, respondent filed a

stipulation of facts and rule violations with respect to Count I, in which she admitted to the facts set forth above and to violating Rules 3.3(a)(1), 8.4(a), and 8.4(c) of the Rules of Professional Conduct. She did not file any stipulations regarding Count II.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the committee accepted respondent's stipulation of facts and rule violations with respect to Count I. Based on those stipulations, the committee made factual findings consistent with the underlying facts set forth above and determined respondent violated the Rules of Professional Conduct as alleged. The committee then determined respondent negligently and knowingly violated duties owed to the public, the legal system, and the legal profession. Her conduct caused actual harm to the public's trust in individuals seeking an elected office, to the legal system, and to the legal profession. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction with respect to Count I is a public reprimand.

Regarding Count II, the committee made factual findings consistent with the underlying facts set forth above. Based on those facts, the committee determined respondent violated Rules 1.3, 1.4, and 8.4(a) of the Rules of Professional Conduct. The committee specifically found that respondent agreed to file an objection to the hearing officer's recommendation but then failed to do so. She told Mr. Jones the objection had been filed without verifying with the clerk of court's office that it had actually been submitted. The committee determined the ODC did not present clear and convincing evidence to support the remaining alleged rule violations. The committee then determined respondent violated duties owed to her client. She acted grossly negligent and caused actual harm to her client. The committee again

determined that the baseline sanction for respondent's misconduct in Count II is a public reprimand.

In aggravation, the committee found multiple offenses and substantial experience in the practice of law (admitted 2007). In mitigation, the committee found the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for nine months, fully deferred, subject to one year of supervised probation with the condition that she complete the Louisiana State Bar Association's Ethics School.

The ODC filed an objection to the committee's report, arguing the recommended sanction was unduly lenient.

Disciplinary Board Recommendation

After review, the disciplinary board determined the hearing committee's factual findings are not manifestly erroneous and adopted same. The board also determined that the committee's conclusions regarding rule violations are correct with one exception. The board determined respondent additionally violated Rule 8.4(c) of the Rules of Professional Conduct with respect to Count II when she misrepresented to Mr. Jones that she had filed the objection to the hearing officer's recommendation.

The board agreed with the committee's determinations regarding duties violated, respondent's mental state, and the harm caused with respect to Count I. Regarding Count II, the board determined respondent acted grossly negligent, if not knowingly, in violating duties owed to her client and causing her client actual harm.

After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

The board agreed with the committee's findings regarding aggravating factors. Regarding mitigating factors, however, the board found only the absence of a prior disciplinary record and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings. Unlike the committee, the board could not find that respondent acted without a selfish motive when she persisted in misrepresenting to the trial court that her Louisiana tax return had been filed in order to preserve her candidacy. Nevertheless, the board did not appear to consider a dishonest or selfish motive in aggravation.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for nine months, with six months deferred, followed by two years of supervised probation with the following conditions:

1. Within one year of the court's imposition of discipline, respondent shall take at least eight hours of her mandatory continuing legal education requirements in the area of law office management, as approved by the Committee on Mandatory Continuing Legal Education;
2. Within one year of the court's imposition of discipline, respondent shall successfully complete the Louisiana State Bar Association's Ethics School; and
3. Any failure of respondent to comply with the above conditions, or any misconduct during the deferral or probationary periods will be grounds for making the deferred suspension executory, or for imposing additional discipline, as appropriate.

The ODC filed an objection to the board's recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

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, the record supports a finding that respondent failed to file her state income tax return for 2015, which resulted in her disqualification as a judicial candidate. She also neglected a legal matter, failed to communicate with a client, and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. This misconduct amounts to a violation of Rules 1.3, 1.4, 3.3(a)(1), 8.4(a), and 8.4(c) of the Rules of Professional Conduct, as found by the disciplinary board.

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 violated duties owed to her client, the public, the legal system, and the legal profession. She acted negligently and knowingly, causing actual harm. We agree with the board that the baseline sanction is suspension.

Case law suggests that the board's recommended sanction is in the range of appropriate sanctions. *In re: Richmond*, 08-0742 (La. 12/2/08), 996 So. 2d 282, and *In re: King*, 19-0356 (La. 5/20/19), 271 So. 3d 1253, are instructive with respect to Count I. In *Richmond*, an attorney filed a notice of candidacy for a seat on the New Orleans City Council that contained a false statement regarding his domicile and then made similar false statements in pleadings and testimony related to a lawsuit challenging his candidacy. The court found that the attorney knowingly made false statements in the context of qualifying for public office and suspended him from the practice of law for six months, with all but sixty days deferred, followed by six months of unsupervised probation. In *King*, an attorney made false representations about her domicile when she qualified to run for judicial office. The attorney ultimately pleaded guilty to a misdemeanor violation related to this conduct. For this knowing and intentional misconduct, the court suspended the attorney from the practice of law for one year.

Regarding Count II, *In re: Hickman*, 20-0292 (La. 6/3/20), 296 So. 3d 1036, *In re: Swafford*, 17-2154 (La. 3/23/18), 238 So. 3d 957, and *In re: Dirks*, 17-0067 (La. 6/29/17), 224 So. 3d 346, provide guidance. In *Hickman*, an attorney with a prior disciplinary record neglected two legal matters, failed to communicate with two clients, and misrepresented the status of a case to one client. The court determined the attorney acted negligently and knowingly and suspended him from the practice of law for one year and one day, with all but three months deferred, followed by one year of probation. In *Swafford*, an attorney neglected a succession

matter, failed to respond to the client's requests for information, and failed to timely inform the client that he would not complete the representation. For this knowing misconduct, the court suspended the attorney from the practice of law for six months, with three months deferred, followed by one year of probation with conditions. Finally, in *Dirks*, an attorney failed to properly communicate with his client regarding the status of her case and provided false information to the client and to the ODC. For this knowing misconduct, the court suspended the attorney from the practice of law for sixty days.

Based on the above jurisprudence and considering the record, we will adopt the board's recommendation and suspend respondent from the practice of law for nine months, with six months deferred, followed by two years of supervised probation with the conditions recommended by the board.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Michelle Andrica Charles, Louisiana Bar Roll number 30872, be and she hereby is suspended from the practice of law for a period of nine months. Six months of this suspension shall be deferred, followed by a two-year period of supervised probation, subject to the conditions set forth by the disciplinary board. The probationary period shall commence from the date respondent, the ODC, and the probation monitor execute a formal probation plan. Any failure of respondent to comply the conditions of probation, or any misconduct during the deferral or probationary periods, may be grounds for making the deferred portion of the 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.