Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #053

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of December, 2022** are as follows:

PER CURIAM:

2022-B-00954 *IN RE: RICHARD L. ROOT*

DISCIPLINE IMPOSED. SEE PER CURIAM.

Weimer, C.J., dissents and assigns reasons.
Hughes, J., dissents for the reasons assigned by Weimer, C.J.
Griffin, J., dissents for the reasons assigned by Weimer, C.J.

SUPREME COURT OF LOUISIANA

NO. 2022-B-0954

IN RE: RICHARD L. ROOT

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Richard L. Root, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

Respondent is employed as an associate in the Mass Tort department of the New Orleans law firm of Morris Bart, LLC (the "firm"). In this capacity, respondent was assigned to represent Michael Smith, a client of the firm, in a claim for damages allegedly caused by a defective cardiac defibrillator device.

After reviewing Mr. Smith's file, respondent determined that the manufacturer of the medical device in question could be sued in Illinois. Respondent is not licensed to practice law in Illinois, but an associate in the firm's Automobile department, Przemek Lubecki, is admitted in both Louisiana and Illinois. On December 17, 2018, respondent sent an email to Mr. Lubecki asking for his Illinois bar number:

> Hey man, I was going to ask you today but I saw you had depos and did not catch up after lunch. I'm about to leave [for] Alexandria … but I forgot to follow up and ask about your Illinois ARDC # so we can eventually get the USDC there in Chicago. I'll fill out the forms and let you know what is going on with the process.

Respondent contends he and Mr. Lubecki had previously had a brief conversation regarding the defibrillator case and that Mr. Lubecki was "fine" with the use of his "credentials" to file suit in Illinois. Moreover, respondent contends that it is a common and accepted practice at the firm to ask a colleague who is licensed in another state for permission to use his bar credentials to file a lawsuit in that state on behalf of one of the firm's clients. Mr. Lubecki suggests he was unaware of any such practice at the firm and specifically denies he and respondent had any discussion regarding any potential litigation in Illinois. Nevertheless, upon receiving respondent's email, Mr. Lubecki did not consider the request as out of the ordinary, so he immediately responded and provided his Illinois bar number:

> My IL ARDC # 6286748. I'll have to check if I'm admitted into fed court there, but I don't think I am.

Respondent and Mr. Lubecki did not speak about this matter again in the weeks that followed.

On January 7, 2019, respondent prepared and filed a Petition for Damages in the matter of *Michael Smith v. Abbott Laboratories and St. Jude Medical, Inc.*, No. 2019-L-14, Circuit Court of the Nineteenth Judicial District, Lake County, Illinois. Respondent electronically signed the Petition as follows:

> Respectfully submitted,
>
> /s/ Przemek Lubecki
> Przemek Lubecki ARDC # 6286748
> Morris Bart, LLC
> 601 Poydras Street, 24th Floor
> New Orleans, LA 70130
> Phone: (504) 526-1135
> Fax: (504) 599-3392
> rroot@morrisbart.com

The telephone number, fax number, and email address listed in the signature block are those used by respondent, not by Mr. Lubecki. It is undisputed that Mr. Lubecki had no involvement in the preparation of the Petition.

Contemporaneously with the filing of the Petition, respondent also prepared and filed two additional documents on behalf of the plaintiff: an "Affidavit Pursuant to Supreme Court Rule 222 (B)" and a "Certificate of Attorney – Civil Division." The Affidavit represented, in part, that "counsel for the above-named plaintiff certifies that plaintiff seeks money damages in excess of Fifty Thousand and 00/100 Dollars ($50,000)." The Certificate of Attorney is a representation by counsel that "[t]here has been no previous Voluntary or Involuntary Dismissal of the subject matter of this litigation" and a certification whether injunctive relief is sought. Respondent electronically signed the Affidavit and the Certificate of Attorney in the name of Mr. Lubecki and using Mr. Lubecki's Illinois bar number, but listing his own telephone number and email address. It is likewise undisputed that Mr. Lubecki had no involvement in the preparation of the Affidavit or the Certificate of Attorney.

On January 18, 2019, Mr. Lubecki received in the mail a notice that the defendants had removed the *Smith* case to federal court. He emailed respondent:

> Received a Notice of Removal on this in today's mail. Will stick it in your box.

An hour later, Mr. Lubecki sent respondent a second email:

> Rick, I just looked through this. Why am I listed as the attorney of record on an IL case?????? That I did not know existed???? And that I have never signed any pleadings in????? This was all done without my knowledge or consent and I would like to know what is going on. It looks like the case has been dismissed!!!!!

Approximately twenty minutes after sending the second email to respondent, Mr. Lubecki reported the matter to his supervisor at the firm:

> Today I received a Notice of Removal on a case filed in Illinois and purportedly signed by me, that has since been dismissed sua sponte by the Northern District Fed. Ct. in IL. The state court filing was signed electronically without my knowledge, and includes two affidavits, also signed without my knowledge. The contact information in "my" signature box in the state filing has Rick Root's email address. Furthermore, though the case was dismissed without prejudice, it is now likely prescribed.

> This is a major problem, as Rick has affected legal process by forging my name to a lawsuit (and affidavits) that has since been dismissed and may now be prescribed. I have e-mailed Rick as per below but have not heard back. Please let me know if there is anything I need to do. I've attached the relevant documents.

Later that evening, respondent went to Mr. Lubecki's office to discuss the matter. Mr. Lubecki testified during his sworn statement that the following exchange occurred during this meeting:

> He came to my office, closed the door. I said, "Rick, what the f***?" And he said, "Man, I'm sorry, I know. I should have come to you. I should have talked to you."
>
> At that point, I told him it looks like the case has been dismissed. You've got some serious problems, and I don't want any of this blowing back on me, essentially. He said that he was going to take full responsibility, and [then] he started getting to the nitty-gritty of mass tort stuff.
>
> At that point, I was still trying to figure out from the medical records and from whatever else I had access to electronically, started questioning anything that he told me. And then that was it. That's the only conversation I've had with him since then.

On January 24, 2019, respondent sent an email to Mr. Lubecki "containing the absolute truth" about the Illinois filing:

> Przemek, just a quick word to say how sorry I am that you have to spend one minute worrying about this. When we spoke in your office last week, I told you that there is no way that you are liable for anything negative that might arise from the Illinois filing, and what was clearly a non-meeting of the minds about your role. Again, that was my failure.
>
> It occurs to me that you [and I] do not know each other very well, which is unfortunate. And while I told you last week in your office that I'd be happy to put something in writing to verify your lack of any culpability for any negatives arising from the suit, upon thinking about it, you might still be worried about your liability – or that I will try to pass any blame to you. I feel bad enough that you have to spend even one minute on this matter, and so I want to state this for the record today….

1) The content of the complaint, being the selection of the Illinois venue and the defendant selection, was all my and mass torts' decision. You are not responsible in any way for that analysis. You do not work in mass torts.
2) You were not responsible for the content of the complaint, or the language to defeat federal preemption on the FDA device, or other content of the complaint. You are not responsible in any way for that analysis. You do not work in mass torts.
3) Most importantly, you, Przemek, were not responsible in <u>any</u> way for the timing of the filing of the Michael Smith matter, and were never responsible for monitoring the applicable SOL date or determining the applicable statute of limitation or statute of repose. So while the dismissal without prejudice gives us leave to file again by February (a small tolling granted to try to settle), if it is determined that the initial Michael Smith suit was untimely filed in January, I can unequivocally state that YOU are in no way responsible for that, as you never had the responsibility for monitoring the Michael Smith case, and never were a decision maker in the when-to-file-the-suit question. You are not responsible in any way for that analysis. You do not work in mass torts.

   If there is any liability for the handling of this matter, I will explain the above points and tell anyone who inquires that you are totally blameless.

Mr. Lubecki responded to respondent's email as follows:

> Rick, My role? I had no role. There was no discussion. You forged my signature and filed a lawsuit in my name without my knowledge or consent.

Notwithstanding Mr. Lubecki's concerns about the status of the *Smith* case, the record reveals that the defendants have not raised a prescription defense, nor has the case been dismissed with prejudice. Instead, Mr. Smith's case is part of a bundle of similar products liability cases the defendants are considering for settlement.

DISCIPLINARY PROCEEDINGS

On January 30, 2019, Mr. Lubecki filed a complaint against respondent with the ODC. In February 2021, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 3.3(a)(1) (a lawyer shall not knowingly make

a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 4.1(a) (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Respondent answered the formal charges and largely admitted the factual allegations therein. However, he denied that he violated the Rules of Professional Conduct, asserting that he believed he had Mr. Lubecki's permission to use his name and Illinois bar number to file the lawsuit in question.

In light of respondent's answer, 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, including the following:

1. Respondent was admitted to the practice of law in Louisiana in 1990. He is not licensed to practice law in any other state. In September 2016, respondent began working in the Mass Tort section at Morris Bart, LLC.
2. Przemek Lubecki practiced law in Chicago for approximately seven years after graduating from law school in 2005. He was admitted to the practice of law in Louisiana in 2011. He moved to New Orleans in 2012 and joined Morris Bart, LLC as an attorney in the firm's Automobile section.
3. Although respondent and Mr. Lubecki work for the same law firm, they work in completely separate sections of the firm and on different floors of the same office building. Respondent and Mr. Lubecki are not social acquaintances,

did not work together on any cases at Morris Bart, LLC, and had no interactions beyond routine pleasantries at the office.

4. On December 17, 2018, at 7:12 p.m., respondent sent an email to Mr. Lubecki requesting his Illinois bar number.

5. Two minutes after receiving respondent's email, Mr. Lubecki provided his Illinois bar number and said that he would have to check to see if he was admitted in the Illinois federal courts, but he did not think he was.

6. Respondent testified that approximately four months before he sent the December 17, 2018 email, he and Mr. Lubecki had a short conversation in the hallway of Morris Bart, LLC. Respondent admitted that he did not have a "crystal clear" recollection of the conversation. Nevertheless, respondent testified that he told Mr. Lubecki "we got these cases, the St. Jude cases, and we need to file them in Illinois. … Hopefully, we try to file things in federal court. And would he mind if, you know, we used him to file our lawsuits in federal court which is … common practice in our firm." Respondent further testified about the hallway conversation: "[B]ut the gist was we got these defib cases. We need to get in their venue in Illinois. Can we use your credentials and are you in federal court."

7. Mr. Lubecki testified that he had no prior conversation with respondent concerning the filing of a lawsuit in Illinois using his credentials. When he received respondent's email on December 17, 2018, Mr. Lubecki said he responded within two minutes and "I did not give this more than a glance and half of a second thought. He wanted the ARDC number, I replied back with it, told him I'm not admitted to federal court. Looking at my email now, I'm assuming – I felt that maybe he wanted me to sponsor him and get him admitted to the federal Bar. I don't know, again, what all this information is because that's not what the focus was at the time."

8. Mr. Lubecki testified that he did not view respondent's December 17, 2018 email as asking for his permission to use his credentials to file a lawsuit in Illinois.

9. Even if the prior conversation did occur consistent with respondent's testimony, there is nothing in respondent's version of that conversation and nothing in the email exchanges of December 17, 2018 to indicate that respondent intended to file a petition with an accompanying affidavit and certificate using solely Mr. Lubecki's signature, or that he would do so without providing Mr. Lubecki the opportunity to review and approve these pleadings. To the contrary, in his email, respondent specifically stated that he would keep Mr. Lubecki informed after completion of "the forms."

10. It is uncontested that respondent had no follow up discussions with Mr. Lubecki with regard to the potential litigation to be filed in Illinois.

11. On January 7, 2019, respondent filed the Petition in Illinois. Respondent admits he personally prepared the Petition and electronically filed it in an Illinois state court without any involvement or role in its preparation by Mr. Lubecki. He did not provide Mr. Lubecki with an advance copy of the Petition and Mr. Lubecki did not review it before it was filed with his electronic signature.

12. At the same time the Petition was filed, respondent filed an Affidavit Pursuant to Illinois Supreme Court Rule 222 (B) certifying the amount of damages at issue in the Petition, and affixed Mr. Lubecki's name to the Affidavit. Moreover, respondent inserted Mr. Lubecki's name in the "Prepared by" section of the Affidavit. Respondent admits that he personally prepared the Affidavit and electronically filed it without any involvement or role in its preparation by Mr. Lubecki. He did not provide Mr. Lubecki with an advance

copy of the Affidavit and Mr. Lubecki did not review it before it was filed with his electronic signature.

13. Along with the Petition and Affidavit, respondent filed a Certificate of Attorney answering certain questions about the petition. The filing attorney was represented by respondent to be Mr. Lubecki. Similar to the Petition and Affidavit, respondent admits that he personally prepared the Certificate of Attorney and electronically filed it without any involvement or role in its preparation by Mr. Lubecki. He did not provide Mr. Lubecki with an advance copy of the Certificate and Mr. Lubecki did not review it before it was filed with his electronic signature.

14. Notably, on all three pleadings, respondent affixed only the signature of Mr. Lubecki. Respondent's signature is nowhere within the Petition, the Affidavit, or the Certificate of Attorney, nor do these pleadings contain the signature of any other attorney at Morris Bart, LLC.

15. Respondent and his witnesses all testified that it is common practice in the Mass Tort section of Morris Bart, LLC to use the credentials of their colleagues at the firm who are admitted in other states when it is believed that litigation may have to be filed by the Mass Tort section in those states.

16. All of the examples provided by respondent and his witnesses, however, involve litigation that was filed in U.S. District Court for the Eastern District of Louisiana by Morris Bart, LLC attorneys licensed to practice in that court. The Morris Bart, LLC attorney who possessed a license from another state was asked to be listed as an additional counsel of record in the event that the Eastern District of Louisiana would remand the case back to the originating state court. Moreover, the emails produced by respondent to support the assertion that using foreign state credentials was routine at Morris Bart, LLC all indicate that the attorney with the foreign state credentials was specifically

and clearly asked for permission to be listed on the pleadings as additional counsel of record.

17. Respondent's December 17, 2018 email does not contain a specific and clear request to Mr. Lubecki, and Mr. Lubecki's response cannot be interpreted as blanket permission to sign his name to any pleading that respondent may draft with the intent of filing in Illinois without Mr. Lubecki's prior review and approval.

18. There is no evidence in the record that respondent had any communication with Mr. Lubecki about the Illinois lawsuit after December 17, 2018, until January 18, 2019, when Mr. Lubecki, who was listed as the attorney of record in the suit, received a notice of removal in the mail.

Based upon these findings, the committee determined that respondent violated Rules 3.3(a)(1), 4.1, and 8.4(c) of the Rules of Professional Conduct. By affixing Mr. Lubecki's signature to the Petition, the Affidavit, and the Certificate of Attorney, respondent knowingly and falsely represented to the Illinois court and the other parties in the litigation that Mr. Lubecki had personal knowledge of the allegations in the Petition and had the requisite knowledge and competence to attest to the amount of damages at issue and certify other details as requested by the court. This was dishonest, deceitful, and a misrepresentation of fact as respondent, by his own admission, had never discussed the details of the case with Mr. Lubecki, had never shown Mr. Lubecki any of the documents, and knew that Mr. Lubecki had no knowledge of their contents. However, the committee did not find that respondent engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d), reasoning that his conduct did not affect the underlying litigation.[1]

[1] The public member of the committee did not agree respondent's conduct violated Rules 3.3(a)(1) or 4.1. The committee's determination of rule violations was unanimous as to Rules 8.4(c) and 8.4(d).

The committee further determined that respondent knowingly violated duties owed to the legal system and the profession. Although there was no evidence that respondent's misrepresentations caused actual harm, the potential for harm existed. The legal system is dependent upon pleadings that are accurate and truthful, and affidavits and certificates should be honest representations based upon personal knowledge and individual competence. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee found the following aggravating factors are present: refusal to acknowledge the wrongful nature of the conduct and substantial experience in the practice of law (admitted 1990). In mitigation, the committee found: absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and character or reputation.

Considering these circumstances, and the prior jurisprudence of this court in similar cases, the committee recommended that respondent be suspended from the practice of law for three months, fully deferred, with the condition that any misconduct during the period of deferral should result in the deferred suspension becoming executory. The committee also recommended that respondent be assessed with the costs and expenses of these proceedings.

Both respondent and the ODC filed objections to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board determined that the factual findings of the hearing committee do not appear to be manifestly erroneous and are supported by the record. Based on those facts, the board found that respondent violated the Rules

of Professional Conduct as alleged in the formal charges. Specifically, by misrepresenting that Mr. Lubecki had prepared and filed the Petition, the Affidavit, and the Certificate of Attorney, respondent made a false statement of fact to a tribunal in violation of Rule 3.3(a)(1); made a false statement of fact to the other parties in the litigation in violation of Rule 4.1(a); engaged in unprofessional conduct in violation of Rule 8.4(c); and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).[2]

The board determined that respondent knowingly violated duties owed to the legal system and the profession. His misrepresentations created the potential for harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

The board found the following aggravating factors are present: refusal to acknowledge the wrongful nature of the conduct and substantial experience in the practice of law. In mitigation, the board found: absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and character or reputation.

Turning to the issue of an appropriate sanction, the board noted that in prior cases involving false representations made by an attorney, the court has imposed a period of suspension, with all or part of the suspension deferred. While these cases are not precisely on point, the board felt they were instructive:

In *In re: Richmond*, 08-0742 (La. 12/2/08), 996 So. 2d 282, Mr. Richmond was suspended for six months, with all but sixty days deferred, for knowingly

[2] The board rejected the committee's conclusion that respondent did not violate Rule 8.4(d) because his conduct did not affect the underlying litigation. Respondent's misconduct was clearly and directly related to a legal proceeding, and though the conduct may not have impacted the litigation, misrepresentations to a court such as the ones made by respondent are prejudicial to the administration of justice and implicate Rule 8.4(d).

making a false statement of domicile on a notice of candidacy and making similarly false statements regarding his domicile in pleadings and oral testimony in the election contest filed against him. Mr. Richmond had no prior disciplinary record, was relatively inexperienced in the practice of law, was fully cooperative, and maintained a good reputation in the community. Mr. Richmond also held a position of public trust in that he was serving in the Louisiana Legislature at the time of his misconduct.

In *In re: Landry*, 05-1871 (La. 7/6/06), 934 So. 2d 694, Mr. Landry was suspended for six months, with all but thirty days deferred, for notarizing and filing into a succession proceeding two affidavits that he knew or should have known contained false information. The court noted that Mr. Landry's actions caused harm to the rightful heirs and caused harm to the court system, "which must be able to rely on the truthfulness of representations made by counsel." Mr. Landry had no prior disciplinary record, was inexperienced in the practice of law, was fully cooperative, maintained a good reputation in the community, and demonstrated remorse.

In *In re: Wahlder*, 98-2742 (La. 1/15/99), 728 So. 2d 837, Mr. Wahlder permitted his client to sign his wife's name to settlement documents, then witnessed the wife's signature as if she had appeared in person. Mr. Wahlder also knowingly attempted to prevent the wife and the court from discovering his actions by refusing to produce the documents when requested. Based on the significant mitigating factors present, the court imposed a fully deferred six-month suspension with probation.

The board concluded:

> Mr. Root is charged with a single instance of false representation to the court and the other parties in the Illinois litigation. His conduct did not cause harm to a particular client, rather he caused potential harm to the legal system and the profession. Given the above case law, and considering the totality of the circumstances of this matter including his lack of a disciplinary history, the

> Board concludes that a six-month suspension, with five months deferred is the appropriate sanction for Respondent's misconduct.

Accordingly, the board recommended that respondent be suspended from the practice of law for six months, with five months deferred. Any misconduct during the period of deferral may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. The board also recommended that respondent be assessed with the costs and expenses of these proceedings.

Respondent 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.

It is undisputed that respondent filed a lawsuit on behalf of his client using Mr. Lubecki's Illinois bar number and electronic signature. It is likewise undisputed that Mr. Lubecki was not involved in the preparation of the pleadings, nor did he review the pleadings before they were filed. Rather, the key question of fact

presented to the hearing committee is whether respondent obtained Mr. Lubecki's permission to use his name and Illinois bar number to file the suit in question.

Respondent testified that several months before he made the Illinois filing, he had a short "hallway" conversation with Mr. Lubecki about using his credentials. The hearing committee apparently did not believe respondent's testimony and instead credited Mr. Lubecki, who testified that no such prior conversation occurred. Based on the record before the court, we cannot say that the committee's credibility determinations are clearly wrong. See *In re: Bolton*, 02-0257 (La. 6/21/02), 820 So. 2d 548 ("Although this court is the trier of fact in bar disciplinary cases, we are not prepared to disregard the credibility evaluations made by those committee members who were present during respondent's testimony and who act as the eyes and ears of this court."). Moreover, the committee found that "even if" the conversation had occurred as respondent testified, nothing in his version of events suggested that he would file the lawsuit using only Mr. Lubecki's signature and without first giving Mr. Lubecki an opportunity to review and approve the pleadings. The record supports this finding.

Because respondent did not have Mr. Lubecki's consent to use his Illinois bar number and electronic signature to file the lawsuit in Illinois, respondent violated the Rules of Professional Conduct as charged 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 violated duties owed to the legal system and the profession. He acted knowingly and his conduct had the potential to cause harm. The applicable baseline sanction is suspension. The aggravating and mitigating factors found by the board are supported by the record.

The sanction recommended by the disciplinary board is a six-month suspension, with five months deferred. The ODC agrees this sanction is appropriate. On the other hand, respondent argues that the sanction is too harsh and that no discipline is warranted, or at most, a fully deferred suspension should be imposed.

The board's recommendation is supported by the prior jurisprudence in cases involving false representations made by an attorney. Although there are substantial mitigating factors present in this case, a short period of actual suspension will reinforce the point that courts "must be able to rely on the truthfulness of representations made by counsel." *In re: Landry*, 05-1871, p.8 (La. 7/6/06), 934 So. 2d 694, 699. Therefore, we will adopt the board's recommended sanction.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Richard L. Root, Louisiana Bar Roll number 19988, be and he hereby is suspended from the practice of law for a period of six months, with five months deferred. Any misconduct during the period of deferral 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.

SUPREME COURT OF LOUISIANA

NO. 2022-B-0954

IN RE: RICHARD L. ROOT

ATTORNEY DISCIPLINARY PROCEEDING

WEIMER, C.J., dissenting.

I respectfully dissent. I suggest a six-month suspension fully deferred would adequately ensure that the purposes of attorney discipline are achieved in this matter.

There are substantial mitigating factors present in this case. The respondent has no prior disciplinary record, had no appearance of dishonest or selfish motive, participated fully with the disciplinary board and had a cooperative attitude toward the proceedings, and has maintained a good character and reputation. The record demonstrates that there have been no ethical lapses during the respondent's career and favors a belief that there will be none in the future.

The respondent's defense included an explanation for why he engaged in the subject conduct. The respondent merely presented the factual basis that gave rise to his conduct, which derived from a misunderstanding between colleagues and was initiated by the culture of the firm rather than from an inappropriate motive. A dangerous precedent is established when one's exercise of his right to a defense is adjudged to be a refusal to acknowledge the wrongful nature of his conduct and, therefore, an aggravating factor when determining the appropriate sanction. See, e.g., **In re Downing**, 05-1553 (La. 5/17/06), 930 So.2d 897, 905-906 (Weimer, J., concurring) (noting that offering an explanation or mounting a defense should not be construed per se as an aggravating factor). Due to the near absence of substantial aggravating factors and the presence of multiple substantial mitigating factors in the

matter before us, the six-month period of suspension should be deferred in its entirety.