Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #023

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **5th day of May, 2023** are as follows:

PER CURIAM:

2022-B-01803 IN RE: WILLIAM A. ROE

SUSPENSION IMPOSED. SEE PER CURIAM.

Weimer, C.J., dissents and assigns reasons.
Crain, J., concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

NO. 2022-B-1803

IN RE: WILLIAM A. ROE

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, William A. Roe, 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 1980.

In 1990, respondent was elected as a judge of the 25th Judicial District Court for the Parish of Plaquemines. In 2006, we imposed judicial discipline of a public censure upon respondent for giving a newspaper interview about a pending case and for publicly criticizing one of the attorneys involved in the case. *In re: Roe*, 06-1243 (La. 6/23/06), 931 So. 2d 1076.

On July 11, 2008, a grand jury indicted respondent on three counts of felony theft and three counts of malfeasance in office, all arising out of allegations that he had "double-dipped" on expense reimbursements relating to the 2005, 2006, and 2007 Summer School for Judges in San Destin, Florida. On July 31, 2008, we disqualified respondent from exercising any judicial function, pending subsequent proceedings before the Judiciary Commission. *In re: Roe*, 08-1641 (La. 7/31/08), 987 So. 2d 250. No proceedings occurred in the Commission before respondent's

term of judicial office ended on December 31, 2008, and thus jurisdiction of the matter passed to the ODC under Supreme Court Rule XIX, § 6.

Following a bench trial in September 2009, respondent was convicted of three misdemeanor counts of unauthorized use of a movable valued under $1,000. On October 14, 2009, we placed respondent on interim suspension based upon his conviction of a serious crime. *In re: Roe*, 09-2117 (La. 10/14/09), 22 So. 3d 867. On January 6, 2010, respondent was sentenced to serve six months in jail with three months suspended, followed by eighteen months of active probation. He was also fined $1,500 and ordered to perform 240 hours of community service.

On January 22, 2010, the ODC filed formal charges against respondent arising out of his conviction. The disciplinary proceedings were then stayed pending the finality of the conviction. On November 10, 2010, the court of appeal affirmed respondent's conviction and sentence in an unpublished opinion. We denied respondent's writ application on November 14, 2011. *State v. Roe*, 10-2731 (La. 11/14/11), 75 So. 3d 935. On March 2, 2012, respondent consented to the imposition of disbarment, retroactive to the effective date of his interim suspension. *In re: Roe*, 12-0264 (La. 3/2/12), 82 So. 3d 266.

On August 24, 2016, respondent filed a petition seeking readmission to the practice of law. The ODC took no position on respondent's readmission. Following a hearing in the matter, the hearing committee recommended that readmission be denied. Respondent objected to this recommendation, and the matter was reviewed by the disciplinary board. The board recommended that respondent be readmitted to the practice of law. On December 15, 2017, we accepted the board's recommendation and readmitted respondent to the practice of law in Louisiana. *In re: Roe*, 17-1862 (La. 12/15/17), 231 So. 3d 604.

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

UNDERLYING FACTS

In October 2019, Anna Stevenson Dobard ("Anna") consulted respondent because she was concerned that her elderly widowed mother, Mrs. Mattie Stevenson, could no longer care for herself. Furthermore, according to Anna, two of her sisters, Dorothy Stevenson Exler ("Dorothy") and Stephanie Stevenson ("Stephanie"), had gained access to their mother's bank accounts and had expended her funds in ways that were inconsistent with her best interests. Respondent agreed to accept Anna's representation on a *pro bono* basis.

After reviewing the matter, respondent decided to seek the interdiction of Mrs. Stevenson and file for injunctive relief against Dorothy and Stephanie. In connection with that effort, respondent drafted affidavits that were to be executed by Mack Stevenson, Jr. ("Mack"), Lois Stevenson ("Lois"), and Richard Stevenson ("Richard"), three of Anna's other siblings. Respondent had never met these siblings, and he did not interview them before he drafted the affidavits. Instead, the content of the affidavits was based solely upon the information Anna had provided to respondent.[1]

Respondent then gave the affidavits to Anna, ostensibly so that she could take them to Mack, Lois, and Richard to see if they agreed with the content of the affidavits. Respondent purportedly intended that if the siblings agreed with the content, they would execute the affidavits in the presence of a notary. However, Anna returned the affidavits to respondent allegedly signed by Mack, Lois, and Richard but not notarized.

[1] The affidavits stated that (1) Mrs. Stevenson was incapable of providing for her own care; (2) Mrs. Stevenson had begun to exhibit dementia; (3) Dorothy and Stephanie had appeared at their mother's residence and demanded that she turn over funds to them, causing Mrs. Stevenson great distress and anguish; and (4) immediate and irreparable injury, loss, or damage would result to Mrs. Stevenson's person and property before she or her appointed attorney could be heard.

Although the affidavits were not executed in respondent's presence, he nonetheless notarized the signatures of Mack, Lois, and Richard. He then attached the three affidavits to a "Petition for Interdiction and Injunctive Relief" which he filed with the court on October 10, 2019. *Interdiction of Mattie Mason Stevenson*, No. 65-606 on the docket of the 25th JDC for the Parish of Plaquemines, Division "A," Judge Kevin D. Conner presiding. Paragraph XIX of the petition filed by respondent specifically referenced the three affidavits, stating:

> As evidenced by the attached affidavits, other adult children of the proposed interdict concur with these interdiction proceedings and the appointment of Anna Stevenson Dobard as the curator for the proposed interdict, including the other two adult children with whom the proposed interdict resides.

In July 2020, Judge Conner conducted a hearing in the matter. During the hearing, Stephanie (who was not then represented by counsel) attempted to question Dorothy about whether the affidavits had been executed in respondent's presence. Respondent objected to Stephanie's questions on hearsay grounds, and Judge Conner sustained the objections. Respondent never informed Judge Conner that he had not properly notarized the affidavits or that he had drafted the affidavits without the input of the affiants. Moreover, Dorothy testified that the affidavit purportedly signed by Mack could not have been signed by him in the fashion reflected on the affidavit because Mack is sight impaired. Once again, respondent did not disclose to Judge Conner the issues surrounding the creation and notarizing of the affidavits.[2]

At the conclusion of the hearing, Judge Conner ordered Mrs. Stevenson interdicted; appointed Anna as Mrs. Stevenson's curator; appointed Dorothy and Lois as co-undercurators to provide daily physical care for Mrs. Stevenson; and ordered a permanent injunction prohibiting Dorothy and Lois from taking any funds or property of Mrs. Stevenson.

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[2] Respondent also has not sought leave of court to withdraw the affidavits from the record.

In June 2020, Dorothy and Stephanie filed complaints against respondent with the ODC. During its investigation of the complaints, the ODC requested the trial transcript from Judge Conner in an effort to determine what representations respondent made to the court regarding the affidavits in question. Judge Conner provided the trial transcript by letter dated March 5, 2021. Although he expressed concern about the affidavits, Judge Conner concluded that "because of other testimony and evidence provided," they did not affect the outcome of the case.

DISCIPLINARY PROCEEDINGS

In April 2021, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated Rules 3.3(a)(3) (a lawyer shall not knowingly offer evidence that the lawyer knows to be false; if a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal), 8.4(a) (violation of the Rules of Professional Conduct), 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) of the Rules of Professional Conduct.

Respondent answered the formal charges and denied any intentional misconduct. Respondent admitted that he did not personally witness the signatures on the affidavits. Nevertheless, he maintained that he notarized the affidavits in an effort to appease Anna, whom he described as "frantic and desperate to redress the misappropriation of funds from her now-destitute mother." He indicated that he had no intention of using the affidavits because he had decided not to move forward with his original plan to seek *ex parte* relief in the interdiction proceeding, but nonetheless, the affidavits were inadvertently attached to the petition for interdiction. Respondent further noted that at the hearing on the interdiction, he did not refer to

the affidavits, offer them into evidence, or call the affiants as witnesses. Therefore, he suggested the affidavits were irrelevant and without legal effect.

In light of respondent's answer, the matter proceeded to a formal hearing on the merits.

Formal Hearing

The hearing committee conducted a formal hearing on August 9, 2021. Both respondent and the ODC introduced documentary evidence. The ODC called the following witnesses to testify before the hearing committee: Stephanie; Dorothy; Lois (by telephone); Jessica Seale, the court-appointed curator for Mrs. Stevenson; and 25th JDC Judge Kevin Conner. Respondent called Richard to testify; he also testified on his own behalf and on cross-examination by the ODC.[3]

Stephanie and Dorothy both testified that the circumstances surrounding the execution of their siblings' affidavits triggered their complaints to the ODC. Lois testified that she signed a document her sister Anna gave to her but she did not know what she was signing and did not read it beforehand; once she did read the affidavit, Lois did not agree with its contents. Richard admitted signing the affidavit but likewise did not read it, relying instead on Anna to explain it to him. Ms. Seale agreed with respondent's assertion that the affidavits were not used in any way other than being attached to the petition for interdiction.

Judge Conner testified that he was never informed during the interdiction hearing that respondent had notarized affidavits of witnesses who had not executed the documents in his presence. He noted that while he was required to sustain respondent's hearsay objections, he nonetheless labored under the belief based on

[3] Anna was present at the hearing, and respondent called her into the hearing room to testify. However, before she could be sworn, respondent apparently had a change of heart and declined to offer Anna's testimony.

their affidavits that several of Anna's siblings shared her concerns regarding the handling of their mother's funds by Stephanie and Dorothy.

Judge Conner was not aware that the content of the affidavits was not supplied by the affiants but rather supplied by Anna herself, nor was he aware that respondent had never spoken to the affiants or verified the allegations contained in the affidavits. When questioned by respondent, Judge Conner explained that he considered that a fraud had been committed upon the court and that the fraud was perpetrated by Anna when she supplied affidavit content that was not consistent with the beliefs of the affiants. On redirect, Judge Conner explained that when affidavits contain information that favors one party, it lends support to that party's position. When asked whether the affidavits had a substantive effect on the proceedings, Judge Conner said "yes" and then added:

> … it's a little bit more to me than just a matter of whether or not the information is correct or not correct. The information is that when somebody supplies an affidavit in favor of somebody, then to me, it lends support to that person, if you have two other people that are behind you.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee made findings of fact, including the following:

1. There are three facts that establish the seriousness of respondent's misconduct: (a) the falsity of the jurats in the affidavits that said that the affiants swore to and signed them in respondent's presence; (b) the allegation in Paragraph XIX of the interdiction petition that three other siblings, including the two who lived with Mrs. Stevenson, concurred in the relief Anna sought; and (c) Judge Conner's testimony that the supporting affidavits of other family members lend weight to the petition and factor into his decision.

2. The jurat is the notary's statement that the formalities identified therein were followed – that the affiant swore to the truthfulness of the contents of the affidavit and that the affiant signed the affidavit in the notary's presence. That did not occur here. The committee's recommendation does not turn on the truthfulness of the affidavits, but on the truthfulness of the jurats on the affidavits. They were respondent's statements, and they were false.
3. Respondent seeks to minimize his misconduct by claiming that the affidavits were not used as evidence. This disregards Paragraph XIX of the petition which states that three of the siblings concurred in the relief sought by his client. It also fails to counter Judge Conner's testimony that such concurrences carry weight in his decision. Having both practiced in and served as a judge in the 25th JDC, respondent would likely be aware of this practice, placing into question his claim that the attachment of the affidavits to the petition was inadvertent.
4. Much of the trial concerned the truthfulness of the affidavits and the authenticity of the affiants' signatures. For the foregoing reasons, these issues are secondary. Furthermore, respondent's hearsay objection to the affidavits was proper and was not an attempt to mislead the court as claimed by the ODC. However, that is little credit to respondent since the affidavits never should have been in the record at all.

Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges. Respondent violated Rules 3.3(a)(3) and 8.4(c) by knowingly offering false evidence – his statement that the affidavits were sworn to and signed in his presence. Although not admitted into evidence in the formal sense, the allegations in Paragraph XIX of the petition, along with Judge Conner's testimony, establish that the affidavits had evidentiary value in the proceeding. Respondent also violated Rule 8.4(d). Judge Conner testified that

he gives more weight to an interdiction petition filed with the written support of other family members. Although there was sufficient evidence for the interdiction without the affidavits, their attachment had the potential to alter the judge's decision, which was prejudicial to the administration of justice. Respondent's violation of the foregoing rules establishes the derivative violation of Rule 8.4(a).

The committee determined respondent violated duties owed to his client, the public, the legal system, and the legal profession. Respondent acted knowingly in allowing the affidavits to remain in the record once their presence was discovered.[4] He caused actual harm to Anna by causing the court to question her actions in obtaining the affidavits, and he caused actual harm to the legal profession because his actions reflected poorly upon the profession. Respondent caused potential harm to the legal system because the affidavits could have affected the outcome of the case if the other evidence was insufficient to warrant interdiction without Judge Conner's consideration of the affidavits. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee determined the following aggravating factors are present: a prior disciplinary record and substantial experience in the practice of law. The committee determined the following mitigating factors are present: full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings and remorse.

Turning to the issue of an appropriate sanction, the committee considered *In re: Porter*, 05-1736 (La. 3/10/06), 930 So. 2d 875. In *Porter*, the respondent was suspended for one year for abandoning his clients without notice and falsely notarizing an affidavit verifying a petition. The affidavit – purportedly signed by

[4] The committee did not find clear and convincing evidence that respondent intended to attach the affidavits to the petition for interdiction, but allowed that may have been a possibility.

one of the plaintiffs – instead was signed by her husband. Mr. Porter then attached the improperly notarized affidavit to the petition and filed it in the Baton Rouge City Court. The court found Mr. Porter violated Rules 3.3 and 8.4(a)(c)(d), among other provisions of the Rules of Professional Conduct.[5] The court found three mitigating factors (no prior disciplinary record, inexperience in the practice of law, and remorse) and two aggravating factors (multiple offenses and vulnerability of the victims) were present. The committee noted that respondent did not abandon his clients like Mr. Porter did, but he does have a prior disciplinary record and substantial experience in the practice of law.

Based on these findings, the committee recommended respondent be suspended from the practice of law for one year. The committee also recommended that he be assessed with the costs and expenses of this proceeding.

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

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and adopted same. Based on these factual findings, the board determined respondent's conduct violated the Rules of Professional Conduct as alleged in the formal charges. Specifically as to the charged violation of Rule 3.3(a)(3), the board agreed that respondent violated this rule even though the affidavits were not formally introduced into evidence in the interdiction proceeding, as they had evidentiary value and were material to the proceeding.[6]

[5] Like respondent herein, Mr. Porter admitted the notarial act was improper; however, he claimed the verification was not "legally material" to the suit and contained no material facts. We implicitly rejected that argument by finding Mr. Porter's conduct violated Rule 3.3.

[6] The board cited *In re: Lightfoot*, 11-1950 (La. 3/13/12), 85 So. 3d 56, for the proposition that "the mere submission of a false pleading or document into the record of a court can justify a finding of a Rule 3.3(a)(3) violation." In *Lightfoot*, the attorney counseled his clients to use fictitious names on their bankruptcy petition and counseled them to secure a temporary post office box and

The board agreed with the committee that respondent violated duties owed to his client, the public, the legal system, and the legal profession. Respondent acted knowingly, and his conduct caused both actual and potential harm. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension. The board agreed with the aggravating and mitigating factors found by the committee.

Considering these findings, the court's prior jurisprudence discussing similar misconduct, and the applicable aggravating factors,[7] the board recommended respondent be suspended from the practice of law for one year and one day. The board further recommended that respondent be assessed with the costs and expenses of this matter.

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:*

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to list that address on the petition. For deliberately filing a false bankruptcy pleading, we found the attorney violated several Rules of Professional Conduct, including Rule 3.3(a)(3). The attorney was suspended from the practice of law for six months, with all but thirty days deferred.

[7] The board placed particular emphasis on respondent's prior disciplinary history and his significant experience in the practice of law as both a former judge and a practitioner.

Caulfield, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

Respondent notarized three affidavits which were not signed by the affiants in his presence. He then attached the improperly notarized affidavits to his petition for interdiction and filed it with the court. Respondent has not taken any remedial action to withdraw the affidavits from the record. Based on these facts, respondent violated Rules 8.4(a), 8.4(c), and 8.4(d) of the Rules of Professional Conduct.

The ODC also alleges that respondent violated Rule 3.3(a)(3) by attaching the improperly notarized affidavits to the petition for interdiction. To find a violation of this rule, the ODC must prove that respondent acted knowingly. Knowing means "actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Rule 1.0(f) of the Rules of Professional Conduct. Thus, to successfully prove its allegation that respondent violated Rule 3.3(a)(3), the ODC must prove more than the simple fact that respondent "attached" the improperly notarized affidavits to the petition for interdiction. Rather, the ODC must prove that respondent actually knew he had attached the improperly notarized affidavits to the petition filed with the court.

Despite the hearing committee's conclusion that respondent violated Rule 3.3(a)(3), it acknowledged in its report that "[w]hile Respondent may have intended to attach the Affidavits, the evidence is not clear and convincing in that respect." In other words, the committee itself questioned whether respondent's conduct was done with actual knowledge. Our review of the record leads us to the same question. Respondent testified at the hearing that the affidavits were inadvertently attached to the petition he filed in October 2019, and that he did not realize his error until he appeared before Judge Conner in July 2020. While there is evidence in the record from which one might infer that respondent intended to include the affidavits, we

find such evidence does not rise to the clear and convincing level required in a bar discipline proceeding.

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 violated duties owed to his client, the public, the legal system, and the legal profession. His conduct caused both actual and potential harm. The applicable baseline sanction is suspension. The following aggravating factors are present: a prior disciplinary record and substantial experience in the practice of law. The following mitigating factors are present: full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings and remorse.

Turning to the issue of an appropriate sanction, we find that respondent's conduct does not warrant the one year and one day suspension recommended by the disciplinary board. However, we must also reject respondent's argument that a fully deferred suspension would suffice. Respondent's prior disciplinary record is significant, and he has substantial experience in the practice of law as both a former judge and a practitioner. Under these circumstances, we find the one-year suspension recommended by the hearing committee to be appropriate.

Based on this reasoning, we will reject the board's recommendation and suspend respondent from the practice of law for one year.

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 William A. Roe, Louisiana Bar Roll number 11384, be and he hereby is suspended from the practice of law for a period of one year. 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-01803

IN RE: WILLIAM A. ROE

ATTORNEY DISCIPLINARY PROCEEDING

WEIMER, C. J., dissenting.

I respectfully dissent from the sanction imposed in this case in light of the conclusion, with which I concur, that a violation of Rule 3.3(a)(3) of the Rules of Professional Conduct was not established by clear and convincing evidence. According the words of the rule their plain and ordinary meaning, I agree that no violation of Rule 3.3(a)(3) was proved.

Because the rules governing the conduct of attorneys have the force and effect of substantive law,[1] in interpreting those rules, the rules of statutory interpretation provide guidance. Pursuant to those rules, the starting point of any analysis is the language of the provision itself. **Hartman v. St. Bernard Parish Fire Department & Fara,** 20-00693, p. 9 (La. 3/24/21), 315 So.3d 823, 829.

Rule 3.3(a)(3) states:

> A lawyer shall not knowingly:
>
> . . . .
>
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

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[1] **Succession of Wallace**, 574 So.2d 348, 350 (La. 1991).

Under the plain language of the rule,[2] the threshold requirement is knowledge: a lawyer shall not "knowingly" offer evidence that the lawyer knows to be false. As the majority notes, as defined by Rule 1.0(f), "knowingly ... denotes actual knowledge of the fact in question." Such knowledge may be inferred from the circumstances. ***Id.***

At the formal hearing, Respondent explained that he prepared alternative petitions for interdiction: one requesting an immediate, *ex parte* order of interdiction and one requesting a preliminary interdiction. Although it was ultimately decided to seek the preliminary interdiction (thereby eliminating the need for the supporting affidavits), the affidavits in question were nevertheless inadvertently attached to the petition for interdiction filed in October 2019. Respondent testified that he did not realize the error until he appeared before Judge Conner in July 2020.

Based on the foregoing, the Hearing Committee acknowledged in its report that "[w]hile Respondent *may* have intended to attach the Affidavits, the evidence is not clear and convincing in that respect." (Italics supplied.) I agree with that finding. The evidence that respondent "knowingly" attached the affidavits does not rise to the level of clear and convincing evidence required in a bar discipline proceeding.

In addition to "knowing" conduct, Rule 3.3(a)(3) is quite specific in what it prohibits: a lawyer shall not knowingly "*offer evidence* that the lawyer knows to be false." (Italics supplied.) The words "offer evidence" are key here, as the facts below are undisputed. Respondent did not offer the improperly notarized affidavits in evidence at the interdiction hearing. Both the Hearing Committee and the Disciplinary Board acknowledged this fact, noting that the affidavits "were not

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[2] The Civil Code instructs that words of a law must be given their generally prevailing meaning. La. C.C. art. 11.

offered into evidence in the formal sense." Nevertheless both entities concluded that despite not being formally introduced in evidence, the affidavits had "evidentiary value." With all due respect to the Hearing Committee and Disciplinary Board, I find this conclusion legally erroneous.

First, because the affidavits were not introduced, they were not "evidence" that could be considered by the district court. **Denoux v. Vessel Management Services, Inc.**, 07-2143, p. 6 (La. 5/21/08), 983 So.2d 84, 88 ("Evidence not properly and officially offered and introduced cannot be considered, even if it is physically placed in the record."). Further, the affidavits were clearly hearsay, La. C.E. art. 801, as the district court recognized in sustaining an objection to questioning surrounding the execution of the affidavits at the interdiction hearing.

Moreover, the affidavits were not required, nor even necessary for the preliminary interdiction. See, La. C.C.P. art. 4549. Because they were not necessary to the proceeding, the affidavits could hardly be characterized as "material evidence," thereby triggering an obligation on respondent's part to move to withdraw the affidavits from the record or to disclose their falsity to the district court. See, Rule 3.3(a)(3) ("If a lawyer ... has *offered material evidence* and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal.") (Italics added.)

Given the foregoing, it is clear that the affidavits could not legally have carried "evidentiary value," as the Hearing Committee and the Disciplinary Board found. The district court judge acknowledged as much when he testified before the Hearing Committee that the judgment granting the interdiction was "based on the evidence presented at the trial and nothing else," and when he wrote in a letter addressed to disciplinary counsel that "because of other testimony and evidence provided to this

Court, the final judgment and outcome in this case were not affected [by the affidavits]."

Based on the facts and circumstances of this matter and particularly for the reasons set forth above, I agree that the charge that respondent violated Rule 3.3(a)(3) was not proved by clear and convincing evidence.[3]

Respondent admits, however, that he notarized three affidavits which were not signed by the affiants in his presence, conduct which violates the provisions of Rule 8.4(a), (c) and (d). Therefore, a sanction is appropriate for this misconduct. Because the sanctions recommended by the Hearing Committee and Disciplinary Board were based, in part, on a finding that a violation of Rule 3.3(a)(3) was proved, it is appropriate, in determining the sanction here, to deviate downward from those recommendations. Juxtaposing respondent's prior disciplinary record and substantial experience in the practice of law (aggravating factors) against his remorse, his acceptance of responsibility for his acts and full cooperation with the disciplinary proceedings, the fact that no harm resulted from the improperly notarized affidavits, and his unselfish motive (having handled the case *pro bono*), all mitigating factors, I believe a one-year suspension from the practice of law with all but 60 days deferred is the appropriate sanction in this case. Therefore, I respectfully dissent from the sanction imposed by the majority.

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[3] To the extent violations of Rule 3.3(a) were found in the cases of **In re: Porter**, 05-1736 (La. 3/10/06), 930 So.2d 875, and **In re: Lightfoot**, 11-1950 (La. 3/13/12), 85 So.3d 56, those cases are distinguishable in that neither involved a situation in which improperly notarized affidavits were inadvertently filed in the record. The untruthful filings in both **Porter** and **Lightfoot** were knowing and deliberate.

SUPREME COURT OF LOUISIANA

No. 2022-B-01803

IN RE: WILLIAM A. ROE

Attorney Disciplinary Proceeding

CRAIN, J., concurs and assigns reasons:

I agree with the sanction imposed. However, I also believe a violation of Rule 3.3(a)(3) occurred. Rule 3.3(a)(3) provides a lawyer shall not knowingly offer evidence that the lawyer knows to be false; if a lawyer has offered material evidence and comes to know if its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. Here, the improperly notarized affidavits were attached to the Petition for Interdiction and Injunctive Relief. The affidavits were also expressly referred to in the petition as support that three other siblings, including two who lived with Mrs. Stevenson, concurred in the relief sought.

A lawyer owes a duty of diligence before signing a petition. *See* La. Code of Civ. Proc. art. 863 ("[T]he signature of an attorney or party shall constitute a certification by him that he has read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry . . . certifies . . . each allegation or other factual assertion in the pleading has evidentiary support . . . ."). This due diligence requires that I conclude the attachments were intentional, even if intentions and litigation strategies may have later changed. Further, respondent has not taken any remedial action to withdraw the affidavits from the record. Thus, I concur in the result, but would additionally find respondent violated Rule 3.3(a)(3).