ORIGINAL

Louisiana Attorney Disciplinary Board
FILED by: Donna P. Burgess
Docket# 12-DB-004
Filed-On 4/17/2013

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: STACY L. MORRIS

DOCKET NO. 12-DB-004

REPORT OF HEARING COMMITTEE #37

INTRODUCTION

On January 23, 2012, the Office of Disciplinary Counsel ("ODC") filed formal charges against Stacy L. Morris ("Ms. Morris" or "Respondent"), which consists of one (1) count. ODC alleges that Respondent is guilty of violating the following Rules of Professional Conduct ("Rule(s)"): Rule 1.3 (diligence); Rule 1.4 (communication); and Rule 1.5(f)(5) (failure to refund an unearned fee).[1] The charges were properly served on Respondent via Rule XIX,

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[1] The version of these rules in effect at the time of the alleged misconduct in this matter read as follows:

RULE 1.3. DILIGENCE
A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4. COMMUNICATION
(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

RULE 1.5. FEES
At the time of the misconduct in this matter, the applicable subsection of Rule 1.5 was subsection (f)(6). Rule 1.5(f)(6) reads:

> (6) When the client pays the lawyer a fixed fee or a minimum fee for particular services to be rendered in the future under Rule 1.5(f)(2) and the funds are placed in the lawyer's operating account, and a fee dispute subsequently arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of the fee, if any. If the lawyer and the client cannot agree on the amount of unearned fee, the lawyer shall immediately refund to the client the amount, if any that the parties agree has not been earned, and the lawyer shall deposit into a trust account an amount which represents the portion of the fee which is reasonably in dispute. The funds shall be held in the trust account until the dispute is resolved, and the lawyer may not hold the disputed portion of the funds to coerce a client into accepting the lawyer's contentions. The lawyer should also suggest means for a

Section 13(A)[2], and on February 15, 2012, Ms. Morris filed an answer to the formal charges. The matter proceeded to hearing on May 30, 2012. At the hearing, Ms. Morris appeared *pro se*, and Deputy Disciplinary Counsel Robert S. Kennedy, Jr., appeared on behalf of ODC.

FORMAL CHARGES

The formal charges read, in pertinent part:

> The complainant, Ernest McGee was convicted of second degree murder in 1981 in Orleans Parish Criminal District Court. After the denial of his direct appeal by the Louisiana Supreme Court, the prisoner filed an application for post-conviction relief *pro* se which Orleans Criminal Court Judge Charles Elloie reviewed in 1999 and ordered a hearing be held on the application. A series of delays ensued involving successive attorneys who enrolled on behalf of McGee and then withdrew, with the result that by September 2003 no hearing on the application had yet been held. It was at this point that relatives of Mr. McGee retained Ms. Morris and paid a $1500 fixed fee to have her conduct the hearing ordered by Judge Elloie. The respondent first appeared in court and enrolled as counsel on behalf of Mr. McGee on October 21, 2003.
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> With Ms. Morris present, the court ordered the matter re-fixed for November 23, 2003 at which point the respondent failed to appear as ordered. The court continued the matter over to January 2004, simultaneously ordering that the respondent obtain the requisite court order commanding DOC (Department of Corrections) to transport the prisoner to Orleans parish for the January 2004 hearing. The respondent thereafter failed to appear at the any of the subsequent re-settings until she presented before the court at a September 2004 setting. With Ms. Morris present, the court personally instructed her to provide the state with a copy of the prisoner's original *pro se* application and the matter was re-fixed to December 8, 2004 to conduct the hearing on the application. In the interim, the client's brother and sister repeatedly attempted to contact the respondent to learn the status of the matter and discover what actions she was taking on their brother's behalf. She did not respond to any of their requests.
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> Subsequently, the respondent also failed to honor the court's instructions to provide documents to the state and failed appear at any subsequent court settings on behalf of the client with the result that the post-conviction issue remained unresolved. In October 2007, McGee filed a disciplinary complaint with the Office of the Disciplinary Counsel seeking a refund of unearned fees.

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prompt resolution of the dispute such as the Louisiana State Bar Association Fee Dispute Program or other similar arbitration.

[2] The charges were served on the Respondent via certified mail at her primary registration address of 1802 Marigny Street, New Orleans, Louisiana 70117 and a last known address of 301 Lakeshore Blvd. N., Apt. 2118, Slidell, LA 70461.

The respondent answered the complaint, denying that she had agreed to provide representation to the client at the post-conviction hearing. She also denied that any unearned fee question was presented by her withdrawal from the client's representation prior to the conclusion of the post-conviction process.

By her acts and omissions the respondent has engaged in professional misconduct in violation of Rules of Professional Conduct 1.3 (diligence); 1.4 (communication); 1.5(f)(5) (failure to refund unearned fee).

EVIDENCE

As indicated above, the hearing in this matter was held on May 30, 2012. Testifying on behalf of ODC were Ernest McGee, complainant, Cathy Bingham, Cynthia McGee Irons, David McGee and John Fuller. The Respondent testified on her own behalf. The following exhibits were introduced into evidence:

1. ODC Exhibit One: Complaint filed with ODC by Mr. McGee;

2. ODC Exhibit Two: Respondent's response to Mr. McGee's complaint;

3. ODC Exhibit Three: Supplemental correspondence received by ODC from Mr. McGee;

4. ODC Exhibit Four: Cancelled checks bearing Cathy Bingham's signature issued to Respondent;

5. ODC Exhibit Five: Mr. McGee's *pro se* Application for Post-Conviction Relief in "*State of Louisiana v. Ernest McGee*" dated March 29, 1999 and filed in Docket No. 281,981, Criminal District Court, Orleans Parish, Louisiana;

6. ODC Exhibit Six: Judge Elloie's order dated September 16, 1999 in "*State of Louisiana v. Ernest McGee*" in Docket No. 281, 981, Criminal District Court, Orleans Parish, Louisiana;

7. ODC Exhibit Seven: Court Minutes of "*State of Louisiana v. Ernest McGee*" in Docket No. 281,981, Criminal District Court, Orleans Parish, Louisiana;

8. ODC Exhibit Eight: State's Response to Petitioner's Application for Post-Conviction Relief dated November 20, 2001 in "*State of Louisiana v. Ernest McGee*" in Docket No. 281,981, Criminal District Court, Orleans Parish, Louisiana; and

9. ODC Exhibit Nine: Copy of order of Judge Laurie White dated March 29, 2010.

The testimony of the Respondent found on page 146 of the hearing transcript was also proffered into evidence by ODC.

FINDINGS OF FACT

The Committee finds the testimony of the Respondent and Mr. Fuller to be credible. In large part, the testimony of Ernest McGee, David McGee, Cathy Bingham and Cynthia McGee Irons is inconsistent or not credible. Given this, the Committee makes the following findings of fact:

1. In August or September of 2003, Respondent was hired by David McGee, Cathy Bingham and Cynthia Irons, the siblings of the complaint, Ernest McGee, to represent Mr. McGee in connection with an application for post-conviction relief. (Tr., p. 33, ODC Exhibit Seven, p. 71).

2. Respondent and David McGee entered into a contract for the representation of Ernest McGee. Neither party had a copy of the contract at the time of the hearing. (Tr., pp. 94, 109, 153). David McGee, Ms. Bingham and Ms. Irons assumed responsibility for the payment of Respondent's fee. (Tr., p. 33, 95-96). The exact amount of the fee that was agreed upon for the representation is unknown, although Ernest McGee claims that $3,500 was paid to the Respondent for the representation. (ODC Exhibit One). The exact amount of the fees actually paid to Respondent is also unknown. The evidence establishes that at least $1,010 was paid to Respondent for the representation. (Tr., pp. 63-65, 79-80, 95, 101-02, 138, 150-53, 168, ODC Exhibit Four).

3. The court records specifically indicate that Respondent appeared in court on behalf of Ernest McGee on the following dates: September 4, 2003; October 21, 2003; and September 30, 2004. The evidence is unclear as to whether during her representation of Mr. McGee Respondent provided to the State a copy of Ernest McGee's application for post-conviction application which had been filed in 1999. However, the State filed a response to this application in 2007. (Tr., p. 141, ODC Exhibits One and Three).

4. At the time of the hearing, Respondent did not have a copy of her file in this matter as her office and its contents were destroyed, with the exception of a few non-related computer discs, during Hurricane Katrina. (Tr., p. 129). However, based on her past work practices, she would have also met with Mr. McGee at the courthouse or at the parish prison concerning his case during the time she represented him. (Tr., pp. 167-68). She would have additionally researched his application for post-conviction relief by reviewing his entire criminal matter, not just his post-conviction filing. (Tr., pp.

132-34, 168). Her work would have also included legal research and pre-trial work. (Tr., p. 156).

5. Based upon past work practices, the Respondent's communications concerning Mr. McGee's case would have been directed to Ernest McGee, her client, or David McGee, his brother. While her professional obligation to communicate with the client was owed to Ernest McGee only, she would have also talked with David McGee about public information concerning the case as courtesy to the family. (Tr., p. 190). In a matter such as Ernest McGee's case, she would have communicated with her client via correspondence or phone or by face-to-face contact while he was at the courthouse for a hearing. She would have also requested that the client be remanded to the parish prison so she could have hands-on contact with the client. (Tr., pp. 170-71). The evidence reflects that on February 10, 2004, Ernest McGee was "ordered to Orleans Parish Prison" from Angola State Penitentiary by Judge Elloie until the matter was resolved, although the evidence does not reflect if this transfer was requested by the Respondent. (ODC Exhibit No. Seven, p. 65). However, in his complaint, Ernest McGee states that "[o]n or about February 9, 2004, Attorney Stacy Morris had me transferred from Angola and into the custody of the Orleans Parish Criminal Sheriff due to a court appearance on February 10, 2004 which was rescheduled." (ODC Exhibit One).

6. Respondent was discharged by her client or his family in 2005, and John Fuller was hired by the family to represent Ernest McGee between March and August of 2005. (Tr., p. 109).

7. When Mr. Fuller assumed the representation, Ernest McGee's application for post-conviction relief was still pending. (Tr., p. 109). Mr. Fuller was representing Ernest McGee when Judge Laurie A. White made her ruling on his application for post-conviction relief on March 29, 2010. At that time, Mr. McGee's application was dismissed on the basis that it was repetitive and did not warrant relief pursuant to La. C.Cr.P. art 930.3. (Tr., pp. 111, 113, ODC Exhibit Nine).

8. The Respondent first learned that there was dispute over the fee in this matter when the complaint was filed by Ernest McGee. (Tr., p. 180). In his complaint, McGee claimed that a fee of $3,500 should be refunded. (ODC Exhibits One and Three). She did not read the complaint to mean that she had an opportunity to go to fee arbitration at that time (Tr., p. 186). She read it to mean that if Ernest McGee's allegations were proven true, then he was requesting that she be ordered to pay the fees back. (Tr., pp. 185-86). She did not proceed with the arbitration because ODC initially dismissed Mr. McGee's complaint. (Tr., p. 188). Respondent has not requested that the matter be resolved through fee dispute arbitration at the Bar Association. (Tr., pp. 186, 188).

9. Based upon the Respondent's testimony, the Respondent earned a fee of at least $3,500 during her representation of Ernest McGee. (Tr., pp. 149-201). As explained

above, the evidence establishes that at least $1010 was paid to the Respondent for the representation.

10. Ernest McGee's complaint had initially been dismissed by ODC, and the matter was closed by that office. ODC later reopened the matter and filed formal charges against the Respondent. (Tr., pp. 192-94).

RULES VIOLATED

The Committee finds that ODC has not proven by clear and convincing evidence that Respondent violated Rules 1.3 or 1.4. At the time the alleged misconduct in this matter occurred, Rule 1.3 provided that "a lawyer shall act with reasonable diligence and promptness in representing a client." The evidence in this matter shows that Respondent made at least three court appearances during the eighteen to twenty-four month period that she represented Ernest McGee in his post-conviction application proceeding. Because her files were destroyed during Hurricane Katrina, Respondent was unable to review Mr. McGee's case file, but credibly described to the Committee her usual work practices in representing criminal clients in post-conviction relief matters. The practices show that the Respondent would have adequately researched and prepared this post-conviction relief matter and appropriately participated in the related court hearings. The Committee, therefore, finds that a violation of Rule 1.3 has not been established by ODC.

Further, at the time of the alleged misconduct, Rule 1.4 provided, in pertinent part, that a lawyer shall "keep the client reasonably informed about the status of the matter" and "promptly comply with reasonable requests for information." Again testifying based upon her general practice habits, the Respondent testified that communications concerning Mr. McGee's case would have been directed to Ernest McGee, her client, or David McGee, a member of his family, due to Ernest McGee's incarceration. In such a matter, she would have communicated with her client via correspondence or phone or by face-to-face contact while he was at the courthouse for

a hearing. She would have also requested that the client be remanded to the parish prison so she could have direct contact with the client.[3] As a courtesy to the family, she would have talked with David McGee at court or on the phone to give him a status report on his brother's case. The Committee accepts the Respondent's credible testimony on this issue and finds that such communication would have been reasonable and in compliance with Respondent's obligations under Rule 1.4. Accordingly, the Committee finds that ODC has failed to establish a violation of Rule 1.4 by clear and convincing evidence.

Finally, as to the Rule 1.5(f)(6) allegation, the Committee finds that a technical violation of this rule is present. After Mr. McGee filed his complaint and supplemental response in this matter, the Respondent had an obligation to place the amount of the disputed fee into her trust account. She also had an obligation to suggest means for a prompt resolution of the dispute such as the Louisiana State Bar Association Fee Dispute Program or other similar arbitration. Respondent explained, however, that she did not take the above steps as she believed that she would have to refund Mr. McGee any fees paid only if his allegations were proven true. As she did not believe that his complaint had merit, she did not place any funds in her trust account or submit the complaint to a fee dispute program. Respondent's interpretation, although technically incorrect, was understandable given the circumstances of this case[4]. Accordingly, pursuant to *In*

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[3] As noted above, the court records show that Judge Elloie, in fact, ordered that Mr. McGee be transferred to the Orleans Parish Prison until his application for post-conviction relief was resolved. The records do not show if Respondent made the request for this transfer, however. Mr. McGee states in his complaint that the transfer was made at the request of the Respondent.

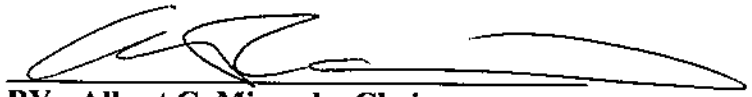
[4] As discussed earlier, this matter had originally been dismissed and closed by ODC. At the time the formal charges were filed, the Respondent understandably did not believe it was necessary to place funds into a trust account or submit the matter to fee arbitration as ODC had initially dismissed the complaint. Further, as indicated above, the Committee finds that the Respondent earned a fee of at least $3,500 during her representation of Ernest McGee. Given the amount of work the Respondent had performed in the case, the Respondent understandably would not have been under the impression that a partial or full refund of the fee was owed.

re Hartley, 2003-2828 (La. 04/02/04); 869 So.2d 799, this Committee finds that no formal discipline or sanction should be imposed for this technical violation of Rule 1.5(f)(6).

CONCLUSION

Based on the above, Hearing Committee Number Thirty-Seven finds that the Office of Disciplinary Counsel has failed to prove violations of Rules 1.3 and 1.4 by clear and convincing evidence and recommends that these charges be dismissed. While a technical violation of Rule 1.5(f)(6) has been established, the Committee finds that this violation does not warrant formal discipline or the imposition of a sanction in this matter pursuant to *In re Hartley*, 2003-2828 (La. 04/02/04); 869 So.2d 799 and recommends same. Finally, the Committee recommends that the costs of this matter to be borne by the Respondent only as to the Rule 1.5(f)(6) violation and that all other costs be borne by the Disciplinary Board.

Metairie, Louisiana, this 17 day of Aug, 2013.



BY: Albert C. Miranda, Chair

Hearing Committee #37
Albert C. Miranda, Chair
La Koshia R. Roberts, Lawyer Member
Irma DiVincenti, Public Member