

## LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: HUGH E. McNEELY

DOCKET NO. 14-DB-055

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**REPORT OF HEARING COMMITTEE NO. 55**

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**INTRODUCTION**

This attorney discipline matter arises out of formal charges consisting of four counts filed by the Office of Disciplinary Counsel (“ODC”) against Hugh E. McNeely (“Respondent”), bar roll number 10628. ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3 (failure to act with reasonable diligence and promptness in representing a client); 1.4(a)(1) (failure to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required); 1.4(a)(3) (failure to keep the client reasonably informed about the status of the matter); 1.16(d) (failure to return client file and return advance payment of fee or expense that has not been earned or incurred upon termination of representation); 8.1(c) (failure to cooperate with the Office of Disciplinary Counsel in its investigation); and 8.4(a) (violate or attempt to violate the Rules of Professional Conduct).<sup>1</sup>

**PROCEDURAL HISTORY**

ODC filed formal charges against Respondent on October 30, 2014. By letters dated November 4, 2014, the formal charges were sent to Respondent’s primary and preferred registration addresses via certified mail.<sup>2</sup> Upon request of ODC, the Board resent the charges to

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<sup>1</sup> See the attached Appendix for the text of the Rules.

<sup>2</sup> Respondent’s primary registration address is Jeddah Plaza Rm 511, Kingdom of Saudi Arabia, Jeddah-Al Hamra-Taboul St., Saudi Arabia. Respondent’s preferred address is c/o Jeddah Plaza Rm 511, PO Box 8932, Jeddah 21492, Saudi Arabia.

the addresses above via certified by letters dated June 1, 2015.<sup>3</sup> Respondent failed to file an answer to the charges within the time period allowed by Louisiana Supreme Court Rules XIX, §11(E)(3).<sup>4</sup> Accordingly, ODC filed a motion to have the formal charges deemed admitted on August 10, 2015. The Hearing Committee Chair signed an order declaring the formal charges deemed admitted and proven by clear and convincing evidence on September 8, 2015. Respondent was granted twenty days in which to file a motion to recall the order, which he failed to do. ODC filed its written argument on sanctions, with supporting exhibits, on November 6, 2015.

### **FORMAL CHARGES**

The formal charges read, in pertinent part:

#### **COUNT I (ODC File Number 0031346)**

Complainant, Julie Clave, filed the instant complaint with the ODC on November 27, 2013. Complainant hired Respondent to represent her in a Workers' Compensation claim against her employer, captioned as *Julie Clavo vs. Office of Risk Management, LSU Health Services Division and State of Louisiana*, Docket Number 09-02850, WC District 08, Office of Workers' Compensation, State of Louisiana. Complainant alleged in her complaint that Respondent informed her that he and defense counsel were working on a settlement. The day before trial, Respondent and defense counsel signed pleadings voluntarily dismissing Complainant's case. Complainant alleges this was done without her knowledge or consent. The ODC interviewed defense counsel, Thomas McGaw,

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<sup>3</sup> A USPS tracking statement indicates that one of the letters was delivered in Saudi Arabia on June 28, 2015.

<sup>4</sup> This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

who informed the ODC that the matter was never settled for a monetary amount. Respondent did agree to voluntarily dismiss the suit because according to Mr. McGaw he had no proof of what was alleged in the Petition. Mr. McGaw had no knowledge whether Respondent voluntarily dismissed the Workers' Compensation matter without the consent or knowledge of Complainant.

The ODC took Complainant's sworn statement in this matter. According to Complainant's testimony during the sworn statement, when she learned that her matter had been dismissed, she attempted to contact Respondent via phone and mail to no avail. When Complainant could not reach Respondent, she sent him a letter terminating his services and requested a copy of her client file. Respondent has never heard from Complainant in response to her request. The ODC was not able to speak with Respondent who is currently residing in Saudi Arabia, and Respondent has failed to provide a response to said complaint or communicate with the ODC about this matter in any way. The ODC mailed the complaint to Respondent's Saudi Arabia address (which is his registered address with the Louisiana State Bar Association) twice and E-mailed the Complaint to Respondent on two separate occasions. Respondent did not reply in any way to the complaint.

Respondent's actions in this matter constitute failure to act with reasonable diligence and promptness in representing a client, in violation of Rule 1.3; failure to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required in violation of Rule 1.4(a)(1); failure to keep the client reasonably informed about the status of the matter, in violation of Rule 1.4(a)(3); failure to return client file and return advance payment of fee or expense that has not been earned or incurred upon termination of representation, in violation of Rule 1.16(d); failure to cooperate with the Office of Disciplinary Counsel in its investigation, in violation of Rule 8.1(c); and, violating or attempting to violate the Rules of Professional Conduct, in violation of Rule 8.4(a) of the Rules of Professional Conduct.

### **FINDINGS OF FACT**

Respondent was serving a three-year suspension which was scheduled to end on November 6, 2015. However, during the same time period the instant claim was filed against respondent. In this claim, Respondent was retained by Julie Clavo to represent her in a Workers' Compensation claim against her employer. Ms. Clavo alleged in her complaint that Respondent informed her that he was working on a settlement with defense counsel. The day before trial a voluntary dismissal was signed by both parties allegedly without the consent of Ms. Clavo. She attempted to contact Respondent via phone and mail but to no avail. Ms. Clavo has never heard from Respondent. ODC was not able to speak with Respondent who currently resides in Saudi Arabia and Respondent

has failed to provide a response to the said complaint or communicate in any way with ODC regarding this matter.

### **RULES VIOLATED**

Respondent's conduct is a violation of the following Rules of Professional Conduct:

Rule 1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client), Rule 1.4(a)(3) (A lawyer shall keep the client reasonably informed about the status of the matter, Rule 1.4(a)(4) (A lawyer shall promptly comply with reasonable request for information), Rule 1.5(a) (A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses), Rule 1.16(d) (Upon representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred), and Rule 8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct).

### **SANCTION**

Louisiana Supreme Court relies on the ABA's *Standards for Imposing Lawyer Sanction* to determine the baseline sanction by "the type of duty violated, the lawyer's mental state and the extent of the injury caused; and then adjust the sanction in accordance with the aggravating and mitigations factors present." *In re: Quaid* 94-1316 (La. 11/30/94); 646 So. 2d 343,350.

Once a violation of the Rules of Professional Conduct has been established, Louisiana Supreme Court Rule XIX, Section 10(C) mandates that in determining an appropriate sanction the following factors should be considered:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

Respondent did not display an inability to assist in his defense with regard to the disciplinary proceedings due to a physical or mental incapacity in accordance with Rule XIX §22(C).

In determining an appropriate sanction for recommendations, Disciplinary Counsel has relied upon the following **A.B.A. Standards for Imposing Lawyer Sanctions** with regard to the misconduct:

**A.B.A. Standard 4.41:** “Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client

**A.B.A. Standard 4.42:** “Suspension is generally appropriate when”

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

### **Louisiana Jurisprudence**

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 mitigation circumstances. *Louisiana State Bar Ass’n v. Whittington* 459 So. 2d 520 (La. 1984). Aggravating factors include prior discipline offenses, substantial experience in the practice of law, and indifference in making restitution.

In *In re: Jones*, 11-1038 (01/24/12) 85 So. 3d 15, the attorney was retained to complete a succession. However, he was discharged before completing the matter. At the time his services were terminated, he had not yet filed the pleadings to open the

succession. He refused to refund any portion of the \$10,000 fee that he received, claiming that he earned the entire amount despite having no evidence of how much time he spent working on the succession. The Court found that the attorney knowingly, if not intentionally, violated duties owed to his client. In failing to resolve the fee dispute, the respondent deprived the client of her funds for several years, causing significant harm. Aggravating factors include prior disciplinary offenses, a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution. The sole mitigating factor was the remoteness of prior offenses. The respondent was suspended from the practice of law for three years, with all but one year deferred and placed on probation for two years.

In *In re: Self*, 13-2361 (11/15/13) 129 So. 3d 1229, the respondent acknowledged that she failed to promptly refund an unearned fee to a client and commingled client funds with personal funds in her trust account. She was suspended from the practice of law for a period of two years, with one year of the suspension deferred, followed by a two year period of supervised probation.

The respondent in the matter of *In re: Taylor*, 14-0646 (5/23/14) 139 So. 3d 1004 collected a fee of \$2500 for representation regarding a port-conviction relief application. After respondent failed to reply to the client's request for the status of his matter, the client requested that his file and the fee be returned. Respondent failed to reply to the client's request.

After receiving notice of the complaint, respondent delivered the client's file to the ODC. The file consisted solely of documents compiled by the client. There was no indication that respondent had ever taken any action in the matter, the respondent was suspended from the practice of law for one year and one day and ordered to repay the fee that he received from his client, plus legal interest.

### **RECOMMENDATION**

Louisiana Jurisprudence and the A.B.A. Standards suggest that the Respondent's similar misconduct warrants the imposition of a three year suspension from the practice of law, with all but one year deferred and placed on probation for two years.

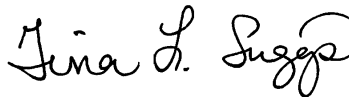
### **CONCLUSION**

Based on the A.B.A Standards, Louisiana Rules of Professional Conduct and applicable Jurisprudence, the committee recommends that the Respondent be suspended from the practice of law for a period of three years, with all but one year deferred and placed on probation for two years.

New Orleans, Louisiana, this 15 day of December, 2015.

**Louisiana Attorney Disciplinary Board  
Hearing Committee #55**

**Glenn B. Adams, Committee Chair  
Tina Louise Suggs, Lawyer Member  
James F. Talley, III, Public Member**

By: 

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**Tina L. Suggs  
For the Committee**

## APPENDIX

### **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. ...

### **Rule 1.16. Declining or Terminating Representation**

(a) ...

(b) ...

(c) ...

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

### **Rule 8.1. Bar Admission and Disciplinary Matters**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) ...

(b) ...



(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

**Rule 8.4. Misconduct**

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; ...