

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: CARLA ANN BROWN-MANNING

NUMBER: 14-DB-053

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This is a disciplinary proceeding based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Carla Ann Brown-Manning (“Respondent”).¹ The formal charges consist of two counts and allege violations of the following Rules of Professional Conduct: 1.3 (diligence), 1.4(a)(1) and (3) (communication), 1.16(d) (return of unearned fees, return of file), 1.5(f)(5) (return of unearned fees), 8.1(c) (cooperation with ODC), and 8.4(a) (violation of the Rules of Professional Conduct).² Respondent allowed the charges to become and remain deemed admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).³ The Hearing Committee assigned to this matter concluded that Respondent violated the Rules as charged and recommended that she be suspended from the practice of law for one year and one day.

¹ Respondent currently eligible to practice law.

² See the attached Appendix for the text of the Rules.

³ 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.

The Board adopts the factual findings and legal conclusions of the Committee. Likewise, the Board adopts the recommendation of the Committee and recommends to the Louisiana Supreme Court that Respondent be suspended from the practice of law for one year and one day.

PROCEDURAL HISTORY

ODC filed the formal charges on October 24, 2014. The charges state, in pertinent part:

COUNT I (ODC File Number 0030651)

Complainant, Cynthia Ann Franklin, filed a complaint with the Office of Disciplinary Counsel ("ODC") on June 3, 2013. Complainant hired Respondent on March 26, 2011, to have her niece removed as the succession representative in her brother's succession and have Complainant appointed as the representative in the proceeding. Complainant and Respondent entered into a written agreement calling for \$2,500.00 flat fee in exchange for Respondent representing Complainant. Complainant paid \$2,200.00 of the flat fee. According to Complainant, Respondent did very little work on the matter and she was unable to contact Respondent via phone when she had questions. Complainant states that she had to hire and pay for another attorney to complete the work because Respondent failed to do so. Respondent also failed to return the unearned portion of the flat fee Complainant paid to her. Initially, Respondent failed to provide a written response to the complaint to the ODC. Consequently, her sworn statement was scheduled for October 9, 2013. After being served with the subpoena for the sworn statement, Respondent appeared at the ODC on October 3, 2013 without an appointment with her entire client file. Respondent reported that all work was completed in the matter and that she would provide a written response to the ODC before October 21, 2013. Respondent further reported that she had been dilatory in her response to the ODC because she had a child with a serious illness who had recently been hospitalized. On October 22, 2013, Respondent provided a written response to the complaint outlining what work had been performed on Complainant's behalf, but stating that she was terminated by Complainant before the matter was concluded. On November 14, 2013, the ODC received correspondence from Complainant who was commenting on Respondent's written response. According to Complainant, Respondent still had not returned her client file. Thereafter, on December 6, 2013, the ODC sent correspondence to Respondent requesting a supplemental reply to Complainant's correspondence and also requesting information indicating whether Respondent had returned Complainant's file. Respondent provided no response to the ODC, so on March 12, 2014, the ODC sent a second request for this information. Because Respondent never complied with the ODC's two prior requests for a supplemental reply, ODC Investigator, Willis Walton, personally served Respondent with the written request for additional information on March 15, 2014. On March 30, 2014, Respondent sent correspondence to the ODC requesting until April 3, 2014 to forward her supplemental response. On March 31, 2014, Respondent faxed her

supplemental reply to the ODC indicating that Complainant would have her complete file within the next five days and that Respondent would refund her fee to Complainant. On April 15, 2014, the ODC sent additional correspondence to Respondent requesting documentation that she had returned the client file to Complainant and paid the refund. After receiving no reply from Respondent, the ODC again scheduled Respondent's sworn statement. After being served with a subpoena for the sworn statement, Respondent did fax correspondence to the ODC indicating that she had returned the file but that she was trying to raise the funds to return to Complainant. Respondent's sworn statement was scheduled for June 10, 2014. Respondent was served with a subpoena to appear for the sworn statement on May 16, 2014. Respondent failed to appear for the sworn statement.

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 return unearned fee, in violation of Rule 1.5(f)(5); 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.

COUNT II (ODC File Number 31278)

Complainant, Umeka M. Faciane, filed a complaint with the ODC on December 19, 2013. Complainant hired Respondent on May 17, 2013, to have an arrest expunged from her record. Complainant needed her record expunged so she would be able to sit for some medical licensing exams. In her complaint, Complainant alleges Respondent had not filed the expungement though she paid her to do so. She further alleges that Respondent informed her that she had filed the expungement, but Complainant checked with the District Attorney's office in the jurisdiction where she was arrested and was informed no expungement had been filed. After unsuccessfully being able to serve Respondent with the complaint through the mail, the ODC instructed ODC Investigator, Willis Walton, to serve Respondent with the complaint. Investigator Walton served Respondent on March 15, 2014. After being served, Respondent faxed a short written response to the ODC indicating that she could not explain what happened to Complainant's expungement. Respondent states in her response that the 29th (should have properly been stated as 19th) Judicial District Court should have received and processed the expungement. Respondent also attached some records indicating she had sent four money orders to the 19th Judicial District Court. The correspondence was dated May 24, 2013, but the fax cover sheet indicates a date of June 11, 2014. Complainant states in her complaint that she phoned the District Attorney's Office for the Parish of East Baton Rouge and was informed that no expungement was ever filed on her behalf. Before filing the complaint,

Complainant was able to contact Respondent and requested a copy of what Respondent informed her she had filed on her behalf. Respondent never provided the information to Complainant. Neither Respondent nor Complainant informed the ODC of the fee arrangement, but both Respondent and Complainant acknowledge that Complainant paid Respondent for her services. As part of its investigation into this matter, the ODC contacted the District Attorney's Office for the Parish of East Baton Rouge. The District Attorney's Office referred the ODC to the Criminal Records Section for the 19th Judicial District Court. A representative from the Criminal Records Division confirmed that no expungement had ever been filed on Complainant's behalf. On July 10, 2014, the ODC sent correspondence to Respondent requesting copies of the four money orders along with confirmation that the money orders were deposited and had cleared the account of the financial institution from which she bought the money orders. The ODC received no response from Respondent and once again scheduled her sworn statement. Respondent's sworn statement was scheduled for June 10, 2014. Respondent was served with a subpoena to appear for the sworn statement on May 16, 2014. Respondent failed to appear for the sworn statement. To date, Complainant's expungement has still not been filed.

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)(1)(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 return unearned fee, in violation of Rule 1.5(f)(5); 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.

By letter dated October 30, 2014, the Board attempted to serve Respondent with the formal charges by mailing the charges to her primary registration address via certified mail.⁴ This mailing was returned on December 17, 2014. However, on December 9, 2014, a staff investigator with ODC personally served Respondent with a copy of the charges at her primary registration address. Respondent failed to file an answer to the charges within the time period

⁴ Respondent's primary registration address is 813 Libra Lane, Kenner, LA 70065.

allowed by Louisiana Supreme Court Rules XIX, §11(E)(3).⁵ Accordingly, ODC filed a motion to have the formal charges deemed admitted on February 3, 2015. The Chairman of Hearing Committee No. 9 (“the Committee”)⁶ signed an order declaring the formal charges deemed admitted and proven by clear and convincing evidence on February 18, 2015. Respondent was granted twenty days in which to file a motion to recall the order, which she failed to do. ODC filed its written argument on sanctions, with supporting exhibits, on April 13, 2015.

The Committee issued its report on May 19, 2015. The Committee concluded that Respondent violated the Rules as charged in the formal charges. When considering the appropriate sanction, the Committee made the following findings:

1. The violations of the [ABA Standards for Imposing Lawyer Discipline] proved herein are violations owed to the client (failure to process their legal matters; failure to communicate with her clients; failure to return files or unearned fees) to the profession (Respondent's actions in not returning unearned fees result in the public holding the profession in disrespect) and to the legal system (failure to participate in the disciplinary process after being personally served with the Complaint).

2. These actions by the Respondent were knowing. She knew that she did not get a Court order appointing Ms. Franklin as the succession representative for her brother's estate. Rather than communicate this fact to Ms. Franklin, she failed to return repeated phone calls from her client.

With respect to the Complaint filed by Ms. Faciane, the evidence shows the Respondent failed to keep her client advised of the status of the legal matter she undertook on behalf of Ms. Faciane and failed to diligently pursue the matter. While Respondent claims she filed the expungement with the proper court, no record of the filing of expungement exists. Again Respondent failed to return to Ms. Faciane any of the unearned fee she accepted in connection with the representation nor did she provide Ms. Faciane with the requested portions of her file.

3. Respondent's actions caused potentially serious losses to the Complainants. Ms. Franklin was forced to hire and pay another attorney to accomplish the change in succession representative that she had already paid Respondent to obtain. Thus, Ms. Franklin had to pay twice to obtain the services

⁵ On December 30, 2014, the Board received a letter from Respondent directed to the Board Administrator in which she requested an extension of time to file an answer. By email sent January 7, 2015, Respondent was instructed by a Board docket clerk to file a motion for extension of time. Respondent failed to do so.

⁶ The Committee was composed of Donald C. Massey (Chairman), Keith M. Pyburn, Jr. (Lawyer Member), and Jennifer L. Steel-Bourgeois (Public Member).

she rightfully expected from Respondent. Not only does this damage, Ms. Franklin but it also results in the profession being held in disregard by the public.

In the case of Ms. Faciane, the client's interests were seriously injured because the expungement was needed for the client to be able to sit for medical certification exams so she could obtain employment in her chosen field. Respondent's failure to even file the requested expungement thereby prevented, or at least delayed the client from working in her chosen field.

4. Aggravating and Mitigating Factors. The Hearing Committee finds that the following aggravating factors are present:

[Respondent] has engaged in a pattern of misconduct. There is a pattern of nonresponsiveness not only to the clients but to the ODC. Ms. Franklin reported that numerous calls to the Respondent went unanswered. Ms. Faciane reported that her requests for a copy of what she was told had been filed on her behalf went unheeded. Similarly, the ODC contacted Respondent repeatedly, first in an attempt to investigate the matter and second about the pendency of this Complaint and, with limited exception, received no substantive responsive contact. This failure to participate in the investigation and these proceedings supports the pattern of non-responsiveness. The Hearing Committee finds this pattern of misconduct to be an aggravating factor.

As can be seen from the facts "deemed admitted," Respondent engaged in this behavior with more than one client, which violated more than one provision of the Code of Professional conduct. Thus, we find the Respondent committed multiple offenses.

The Hearing Committee also finds that Respondent had to be personally served with the complaint in this matter, was obviously aware of the proceedings, and yet failed to file an answer or otherwise substantively participate in the proceedings. This obstruction of the orderly processing of this Complaint is an aggravating factor.

The Hearing committee finds the following mitigating factor is present in this case:

The ODC submitted no evidence of any prior discipline to Respondent. In the absence of such evidence, we assume there is no such prior record and this may be considered in mitigation. However, in light of our above-findings that Respondent engaged in a pattern of substantial nonresponsiveness both to the two complaining members of the public and to the Disciplinary Counsel, the absence of such prior discipline is only of minimal importance.

Additionally, included as an Exhibit in the record was correspondence from the Respondent to the ODC advising that Respondent's delay in responding to the ODC investigation was caused by her need to take care of a medical problem of her child. While this might have provided evidence of mitigation with respect to her delay in responding to the ODC investigation, her subsequent failure to appear for a scheduled meeting at the ODC at which she was to give a sworn statement and her complete failure to participate in these proceedings thereafter results in there being no evidentiary record of the nature and/or extent of the family demands on her time. It is therefore not possible for the Hearing Committee to consider this as a mitigating factor.

Hearing Committee Report, pp. 6-9. Based upon the foregoing, the Committee recommended that Respondent be suspended from the practice of law for one year and one day.

This matter was initially scheduled for oral argument on August 13, 2015. However, it was continued to September 24, 2015, upon motion of ODC. In its motion for continuance, ODC stated that it had contacted Respondent via telephone regarding the motion, and further stated that Respondent indicated no objection to the continuance. Disciplinary Counsel's Motion to Continue Board Panel Argument (filed 5/26/15).

Oral argument was heard as scheduled on September 24, 2015, before Board Panel "A".⁷ Deputy Disciplinary Counsel Tammy Pruet Northrup appeared on behalf of ODC. Respondent failed to appear.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

⁷ Board Panel "A" is composed of Anderson O. Dotson, III (Chairman), Dominick Scandurro, Jr. (Lawyer Member), and R. Lewis Smith, Jr. (Public Member).

A. The Manifest Error Inquiry

The factual allegations in the formal charges have been deemed admitted and proven pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). The factual findings of the Committee are supported by the factual allegations asserted in the formal charges and/or by the evidence submitted in support of the allegations. *See In re Donnan*, 2001-3058 (La. 1/10/03), 838 So.2d 715.

B. De Novo Review

The Committee correctly applied the Rules of Professional Conduct. The record supports the conclusion that Respondent violated Rules 1.3 (lack of diligence), 1.4(a)(1) and (3) (lack of communication), 1.16(d) (failure to return unearned fees and return files), 1.5(f)(5) (failure to return unearned fees), 8.1(c) (failure to cooperate with ODC), and 8.4(a) (violate the Rules of Professional Conduct), as alleged in both counts of the formal charges.

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, §10(C) states that when imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

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.

Here, Respondent knowingly violated duties owed to her clients and the profession. Respondent's misconduct caused serious actual harm to her clients. Ms. Franklin had to hire and pay another attorney to complete the succession matter. Ms. Faciane's employment prospects

were compromised by Respondent's failure to have her record expunged. Respondent also caused harm to the profession by forcing ODC to expend additional resources in its investigation of these matters.

The Board adopts the aggravating factors recognized by the Committee: pattern of misconduct, multiple offenses, and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. The Board also recognizes the aggravating factor of indifference to making restitution. Despite her failure to complete the matters for which she was hired, Respondent has made no attempt to refund the fees she was paid. The only mitigating factor supported by the record is Respondent's lack of a discipline history.

B. The ABA Standards and Case Law

The *ABA Standards for Imposing Lawyers Sanctions* suggests suspension is the baseline sanction in this matter. Standard 4.42 states: "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 causes injury or potential injury to a client." Here, as discussed above, Respondent knowingly neglected two client matters, causing serious harm to those clients. Accordingly, suspension is the baseline sanction.

The case law of the Court supports the recommendation of the Committee – a one year and one day suspension. In deemed admitted formal charge matters where a lawyer engaged in misconduct similar to the facts of this matter (neglect; failure to refund fees, provide accountings, and/or return files; and failure to cooperate with ODC) and in the presence of significant aggravating factors, the Court has imposed at least a one year and one day suspension. *See In re Armato*, 2007-0500 (La. 6/1/07), 958 So.2d 650 (two client matters; one

year and one day suspension); *In re Engum*, 2009-1619 (10/28/09), 21 So.3d 926 (three client matters; one year and one day suspension);⁸ *In re Turnage*, 2001-1240 (La. 6/22/01), 790 So.2d 620 (two client matters; one year and one day suspension); *In re Mathews*, 2002-1377 (La. 9/20/02), 827 So.2d 1129 (one client matter; 18 month suspension). Accordingly, the Board adopts the Committee's recommendation of a one year and one day suspension from the practice of law.

CONCLUSION

The Board adopts the Committee's factual findings, legal conclusions, and recommendation. The Board recommends that Respondent be suspended from the practice of law for one year and one day. The Board also recommends that Respondent provide restitution to Ms. Franklin and Ms. Faciane and/or to the Client Assistance Fund.⁹ Finally, the Board recommends that Respondent be assessed with the costs and expenses of this proceeding.

⁸ The deemed admitted order in *Engum* was recalled and a hearing on the merits was held. However, Ms. Engum failed to appear at the hearing or otherwise present evidence in her defense.

⁹ The record indicates that Ms. Faciane filed a claim with the Client Assistance Fund in September of 2014. ODC Exhibit 34. At oral argument on September 24, 2015, ODC stated that Ms. Faciane had received funds from the Client Assistance Fund.

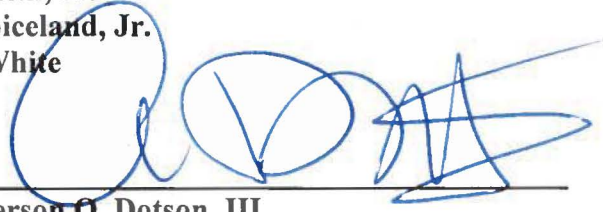
RECOMMENDATION

The Board recommends that Respondent, Carla Ann Brown-Manning, be suspended from the practice of law for one year and one day. The Board also recommends that Respondent be ordered to provide restitution to Ms. Franklin and Ms. Faciane and/or to the Client Assistance Fund. Respondent should also be assessed with the costs and expenses of this matter.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**Carl A. Butler
George L. Crain, Jr.
Carrie L. Jones
Edwin G. Preis, Jr.
Dominick Scandurro, Jr.
R. Lewis Smith, Jr.
Evans C. Spiceland, Jr.
Walter D. White**

BY:



**Anderson O. Dotson, III
FOR THE ADJUDICATIVE 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.

(b) ...

(c) ...

Rule 1.5. Fees

(f) Payment of fees in advance of services shall be subject to the following rules:

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute 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 such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Rule 1.16. Declining or Terminating Representation

(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:

(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; ...