

THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

NUMBER: 17-DB-011

IN RE: TRACEY MICHEL FAVORITE

REPORT OF HEARING COMMITTEE NUMBER THIRTY-SEVEN

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**INTRODUCTION**

Formal charges were filed by the Office of Disciplinary Counsel ("ODC") in this matter on March 27, 2017. The charges consist of five counts, all of which allege that Tracey Michel Favorite ("Respondent") issued multiple worthless checks in Orleans and Jefferson Parishes that resulted in felony criminal charges being issued in Jefferson Parish and attachments issued for her arrest.

The hearing on these matters occurred on September 28, 2017 and October 30, 2017. The first hearing was suspended when Respondent was arrested by Jefferson Parish Sheriff Deputies.

Evidence introduced on the five formal charges are hereafter noted as 1-transcript number and 2-transcript number from the transcript records of the two days of the hearings. The Formal Charges by the ODC are listed below for each charge.

## **FORMAL CHARGES**

The formal charges made are as follows:

### **COUNT 1**

**ODC 0034141**

1. Violations of Louisiana Rules of Professional Conduct 8.4(a) (violate or attempt to violate Rules of Professional Conduct); 8.4(b) (criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness); 8.4(c) (dishonesty, fraud, deceit or misrepresentation); and 8.4(d) (engage in conduct prejudicial to the administration of justice).

### **COUNT 2**

**ODC 0034265**

2. Violation of the Louisiana Rules for Professional Conduct, Rules 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonesty, fraud, deceit or misrepresentation).

### **COUNT 3**

**ODC 0034614**

3. Violation of the Louisiana Rules of Professional Conduct, Rules 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonesty, fraud, deceit or misrepresentation).

### **COUNT 4**

**ODC 0034881**

4. Violation of the Louisiana Rules of Professional Conduct, Rules 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonesty, fraud, deceit or misrepresentation).

**COUNT 5**

**ODC 0035224**

5. Count 5, violations of Louisiana Rules of Professional Conduct 8.4(a) (violate or attempt to violate Rules of Professional Conduct); 8.4(b) (criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness); 8.4(c) (dishonesty, fraud, deceit or misrepresentation); and 8.4(d) (engage in conduct prejudicial to the administration of justice).

**ANALYSIS OF THE EVIDENCE**

**COUNT 1 - ODC 0034141**

The ODC alleged that Respondent rented a townhouse from Brett Morris on November 20, 2014, and issued two checks for \$3,575.00 that did not clear due to insufficient funds. It was undisputed that the rental occurred, the rental charge was made, and that Respondent issued two checks totaling \$3,575.00 which were returned NSF.

Respondent testified that her checks payable to Brett Morris failed to clear because of insufficient funds, that as a result a felony criminal charge was filed against her alleging violation of LRS 14:71, which prohibits the issuance of worthless checks, that three attachments were issued for her arrest in 2015, but she was not served with the attachments for nearly three years before she was arrested on the first day of the hearing on September 28, 2017. She also admitted that she never paid Brett Morris any amount for the rental of the property. (1/79-81).

**COUNT 2 – ODC 0034265**

Respondent issued a check on February 25, 2016 for \$4,542.67 payable to associate attorney Chasmine M. White which was returned NSF. Respondent admitted that the check was returned because her account did not have sufficient funds. She subsequently contended that she later paid the associate attorney. (1/81-82).

**COUNT 3 - ODC 0034614**

Respondent on February 25, 2016 issued a payroll check to secretary/office manager Alicia F. Wiley which was returned NSF. Respondent did not dispute that the check was returned because the account did not have sufficient funds. She claimed that she subsequently paid Alicia Wiley. (1/83-84).

**COUNT 4 - ODC 0034881**

Respondent purchased office furniture from DKI Office Furniture on December 3, 2015, and issued a check in the sum of \$3,940.95 in payment of the purchases. The check was returned because it was written on a closed account. (1/85). She issued a second check in the same amount which was returned NSF. (2/64).

Mark Jacobs, Vice President of DKI Office Furniture, testified that the delivery of the furniture occurred in December of 2015, but no payment was received from respondent until a payment was received in 2017 which was made through the Jefferson Parish District Attorney's Office. (2/72). This was the result of what the witness referred to as "criminal proceedings \* \* \* instituted in Jefferson Parish and the District Attorney's Office provided \* \* \* payments." (2/80)

Count 4 also includes a claim relating to that of the Poydras Center, LLC. Respondent rented property in its office building located on Poydras Street in New

Orleans. Respondent signed a lease and building management built out the rental space at a cost of \$17,858.00.

Respondent issued a check to Poydras Center, LLC on October 30, 2015 in the sum of \$3,153.50 which was returned NSF. She issued a replacement check in the same amount on December 16, 2015 which was also returned with a bank notation that the account was blocked or frozen. Suit was filed against Respondent by Poydras Center, LLC, and a Judgment of Eviction was signed on January 3, 2017.

The attorney for Poydras Center, LLC, Ryan Luminais, testified that Respondent never paid his client any amount for tenant buildout or rental charges. (2/88-89)

In her testimony, Respondent admitted she issued a check to Poydras Center, LLC in the sum of \$3,150.50 on November 5, 2015, which was returned NSF, and she never paid the landlord any amount for rent during the several months she occupied the rental property. She also admitted that she never paid for the buildout costs that she had agreed to be responsible for which totaled \$17,613.70. (2/89-91) .

#### **COUNT 5 - ODC 0035224**

Respondent purchased furniture from Comeaux Furniture and Appliance Company costing \$8,005.01. She issued four checks in the sum of \$2,001.25 each to be paid in January, February and March 2016. The initial checks deposited by Comeaux Furniture were returned with a note that they were on a "closed account".

Rene Fontaine, Operations Manager of Comeaux Furniture, testified that during the period from January 2016 to October 30, 2017, the second day of the hearing, Respondent never paid any amount for the purchase of the furniture. In addition, the furniture was never returned to Comeaux Furniture. (2/113-114).

In her testimony, Respondent admitted that she never paid any money to Comeaux Furniture for the furniture she had purchased, and that she had an outstanding felony criminal charge in Jefferson Parish with an attachment for issuing worthless checks. (1/95).

### **FINDINGS OF FACT**

The Committee finds that the testimony of Laura Schneidau, Brett Morris, Rene Fontaine, Ryan Luminais, Mark Jacobs, Chasmine White and Alicia Wiley and documentary evidence introduced at the hearing are credible. The evidence shows a pattern of multiple worthless checks being issued by Respondent in 2015, 2016 and 2017.

The evidence proves that Respondent engaged in a pattern of issuing multiple worthless checks, and that limited effort was made by Respondent to pay her debts after she issued checks in accounts with insufficient funds as well as checks issued in closed accounts. During the hearing, Respondent showed no remorse for her worthless checks history that occurred over a period approaching three years.

### **OPINION**

The Panel concludes that Respondent violated Rules of Professional Conduct 8.4(a), 8.4(b), 8.4(c) and 8.4(d) as alleged by the ODC in Counts 1 and 5, and violated Rules of Professional Conduct 8.4(a) and 8.4(c) as alleged by the ODC in Counts, 2, 3 and 4.

L.R.S. 14:71, a felony statute in the Louisiana Criminal Code, states in pertinent part that "Issuing worthless checks is the issuing \* \* \* with intent to defraud, of any check \* \* \* knowing at the time of the issuing that the offender has not sufficient credit

with the bank \* \* \* for the payment of such check \* \* \* in full upon its presentation.” The evidence proves that Respondent has been in violation of this felony criminal statute in each of the five counts made by the ODC. The fact that an attorney has not been convicted of the crime does not preclude the ODC from proving in an attorney disciplinary proceeding that the attorney committed a criminal act in violation of the professional conduct rule prohibiting a criminal act, especially one that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects. *In Re: Williams*, Sup. 2012, 85 So.2d 583, 2011-1457 (La. 1/24/12).

The Supreme Court, *In re: Lash*, 97-0327 (La. 4/4/97) 691 So.2d 694 (per curiam) disbarred a lawyer for misconduct due to criminal acts including issuing seven worthless checks.

The ABA Standards for Imposing Lawyer Sanctions, Standard 9.22, entitled Factors Which May Be Considered In Aggravation, states that aggravating factors include dishonest or selfish motive, a pattern of misconduct, multiple offenses, and refusal to acknowledge wrongful nature of conduct. These factors may be applied in this matter.

Accordingly, the Committee recommends that Respondent be disbarred.

New Orleans, Louisiana this 11 day of December, 2017.

  
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HEARING COMMITTEE NO. 37

WADE P. WEBSTER, CHAIR  
ROBERT JOHNSTON, LAWYER MEMBER  
LINDA ELLIS, LAY MEMBER