ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: CAROL E. PARKER

NUMBER: 17-DB-068

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

INTRODUCTION

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel ("ODC") against Carol E. Parker ("Respondent"), Louisiana Bar Roll Number 20317.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 3.1 (meritorious claims and contentions), 8.4(a) (violate or attempt to violate the Rules of Professional Conduct); 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice).[2] The hearing committee ("committee") assigned to the matter concluded that Respondent violated Rules 3.1, 8.4(a), 8.4(c), and 8.4(d) as charged. The committee recommended Respondent be suspended for three months, with all but thirty days deferred.

For the following reasons, the Board adopts the committee's factual findings and conclusions regarding rule violations. The Board recommends that Respondent be suspended for six months, with all but thirty days deferred, and that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. The Board further recommends that Respondent be assessed with the costs and expenses of this matter.

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[1] Respondent was admitted to the Louisiana Bar on 10/05/1990. Her primary registration address is 160 S. 9th St., Ponchatoula, LA 70454. Respondent is currently eligible to practice law in Louisiana.

[2] *See* attached Appendix for full text of the Rules.

PROCEDURAL HISTORY

The formal charges were filed on November 21, 2017. The charges state, in pertinent part:

The Office of Disciplinary Counsel opened ODC file numbers 0027558, pursuant to information received from the Honorable Bruce C. Bennett, 21st Judicial District Court and 0028071, pursuant to information received from Roy H. Maughan, Jr., Esq., both reporting allegations of misconduct by Respondent Carol E. Parker. Notice of the complaints was transmitted to the Respondent via certified registered mail on February 7, 2011, and June 17, 2011, at Respondent's primary bar registered address, respectively. Respondent accepted service of the same on February 26, 2011, and June 21, 2011, respectively.

The Respondent was retained by Cathy L. Williams on or before July 15, 2010, to complete litigation pertaining to the partition of Community Property subsequent to a divorce. On that same day, Respondent contacted the Complainant/Opposing Counsel, Roy H. Maughan, Jr., and requested a continuance of an upcoming *Rule to Show Cause* hearing that was scheduled for Monday, July 26, 2010. Respondent communicated to Mr. Maughan that her reasons for the continuance were that she required additional time to review the file history, it was her first request for a continuance, and that her mother was having major surgery on July 19, 2010, which required the Respondent's assistance. Because of these compelling reasons, Complainant Maughan agreed to the continuance.

Thereafter, Respondent failed to make any formal arrangements through the Court to secure her request for continuance, until Friday, July 23, 2010, at 5:30 p.m. The Court's hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m.

Further, despite the Respondent's request to Mr. Maughan for the continuance, and the filing of the untimely after-hours fax to the Court, Respondent nevertheless appeared in Court on July 26, 2010, with her client. Mr. Maughan's client's *Rule* was dismissed due to his failure to appear in Court. Mr. Maughan did not appear in Court because, in good faith, he honored and relied on the Respondent's representation that she required the continuance and that she had taken the proper and necessary steps in requesting the same from the Court.

On October 12, 2010, Respondent appeared before Judge Zorraine Waguespack for a status conference in the same matter. The parties were given a pre-trial conference date of November 22, 2010, at 2:00 p.m. During the pre-trial conference, Judge Waguespack set the matter for trial, scheduled for Tuesday, November 23, 2010, at 9:00 a.m. Also, during the pre-trial conference, Respondent requested another continuance, and Judge Waguespack denied the same.

On November 23, 2010, the Respondent failed to appear before the Court for the scheduled trial; however, that same day, the Respondent faxed filed a *Motion to Recuse* Judge Waguespack. The Court found Respondent in contempt of court for failure to appear. Subsequently, the Contempt was set aside after Respondent made an appearance, prior to the Court's first recess. After the recess, Respondent went on the record, in open court, and informed the Court that if she received her discovery from opposing counsel, or otherwise if the Court would hear the *Motion and Order to Compel Discovery*, that she had prepared to file that very same day,

prior to the parties going to trial, that she would withdraw her *Motion and Order to Recuse*. Judge Waguespack denied this *Motion* and advised that her recusal matter would be set for hearing. The recusal motion was randomly allotted to Complainant Judge Bennett, and the matter was set for December 6, 2010. This was a special hearing that required Complainant Judge Bennett to rearrange his docket in a three-parish court system, and to request a special court reporter.

On December 1, 2010, Respondent received notice of the December 6, 2010, hearing. Thereafter, Respondent filed a *Motion to Continue and Reset* the hearing to recuse Judge Waguespack, and the Court denied the same. Because the *Motion* was denied, the Respondent, thereafter, filed a *Motion to Dismiss Motion to Recuse* Judge Waguespack on December 3, 2010. This *Motion* was also denied by the Court.

Judge Bennett denied the *Motion to Continue and Reset* and the first *Motion to Dismiss Motion to Recuse* Judge Waguespack. Respondent appeared at the December 6, 2010, recusal hearing, and informed Judge Bennett that she had again faxed filed, that day, a second *Motion to Recuse* Judge Bennett. At that point, Complainant Judge Bennett voluntarily recused himself, and the matter was realloted to Judge Robert Morrison, Division C. Judge Morrison also was compelled to make special accommodations to schedule the special hearing. The second recusal hearing was then set for December 16, 2010.

Also, on December 6, 2010, the Respondent filed a *Notice of Intention to Apply for Emergency Writs of Review from the First Circuit Court of Appeal for the State of Louisiana, With Stay Order Requested*, regarding the allotment procedure for the 21st Judicial District Court, State of Louisiana.

On December 14, 2010, two days before the second scheduled recusal hearing, the Respondent filed a *Motion to Dismiss Motion to Recuse with Prejudice* as it relates to Judge Bennett. As a result, the community property issue was placed back on the original docket of Judge Waguespack.

Respondent's actions constitute a violation or attempted violation of the Rules of Professional Conduct, in violation of Rule 3.1 (a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law); Rule 8.4(a)(violate or attempt to violate the Rules of Professional Conduct); Rule 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and Rule 8.4(d) (conduct prejudicial to the administration of justice).

After being granted an extension of time to respond, Respondent answered the formal charges on January 29, 2018. She denied all of the alleged rule violations.

The hearing in this matter was held on June 15, 2018 before Hearing Committee No. 62.[3] Deputy Disciplinary Counsel Karen Hayes Green appeared on behalf of the ODC. Respondent appeared pro se. The committee heard testimony from the following: Respondent; Roy H. Maughan (complainant/opposing counsel in underlying litigation); Judge Zorraine M. Waguespack (ret.) (one of the judges Respondent sought to recuse in the underlying litigation); and Judge Bruce C. Bennett (ret.) (complainant/one of the judges Respondent sought to recuse in the underlying litigation). Exhibits ODC1 through ODC22, RESP1 through RESP20, and RESP23 through RESP33 were admitted into evidence.

The hearing committee filed its report on August 20, 2018. On August 21, 2018, the ODC filed a Notice of No Objection to the Hearing Committee Report. On October 9, 2018, the ODC filed its brief in support of the committee's report and recommendation.

On October 15, 2018, Respondent filed a brief in opposition to the committee's report. In her brief, Respondent sets forth a chronology of events and argues that the ODC failed to prove the allegations of misconduct by clear and convincing evidence. She also argues that the cases cited by the ODC involve more egregious circumstances than the misconduct alleged in this matter.

Oral argument of this matter was held on November 15, 2018, before Board Panel "B."[4] Deputy Disciplinary Counsel Karen Hayes Green appeared on behalf of the ODC. Respondent appeared pro se.

HEARING COMMITTEE REPORT

The committee filed its report on August 20, 2018. The committee made the following findings and conclusions:

[3] Hearing Committee No. 62 was comprised of Mark J. Mansfield (Committee Chair), Kenneth P. Mathews (Lawyer Member), and Verlean W. Randolph (Public Member).
[4] Board Panel "B" was composed of Pamela W. Carter (Chair), Dominick Scandurro, Jr. (Lawyer Member), and Evans C. Spiceland, Jr. (Public Member).

* * *

For the following reasons, the Committee finds that Carol E. Parker violated Rules of Professional Conduct: 3.1, 8.4(a), 8.4(c), and 8.4(d) and as such, should be suspended from the practice of law for three (3) months with all but thirty (30) days deferred.

* * *

FINDINGS OF FACT

Although Respondent Carol Parker and the ODC entered into negotiations to resolve this matter, they were unable to agree on a consent discipline resolution. Therefore, it came before the hearing committee on June 15, 2018.

Ms. Parker has been licensed to practice law in Louisiana since October 5, 1990. Prior to the filing of charges, she had no previous disciplinary record. The facts as recited above are largely undisputed. Ms. Parker was retained on July 15, 2010 to represent Cathy Williams in a community property partition trial. Ms. Williams' former husband filed for relief which was set before Judge Zorraine Waguespack on July 26, 2010. Due to the fact that she had not had adequate time to review the record and the fact that her mother was undergoing a medical procedure, she requested a continuance. Counsel for Mr. Williams, Roy Maughan Jr., reluctantly agreed to the continuance prior to the date and indicated he would not appear that date. Ms. Parker testified that she faxed a letter to the Judge's office on July 23, 2010 at 5:30 pm, a Friday evening, that the matter would be continued. In the interest of caution, Ms. Parker testified she decided to physically appear that following Monday morning in court. However, due to the fact that Ms. Parker was late and Mr. Maughan didn't show up – assuming that Ms. Parker had notified the Court of the unopposed continuance, the Judge dismissed the matter due to no appearances. Mr. Maughan, upon learning that the Respondent actually did physically appear, but late and a formal continuance was not filed well in advance of the court date as anticipated, was understandably upset upon learning that the matter was dismissed. He filed to have the motion reset on August 30, 2010. Mr. Maughan had to incur additional costs and time by filing to reset the rule. The record is not very clear, but evidently Ms. Parker was not even immediately retained due to Ms. Williams' inability to come up with the necessary retainer in the weeks following the appearance in July. At some point though, she was able to come up with the retainer and Ms. Parker enrolled as counsel. Ms. Parker subsequently made a formal appearance at the October 11, 2010 status conference to set the partition trial. A scheduling order was confected during the status conference and a November 22, 2010 pre-trial conference date was selected with a trial the next day on November 23, 2010. Presumably, all counsel agreed with the trial date at that time and advised the Judge of their availability that date. As the date approached, Ms. Parker testified that she was missing discovery and could not be prepared for the trial date. Notably, she failed to file *any* pleadings to have the alleged discovery deficiencies addressed prior to trial. On the day of the trial, Ms. Parker failed to appear and was found in contempt. On that same date, Ms. Parker

fax filed a Motion to Recuse Judge Waguespack. The contempt order was thus set aside. Ms. Parker also filed a Motion and Order to Compel Discovery that day of trial and advised the Court that she would withdraw the Motion to Recuse if the discovery motion could be heard and trial delayed. That motion was denied.

Pursuant to the rules, the recusal motion was docketed to Judge Bruce Bennett and was set for December 6, 2010. Ms. Parker filed a motion to continue and reset that recusal hearing, which was denied. Subsequent to that, Ms. Parker filed a motion to dismiss the motion to recuse Judge Waguespack on December 3, 2010 prior to the hearing with Judge Bennett. That motion was also denied. In open court on December 6, 2010 at the recusal hearing, Ms. Parker notified Judge Bennett that she filed a second motion to recuse – now against him and a Notice of Intention to Apply for Emergency Writs with a stay order. Understandably angry, Judge Bennett voluntarily recused himself at that point in time and made a record of what had been going on with the recusal motions. Ms. Parker testified that this second motion to recuse was also filed to buy time for her writ to be considered. On December 14, 2010, Ms. Parker dismissed all the motions to recuse and the matter was allotted back to Judge Waguespack. However the partition matter was effectively delayed due to the motions to recuse filed.

Committee Report, pp. 1, 3-4.

In concluding that Respondent violated Rules 3.1, 8.4(a), 8.4(c), and 8.4(d), the committee explained:

In this matter, Ms. Parker filed several frivolous and baseless motions to recuse Judges in order to "buy time" and delay a community property partition trial. She testified that she was not prepared for trial at that time and felt like she had to file to recuse Judge Waguespack in order to delay the proceedings and allow her time to obtain discovery. The motion to recuse Judge Bennett was for dilatory purposes also so that the First Circuit could consider her writ. *Even* if Ms. Parker had valid reasons to ask for a continuance the day of trial, other procedural mechanisms are in place to ensure that she could obtain whatever she felt like she needed to present her case to the court. A Motion to Recuse at the eleventh hour could conceivably only be considered in good faith if some information regarding Judge Waguespack's impartiality had only been recently discovered. Otherwise, this motion was done for one reason – to delay. The Respondent simply was unprepared for trial and did not follow the appropriate procedure to seek a delay. Instead, without any valid grounds to do so, she filed a frivolous Motion to Recuse the Trial Judge on the day of trial, knowing it would trigger an immediate stay so that a third party Judge could review the motion. [FN3]

[FN3 A judge of any court, trial or appellate, shall be recused when he:
(2) Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's

employment in the cause, and the judge participated in representation in the cause;

* * *

(4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

* * *

B. A judge of any court, trial or appellate, may be recused when he:
(3) Has performed a judicial act in the cause in another court.
La.C.C.P. art. 151(A)(2)(4) and B(3).

Jurisprudence has held that a party seeking to recuse a judge "cannot merely allege a lack of impartiality; he must present some factual basis." *Use v. Use*, 94-0972 (La.App. 1 Cir. 4/7/95), 654 So.2d 1355, 1360; *Earle v. Ahlstedt*, 90-1607 (La.App. 4 Cir. 11/22/91), 591 So.2d 741, 746. Further, the alleged "bias, prejudice or personal interest (of the judge) must be of a substantial nature and based on more than conclusory allegations." *Tamporello v. State Farm Mutual Auto Insurance Comopany*, 95-458 (La.App 5 Cir. 11/15/95), 665 So.2d 503, 506; *Pierce v. Charity Hospital*, 88-1662 (La.App. 4 Cir. 9/14/89), 550 So.2d 211, 213, *writ denied*, 551 So.2d 1341 (La. 1989). Even where a litigant might have reason to suspect a judge's prejudice, bias, or impropriety, the recusal of a judge requires a finding of actual bias or prejudice, and thus, a substantial appearance of the possibility of bias or appearance of impropriety are not causes for removing a judge from presiding over a given action. *Edwards v. Daughtery*, 97-1542 (La.App. 3 Cir. 3/10/99), 729 So.2d 1112.]

There was no reason to recuse Judge Waguespack in this matter other than to delay the proceedings. Also, if Ms. Parker felt that she did not have enough time to prepare for trial upon her retention by the client, she should have declined representation. Compounding this error of judgment, the subsequent motions to recuse Judge Bennett and dismissals clearly exhibit that she was not filing motions with a good faith basis. The allegations in her pleadings seeking recusal do not in any way, shape or form provide a good faith basis for recusal under the Code of Civil Procedure.

La.C.C.P. Art. 863 titled "Signing of pleadings, effect" provides as follows:

A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address.

B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the 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, he certifies all of the following:
>
> > (1) **The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the litigation.** (emphasis supplied)
>
> Ms. Parker was a licensed attorney for twenty (20) years in 2010. With that amount of experience at the time, she certainly should have known better than to file pleadings with no legal or good faith basis, but she chose to do so anyway. Furthermore, she did so not once, but twice in this matter. These dilatory antics delayed the underlying legal proceedings, cluttered the record and presumably cost more money for all parties in additional legal fees and expenses. Ms. Parker admitted at the disciplinary hearing that she filed the recusal motions without any valid grounds evident in the Code of Civil Procedure. However, what was additionally problematic to the committee was her seeming lack of remorse until she was prodded by the committee at the end of the hearing. She continued to assert that Judge Waguespack's ruling had a "prejudicial effect" on her client and as such, she was not in bad faith in filing the motion. (Transcript, pp. 178-181). Only at the end of the proceedings did she finally state that she was wrong (*Id.* at p. 184, lines 3-7).
>
> Due to the length of time between the initial complaint and the hearing, memories of the witnesses were somewhat cloudy on exactly the cost to Mr. Maughan's client, but Judge Bennett (now retired) recalled the fact that he was quite upset about the inconvenience Ms. Parker's motions caused to his staff. Ms. Parker's behavior in this matter violated Rules 3.1 and 8.4 of Professional Conduct and as such, she should be sanctioned for those violations. She violated Rule 3.1 by filing frivolous and dilatory motions to recuse two Judges and misusing the legal process to obtain a delay in proceedings based solely on her own lack of preparedness for trial. This was disruptive and unfair both to the opposing counsel and his client.

Committee Report, pp. 4-7.

In addressing the appropriate sanction to be imposed for the proven violations, the committee first considered the factors outlined in Louisiana Supreme Court Rule XIX, §10(C). The committee found that Respondent violated duties owed to the public, the legal profession, opposing counsel and his client. The committee also found that Respondent "acted knowingly and intentionally" and that her "misconduct caused actual harm in delaying a matter which was set for trial and wasting judicial resources in dealing with frivolous motions." Committee Report, pp. 7.

The committee then provided the following analysis in reaching its recommendation regarding the appropriate sanction to be imposed:

> The *ABA Standards for Imposing Lawyer Sanctions* suggest that ABA Standard 6.2 is the baseline sanction for Respondent's misconduct.
> ABA Standard 6.2:
> 6.2 Abuse of the Legal Process Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:
> 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
> 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
> 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
> 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.
>
> In *In re Bandaries*, the Court publicly reprimanded Mr. Bandaries for filing multiple lawsuits in multiple venues against his former client and her business agent with no good faith basis to do so and to harass the former client. 2014-B-1435 (La. 12/9/14), 156 So.3d 1152. The Court concluded that Mr. Bandaries knowingly engaged in the conduct, causing actual financial harm to his former client and burdening various court with unnecessary litigation. The Court recognized the following aggravating factors: a prior disciplinary record, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. The Court recognized only one mitigating factor: imposition of other penalties or sanctions in the form of the sanctions Mr. Bandaries received in the underlying litigation. The Court concluded that a downward deviation from the baseline sanction of suspension warranted based upon the unique circumstances of the case. However, the Court did not state what those circumstances were.
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> In *In re Miniclier*, the Court suspended Mr. Miniclier for three months, fully deferred, for filing multiple and duplicative pleadings in federal court, contrary to the instruction of the presiding judge. 2011-1859 (11/4/11), 74 So.3d 687. The Court found that Mr. Miniclier knowingly engaged in the misconduct, which caused actual harm. The Court recognized the following aggravating factors: prior disciplinary offenses, refusal to acknowledge the wrongful nature of the conduct,

and substantial experience in the practice of law. In mitigation, the Court recognized the following: absence of a dishonest or selfish motive, imposition of other penalties or sanctions, remoteness of prior offenses, and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

In *In re Harvin*, the Court suspended Mr. Harvin for 3 months, with all but 30 days deferred, for filing frivolous pleadings. 2013-0685 (La. 5/24/13), 117 So.3d 907. Mr. Harvin obtained an improper default judgment and filed improper notices of lis pendens against ***all*** property owned by the defendant, even though some of the property was not connected to the underlying litigation. The Court found that Mr. Harvin knowingly engaged in the misconduct and that it caused actual harm by delaying the sale of some of the property because of the improper lis pendens. Mr. Harvin ultimately admitted his mistakes. The Court considered the following aggravating factors: prior disciplinary record and substantial experience in the practice of law. However, there were several mitigating factors present: full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, character or reputation, remorse, and remoteness of the prior disciplinary offense.

In *In re Cook*, the Court suspended Mr. Cook for 3 years, with 18 months deferred, for filing repetitive and unwarranted pleadings attacking the judge and magistrate assigned to the matter and for making frivolous and harassing claims for discovery against third persons not involved in the litigation. 2006-0426 (La. 6/16/06), 932 So.2d 669. The misconduct spanned three years, resulted in sanctions and fines by the court, and harmed the courts and defendants. His misconduct was knowing. The Court relied on the following aggravating factors: pattern of misconduct and refusal to acknowledge the wrongful nature of the conduct. The Court also recognized numerous mitigating factors: absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and inexperience in the practice of law.

In *In re Boydell*, the Court suspended Mr. Boydell for three years for filing unwarranted and harassing demands against a former client over the course of 10 years. 2000-0086 (La. 5/26/00), 760 So.2d 326. The district court rendered a significant monetary judgment against Mr. Boydell for abuse of process and intentional infliction of emotional distress. In the disciplinary proceedings, the Court found disbarment to be the baseline sanction for Mr. Boydell's pursuit of the vexatious litigation, but considering the mitigating factors present, suspended him for three years. Those mitigating factors were: absence of a prior disciplinary record, cooperation with the disciplinary process, and imposition of other penalties and sanctions. The Court did not recognize any aggravating factors.

In this case, aggravating factors include substantial legal experience and refusal to acknowledge wrongful conduct. Mitigating factors are the absence of a prior disciplinary record, the excessive length of time it took this matter to bring to hearing and her cooperation in the proceedings. Due to the fact that the conduct complained of was almost eight (8) years ago, some of the witnesses could not recall with absolute certainty some of the facts so quantification of actual harm to

the opposing party was speculative. However, it is clear from the testimony and evidence presented at trial that her conduct was disruptive and harmful. This committee finds the conduct of the Respondent in *In re Harvin* gives guidance on the proper sanction.

CONCLUSION

The Committee concludes that Carol Parker violated the Rule of Professional Conduct and should be sanctioned with a three (3) month suspension with all but 30 days deferred and to pay all costs associated with these proceedings.

Committee Report, pp. 7-9.

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).

A. The Manifest Error Inquiry

The factual findings of the committee do not appear to be manifestly erroneous, are supported by the record, and are adopted by the Board.

B. *De Novo* Review

The ODC proved by clear and convincing evidence that Respondent violated Rules 3.1, 8.4(a), 8.4(c), and 8.4(d) as charged. Upon first being contacted by her client, Respondent sought

and obtained agreement from Mr. Maughan to a continue his client's rule to show cause. However, Respondent failed to timely notify and obtain approval from the court of the continuance. Further, after advising Mr. Maughan that she was unable to appear in court on the date in question, Respondent in fact did appear on the hearing date, at which time the court dismissed Mr. Maughan's rule due to the failure of counsel to appear. By these actions, Respondent engaged in conduct involving misrepresentation and conduct that is prejudicial to the administration of justice in violation of Rules 8.4(c) and 8.4(d). Additionally, Respondent's subsequent actions in connection with the filing of frivolous motions to recuse two judges and other behavior in requesting continuances and failing to appear timely on an assigned trial date constitute violations of Rules 3.1, 8.4(c), and 8.4(d) as fully explained in the committee's report previously quoted herein. Finally, the violation of Rules 3.1, 8.4(c), and 8.4(d) establish the derivative violation of Rule 8.4(a) which provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct.

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 violated duties to the public, the profession, and the legal system. Respondent acted knowingly and intentionally. Her misconduct caused actual harm in delaying the litigation, wasting judicial resources, and causing added inconvenience and expense to Mr. Maughan and his

client, and also caused the potential for harm to the reputations of the judges whom she wrongfully sought to recuse.

The following aggravating factors are supported by the evidence: refusal to acknowledge wrongful nature of conduct and substantial experience in the practice of law. The mitigating factors present are absence of prior disciplinary record; full and free disclosure to disciplinary board or cooperative attitude toward the proceedings; and delay in disciplinary proceedings.

B. The ABA Standards and Case Law

The following ABA *Standards for Imposing Lawyer Sanctions* are instructive in considering the sanction to be imposed for Respondent's misconduct:

> 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
>
> 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
>
> 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

The committee has provided a detailed review and discussion of numerous decisions in which sanctions have been imposed for misconduct of the type committed by Respondent here, which discussion is previously quoted herein. The sanctions in the cases reviewed by the committee range from public reprimand to a three-year suspension. In addition to the cases

discussed by the committee, in the more recent decision in *In re Nugent*, 2017-1856 (La. 12/5/17), 231 So.3d 19, the Supreme Court imposed consent discipline in the form of an eighteen-month suspension for misconduct involving the filing of several baseless claims. The disciplinary charges in *Nugent* resulted from claims filed by the respondent subsequent to a municipal court, criminal proceeding against him for domestic abuse battery.[5] Mr. Nugent filed a lawsuit for damages against a municipal court judge and Mr. Nugent's former wife alleging that the judge was romantically involved with Mr. Nugent's then wife when the judge acted in Mr. Nugent's criminal case, and Mr. Nugent further issued a press release to the media regarding the allegations. He also filed two judicial complaints against the judge. In one complaint, he asserted the same claims alleged in the lawsuit against the judge. In the other complaint, he asserted that the judge, along with the judge's staff and other attorneys, were engaged in criminal conduct by accepting payments in exchange for dismissal of pending criminal charges against their clients. The lawsuit and both judicial complaints were dismissed. Mr. Nugent admitted to violations of Rules 3.1, 8.4(a), 8.4(c) and 8.4(d).

In recommending a three-month suspension with all but thirty days deferred, the committee relied primarily on the Court's decision in the *Harvin* case. However, in *Harvin*, the respondent ultimately admitted his mistakes, exhibited remorse, and made efforts at restitution. In the present matter, Respondent's misconduct, which is outlined in the committee's report quoted above, included behavior and tactics which delayed and prejudiced the proceeding and prejudiced the opposing party and counsel. Her misconduct included filing two motions to recuse unjustifiably asserting bias on behalf of two different judges. She further attempted to barter a dismissal of the

[5] The respondent in *Nugent* was previously suspended for one year and one day, with all but ninety days deferred subject to a two-year probation period, in a separate disciplinary proceeding arising out of the domestic abuse incident. *In re Nugent*, 2015-0219 (La. 3/6/15), 162 So.3d 1170.

first motion to recuse for a trial continuance and consideration of an untimely filed discovery motion. While Respondent claims to have remorse, she has never genuinely acknowledged the wrongful nature of her conduct. Considering Respondent's misconduct, the ABA *Standards*, and the jurisprudence discussed above and in the committee's report, the Board recommends that Respondent be suspended for six months, with all but thirty days deferred.

Additionally, in *In re Dobbins*, 2001-2022 (La. 1/15/02), 805 So.2d 133, the Louisiana Supreme Court explained that without some mechanism to make the deferral of a suspension executory, "deferral is meaningless." In *Dobbins*, the Court instructed, "in cases where the disciplinary board recommends that all or part of a suspension be deferred, it should also recommend either a period of probation, or a period within which the deferred suspension may become executory, in the event of misconduct by the respondent during this period." *Id.* at p. 137. Therefore, the Board recommends that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate.

CONCLUSION

The Board adopts the committee's factual findings and conclusions regarding rule violations. The Board recommends that Respondent be suspended for six months, with all but thirty days deferred, and that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. The Board further recommends that Respondent be assessed with the costs and expenses of this matter.

RECOMMENDATION

The Board recommends that Carol E. Parker be suspended for six months, with all but thirty days deferred, and that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. The Board further recommends that she be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

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By DocuSigned by: Dominick Scandurro 7A2BFA1B2C974A2... **Dominick Scandurro, Jr.**
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

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;
(b) . . .;
(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
(d) Engage in conduct that is prejudicial to the administration of justice;
. . .