

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DINA FAE DOMANGUE

NUMBER: 17-DB-083

RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD



INTRODUCTION

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Dina Fae Domangue (“Respondent”), Louisiana Bar Roll Number 26266.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3 (lack of diligence); 1.4(a)(3) (communication – failure to keep client reasonably informed about the status of the matter); 1.4(a)(4) (communication – promptly comply with reasonable requests for information); 1.5(a) (reasonable fee); 1.16(d) (termination of representation; return of papers and property; return of unearned fee); 8.1(c) (failure to cooperate with ODC investigation); and 8.4(a) (violate or attempt to violate the Rules of Professional Conduct).²

At the outset of the hearing before the hearing committee (“committee”), the Respondent was placed under oath. A discussion then ensued regarding the Respondent’s desire to reach a consent relating to the facts of the matter. A recess was taken and when the hearing resumed, stipulations as to numerous facts were stated on the record and the proceeding continued. The committee did not make explicit determinations regarding rule violations, but ultimately recommended that Respondent be suspended for one year, “fully deferred and with a public

¹ Respondent was admitted to the Louisiana Bar on October 15, 1999 and to the Texas Bar on August 12, 2005. Her primary registration address is 210 Woodland Dr., Columbia, LA 71418. Respondent is currently eligible to practice law in Louisiana.

² See attached Appendix for full text of the Rules.

reprimand,” and that “during the year Respondent is on probation and attends a course on law office practice management and professionalism, that the check she tendered to Complainant clears the bank and that she pays all costs ...”

For the following reasons, the Board adopts the committee’s factual findings and further concludes that Respondent violated Rules 1.3, 1.4(a), 1.16(d), 8.1(c), and 8.4(a), but did not violate Rule 1.5(a). As to sanction, the Board issues a public reprimand with the condition that Respondent attend additional legal training in the area of law office management. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

PROCEDURAL HISTORY

The formal charges were filed on December 28, 2017, and served on Respondent on February 22, 2018. The charges state, in pertinent part:

After having filed his divorce petition pro se, Complainant spoke to Respondent on or about February 21, 2017, regarding representation for his divorce/domestic violence matter. Complainant delivered the \$1,500 retainer fee to Respondent prior to his April 5, 2017, scheduled hearing. Complainant appeared for the April 5, 2017, hearing and the charges were dropped due to insufficient evidence. Respondent failed to appear.

Complainant states that his next contact with Respondent occurred on May 30, 2017, via text message when she contacted him regarding scheduling a court date for his divorce matter. The matter was scheduled for June 15, 2017. Complainant states that Respondent requested that he meet her at court on June 13, 2017, for the sole purpose of providing a copy of his tax and financial documents to be submitted to opposing counsel. Complainant states that he arrived as scheduled, however, Respondent failed to appear for their meeting. Thereafter, at Respondent’s request, Complainant deliver [sic] the requested documents to her home. Complainant did not meet with Respondent, he left the documents on the seat of her car as she requested. Complainant and opposing counsel appeared for court on June 15, 2017. Respondent failed to appear. The matter was rescheduled.

The next scheduled meeting was June 23, 2017, when Respondent and Complainant were to meet with opposing counsel at his office. Respondent suggested that she and Complainant meet for breakfast prior to meeting with opposing counsel in order to discuss his case. Respondent failed to appear; alleging that opposing counsel contacted her and canceled the meeting. Complainant states that he contacted opposing counsel to confirm Respondent’s claim and was

informed that it was Respondent who had cancelled the meeting. Thereafter, Complainant terminated Respondent and requested the return of his file and retainer fee.

At Complainant's request, on June 24, 2017, Respondent meet [sic] with Complainant's sister and brother-in-law to return his file and fee. Complainant states that Respondent presented some documents and requested a signature as acknowledgment that all of Complainant's documents were included. Complainant's brother-in-law refused to sign the receipt, arguing that he could not confirm that all of the documents were included because he had no knowledge of what documents should have been included. They did not execute the exchange.

Complainant has since retained new counsel. He states that his new counsel has requested Complainant's file, to no avail. Respondent has failed to return the file and as well as [sic] the retainer fee.

Respondent has violated the following Rules of Professional Conduct: [1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), 1.16(d), 8.1(c), and 8.4(a)].

On April 2, 2018, Respondent filed a lengthy answer to the formal charges outlining her interactions with and efforts on behalf of the Complainant during the three months between her first contact with him on March 24, 2017, and June 23, 2017, when the Complainant advised he no longer desired Respondent's services and requested a return of his file and the fee he paid. The answer further sets forth an explanation of Respondent's attempts to return to Complainant the file and a portion of the fee which had been paid to her. In her answer, Respondent denied the allegations of rule violations with the exception of the violation of Rule 8.1(c). Respondent asserted that although she prepared a response to the request for information from the ODC, she neglected to personally insure that the response was mailed and/or received by the ODC, having requested that her assistant place the response in the mail, and that she did not learn the reply had not been mailed until she received the formal charges. Therefore, Respondent admitted that she failed to cooperate with the ODC.

The hearing of this matter was originally scheduled for June 25, 2018. On June 12, 2018, Respondent filed an unopposed motion to continue the hearing asserting that based on recent communications between Deputy Disciplinary Counsel and Respondent, with additional time and

production of records/exhibits by Respondent to ODC, stipulations or a resolution of the formal charges could possibly be achieved. The motion was granted and the hearing was rescheduled for August 6, 2018.

On July 31, 2018, ODC filed a motion to continue the hearing on the basis that Respondent had not yet provided the documents referenced in Respondent's June 12 motion to continue and further requested that a deadline of August 3, 2018, be set for Respondent to submit all documents pertaining to the allegations of misconduct. On August 1, 2018, an order was signed granting ODC's motion to continue and setting a deadline of August 3 for Respondent to produce any documents related to the allegations. On August 13, 2018, a notice was issued rescheduling the hearing for October 1, 2018.

The hearing was convened on October 1, 2018, as scheduled, before Hearing Committee No. 3.³ The hearing began with Respondent being placed under oath. A discussion then ensued regarding the Respondent's desire to reach a consent agreement relating to the facts of the matter. A recess was taken and when the hearing resumed, stipulations as to numerous facts were stated on the record and the proceeding continued.⁴ The Complainant's file was returned to him at the hearing. The Complainant was called to testify briefly on the fee dispute. Respondent provided lengthy statements and responded to questions from the committee regarding the work she had performed, her position on the fee dispute, her attempts to return Complainant's file and \$500.00 of the \$1,500.00 fee paid by Complainant, and mitigation issues. An agreement was reached between Complainant and Respondent for the return of \$800 to Complainant. The Respondent paid Complainant a check in the amount of \$500 plus \$300 in cash at the hearing. Joint Exhibits

³ Hearing Committee No. 3 was comprised of Frederick B. King (Committee Chair), John L. Whitehead (Lawyer Member), and John Hardy Dowd (Public Member).

⁴ The stipulations are summarized in the committee's report quoted later herein.

Joint A and Joint B, ODC's Exhibits ODC 1 through ODC 7, and Respondent's Exhibits R-1, R-2, and R-10 were admitted into evidence without objection. Respondent's Exhibits R-3 through R-9 were proffered. At the end of the hearing, the committee chair stated the committee's plan to recommend a one-year suspension, fully deferred, plus attendance at some type of office management continuing education.

The hearing committee's report was filed on November 14, 2018. Notice was issued on November 26, 2018, scheduling oral argument for January 17, 2019, with briefs due thirty days before the argument date.

Neither party filed an objection to the committee's report or a timely brief. On January 15, 2019, two days before the scheduled argument before the Board, ODC filed a Motion and Order to File Out of Time Memorandum. The motion was granted by Order dated January 17, 2019, and ODC's Pre-Argument Memorandum was filed that date. ODC argued that public reprimand is the baseline sanction for Respondent's misconduct and further suggested that Respondent be required to attend a session of the Louisiana Bar Associations' law office practice program.

Oral argument was held, as scheduled, on January 17, 2019, before Board Panel "A."⁵ Deputy Disciplinary Counsel Yolanda Cezar appeared on behalf of ODC. Respondent did not appear.

HEARING COMMITTEE REPORT

The committee filed its report on November 14, 2018. The committee's report consisted of a discussion of the proceedings and the committee's conclusions and recommendations as follows:

⁵ Board Panel "A" was composed of Dominick Scandurro, Jr. (Chair), Linda G. Bizzarro (Lawyer Member), and Charles H. Williamson, Jr. (Public Member).

* * *

PROCEDURAL HISTORY

The formal charges were filed on December 28, 2017. Respondent filed her answer to the charges on April 2, 2018. The hearing of this matter was heard on October 1, 2018. Deputy Disciplinary Counsel Yolanda Cezar appeared for ODC. Respondent appeared *pro se*.

After the hearing was opened and the initial witness sworn, a recess was taken to allow ODC and Respondent to reduce a motion for consent with stipulated facts to writing, but was actually read into the record as follows: Respondent received a \$1500 check from Complainant on April 7, 2017, when she was retained for Complainant's divorce. The representation lasted until June 23, 2017, when Complainant terminated Respondents services. No written retainer agreement was executed between the parties setting forth the terms of the representation. Respondent never enrolled as Counsel for Complainant and never filed anything in the divorce matter. Respondent did have a questionnaire and divorce worksheet prepared, both of which were accepted into evidence as Joint Exhibit A.

Further stipulations are Respondent did not appear for a hearing of the divorce on June 15, 2017, because she had not enrolled so she received no notice. A meeting with opposing counsel was scheduled for June 23, 2017, but was cancelled. Also on June 23, 2017, Complainant sent Respondent a request for return of his file and return of his fee.

On June 24, 2017, Respondent met with Elbert Woods, Complainant's brother-in-law in an aborted attempt to return the file. However, Woods would not sign the receipt for the file because he did not know what the file was supposed to contain. This receipt was admitted into evidence as Joint Exhibit B. Also stipulated, Respondent failed to respond to ODC request for information which delayed proceedings. This ended the stipulations.

During the stipulations, Respondent tendered to Complainant his file which Complainant accepted as complete. Also during the proceedings Respondent tendered to Complainant a \$500 check and \$300 cash which Complainant accepted as return of his fee. Respondent also submitted numerous exhibits, either accepted into evidence or proffered, supposedly documenting her time working on Complainant's case in telephone calls, research and email messages, all of which would appear redundant since the fee matter was settled and there was no allegation or charge that fee was excessive.

CONCLUSIONS AND RECOMMENDATIONS

ODC has proposed a sanction of suspension of one year and a day with a public reprimand.⁶ Rule XIX, §10C, of the Louisiana Supreme Court rules, requires a panel to take into account when considering a sanction for a lawyer guilty of misconduct:

⁶ The ODC did not actually propose a sanction of suspension with a public reprimand. In its pre-hearing memorandum, the ODC discussed several cases resulting in sanctions ranging from active suspension of one year and one day (*In re Aucoin*, 2017-0451 (La. 5/26/17), 220 So.3d 710, and *In re Taylor*, 2014-0646 (La. 5/23/14), 139 So.3d 1004) to public reprimand (*In re Clark*, 2014-0518 (La. 4/4/14), 137 So.3d 11) and argued that the baseline sanction for misconduct involving neglect of a legal matter and failure to timely refund an unearned fee is suspension from the practice of law.

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 the actual or potential injury cause [sic] by the lawyer's misconduct;
4. the existence of any aggravating or mitigating factors.

When the dust settled, the misconduct of this lawyer is distilled to its basic elements, it involves being tardy in returning the client's file, the retainer fee and performing little ostensible work on the divorce in the client's eyes. This was duty owed to the client which came about unintentionally or negligently but not knowingly. The actual or potential injury in this case was a delay in getting the divorce for the client.

As to aggravating factors, Respondent has almost 20 years experience in practicing law with a clean record as to disciplinary matters. She has been a Town Magistrate in Clarks, Caldwell Parish, Louisiana. She has been an Assistant District Attorney in Terrebonne Parish, and a Narcotics Prosecutor with much jury trial experience. Respondent is no neophyte to the Louisiana legal system.

Although Respondent did not claim any mitigating factors, there tare [sic] two which come from the record. In 2015, Respondent was diagnosed with Hodgkin's lymphoma and was taking radiation treatment after the tumor was removed. She had a relapse in November 2017, and on radiation treatment again from MD Anderson and Glenwood. That plus her office was flooded and she lost of [sic] her electronic equipment and many files. These factors would probably have had more effect on how Respondent has interacted with the committee than her client although it may have had some effect there also.

After consultation with each other, the committee is of the unanimous opinion that this respondent does not need to be suspended from the practice of law but does need to be apprised of how her actions or inactions affect the public view of the legal community's professionalism or lack thereof. Accordingly, it is the recommendation of this committee that Respondent be given a one year suspension from the practice of law, with time fully deferred and with a public reprimand; further that during the year Respondent is on probation and attends a course on law office practice management and professionalism, that the check she tendered to Complainant clears the bank and that she pays all costs associated with Docket #17-DB-083.

Committee Report, pp. 1-3.⁷

⁷ The Committee Report does not actually include page numbers, but number references are made as if the pages were numbered in sequential order.

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 has the power “(a) [t]o 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 ... (b) [t]o administer reprimands; ...” 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

Most of the facts stated in the committee’s report were stipulated by Respondent and the ODC. The parties are free to enter into stipulations and effect must be given to them unless they are withdrawn. *In re Webre*, 2017-1861 (La. 1/12/18), ___ So.3d ___; *In Re Torry*, 2010-837 (La. 10/19/10), 48 So. 3d 1038. The additional 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 committee did not state any explicit conclusions regarding rule violations in its report. It is assumed the committee concluded that Respondent violated all rules charged. The report included the general statement that “the misconduct of this lawyer ... involves being tardy in

returning the client's file, the retainer fee and performing little ostensible work on the divorce in the client's eyes." Committee Report, p. 2.

The Board concludes that ODC proved by clear and convincing evidence that Respondent violated Rules 1.3 (diligence) and 1.4(a) (communication). Respondent never met in person with the Complainant and her only communications with Complainant were by phone or text message. There was no writing setting forth the amount of her fee or the scope of the services she would perform. Respondent asserts that Respondent chose a payment option of a flat fee of \$2,500.00 to be paid before Respondent would enroll as counsel and that the \$1,500.00 payment by Complainant was only a partial payment. There is no indication that Complainant believed he owed more than the \$1,500.00. Further, the confusion regarding the missed hearing and the canceled meeting and some of the text messages in Ex. ODC 1 evidence problems in communication and lack of diligence.

The Board finds that a violation of Rule 1.5(a) (unreasonable fee) has not been proven by clear and convincing evidence. Whether Respondent charged an advanced, flat fee of \$1,500.00 or \$2,500.00 to handle the divorce, the fee does not appear unreasonable.

The Board further concludes that a violation of Rule 1.16(d) which requires the prompt return of the client's file and any unearned fee is supported by the evidence. While Respondent may have made unsuccessful attempt(s) to return the file and what she believed was an appropriate refund, she did not actually do so until the hearing, well over one year after termination, and she did not begin any effort to resolve the dispute over the remainder of the fee until just before the hearing. Additionally, the return of the file by mail was unsuccessful due to the inadvertent error in addressing the mailing by Respondent or her office.

Respondent has admitted to a violation of Rule 8.1(c) (failure to cooperate with the ODC investigation). While the failure to mail the response to the complaint again may have been due to a mishap in her office, the fact remains that she did not provide any response until after the formal charges were filed and she has admitted her responsibility for this failure.

Violations of Rules 1.3, 1.4(a), 1.16(d), and 8.1(c) 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 client and the profession. Her misconduct was negligent. Respondent caused possible harm to the client by perhaps causing a brief delay in the divorce proceedings and a delay in the return of a portion of the fee paid and potentially could have caused delay in the disciplinary proceedings.

The only aggravating factor present is substantial experience in the practice of law (eighteen years). The following mitigating factors are supported by the evidence: absence of a prior disciplinary record; absence of a dishonest or selfish motive; and personal or emotional problems.

With respect to Respondent's personal problems, two significant events occurred which should be considered. During the time of her representation of Complainant, Respondent's offices were flooded for the second time in approximately one year. Respondent explained in her answer to the formal charges that because the flooding irreparably damaged equipment, supplies, and furniture and caused structural damage to the building, she had to abandon the office location and began practicing out of her home effective June 1, 2017. The evidence also includes at least one text message from Respondent to Complainant stating that her office was flooded and that she was working from her home. *See* Ex. ODC 1, p. 163. In 2015, Respondent was diagnosed with Hodgkin's lymphoma requiring surgery and chemotherapy and radiation treatment. She experienced a relapse in November of 2017 requiring further treatment. This is the time frame in which she advised the ODC that she would be sending in a response to the complaint and in which she testified she prepared the response, but did not realize that her secretary had inadvertently filed away the response and did not mail it. *See* T.33-34; Ex. ODC 4, Cezar notes of 11-3-17 conversation with Respondent.

B. The ABA Standards and Case Law

The following *ABA Standards for Imposing Lawyer Sanctions* provide guidance in determining the appropriate sanction to be imposed:

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.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.⁸

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

The committee recommended that a one-year suspension, fully deferred, and a public reprimand be imposed and that Respondent be required to attend a course on law office practice management. The committee did not provide any analysis of the ABA Standards or the jurisprudence in making the sanction recommendation. The Board finds that public reprimand is the appropriate sanction here.

In the recent matter of *In re Watkins*, 2018-1332 (La. 11/14/18), 256 So.3d 259, the respondent was retained by the complainant to pursue proceedings for expungements of three felony convictions and one misdemeanor conviction. The complainant paid the respondent \$4,500.00 at the time the respondent was retained in August 2015. Within two months of being hired, the respondent filed motions for expungement in one of the felony cases and in the misdemeanor case. Objections were filed to the motions and they were set for hearing. The respondent obtained continuances of both hearings. One of the cases was rescheduled for hearing and then continued again in December 2015 because the respondent failed to appear. The

⁸ The Standards set forth here relating to admonition are listed for perspective only. Louisiana Supreme Court Rule XIX, Section (10)(A)(5), provides that “an admonition cannot be imposed after formal charges have been issued.”

respondent took no further action in the two matters in which the motions had been filed and failed to take any action in the other two matters. The respondent subsequently failed to respond to numerous telephone calls and e-mails from the complainant and his office assistant, including a final e-mail on May 26, 2016, in which the client stated he was “thoroughly fed up with the lack of communication and information” and failed to claim a certified letter sent to him by the client in August 2016, one year after being retained.

In March 2017, the client filed a complaint against Mr. Watkins with the ODC. The respondent initially responded that he would complete the expungement proceedings as soon as possible, but failed to do so and failed to return the fee. In August 2017, formal charges were filed. The respondent admitted that he dropped the ball after the expungements proved more complex than he anticipated and ultimately forgot about them with the passage of time and the press of other work. The court determined that the respondent violated Rules 1.3, 1.4, 1.5, 1.16, and 3.2 (failure to make reasonable efforts to expedite litigation). The court further concluded that the respondent acted negligently and violated duties owed to his client, causing actual harm to the client. Mitigating factors included absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and remorse. The only aggravating factor was substantial experience in the practice of law (fourteen years at time of misconduct). The court found that the baseline sanction for the respondent’s misconduct was a public reprimand based upon Standard 4.43. Finding guidance from *In re Donald*, 2013-2056 (La. 11/1/13), 127 So.3d 918,⁹ and in light of the fact that the

⁹ In *Donald*, the respondent knowingly, and possibly intentionally, neglected a legal matter, failed to communicate with his clients, and failed to refund a \$600 unearned fee. The client filed a disciplinary complaint after making numerous attempts to obtain information from the respondent over a period of two and a half years, to no avail. The respondent still had not refunded the unearned fee at the time sanction was imposed. The Court suspended the respondent for six months, fully deferred, with a one-year probation period, refund of the fee within thirty days, and required attendance at the LSBA Ethics School.

respondent had not yet been able to return the unearned fee, the court further found that an upward deviation from the baseline sanction was warranted and suspended the respondent for three months, fully deferred, subject to one year of probation with conditions including payment of restitution.

In *In re Clark*, 2014-0518 (La. 4/4/14), 137 So.3d 11, the respondent agreed to consent discipline in the form of public reprimand after formal charges were filed against her. The respondent was retained by the complainant to file and prosecute a motion for past due child support and paid the respondent the quoted fee of \$750.00. The following month the respondent fax-filed a motion, but did not later submit the required hard copy for filing or pay the required court costs. Therefore, the motion was not formally accepted for filing and was not set for hearing. Concerned about the delay in the matter, the complainant telephoned the respondent several times during the ensuing months seeking information regarding status of the matter, but her calls were not returned. Fourteen months after hiring the respondent, the complainant filed a complaint with the ODC. The respondent answered acknowledging her failure to complete the matter and agreeing to refund the entire fee. However, the respondent did not refund the fee and the ODC filed formal charges approximately sixteen months thereafter. Four months later, the respondent refunded the fee and subsequently joined in the petition for consent discipline conceding violations of Rules 1.3, 1.4, and 1.5(f)(5) (obligations when fee dispute occurs). Aggravating factors included a prior disciplinary offense (admonition in 2012), vulnerability of the victim (single mother) and substantial experience in the practice of law. Mitigating factors present were personal and emotional problems (single parent of teenaged child; father hospitalized following debilitating stroke); full and free disclosure to the disciplinary board, and remorse.

In *In re Post*, 2008-1678 (La. 11/10/08), the Court found that the Board reached the correct decision in recommending public reprimand for the respondent's conduct in connection with the handling of the defense of a real estate ownership matter. *See also*, Disciplinary Board Ruling, 06-DB-077 (6/18/08). The respondent in *Post* stipulated to violations of Rules 1.3, 1.5(f)(5) (obligations when fee dispute occurs), 1.16(d) and 8.4(a). The Board found the respondent's conduct was knowing. Actual injury occurred in that the clients lost their property, although there was a possibility an action existed to regain the property, and many of them were deprived of unearned fees for over three years. Aggravating factors included vulnerability of victims, substantial experience in the practice of law, and prior discipline (admonition). Mitigating factors included absence of a dishonest or selfish motive, full and free disclosure and cooperative attitude towards the proceedings, remorse, and refund of fee (during the course of the disciplinary proceedings).

Considering the above discussion of the ABA Standards and the jurisprudence, the Board concludes that public reprimand is appropriate based on the circumstances presented in this matter. The charges here resulted from one isolated representation which lasted three months. While Respondent's means of communication may not have been the best and there may have been confusion between Respondent's and Complainant's appreciations of events, the text message and phone records submitted show that Respondent was maintaining contact with the client. Further, Respondent's office was flooded during this time causing damage to equipment and files and causing her to have to abandon the office and work out of her home. Additionally, while she did not actually return the client's file and the unearned portion of the fee until the hearing date, the record supports that she did make prior flawed attempts to do so.

As to Respondent's failure to cooperate with the investigation, the complaint was received by the ODC on August 31, 2017, and served on Respondent on September 25, 2017. *See* Exs. ODC 1 and ODC 3. On November 3, 2017, Respondent spoke with Deputy Disciplinary Counsel Cezar and told her she would submit a response by November 10, 2017, but then failed to do so. Ex. ODC 4. The ODC then proceeded with filing formal charges on December 28, 2017. Respondent's failure to submit a response to the complaint was due to her negligence and miscommunication with her office staff and Respondent has acknowledged and taken responsibility for this failure. Significantly, during this time in November 2017, Respondent experienced a relapse of the Hodgkin's lymphoma for which she had been previously treated in 2015. Finally, Respondent did answer the formal charges, cooperated with the ODC in reaching factual stipulations at the hearing, and returned the client's file and paid the client the agreed refund at the hearing.

CONCLUSION

The Board adopts the committee's factual findings and further concludes that Respondent violated Rules 1.3, 1.4(a), 1.16(d), 8.1(c), and 8.4(a), but did not violate Rule 1.5(a). The Board finds that a public reprimand is warranted and that required attendance at additional continuing legal education in the area of office management is also appropriate.

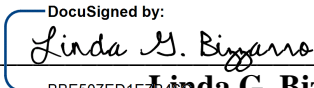
RULING

Considering the foregoing, the Board hereby issues a public reprimand to Dina Fae Domangue, subject to the condition that within one year from this ruling, Dina Fae Domangue attend eight hours of approved continuing legal education training in the area of law office management in addition to the mandatory continuing education hours required under Louisiana Supreme Court Rule XXX, CLE Rule 3. Any failure of the Respondent to comply with this

condition may be grounds for reconsideration of this matter and prosecution of formal charges against the Respondent. Rule XIX, Section 10(B). The Respondent is also assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**Paula H. Clayton
Susan P. DesOrmeaux
Laura B. Hennen
Dominick Scandurro, Jr.
Danna E. Schwab
Evans C. Spiceland, Jr.
Melissa L. Theriot
Charles H. Williamson, Jr.**

By  _____
BBE507ED1E7E4D
Linda G. Bizzarro
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.

...

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

...

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(c)

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;

...