

ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MICHELLE MILLER ODINET

NUMBER: 22-DB-039

Louisiana Attorney Disciplinary Board	
FILED by: <i>Lyndy D. Piro</i>	
<u>Docket#</u>	<u>Filed-On</u>
22-DB-039	9/25/2023

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 Michelle Miller Odet (“Respondent”), Louisiana Bar Roll Number 22530.¹ ODC alleges that Respondent violated Canons 1 and 2A of the Louisiana Code of Judicial Conduct and Rules 8.4(a) (violate or attempt to violate the Rules of Professional Conduct) and 8.4(d) (engage in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct. The hearing committee (“Committee”) assigned to the matter concluded that Respondent violated Canons 1 and 2A, but did not violation Rule 8.4(a) or 8.4(d). The Committee further found the violation of Canons 1 and 2A alone to be insufficient to merit the imposition of discipline under Rule XIX, §6B. Therefore, the Committee recommended that the charges against Respondent be dismissed.

For the following reasons, the Board concurs in the Committee’s recommendation of dismissal and orders that all formal charges filed against Respondent be dismissed.

PROCEDURAL HISTORY

The formal charges were filed in the present matter on August 29, 2022. The charges state, in pertinent part:

¹ Respondent was admitted to the Louisiana Bar on October 8, 1993. She took the oath of office as a Lafayette City Court Judge on December 30, 2020. On December 16, 2021, the Court granted Respondent’s Motion for Interim Disqualification by Consent. *In re Odet*, 2021-01884 (La. 12/16/21), 328 So.3d 1166. She voluntarily permanently resigned from the bench on December 31, 2021. Respondent’s primary registration address is 200 Beaulieu Dr., Lafayette, LA 70508. She is currently eligible to practice law in Louisiana.

V.

On or about December 30, 2021, the ODC was informed of conduct by Respondent that would warrant the opening of a disciplinary complaint.

VI.

On December 31, 2021, Respondent resigned her elected position as Lafayette City Court Judge, and on January 13, 2022, a disciplinary complaint was opened for investigation. *In re: Michelle Miller Odinet*, ODC 0039715.

VII.

On February 16, 2022, the ODC received a referral from the Judiciary Commission of Louisiana, and that referral was considered as part of the disciplinary complaint identified as ODC 0039715.

VIII.

Respondent was placed on notice of the disciplinary complaint and submitted an initial response.

IX.

The ODC investigation reflects that on July 22, 2020, Respondent submitted a Notice of Candidacy for City Judge, City Court, Division A, City of Lafayette. As a candidate for judge, Respondent was provided with an information packet that included a copy of the Louisiana Code of Judicial Conduct. Respondent signed for receipt of the packet on July 22, 2020.

On November 3, 2020, Respondent was elected City Judge of Division “A” in Lafayette, Louisiana. On November 6, 2020, as a newly elected judge, the Louisiana Supreme Court Judicial Administrator mailed to Respondent a packet of information; a copy of the Louisiana Code of Judicial Conduct was included.

During the early morning hours of December 11, 2021, Respondent arrived home with others in her vehicle. Upon arrival, Respondent observed a stranger who, apparently, had entered family vehicles. Respondent’s sons and their friend left Respondent’s vehicle, and the alleged perpetrator was tackled and detained until law enforcement arrived. Upon the arrival of law enforcement, Respondent identified herself as a judge, and an investigation ensued. The alleged perpetrator was taken into custody by the Lafayette Parish Sheriff’s Department.

Later that morning, while at home, Respondent and others viewed a home security video of the incident. This viewing also was videoed, with Respondent and others narrating the events that had occurred earlier that morning. In the video, a male voice states: “And mom’s yelling n****r, n****r.” Respondent then states: “We have a n****r; it’s a n****r, like a roach.”

The video of Respondent’s use of racial slurs was posted on the internet and widely circulated. The incident drew local and national attention and media coverage.

X.

The Rules for Lawyer Disciplinary Enforcement, found in Louisiana Supreme Court Rule XIX, expressly provide for the ODC’s jurisdiction over former judges. Rule XIX, Section 6B provides in pertinent part:

A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the agency not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and

would have been grounds for lawyer discipline. This jurisdiction of the agency should not be exercised if the misconduct was the subject of a judicial disciplinary proceeding in which there has been a final determination by the court, unless the court reserved to the agency the right to pursue lawyer discipline in accordance with this subsection. Misconduct by a judge that is not finally adjudicated before the judge leaves office falls within the jurisdiction of the lawyer disciplinary agency.

XI.

The ODC respectfully submits that the evidence is clear and convincing that, as a matter of law, Respondent has violated Canons 1 and 2A of the Louisiana Code of Judicial Conduct and Rule 8.4(a) (violate or attempt to violate the Rules of Professional Conduct) and (d) (engaged in conduct prejudicial to the administration of justice) of the Louisiana Rules of Professional Conduct.

Through her counsel, Dane S. Ciolino, Respondent answered the formal charges on September 6, 2022. Respondent admitted that she uttered the slur as alleged, that her utterance was profane and offensive, and that it had justifiably subjected her to nationwide condemnation and public humiliation. She explained that she has accepted full and unconditional responsibility for her conduct, consenting to interim disqualification from serving as a judge and thereafter resigning from public office. She maintained that she has acknowledged the wrongfulness of her conduct and remains deeply remorseful for same.

Respondent further asserted in her response that lawyer discipline for her conduct is not appropriate. She averred that Supreme Court Rule XIX, §6(B) provides that a former judge is subject to discipline for misconduct that occurred while the lawyer was a judge only when the conduct would have been grounds for lawyer discipline. Thus, she maintained that she cannot be sanctioned as a lawyer for a violation of the canons of the Code of Judicial Conduct alone. She also maintained that her actions were not prejudicial to the administration of justice. She pointed out that her statements were made on a weekend in her own home in a setting entirely unrelated to the practice of law and that a third person broadcast her statements without her knowledge or consent. She further maintained that after the publication of the statements, she presided over no

cases and signed no judgments or orders and that she promptly consented to an interim disqualification from judicial office and thereafter resigned. Finally, Respondent asserted that her utterance on a weekend in her home with no intent or knowledge that it would be published was private speech protected under the First Amendment of the U.S. Constitution.

The hearing in this matter was held on December 13, 2022, before Hearing Committee No. 5.² Deputy Disciplinary Counsel Susan C. Kalmbach, Brianne A. Hemmans, and Gregory L. Tweed appeared on behalf of ODC. Respondent appeared with counsel, Mr. Ciolino, Leslie J. Schiff, and Clare S. Roubion. The Committee heard testimony from the following: Respondent; Kenneth L. Odinet III (Respondent's son; witness to events giving rise to formal charges); Joseph P. Raspanti (via Zoom; character witness); Alan Breaud (character witness); Joseph Prejean (character witness); Dawnelle Delaune (character witness); and Sadie Shamsie (character witness). The testimony of two additional character witnesses, Fr. Chester Arceneaux and retired Judge Ronald Cox was also proffered.³ ODC's Exhibits ODC-1 through ODC-16 and Respondent's Exhibits 1 and 2 were admitted into evidence. Respondent's Exhibit 1 consists of 39 letters of good character from friends, colleagues and/or other members of Respondent's community (including the five character witnesses who were allowed to testify at the hearing).

The Committee filed its report on January 23, 2023.

On January 26, 2023, Respondent filed a notice of no objection to the Committee's report.

On February 6, 2023, ODC filed an objection to the Committee's report asserting that the Committee erred in concluding that clear and convincing evidence of violations of Rules 8.4(a) and 8.4(d) was not presented; in finding that Respondent's evidence of mitigating circumstances

² Hearing Committee No. 5 was comprised of Catherine M. Landry (Committee Chair), Timothy A. Maragos (Lawyer Member), and Bradley J. Pellegrin (Public Member).

³ The testimony of these two witnesses was excluded by the Committee due to their late disclosure by Respondent.

was undisputed by ODC and in its findings regarding mitigating circumstances; and in concluding that discipline of Respondent is unwarranted.

ODC filed its brief in support of its objection on March 21, 2023. Respondent filed her brief in support of the Committee's recommendation on March 31, 2023.

Oral argument of this matter was held on May 25, 2023, before Board Panel "A."^{4,5} Ms. Kalmbach appeared on behalf of ODC. Respondent appeared with counsel, Mr. Ciolino.

HEARING COMMITTEE REPORT

In its report filed on January 23, 2023, the Committee made the following findings and conclusions:

FINDINGS OF FACT

Michelle Miller Odinet ... has been a member of the Louisiana Bar Association since 1993 after graduating from Tulane Law School (nearly 30 years). Prior to the incident in question, she has never been subjected to discipline either as an attorney or as a judge. Respondent was elected to serve as judge of Division A of the Lafayette City Court in November of 2000. In connection with the election, Respondent was provided with a copy of the Code of Judicial Conduct, both as a candidate for office and as a judge after winning the election, which Respondent reviewed. Additionally, Respondent underwent training with the Louisiana Judicial College upon her election which included ethics training. As a Lafayette City Court Judge, Respondent was paid by both the City of Lafayette and the Louisiana Supreme Court for her services while occupying this position of trust.

In the early morning hours of December 11, 2021, Respondent picked up her major children, along with two friends, from downtown Lafayette and returned to her residence on Beverly Drive in Lafayette, Louisiana at approximately 1:50 a.m. Upon arrival with her six passengers, Respondent noticed the lights were on inside one of the family vehicles located in the driveway. The occupants "understood what was going on," and the young men attempted to exit the vehicle, but Respondent locked the doors to keep them inside due to concern for the children's safety. After some back and forth with the locks on the vehicle, three male passengers exited and saw a male near the family's truck. The lighting in the area was inadequate to identify the race of the individual at this point. The young men pursued the male who was on the family's property and successfully detained him without injury. The young men were not charged with any crimes, *e.g.*, breach

⁴ Board Panel "A" was composed of Aldric C. Poirier, Jr. (Chair), R. Alan Breithaupt (Lawyer Member), and Albert R. Dennis III (Public Member).

⁵ Oral argument was originally scheduled for April 20, 2023, before Board Panel "C" but was continued by an order granting an unopposed motion filed by ODC.

of peace or battery on the alleged perpetrator. Respondent's son, Kenneth Odinet, III, who was one of the young men, testified Respondent was actively trying to keep the children in the vehicle and denied Respondent incited the occupants of her vehicle to pursue the alleged perpetrator.

At the same time, Respondent ran into the home yelling for her husband who was asleep at the rear of the residence. Due to excitement and fear, Respondent did not recall what she said during this "out of control" situation but did recall calling 911. Lafayette City Police responded to the incident and took the alleged perpetrator into custody. [FN2] The perpetrator was arrested for simple car burglary.

[FN2] Testimony was provided and argument of counsel was made at the hearing indicating the alleged perpetrator was armed at the time of the incident in question. The police report, ODC-1, does not mention a pocketknife as has been claimed. Further, the alleged perpetrator was arrested for simple car burglary, not aggravated car burglary. Nonetheless, body cam footage following the incident reveals a small pocketknife was found on the person of the alleged perpetrator.]

The following morning, Respondent checked the home's security surveillance system and watched video of the incident. As she did so, her children and their friends came up from behind Respondent and watched as well. (This was not an organized viewing with guests not already in the household overnight.). During the viewing, events were narrated by some male voices and comments were made by Respondent who stated, "We have a n*****, it's a n*****, like a roach." This viewing of the surveillance footage, with the comments by the individuals in the home, was recorded and subsequently posted on the internet and widely circulated. Respondent did not take the video, post the video or circulate the video and denied any knowledge or intent for the words to leave the home.

Within six days of the attempted burglary of the family vehicles, Respondent resigned from her position as City Judge and so notified the Louisiana Supreme Court on December 31, 2021. She did not return to the bench at any time after this incident and presided over no matters between the incident and her resignation.

ODC opened a disciplinary complaint regarding Respondent, In re: Michelle Miller Odinet, ODC 0039715, on January 13, 2022. On February 16, 2022, the ODC received a referral from the Judiciary Commission of Louisiana, and that referral was considered as part of the disciplinary complaint identified as ODC 0039715. Respondent was notified of the disciplinary complaint and submitted an initial response. Respondent has admitted the female voice on the screening video is hers and she used the language referenced herein when viewing the surveillance video.

Respondent believed the incident reflected poorly on her and her ability to act as a judge and resigned due to her undignified and unprofessional behavior. She classified the language as repugnant and demonstrated remorse for her actions and language in her testimony at the hearing.

Several character witnesses testified at the hearing of this matter, in addition to the 39 character letters submitted, that Respondent is a person of integrity and

high moral character with a respectful and humble nature. The character witnesses, when faced with questions as to whether Respondent's conduct on the screening video was dignified, stated it was not (Joseph Raspanti, Joseph Prejean, Dawn Delaune, Sadie Shamsie) and whether the conduct promoted public confidence in the integrity of the judicial system, stated it did not (Joseph Raspanti, Dawn Delaune, Sadie Shamsie).

Evidence of mitigating factors were submitted by Respondent and undisputed by ODC which included: (1) no prior discipline, (2) absence of a dishonest or selfish motive, (3) timely and good faith efforts to rectify, (4) full and free disclosures to the ODC (timely answered complaint, provided sworn statement and deposition, appeared without necessity of subpoena, agreed to a private admonition and agreed to stipulate to charges), (5) imposition of other penalties (resigned position, widespread public condemnation, lost income and impact on family and children), (6) good character and reputation, [FN3] and (7) remorse.

[FN3 ODC, although not objecting to the admissibility of the character witness letters, did critique the letters as 33 did not mention the video, several contained misstatements of fact, several witnesses seemed to be under the impression Respondent had already been disciplined and several appeared to be under the impression ODC was seeking disbarment of Respondent. The Committee took these critiques into account when weighing the character evidence submitted.]

RULES/CANONS

Jurisdiction

Initially, this Committee addresses whether it has jurisdiction to review the actions of a former judge who remains a member of the Louisiana State Bar Association. At the time of the conduct in question, Respondent was a Lafayette City Court Judge and subject to investigation by the Louisiana Judiciary Committee for allegations of misconduct. Once Respondent resigned from this position, however, the Commission lost jurisdiction to investigate and discipline Respondent, if warranted, which jurisdiction became vested with the ODC pursuant to Louisiana Supreme Court Rule XIX, Sec. 6B which provides:

B. Former Judges. *A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the agency not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline. This jurisdiction of the agency should not be exercised if the misconduct was the subject of a judicial disciplinary proceeding in which there has been a final determination by the court, unless the court reserved to the agency the right to pursue lawyer discipline in accordance with this subsection. Misconduct by a judge that is not finally adjudicated before the judge leaves office falls within the jurisdiction of the lawyer disciplinary agency.*

As such, this Committee has jurisdiction to review the conduct of Respondent and issue a report with its findings and recommendations.

Code of Judicial Conduct

The Louisiana Code of Judicial Conduct provides, in pertinent part:

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

COMMENTARY TO CANON 1

The word “shall” is intended to impose binding obligations, the violation of which can result in disciplinary action.

When “should” is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

Canon 1 provides a binding obligation on members of the Judiciary in Louisiana to personally observe high standards of conduct so the integrity of the judiciary may be preserved. This Committee finds Respondent did not maintain these high standards in her conduct of December 11, 2021.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

- A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. As used in this Code, “impartiality” or “impartial” denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

Canon 2 likewise provides that judges “shall act at all times” in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Impartiality is defined in the Canon as the absence of bias or prejudice against a particular class or parties. The Committee finds, based on the testimony submitted, that Respondent did not act in a manner that promoted public confidence in the integrity and impartiality of the judiciary.

The language of Canons 1 and 2A are not restricted to the location or setting where the impropriety occurs and indeed specifically reference “at all times,” meaning whether on or off the bench. As such, regardless of the location of the

conduct, *i.e.*, the fact that the conduct occurred in Respondent's own home, this Committee finds Respondent violated Canons 1 and 2A of the Code of Judicial Conduct.

Louisiana Supreme Court Rule XIX, Sec. 6B provides:

B. **Former Judges.** A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the agency not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline. This jurisdiction of the agency should not be exercised if the misconduct was the subject of a judicial disciplinary proceeding in which there has been a final determination by the court, unless the court reserved to the agency the right to pursue lawyer discipline in accordance with this subsection. Misconduct by a judge that is not finally adjudicated before the judge leaves office falls within the jurisdiction of the lawyer disciplinary agency.

Pursuant to Rule XIX, Sec. 6B, the authority by which this Committee is reviewing Respondent's conduct in reference to the charges brought by ODC, a "former judge who has resumed the status of a lawyer is subject to the jurisdiction of the agency not only for conduct as a lawyer but also for [1] misconduct that occurred while the lawyer was a judge and [2] would have been grounds for lawyer discipline." Based on the above findings, Respondent violated Canons 1 and 2A which would constitute "misconduct that occurred while the lawyer was a judge." The second part of this inquiry, however, requires the conduct also be "grounds for lawyer discipline."

There is no ground for lawyer discipline under the Louisiana Rules of Professional Conduct for profanities and undignified/uncivil language used by a lawyer in their own home. [FN4] The Louisiana Supreme Court, in adopting the Rules of Professional Conduct, adopted in part aspects of the ABA Model Rules. It could have, if it had been so inclined, adopted ABA Model Rule 8.4(g) which states:

It is professional misconduct for a lawyer to engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender [identity], marital status or socioeconomic status in conduct related to the practice of law.

The Supreme Court did not do so, however, and this Committee is not in a position to make such policy changes.

[FN4] ODC's argument that Respondent's conduct was not "in private" due to their being two family friends who were invited guests to her home and stayed overnight is specifically rejected. This is not a case wherein Respondent hosted a 100 person dinner party at her home and displayed such conduct or exhibited such conduct in a more public setting such as a restaurant (*In Re: Aaron Schlossberg*, 192 A.D.3d 8, 187 N.Y.S. 44 (1st Dept. 2020)) or a party at someone else's home (*In Re Ellender*, 2004-2123 (La. 12/13/04), 889 So.2d 225).

As such, this Committee finds the second prong of Supreme Court Rule XIX, Sec. 6B has not been met in order to impose disciplinary action on Respondent based on Respondent's violations of Canons 1 and 2A.

Rules of Professional Conduct

Turning to ODC's charges 3 and 4, the Louisiana Rule of Professional Conduct 8.4 provides:

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;

...

(d) Engage in conduct that is prejudicial to the administration of justice;

ODC relies upon *In Re: Whitaker*, 2006-2222 (La. 2/2/07), 948 So.2d 1067[,] for the contention that a violation of the Judicial Canons necessarily constitutes a violation of Rule 8.4(d), conduct prejudicial to the administration of justice. A reading of *Whitaker* indicates the Court found:

By respondent's own admission, he wrote a letter of recommendation on his official court stationery and frequently issued *ex parte* directives to the Natchitoches Parish Sheriff's Office. Such conduct is clearly a violation of the Canons of the Code of Judicial Conduct and, by extension, constitutes conduct prejudicial to the administration of justice for purposes of Rule 8.4(d) of the Rules of Professional Conduct.

The Court did not state a violation of the Canons of the Code of Judicial Conduct is *always* a violation of the Rules of Professional Conduct. In *Whitaker*, the misconduct by the judge took place in relation to his duties as a judge, unlike the conduct at issue here which took place away from Respondent's duties on the bench and were unrelated to an abuse of the power of the office such as that in *Whitaker*.

ODC further cites *In Re: Benge*, 2012-0619 (La. 10/16/12), 100 [So.3d] 818, wherein the Supreme Court found the conduct by Benge, who conducted a bench trial in a civil case and awarded damages to the plaintiff based on her relationship with individuals involved in the case, also constituted a violation of Rule 8.4. Again, this case is distinguishable from the instant scenario as the misconduct at issue did not occur in connection with any matters, civil or criminal, pending before the Respondent.

Finally, ODC cites *In Re: Williams*, 2022-00911 (La. 6/28/22), 341 [So.3d] 527[,] wherein the judge's conduct consisted of unwelcome touching of several women and acting inappropriately in the courtroom. (As this was consent discipline, limited facts are available.) This case is also distinguishable for the same reasons—the conduct in question in the pending matter does not arise from Respondent's conduct on the bench but from personal conduct, after hours, at her home, with family and two friends of the family, which was never intended to leave the home. It does not arise from conduct which occurred on a matter pending before Respondent or in her courtroom, unlike the cited authorities. As such, this Committee does not find a violation of Canons 1 and 2A of the Code of Judicial

Conduct must always and necessarily constitute a violation of Rule 8.4(d) of the Rules of Professional Conduct.

ODC separately argues Respondent's conduct constitutes a violation of Rule 8.4(d), prejudice to the administration of justice, based on *In Re: Downing*, 2005-1553 (La. 5/17/06), 930 So.2d 897, claiming Rule 8.4(d) reaches conduct that is undignified and unprofessional, regardless of whether it is directly connected to a legal proceeding. The statement from *Downing*, however, is in a footnote and cites *In Re: Ashy*, 98-0662 (La. 12/1/98), 721 So.2d 859[,] where an attorney made unwanted sexual advances toward a client and was found in violation of Rule 8.4(d). Unlike *Ashy*, there is no attorney/client relationship at issue here. Further, *Downing's* violation of Rule 8.4(d) arose from his failure to research the law resulting in an improper arrest and exposure of the attorney's client to a lawsuit. Again, both references relate to actions of a lawyer taken in connection with their work as a lawyer, even if not directly connected to a pending legal proceeding, which is not the case here.

Notably, neither ODC nor Respondent specifically addressed Rule 8.4(a) in either briefing or at the hearing. As such, the Committee finds ODC failed to establish a violation of Rule 8.4(a) by clear and convincing evidence. Insofar as Rule 8.4(d) is concerned, this Committee finds Respondent's conduct was unrelated to the administration of justice. Further, because Respondent resigned as judge after the incident and did not preside over another legal matter thereafter, there was no prejudice to the administration of justice on any matters pending before her. The Committee therefore finds ODC failed to establish a violation of Rule 8.4(d) by clear and convincing evidence.

First Amendment

Based on the foregoing, this Committee believes it unnecessary to address the First Amendment claims raised by Respondent as a defense of the formal charges. To the extent this argument is addressed by the Disciplinary Board and/or Supreme Court upon their review, however, this Committee finds, based on the evidence elicited at the hearing of this matter, the conduct of Respondent at her home on December 11, 2021 was not meant to incite violence or breach the peace, and in fact Respondent attempted to keep her passengers in her vehicle for their safety, which was confirmed by the testimony of Kenneth Odinet, III.

SANCTION

ODC suggested at the hearing of this matter that the appropriate discipline of Respondent would be in the realm of public discipline to a deferred suspension. As discussed above, this Committee does not find a violation of Canons 1 and 2A alone sufficient to merit the imposition of discipline under Rule XIX, Sec. 6B and finds no violations of Rules 8.4(a) and 8.4 (d) of the Rules of Professional Conduct such that there is no basis for discipline of Respondent. Even if a sanction was warranted, this Committee finds Respondent established by clear and convincing evidence numerous mitigating factors, including the absence of a prior disciplinary record, absence of a dishonest or selfish motive, timely good faith effort to rectify the [consequences] of her conduct, full disclosure and a cooperative attitude toward these proceedings, good character or reputation, the imposition of other penalties and remorse. This Committee further finds Respondent's self-imposed discipline,

resigning as judge, more onerous than any discipline sought by ODC such that any requested discipline is superfluous.

CONCLUSION

It is the finding of this Hearing Committee that the Respondent, Michelle Miller Odinet, did violate Canons 1 and 2A of the Code of Judicial Conduct. However, the imposition of discipline under Supreme Court Rule XIX, Sec. 6B requires ODC establish by clear and convincing evidence not only misconduct that occurred while the lawyer was a judge but also that the conduct in question would have been grounds for lawyer discipline. ODC failed to meet the second prong of Rule XIX, Sec. 6B by establishing Respondent's conduct would have been grounds for lawyer discipline.

The Committee further finds ODC failed to establish by clear and convincing evidence that Respondent violated Rule 8.4(a) or 8.4(d) of the Louisiana Rules of Professional Conduct.

In light of the foregoing findings, it is the opinion of this Committee that discipline of Respondent is unwarranted. This opinion is unanimous ...

Committee Report, pp. 5-16.

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 readmission, 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 Committee’s findings regarding the facts giving rise to the formal charges do not appear to be manifestly erroneous, are supported by the record, and are adopted by the Board with only one clarification related to Respondent’s resignation from the bench. The Committee stated that within six days of the attempted burglary of the vehicles, Respondent resigned from her position as City Judge. The evidence reflects that within six days of the incident, Respondent filed a Motion for Interim Disqualification by Consent which was granted. She later resigned from her position on December 31, 2021.

B. De Novo Review

The Board finds that the Committee was correct in its analysis of Rule XIX, §6B and its conclusions that while Respondent’s conduct may have constituted violations of Canons 1 and 2A of the Code of Judicial Conduct, ODC did not meet its burden of proving violations of Rules 8.4(a) and 8.4(d) of the Rules of Professional Conduct which prescribe the misconduct for which discipline may be imposed upon lawyers in Louisiana. The Committee has aptly addressed the issues presented by ODC relating to the alleged rule violations and the Committee’s discussion distinguishing the legal decisions cited by ODC is correct.

Additionally, the decisions in *In re Williams*, 2022-00911 (La. 6/28/22), 341 So.3d 527, *Matter of Traywick*, 433 S.C. 484, 860 S.E.2d 358 (2021),⁶ and *Matter of Schlossberg*, 192 A.D.3d 8, 137 N.Y.S.3d 44 (S.Ct., Appellate Division, 1st Dept.),⁷ relied upon by ODC, should not be

⁶ *Traywick* was cited by ODC for the first time in its brief to the Board. It involved statements made by a lawyer on his “public” (meaning his posts were visible to anyone, not just Facebook “friends”) Facebook page. (Emphasis added.) Mr. Traywick was found to have violated South Carolina lawyer disciplinary rules relating to “conduct tending to bring the courts or the legal profession into disrepute” and violation of “the Lawyer’s Oath” which have no counterparts in the Louisiana Rules of Professional Conduct.

⁷ *Schlossberg* is also additionally distinguishable in that the lawyer was found to have violated a rule relating to “conduct that adversely reflects on his fitness as a lawyer” which has no counterpart in the Louisiana Rules of Professional Conduct.

considered because they are consent discipline cases. The Court has instructed that reliance on consent discipline cases is inappropriate in matters that are not consent discipline proceedings.⁸

Further, the case of *In re Ellender*, 2004-2123 (La. 12/13/04), 889 So.2d 225, is distinguishable on the additional basis that it was a judicial disciplinary proceeding only and did not involve lawyer discipline or the Rules of Professional Conduct.

Finally, the Texas matter of *In re Adams*, CJC No. 12-0217-CC (Tx. Comm'n Jud. Conduct 2012), cited by ODC for the first time in its brief to the Board, is also distinguishable as a judicial disciplinary proceeding only. That matter involved a secretly recorded video of a judge forcefully striking his sixteen-year-old daughter with a belt, yelling profanities at her, and threatening her with further physical harm, which video was taken in the daughter's bedroom. The judge was found to have violated a Texas judicial canon which specifically addressed a judge's "extra-judicial activities."

CONCLUSION

Having reviewed and considered all of the evidence presented in this matter and for the reasons outlined above, the Board concurs in the Committee's recommendation of dismissal. The Board finds that ODC has failed to carry its burden of proof by clear and convincing evidence that Respondent violated the Rules of Professional Conduct as charged and has failed to meet its burden of proving that Respondent engaged in misconduct that occurred when she was a judge which would have been grounds for lawyer discipline.⁹ Therefore, the Board orders that the charges filed against Respondent be dismissed.

⁸ In *In re Mui*, 2022-1305 (La. 12/6/22), 350 So.3d 853, 858, the Court stated, "The board has justified its recommended sanction by citing a consent discipline case, which is inappropriate in this matter as it is not a consent discipline proceeding."

⁹ Having concluded that Respondent did not engage in misconduct constituting grounds for lawyer discipline, the Board finds that it is unnecessary to address Respondent's asserted defense that her utterance was private speech protected by the First Amendment to the U.S. Constitution.

RULING

For the foregoing reasons, the Board hereby dismisses the formal charges that were filed against Respondent, Michelle Miller Odinet, bearing number 22-DB-039. The costs and expenses of this proceeding are to be borne by the Disciplinary Board.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**R. Alan Breithaupt
Albert R. Dennis III
Susan P. DesOrmeaux
James B. Letten
M. Todd Richard
Lori A. Waters**

By: _____
DocuSigned by:
Aldric C. Poirier, Jr.
Aldric C. Poirier, Jr.
FOR THE ADJUDICATIVE COMMITTEE

**Paula H. Clayton - Dissents with reason.
Todd S. Clemons - Dissents with reason.**

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MICHELLE MILLER ODINET

NO. 22-DB-039

DISSENT

Accordingly, I respectfully dissent.

Any person that is elected is held to a higher standard than the average citizen. Clearly, respondent's behavior dictates that she would not, and probable she was not, fair and impartial and at the time of the incident she was a judge and held to a higher standard, I oppose the dismissal.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By:  PAULA H. CLAYTON
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Adjudicative Committee Member

LOUISIANA ATTORNEY DISCIPLINARY BOARD

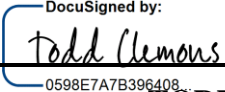
IN RE: MICHELLE MILLER ODINET

NO. 22-DB-039

DISSENT

Accordingly, I respectfully dissent. Public Reprimand is appropriate.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By:  **TODD S. CLEMONS**
Adjudicative Committee Member

DocuSigned by:
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