

The Supreme Court of the State of Louisiana

**IN RE: TONI RACHELLE MARTIN**

No. 2024-B-00685

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IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations  
(Formal Charges);  
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**October 01, 2024**

Suspension imposed. See per curiam.

JLW

SJC

JTK

WJC

JBM

PDG

Supreme Court of Louisiana

October 01, 2024



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Chief Deputy Clerk of Court  
For the Court

**SUPREME COURT OF LOUISIANA**

NO. 2024-B-0685

IN RE: TONI RACHELLE MARTIN

**ATTORNEY DISCIPLINARY PROCEEDING****PER CURIAM**

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Toni Rachelle Martin, an attorney licensed to practice law in Louisiana.

**UNDERLYING FACTS**

In 2019, David Walker hired respondent to interdict his mother, paying a \$1,500 fee. Before any pleadings were filed, the mother died. Mr. Walker requested a refund of the fee. Although respondent agreed to return the fee, she repeatedly delayed doing so. When more than two years passed without a refund, Mr. Walker filed suit against respondent in Alexandria City Court. In June 2022, Mr. Walker secured a judgment in his favor. Respondent agreed to a payment plan to resolve the debt and made a \$300 payment, but no further payments occurred. In February 2023, Mr. Walker filed a complaint against respondent with the ODC. Respondent returned the remainder of the fee shortly after her sworn statement was taken by the ODC.

**DISCIPLINARY PROCEEDINGS**

In July 2023, the ODC filed formal charges against respondent, alleging that her conduct as set forth above violated Rules 1.5(f)(5) (failure to refund an unearned fee) and 1.16(d) (obligations upon the termination of the representation) of the Rules

of Professional Conduct. Respondent answered the formal charges and indicated that her failure to return the balance of Mr. Walker's fee was "never intended as a willful act of disobedience but rather a lack of means to do so." Respondent added that she did not appear at the hearing in Alexandria City Court due to a death in her family.

### *Formal Hearing*

The matter proceeded to a formal hearing conducted by the hearing committee on November 15, 2023. The ODC was represented by Deputy Disciplinary Counsel Harrel L. Wilson, Jr. Respondent did not appear at the hearing. The ODC introduced documentary evidence and called David Walker to testify before the committee.

### *Hearing Committee Report*

The hearing committee provided a summary of the ODC's evidence regarding respondent's representation. The pertinent parts of that summary are as follows:

Mr. Walker and his sister met separately with respondent for the purpose of interdicting their mother, who was in the early stages of dementia, and they signed affidavits that were prepared by respondent for the interdiction filings. Respondent agreed to handle the matter for a \$1,500 flat fee, which Mr. Walker paid.

Respondent later informed Mr. Walker that the pleadings had been filed, but Mr. Walker's sister then checked at the courthouse and discovered no pleadings were filed. When Mr. Walker confronted respondent, she indicated that the paperwork may have been lost when she relocated her office. Respondent further indicated that she would need to prepare other affidavits and then file the interdiction. However, the mother had died, and the interdiction was never filed.

Mr. Walker testified that the lack of an interdiction complicated his mother's affairs. After respondent offered to prepare the affidavits to replace those lost, Mr.

Walker had no further communication with respondent until late 2021, when he sent her a text message demanding a refund.<sup>1</sup>

On the day that Mr. Walker filed suit against respondent, she issued a \$300 cashier's check made payable to Mr. Walker. However, he did not immediately negotiate the check for fear that it may be argued that he compromised his claim.

In her answer to Mr. Walker's suit, respondent indicated that she owed the money and wished to work out a payment plan. On June 29, 2022, the day of trial, the Alexandria City Court signed a judgment in favor of Mr. Walker for \$1,500 plus judicial interest. Respondent does not seem to have worked out a payment plan with the court, and she did not work out a plan with Mr. Walker. On February 14, 2023, Mr. Walker filed a complaint against respondent with the ODC.

The committee also summarized respondent's answer to the complaint and her sworn statement. The pertinent parts of that summary are as follows:

In her answer to the complaint, respondent explained she did not immediately refund the entirety of Mr. Walker's fee as she was in necessitous circumstances, having been furloughed from her job as a public defender during the months of April, May, and June of 2020 due to the COVID-19 shutdowns. Respondent also explained that while she could not attend trial due to a death in the family, she offered to pay Mr. Walker \$200 per month over six months to satisfy his demand for a refund.

During her sworn statement, held on April 5, 2023, respondent indicated that she is employed at the Southern Poverty Law Center.<sup>2</sup> Respondent testified that she was retained by Mr. Walker's sister and that they agreed to a flat-fee arrangement whereby respondent would receive \$400 for filing the interdiction and \$1,100 for the remainder. At the time, respondent was employed as an indigent defender in the

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<sup>1</sup> The evidence reflects that the communications began in 2020, not 2021, and consisted of emails, not text messages.

<sup>2</sup> Respondent stated that she plans to relocate to Atlanta and to be admitted to the Georgia Bar.

Ninth and Seventh Judicial Districts and her private practice was extremely limited. Respondent testified that she did not deposit the funds into a client trust account because she does not maintain one.<sup>3</sup> Respondent testified that she had wanted to file the interdiction earlier but was delayed because Mr. Walker's sister did not come to her office to sign the paperwork until late October 2019. Respondent further testified that she was in the process of relocating her office during this time and thought the interdiction had been filed.

After considering the testimony and evidence presented at the hearing, the committee made the following findings of fact:

Mr. Walker presented credible testimony about the events surrounding the representation. Mr. Walker candidly admitted that his recollection of some facts is cloudy. It is evident that he was deeply dissatisfied with the level of representation he received. He was also very unhappy with the inordinate delay in refunding his fee. There is no dispute regarding the timing of the fee; Mr. Walker only got a refund after he demanded it, filed suit, obtained a judgment, and filed a complaint. Nothing short of a stern warning from the ODC at respondent's sworn statement convinced her that this was a serious matter. Meanwhile, Mr. Walker, a retired and disabled veteran, had to wait more than three years for a refund.

Based upon these findings, the committee determined that respondent violated the Rules of Professional Conduct as charged. The committee explained:

Under Rule 1.5(f)(5), respondent was required to immediately refund the amount of the fee that she and Mr. Walker agreed was unearned. Respondent conceded that Mr. Walker was due a \$1,500 refund, and the ODC has proven by clear and convincing evidence that she did not immediately refund that unearned fee. Rule 1.16(d) requires an attorney upon the termination of representation to "take

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<sup>3</sup> Respondent testified that she did not believe she needed a trust account for matters such as the interdiction. The ODC confirmed that she did not have to put the flat fee into a trust account.

steps to the extent reasonably practicable to protect a client’s interest,” including “refunding any advance payment of fee or expense that has not been earned or incurred.” The ODC has proven by clear and convincing evidence that the refund was not effected to the extent reasonably practicable.

The committee determined respondent knowingly violated duties owed to her client and the legal profession, and her actions caused actual harm. Mr. Walker was deprived of his funds from the onset of the COVID-19 pandemic through 2023, and respondent’s recalcitrance in not repaying the unearned fee cast the legal profession in a bad light. Relying on the ABA’s *Standards for Imposing Lawyer Sanctions*, the committee determined the applicable baseline sanction is suspension.

The committee found the following aggravating factors are present: a prior disciplinary record,<sup>4</sup> “refusal to accept the seriousness of the charges,” substantial experience in the practice of law (admitted 1992), and indifference to making restitution. The committee added that “[t]hroughout the saga of the representation, continuing into Mr. Walker’s pursuit of a refund of unearned fees, right through the disciplinary process, every untoward event has been excused by respondent.”<sup>5</sup> The committee noted that respondent “does not really, genuinely, accept responsibility for either her lack of diligence (for which no formal charges were brought) or her failure to refund Mr. Walker’s money.” Finally, the committee noted that although respondent urged that she was unable to refund the money because she had been furloughed from her job for three months, that was in 2020, and she took no steps toward refunding the money until 2022.

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<sup>4</sup> In 2012, respondent was admonished for failing to fulfill her professional obligations and for practicing law while ineligible.

<sup>5</sup> The committee listed the following excuses provided by respondent: Mr. Walker and his sister delayed signing the initial paperwork; the pleadings were lost; COVID-19; her phone was hacked; she had to attend a funeral; FedEx took over a month to deliver papers from Pineville to Baton Rouge; and Mr. Walker failed to tell respondent of his mother’s death.

The committee found that the only mitigating factor present is remoteness of prior offenses. The committee declined to recognize the mitigating factors of full and free disclosure to the disciplinary board and cooperative attitude toward the proceedings, which respondent argued for in her prehearing memorandum. The committee explained that she was not cooperative with respect to the hearing.<sup>6</sup>

Considering these circumstances, and the prior jurisprudence of this court in similar cases, the committee recommended that respondent be suspended from the practice of law for six months, with three months deferred, followed by one year of probation during which she shall attend the Louisiana State Bar Association's ("LSBA") Ethics and Trust Accounting Schools. The committee also recommended that respondent be assessed with the costs and expenses of these proceedings.

The hearing committee filed its report on December 11, 2023. On January 2, 2024, the disciplinary board received correspondence from the ODC that included a letter from respondent. In the correspondence, Deputy Disciplinary Counsel Susan C. Kalmbach<sup>7</sup> suggested that respondent's letter, dated December 20, 2023, could be interpreted as an appeal from the committee's report and recommendation.<sup>8</sup> In light of the letters from both Ms. Kalmbach and respondent, the matter was docketed for argument before a panel of the board.

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<sup>6</sup> The committee explained that on the day prior to the hearing, respondent and the board engaged in communications regarding a continuance, but no motion was filed. The exchange resulted in the public member believing the hearing would not take place, and as a result, she had to participate in the hearing via Zoom. The proceeding was also substantially delayed while the host arranged to technically accommodate the meeting, which respondent did not attend. Respondent provided no explanation for her absence.

<sup>7</sup> On November 22, 2023, Ms. Kalmbach was substituted as counsel for the ODC.

<sup>8</sup> In her letter, respondent stated that her mother attempted to contact Mr. Wilson on the day prior to the hearing, to no avail, but did speak to Mr. Wilson on the morning of the hearing to request a continuance. The request was based on respondent's medical incapacity to participate because of recent seizures she experienced, but Mr. Wilson would not consent to the continuance. Respondent asserted that she had medical records to substantiate the occurrence of the seizures as well as other health problems she experienced in the months prior to the hearing.

### *Disciplinary Board Recommendation*

A panel of the disciplinary board heard oral argument in this matter on February 29, 2024.<sup>9</sup> On May 30, 2024, the board filed its report in this court, recommending that respondent be suspended from the practice of law for six months, with three months deferred, followed by a one-year period of probation with attendance at Ethics School.

After review, the board determined that the hearing committee provided an accurate summary of the evidence presented, with minor clarifications, and further determined that the factual findings of the committee are not manifestly erroneous, are supported by the record, and adopted same. Based upon these facts, the board concluded that respondent violated the Rules of Professional Conduct, as charged. The board indicated that these conclusions are supported by the evidence for the reasons stated in the committee's report.

The board determined that respondent knowingly violated a duty owed to her client. She caused harm to her client, who was deprived of his funds for over three years. Her failure to return the fee resulted in a public court claim against her and potentially caused damage to the public's image of the legal profession. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

The board found that the following aggravating factors are present: a prior disciplinary record, a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and

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<sup>9</sup> At the close of business on the day prior to oral argument, respondent sent an email to the board with a copy of a letter, dated February 21, 2024, to Ms. Kalmbach from respondent. In the letter, respondent stated that she disagreed with the decision of the committee but was not interested in prolonging the disciplinary process. Attached to the email, and referenced in her letter, was a copy of correspondence from an insurance company confirming approval of respondent's claim for disability benefits but also stating that respondent was allowed to work part-time under the policy.



indifference to making restitution. The board determined that the only mitigating factor present is remoteness of prior offenses.

Considering these findings, and the prior jurisprudence of the court in similar cases, the board recommended that respondent be suspended from the practice of law for six months, with three months deferred, followed by a one-year period of probation, during which respondent shall attend the LSBA's Ethics School. The board also recommended that respondent be assessed with the costs and expenses of these proceedings.

Neither respondent nor the ODC filed an objection to the disciplinary board's recommendation.

### **DISCUSSION**

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So.2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So.2d 150.

The record in this matter supports a finding that respondent failed to timely refund an unearned fee. This conduct violated the Rules of Professional Conduct as charged.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain

high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent violated duties owed to her client. She acted knowingly, and her conduct caused actual harm. The applicable baseline sanction is suspension. The aggravating and mitigating factors found by the board are supported by the record.

Turning to the issue of an appropriate sanction, we find the case of *In re: Donald*, 13-2056 (La. 11/1/13), 127 So. 3d 918, instructive. In *Donald*, an attorney was paid \$600 to cancel a judgment that was discharged in the client's bankruptcy. The attorney neglected the matter, failed to communicate with the client, and failed to respond to the client's request for a refund. The attorney acted knowingly, if not intentionally, and caused harm by delaying the client's case and depriving the client of a refund. Aggravating factors included a prior disciplinary record (diversion), a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution. The mitigating factor of personal and emotional problems was also present. For this misconduct, the court suspended the attorney from the practice of law for six months, fully deferred, subject to a one-year period of supervised probation with the condition that he attend Ethics School and refund the fee to his former client.

By comparison, respondent's conduct is more egregious. She failed to refund her client's fee for nearly four years, even after a civil judgment was rendered against her. Thereafter, respondent failed to participate in the disciplinary hearing. Under the circumstances, we agree that a period of actual suspension is warranted.

Accordingly, we will adopt the disciplinary board's recommendation and suspend respondent from the practice of law for six months, with three months deferred, followed by a one-year period of probation, during which respondent shall attend the LSBA's Ethics School.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, it is ordered that Toni Rachelle Martin, Louisiana Bar Roll number 21949, be and she hereby is suspended from the practice of law for a period of six months. It is further ordered that three months of this suspension shall be deferred. Following the completion of the active portion of her suspension, respondent shall be placed on probation for a period of one year. As a condition of probation, respondent is ordered to attend and successfully complete the Louisiana State Bar Association's Ethics School. The probationary period shall commence from the date respondent and the ODC execute a formal probation plan. Any failure of respondent to comply with the condition of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.