

ORIGINAL

Louisiana Attorney Disciplinary Board

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19-DB-041

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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MICHELLE ANDRICA CHARLES

NUMBER: 19-DB-041

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

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This is a disciplinary proceeding based upon the filing of a second motion to revoke probation by the Office of Disciplinary Counsel (“ODC”) in this matter. ODC is seeking to revoke the probation of Michelle Andrica Charles (“Respondent”), Louisiana Bar Roll Number 30872.¹ For the reasons stated below, the Board recommends that ODC’s motion be granted, that Respondent’s probation be revoked, and that the previously deferred portion of the nine-month suspension be made executory. The Board further recommends that Respondent be assessed with the costs and expenses of this matter.

PROCEDURAL HISTORY

On May 13, 2022, Respondent was suspended (effective 5/27/22) for nine months, with six months deferred, subject to a two-year period of supervised probation, with conditions, following the active portion of the suspension. *In re Charles*, 2021-1853 (La. 5/13/22), 340 So.3d 901 (“*Charles P*”); see Ex. ODC-17, p. 335.² The suspension resulted from the filing of formal charges which included two counts of misconduct. The underlying facts were set forth in the Court’s opinion as follows:

Count I

On July 20, 2018, respondent executed and filed a notice of candidacy to be a candidate for Judge of Division B of the Jefferson Parish Juvenile Court. By executing the notice of candidacy, respondent certified “that for each of the previous five tax years, I have filed my federal and state income tax returns, have filed for an extension of time for filing either my federal or state income tax return

¹ Respondent was admitted to the practice of law in Louisiana on April 26, 2007.

² Unless noted otherwise, all references herein to ODC exhibits are to the exhibits introduced at the hearing on October 3, 2024.

or both, or was not required to file either a federal or state income tax return or both.” The Louisiana Department of Revenue (“LDR”) could not confirm that respondent filed a state income tax return for 2015.

Thereafter, Stephen Michael Petit, Jr. filed in the 24th Judicial District Court for the Parish of Jefferson a petition objecting to respondent’s candidacy. During a July 30, 2018 hearing, respondent acknowledge[d] that the signature on the notice of candidacy was hers and that her signature had been notarized. Respondent testified that she “had no knowledge that there was no 2015 state tax return.” When asked if she had proof of filing her 2015 state tax return, respondent indicated she did not “at this time.” She also indicated she “never received any notification that [she] hadn’t filed.” Later, respondent indicated she had “no reason to think that a state income tax wasn’t completed and filed.” An attorney with the policy services division of the LDR confirmed that there was no 2015 state tax return under the names (or social security number) provided by respondent. Based on this evidence, respondent was disqualified as a candidate for public office, with the judge stating “there is no evidence that her 2015 state tax return was ever received by the [LDR].”

Count II

On September 13, 2018, Herbert Jones wrote a \$750 check to respondent for “legal fees.” According to Mr. Jones, he hired respondent “to file a contempt rule against my ex-wife for failing to honor a court order of visitation and mishandling of child support.” Mr. Jones also claimed that respondent’s fee included the cost of various meals for respondent and her assistant, which Mr. Jones quantified at approximately \$250 to \$300. According to respondent, the \$750 fee she received was for her to help Mr. Jones look into renegotiating his previous community property settlement with his ex-wife and to assist Mr. Jones’ friend, Ocie Sherrod, regarding a felony charge pending in Jefferson Parish.

Respondent did not file any pleadings in Mr. Jones’ divorce case and did not produce any evidence regarding the representation of Mr. Sherrod. However, she indicated she drove to the courthouse in St. Tammany Parish to examine Mr. Jones’ divorce case record and applied for St. Tammany Parish online records’ access to complete her review. Although there is no written evidence of respondent’s research efforts regarding renegotiation of Mr. Jones’ community property settlement, respondent indicated she met with Mr. Jones to share her findings.

On September 24, 2018, respondent appeared at a hearing with Mr. Jones in a matter regarding his non-payment of child support. According to respondent, she agreed to accompany Mr. Jones to the hearing as a “favor” and the representation was not part of the \$750 fee. At the conclusion of the hearing, the hearing officer made a recommendation unfavorable to Mr. Jones. Respondent advised the hearing officer and Mr. Jones that she would file an objection to the recommendation. After the hearing, she again confirmed to Mr. Jones that she would file an objection. According to respondent, her assistant prepared the objection, and she signed it and then directed her assistant to file it. Nevertheless, respondent could produce no documentary evidence of the objection. Respondent spoke with Mr. Jones several times following the hearing and informed him the objection had been filed. However, respondent did not follow up to verify the objection had been filed, and the court record indicated no objection was filed.

Id. at 902-903; Ex. ODC-17, pp. 336-337.

The Court found that respondent failed to file her state income tax return for 2015, which resulted in her disqualification as a judicial candidate, neglected a legal matter, failed to communicate with a client, and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. The Court concluded this conduct violated Rules 1.3 (diligence), 1.4 (communication), 3.3(a)(1) (candor toward the tribunal), 8.4(a) (violate or attempt to violate the Rules of Professional Conduct), and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Court further found that Respondent violated duties owed to her client, the public, the legal system, and the legal profession and that she acted negligently and knowingly, causing actual harm.

The Court deferred six months of the nine-month suspension, subject to a two-year supervised probation period following the active portion of the suspension, with the following conditions:

1. Within one year of the court's imposition of discipline, respondent shall take at least eight hours of her mandatory continuing legal education requirements in the area of law office management, as approved by the Committee on Mandatory Continuing Legal Education;
2. Within one year of the court's imposition of discipline, respondent shall successfully complete the Louisiana State Bar Association's Ethics School; and
3. Any failure of respondent to comply with the conditions of probation, or any misconduct during the deferral or probationary periods, may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate.

The Court further ordered that the probationary period would commence from the date of the execution of a formal probation plan. *Id.* at 905-907; Ex. ODC-17, pp. 338-340. The Court also assessed all costs and expenses in the matter against Respondent in accordance with Rule XIX,

§10.1, with legal interest to commence thirty days from the date of finality of the Court’s judgment until paid. *Id.* at 907.

Respondent’s probation period commenced on September 19, 2022. *See* Ex. ODC-17, p. 341. The Probation Agreement executed by Respondent and Disciplinary Counsel included the following Probation Conditions:

PROBATION CONDITIONS – Michelle Andrica Charles shall:

* * *

4. Within one year of the Court’s imposition of sanction, Respondent shall attend and successfully complete the Louisiana State Bar Association Ethics School. This requirement should be completed on, or before, May 27, 2023;

5. Within one year of the court’s imposition of sanction, Respondent shall take at least eight (8) hours of her mandatory continuing legal education requirements in the area of law office management, as approved by the Committee on MCLE. This requirement should be completed on or before May 27, 2023;

6. Acknowledge that all costs and expenses in this matter are assessed against her in accordance with Louisiana Supreme Court Rule XIX, §10.1, with legal interest to commence thirty days from the date of finality of the court’s judgment until paid and that her failure to pay those costs in full or to execute and keep current a promissory note for same with the Louisiana Attorney Disciplinary Board, within thirty days from the date of finality of the court’s judgment, may result in her ineligibility to practice pursuant to Louisiana Supreme Court Rule XIX, §10.1(E).

7. Acknowledge that any violation of the Rules of Professional Conduct and/or this Probation Agreement may result in summary revocation of her probation and making the deferred suspension executory and/or may result in the imposition of additional discipline as appropriate; and

* * *

Id.

In May 2023, Respondent filed a motion with the Louisiana Supreme Court to extend the time for completing the conditions of her discipline. She stated that she had worked in public defense most of her career and that it had been a financial burden trying to fulfill all the financial aspects of her discipline. She further stated that she had continued to pay regularly towards her discipline fees and paid her Bar dues. She requested additional time to complete “the final two

conditions of discipline” which were attendance at continuing legal education in law office management and attendance at the LSBA Ethics School. ODC did not oppose the motion to extend the deadline.³

On May 25, 2023, the Court issued an order allowing Respondent until July 1, 2023 to complete five hours of approved continuing legal education in the area of law office management and attend and successfully complete the LSBA Ethics School. The Court’s order further provided that if Respondent did not complete the conditions by the deadline, ODC “shall immediately institute proceedings to revoke [Respondent’s] probation, pursuant to Supreme Court Rule XIX, Appendix C, Rule 6.” Ex. ODC-17, p. 342.

On July 5, 2023, ODC filed its first Motion to Revoke Probation and to Impose Previously Deferred Suspension Pursuant to Rule XIX, Appendix C, Rule 6C. ODC asserted that Respondent had failed to complete the required eight hours of her mandatory continuing legal education requirements in the area of law office management, as approved by the Committee on Mandatory Continuing Legal Education, and that respondent had failed to obtain a certificate of successful completion of the Louisiana State Bar Association Ethics School.

On or before July 5, 2023, Respondent filed a second motion for extension of time with the Court. In addition to the same bases asserted in her first motion, Respondent stated that she worked full time in the Public Defender system and could not take off to attend in-person continuing legal education. She further stated that she had taken the Ethics School and paid for and took what she believed to be approved continuing legal education hours, but the Bar then informed her that the hours were not approved. She asserted that discipline would be enforced on a technicality. ODC

³ A copy of this motion was attached as Ex. ODC-9 to ODC’s first motion to revoke probation. This exhibit was filed into the Board record on August 8, 2023.

opposed the motion, arguing that the matter should proceed before the Board for a determination of whether Respondent's probation should be revoked.⁴

A hearing on ODC's first motion to revoke probation was conducted before a panel of the Board on August 3, 2023.⁵ After reviewing the testimony and evidence presented, the Board found that while Respondent had not fully satisfied her conditions of probation, she had completed the Ethics School and completed four of the eight hours of MCLE in law office management. She also completed four hours of MCLE in June 2023 which, apparently due to confusion on her part, she thought satisfied the law office management requirement but had not been approved in the area of law office management by the Committee on MCLE. Further, the Board found that Respondent was strained financially and subject to significant work demands working as a public defender in two different parishes. Considering all of the circumstances presented, the Board concluded that Respondent should be allowed additional time to complete the remaining four required MCLE hours in the area of law office management. The Board recommended that ODC's first motion to revoke probation be denied, that the Court order that Respondent should have until October 31, 2023 to complete the remaining required MCLE hours, and that all other provisions and conditions of her probation should remain in full force and effect.

The Court subsequently considered together Respondent's second motion for extension of time for completing the conditions of her discipline and ODC's first motion to revoke probation after receiving the Board's recommendation regarding the first motion to revoke probation. In its decision issued on September 19, 2023, the Court concluded that Respondent had shown good cause for an extension of time to complete her remaining MCLE requirements. Accordingly, the

⁴ A copy of this motion was attached as Ex. ODC-12 to ODC's first motion to revoke probation. This exhibit was filed into the record on August 8, 2023.

⁵ ODC timely filed its pre-hearing memorandum in advance of the hearing. Respondent failed to file a pre-hearing memorandum.

Court granted the motion for extension and extended the deadline to December 31, 2023, “subject to the condition that no further extensions shall be granted.” In light of its decision on the motion for extension, the Court dismissed the motion to revoke probation as moot. The Court further ordered that all other provisions and conditions of probation imposed in *Charles I* and the probation agreement executed on September 19, 2022 shall remain in full force and effect. All costs and expenses in connection with the first motion to revoke probation were waived by the Court. *In re Charles*, 2023-01117 and 2021-01853 (La. 9/19/23), 370 So.3d 449 and 370 So.3d 713 (*Charles II*); Ex. ODC-17, pp. 343-345.

On September 6, 2024, ODC filed the second Motion to Revoke Probation and to Impose Previously Deferred Suspension Pursuant to Rule XIX, Appendix C, Rule 6C which is currently before the Board. ODC bases this request on several allegations which are reproduced below.

On September 10, 2024, an order was signed scheduling an evidentiary hearing on ODC’s motion for October 3, 2024. The order required that each party file a pre-hearing memorandum no later than September 23, 2024 and that the memorandum include, among other things, the names of witnesses and a list of exhibits to be introduced at the hearing. By letter dated September 10, 2024, the order and a notice providing the date, time and location of the evidentiary hearing were sent to Respondent via U.S. Mail and e-mail.⁶

ODC filed its pre-hearing memorandum in support of its motion to revoke probation on September 18, 2024. Respondent filed her pre-hearing memorandum on September 26, 2024.⁷

⁶ The September 10, 2024 letter and e-mail were sent to Respondent at her registered primary mailing address and her registered e-mail address, respectively. Another copy of the letter was mailed to Respondent at her registered secondary/preferred mailing address on September 13, 2024.

⁷ On September 20, 2024, Respondent e-mailed a copy of an “Opposition to Office of Disciplinary Counsel Pre-Argument Brief” to the Board Appellate Clerk. On September 20, 2024, the Board Appellate Clerk responded to Respondent’s e-mail explaining that the opposition memorandum would not be filed because the Board does not accept pleadings via e-mail, the Board requires that the filing contain an original signature, and the opposition memorandum presented did not include a certificate of service.

The hearing was convened before Board Panel “A” on October 3, 2024, as scheduled.⁸ Deputy Disciplinary Counsel Susan C. Kalmbach appeared on behalf of ODC. Respondent appeared pro se. The panel heard testimony from the following witnesses: Respondent; Brianne A. Hemmans (ODC Deputy Disciplinary Counsel/probation monitoring counsel); and Major Tracy Riley (US Army Retired) (friend of Respondent). Exhibits ODC-1 through ODC-17 were admitted into evidence.

ODC’S ALLEGATIONS

In its motion to revoke probation filed on September 6, 2024, ODC made the following allegations:

III.

Respondent currently is under an order of probation. In the matter of *In re Charles*, 2021-1853 (La. 5/13/22), 340 So.3d 901 (per curiam), the Louisiana Supreme Court concluded that the evidence was clear and convincing that Respondent violated the Rules of Professional Conduct, Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client); 1.4 (failure to communicate with a client); 3.3(a)(1) (knowing false statement of fact or law to a tribunal or failure to correct a false statement of material fact or law previously made to the tribunal); and 8.4(a) (violate or attempt to violate the Rules of Professional Conduct) and (c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). The court held that the discipline appropriate for Respondent’s proven misconduct was suspension from the practice of law for a period of nine months, with six months of the suspension deferred, followed by a two-year period of supervised probation with conditions. The court’s order provided that any failure of Respondent to comply with the conditions, or any misconduct during the deferral or probationary periods, may be grounds for making the deferred portion of the suspension executory, or for the imposition of additional discipline, as appropriate. All costs and expenses in the matter were assessed against Respondent in accordance with Louisiana Supreme Court Rule XIX, Section 10.1, with legal interest to commence thirty days from the date of finality of the Court’s judgment until paid. ODC-17.

IV.

Respondent’s two-year probation agreement was fully executed on September 19, 2022.

⁸ Board Panel “A” was composed of Lori A. Waters (Chair) (substituting for James B. Letten), Todd S. Clemons (Lawyer Member), and Valerie S. Fields (Public Member).

V.

Respondent's probation was the subject of an earlier probation revocation hearing pertaining to Respondent's attendance at mandatory continuing legal education and at The Louisiana State Bar Association Ethics School. The Court granted Respondent's request to modify the conditions of discipline and, accordingly, denied the motion to revoke Respondent's petition as moot. *In re: Charles*, 2021-01853 (La. 9/19/23), 370 So.3d 713 (mem.) (per curiam). ODC-17, pp. 342-46.

VI.

Paragraph 7 of the probation agreement includes an acknowledgement by Respondent that "any violation of the Rules of Professional Conduct and/or this Probation Agreement may result in summary revocation of her probation and making the deferred suspension executory and/or may result in the imposition of additional discipline as appropriate." ODC-17, p. 341.

VII.

In January of 2023, the Office of Disciplinary Counsel ("ODC") received information regarding allegations of ethical misconduct occurring while Respondent was on probation, and a disciplinary complaint was opened for further investigation. *In re: Michelle Andrica Charles*, ODC 0040621. ODC-1.

- A. Respondent was placed on notice of the complaint via certified mail to Respondent's Louisiana State Bar Association ("LSBA") registered primary address (Diversion [sic] St.). ODC-2; ODC-14; ODC-15. The correspondence was returned to the ODC as "NOT DELIVERABLE AS ADDRESSED; UNABLE TO FORWARD." ODC-2.
- B. On January 23, 2023, Respondent personally received, by hand delivery, notice of the complaint and a request for an initial response. ODC-4. Respondent also personally was served with a subpoena to appear on February 10, 2023, for the purpose of providing the ODC with a sworn statement. ODC-3.
- C. The ODC investigation reflects that Respondent was hired to represent Quanittia Dennis in a pending criminal matter. *State v. Dennis*, 21CR31639, 42nd J.D.C., Parish of DeSoto, ODC-13. Ms. Dennis's matter was specially set for trial at 9:00 a.m. on October 25, 2022. ODC-13, pp. 94, 154. In September of 2022, Respondent received discovery from the State. ODC-16, pp. 251-53.
- D. At Respondent's request, subpoenas issued for 21 witnesses to appear at trial on behalf of Ms. Dennis. ODC-13, pp. 105-107.
- E. On October 13, 2022,⁹ Respondent filed a motion to withdraw; the motion was denied. ODC-13, pp. 97-102. On October 24, 2022, Respondent emailed the judge's office writing: "I will not try this case on Tuesday [October 25, 2022] without being properly prepared for trial." ODC-13, p. 110.

⁹ It appears that this motion was filed on October 11, 2022 and denied on October 12, 2022. See Ex. ODC-13, p.100-102.

- F. On the morning of trial, Ms. Dennis and the 21 witnesses subpoenaed by Respondent were present in court; however, Respondent failed to appear. ODC-13. When questioned by the court, Ms. Dennis indicated that the day before, Respondent had contacted Ms. Dennis and asked Ms. Dennis to terminate Respondent's legal representation; however, Ms. Dennis declined to do so. ODC-13, pp. 113-16. The State successfully moved for the issuance of a "writ of attachment." ODC-13, pp. 117, 124. The State also filed a *Rule for Contempt*. ODC-13, p. 135.
- G. Later October 25, 2022, after the subpoenaed witnesses had been released, Respondent appeared at the DeSoto Parish Courthouse, where she was detained and, then, brought before the judge on the writ of attachment. ODC-13, pp. 126-133, 184. In court, Respondent personally was served with notice of the constructive contempt charge and of the November 16, 2022, hearing on the rule. ODC-13, p. 130.
- H. Prior to the November 16, 2022, hearing on the motion for contempt, Respondent filed numerous motions with the district court. Respondent also sought relief from the Louisiana Second Circuit Court of Appeal, which on November 15, 2022, denied Respondent's writ application. *State v. Dennis (In re: Michelle A. Charles Contempt Proceedings)*, 55,039-KW (La.App. 2d Cir. 11/15/22). ODC-13, pp. 145-46. The contempt hearing took place on November 16, 2022, with the district court taking the matter under advisement. ODC-13, pp. 150-97.
- I. On November 30, 2022, the Louisiana Supreme Court denied Respondent's request for stay and for a writ. *State v. Dennis (In re: Michelle A. Charles Contempt Proceedings)*, 2022-01726 (La. 11/30/22), 350 So.3d 871 (mem.). ODC-13, p. 199.
- J. On December 7, 2022, the district court issued its judgment, finding Respondent to be in constructive contempt of court and sentencing Respondent to 22 hours of incarceration. ODC-13, pp. 201-04. The conviction and sentence were affirmed on appeal. *State v. Dennis (In re: Michelle A. Charles Contempt Proceedings)*, 55462 (La.App. 2 Cir. 1/10/24), 379 So.3d 834. On or about February 15, 2024, Respondent applied to the Louisiana Supreme Court for a writ of certiorari. *State v. Dennis (In re: Michelle A. Charles Contempt Proceedings)*, 2024-213. The Court has not yet acted on the application.

VIII.

The ODC maintains that there is sufficient evidence demonstrating that Respondent has violated her probation and committed a violation of the Rules of Professional Conduct. La. S. Ct. Rule XIX, Appendix C, Rule 6C. In particular, there is sufficient evidence demonstrating that, while on probation, Respondent violated the Rules of Professional Conduct, Rules 1.1(a) (competent representation to a client); 1.3 (act with reasonable diligence and promptness in representing a

client); and 8.4(a) (violate or attempt to violate Rules of Professional Conduct), (b) (commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and (d) (engage in conduct prejudicial to the administration of justice).

IX.

Paragraph 6 of Respondent's September 19, 2022, Probation Agreement provides that Respondent "shall execute and keep current a promissory note" for costs and expenses associated with her disciplinary matter. ODC-17, p. 341. On August 29, 2024, the Louisiana Attorney Disciplinary Board sent notice that Respondent had a delinquent balance of \$1,289.01 due and payable. ODC-17, pp. 347-56. Thus, there is sufficient evidence that Respondent has failed to keep payments current on the promissory note for costs and expenses due and payable to the Louisiana Attorney Disciplinary Board and, thus, violated her probation.

EVIDENCE AND FINDINGS

ODC presented the testimony of Brianne A. Hemmans who stated that she has served as monitoring counsel for ODC since March of 2020. She is familiar with the disciplinary sanction imposed upon Respondent in May 2022, including all conditions required by the Court. *See Charles I*, Ex. ODC-17, p. 1. After Respondent served the active portion of her suspension and Ms. Hemmans received a notice of Respondent's reinstatement, Ms. Hemmans prepared the probation agreement which was signed by Respondent and Ms. Hemmans on September 19, 2022. Ex. ODC-17, p. 341.

Ms. Hemmans read the provisions of Paragraph 6 of the probation agreement, quoted previously herein, in which Respondent acknowledged the assessment of all costs and expenses against her in *Charles I* and her obligation to pay such costs in full or keep current with a promissory note for same with the Board and acknowledged that failure to do so may result in her ineligibility to practice pursuant to Rule XIX, §10.1E. *Id.* Ms. Hemmans stated that Respondent entered into a promissory note with the Board which required Respondent to make monthly payments of \$100.00 plus interest commencing August 18, 2022. *Id.* at 347-350.

Ms. Hemmans additionally provided a brief history of the circumstances relating to ODC's first motion to revoke probation and explained that the Court ultimately dismissed the motion to revoke probation and granted Respondent's motion to extend the time for Respondent to fulfill the probationary conditions involving completion of mandatory continuing education hours.

Ms. Hemmans further testified that sometime in 2023, she became aware through review of Supreme Court news alerts that Respondent had been involved in a matter related to a contempt issue in a court. Following her normal practice as probation monitor, she forwarded the information to the ODC attorney in charge of potentially investigating and prosecuting Respondent. *See Exs. ODC-1 and ODC-2.*

Ms. Hemmans further stated that Respondent's probation was expected to end on September 19, 2024. Before then, Ms. Hemmans learned of a Notice of Delinquency sent by the Board to Respondent on August 29, 2024. *See Ex. ODC-17, pp. 351-355.* Upon receipt of the notice, Ms. Hemmans disseminated the notice within the office.

On cross examination, Ms. Hemmans was asked if it was customary that ODC moved to revoke probation every time a payment had not been made. Ms. Hemmans explained that each case is handled on its own facts and circumstances, but that traditionally failure to pay costs alone would not result in a motion to revoke probation. However, she further explained that when there are bases to revoke probation other than failure to pay costs, then the failure to pay costs is included with the more substantive basis.

ODC next presented the testimony of Respondent. With respect to the costs issue, Respondent admitted that she is not current on payment of the promissory note with the Board. In explanation, she stated that 2024 has been a very difficult year for her personally and financially.

She stated that her mother had been ill and hospitalized for two months.¹⁰ At the hearing, she testified that in 2024, she had been facing decisions such as whether to pay her bar dues or a payment on her promissory note or whether to pay for food or something else. On questioning by the panel, Respondent testified that she had not made any attempt to secure assistance or a loan from any source in order to pay her disciplinary costs to maintain her license to practice law.

With respect to Ms. Dennis's criminal matter in DeSoto Parish, Respondent testified that she met Ms. Dennis in approximately 2019 through community activist work in which both Ms. Dennis and Respondent are involved. Prior to Ms. Dennis's criminal matter, Respondent only knew Ms. Dennis by the name Breka Peoples. In 2021, Respondent was living in Shreveport and working for the Caddo Parish public defender's office. Ms. Dennis was charged with a misdemeanor relating to standing too close to a polling location wearing campaign paraphernalia in 2020. Respondent enrolled as counsel on behalf of Ms. Dennis in May 2022.¹¹ However, within days thereafter the Court issued its order suspending her from the practice of law. Due to her suspension, Respondent returned home to south Louisiana. Other counsel enrolled in all of her cases while she was on active suspension.¹²

By September of 2022, Respondent had been reinstated to the practice of law. Respondent testified that a pre-trial conference was held in the *Dennis* matter on September 8, 2022. She stated that both Ms. Page and Respondent participated in the conference. During the conference, trial was scheduled in the *Dennis* matter for October 25, 2022 at 9:00 a.m. Respondent testified that Ms. Page informed the court that she would be out of town in some type of training for an extended

¹⁰ Additionally, in earlier correspondence with the Board, Respondent had stated that Respondent had been in a bad car accident in April 2024 and had been out of work. *See* Ex. ODC-17, p. 356.

¹¹ Prior to formally enrolling as counsel in the *Dennis* matter, Respondent had made appearances either standing in for Ms. Dennis's former counsel or with Ms. Dennis's former counsel. *See* Ex. ODC-13, p. 95.

¹² By the time Respondent was suspended, Ms. Sandra Page had also been retained as co-counsel for Ms. Dennis. *See* Ex. ODC-13, p. 95.

period and would not return until October 24, 2022, and wanted to withdraw. She stated the court did not allow Ms. Page to withdraw as counsel.

Respondent testified that she did not know that the October 25, 2022 trial date was a special setting. However, the court minutes introduced at the hearing reflect that the trial date was a special setting and that the court noted at the September 8, 2022 conference that “no further defense continuances will be granted.” *See* Ex. ODC-13, p. 94. The minutes introduced at the hearing further show that the October 25 trial date was at least the fourth time the matter had been set for trial. *Id.* at pp. 93-95, 140-142.

Respondent testified that in approximately mid-September 2022, she received discovery from the State in the *Dennis* matter. The discovery was submitted to her on two jump drives which included at least 300 pages of discovery materials. Respondent stated that upon initial review of the discovery, she realized that the matter was much more complicated than the average misdemeanor trial and that she would not have the time or the resources to prepare for the October 25, 2022 trial date, particularly since she was now located in south Louisiana. Nonetheless, she acknowledged that in preparation for trial, on October 10, 2022, she filed a witness list and a request for the issuance of subpoenas to twenty-two witnesses to appear at the trial on October 25, 2022.¹³

Respondent additionally filed a motion to withdraw as counsel on or about October 11, 2022. While it was pointed out to Respondent during questioning that the court records in the *Dennis* proceeding reflect that the motion was denied on October 12, 2022, Respondent testified that she did not learn the motion was denied until a Zoom conference was held with the court and all parties in the *Dennis* matter on October 20, 2022. *Id.* at 94, 100-102. She stated that she made

¹³ The evidence shows that the request was actually for the issuance of subpoenas to twenty-one witnesses. Ex. ODC-13, pp. 105-107.

a request at that time to file a writ to the court of appeal and the court set a return date of twenty-four hours to allow her to file a writ application. Respondent explained that given her limited resources and physical location, she was not able to achieve the filing of the application in that time period.

Respondent identified an email she wrote to the judge's law clerk in the *Dennis* matter on Monday, October 24, 2022 at 8:30 a.m. Respondent testified that this was her last, desperate cry for help because she was dealing with a client who had become uncooperative and she had only limited communication with the client through the client's husband. The email written by Respondent is included in the record in Exhibit ODC-13, p. 110. In the email, Respondent stated that she had attempted to call the judge's office on Friday, but had not received a call back. She explained that she had not spoken directly to her client in almost two months, that her client had not paid for services,¹⁴ and that Respondent did not have the resources to properly prepare the case for trial after having been suspended and out of work for three months. She stated that being forced to try the case without having properly communicated with her client to prepare for trial would cause her to commit malpractice. She further stated that she would not try the case without being properly prepared for trial, but she did state that she planned to be present for trial.

Respondent testified that on the morning of October 25, 2022, she left New Orleans to drive to court in DeSoto Parish between 4:00 and 5:00 a.m. which would have allowed her sufficient time to arrive in court on time. Her friend Maj. Tracy Riley rode with her. When driving on the Atchafalaya Basin, she encountered severe rain which required her to reduce her speed. By the time they got off the Atchafalaya Basin, they stopped to use the bathroom and get fuel and snacks. She was not consciously looking at the time. She was just focused on getting there. She

¹⁴ Respondent testified that there was never an agreement with Ms. Dennis for Ms. Dennis to pay Respondent for her services.

did use Waze GPS but did not recall if she paid attention to whether the Waze system was telling her the estimated time of arrival. At no time did she make any attempt to contact the court, opposing counsel, or her client to advise that she had encountered bad weather and would be late. Her only explanation for this was that she was just focused on getting there and that on all other occasions, the *Dennis* matter had always been taken up last on the court's docket.

Respondent testified that she arrived at court at approximately 10:00 a.m.¹⁵ When she reached the court security check point, she was detained and placed in a jail cell. She was told that a writ of attachment had been issued for her. She stated she remained in the cell for approximately four hours. She was then taken to the courtroom.¹⁶ At that time, neither her client or the trial witnesses were present. Respondent testified that a contempt hearing was scheduled for November 2022.

Maj. Tracy Riley, US Army, Retired, was the last witness to testify at the probation revocation hearing. The only relevant testimony given by Maj. Riley is as follows. Maj. Riley and Respondent have known each other since 2017. They have worked closely together as community activists. They both know Ms. Dennis through community activist work together. Maj. Riley rode with Respondent to DeSoto Parish on October 25, 2022. She had to get up around 4:00 or 5:00 a.m. that morning. She left her house which is five or ten minutes south of Belle Chasse and drove to Respondent's house. They then left in Respondent's car to drive to DeSoto Parish. They encountered heavy rains on the bridge and it was stop and go traffic a large amount of the time and she believes there were also a couple of accidents on the road. She did not recall the specific time of day. They were not watching the clock en route she guessed because they left

¹⁵ The sheriff's office Notice of Custody of Arrested Person reflects that the hour of incarceration was 10:42. Ex. ODC-13, p. 126.

¹⁶ Respondent testified that she had never been in trouble before. She stated they took her mug shots and posted her on an arrestee website.

so early they felt they had a cushion and felt comfortable. In the days leading up to October 25, 2022, Respondent indicated to Maj. Riley that Ms. Dennis was acting in an uncharacteristically very negative, low energy way towards Respondent.

Through the testimony of Respondent and the exhibits in evidence, the record reflects that on the morning of October 25, 2022, the assistant district attorneys, Ms. Dennis, and numerous witnesses who had been subpoenaed at Respondent's request all timely appeared for trial in the *Dennis* matter. Respondent did not timely appear. Ms. Dennis was placed under oath and testified that she did not know where her counsel of record were. She testified she called and texted with Respondent on Sunday (two days before the trial date) and Respondent asked Ms. Dennis to fire Respondent. Ms. Dennis did not fire Respondent. Ms. Dennis had not communicated with Ms. Page since September 8, 2022. After hearing from Ms. Dennis, the assistant district attorney stated the State's intent to file a notice of constructive contempt. A new date was set for Ms. Dennis's trial. *See* Ex. ODC-13, pp. 112-122.

On October 25, 2022, the State filed a Rule for Contempt against Respondent. The state asserted that Respondent should be held in constructive contempt for willful disobedience of court orders in that she failed to prepare for trial after being advised by the court that the trial would not be continued, declared herself to be constitutionally unprepared, requested Ms. Dennis to fire her to avoid the October 25th trial date, and failed to appear for the trial setting without notice to the court, counsel, or her client. Ex. ODC-13, pp. 135-137.

A hearing was held on November 16, 2022, and the district court issued a ruling on December 7, 2022. The court found Respondent guilty of constructive contempt of court and sentenced her to twenty-two hours in the DeSoto Parish Detention Center to be served prior to

January 15, 2023.¹⁷ Ex. ODC-13, pp. 93, 203-204. Respondent ultimately appealed the district court's decision and the court of appeal affirmed the decision on January 10, 2024. *Id.* at 210-220; *State v. Dennis (In re: Michelle A. Charles Contempt Proceedings)*, 55,462 (La.App. 2 Cir. 1/10/24), 379 So.3d 834. Respondent filed an application for writ of certiorari to the Louisiana Supreme Court in February 2024. To date, no ruling has been issued by the Supreme Court on the application.

Based upon the evidence presented at the hearing, the Board finds as follows.

Unpaid Disciplinary Costs:

At the time of her suspension in 2022, Respondent was assessed with all costs and expenses in accordance with Rule XIX, §10.1, with legal interest to commence thirty days from the date of finality of the Court's judgment until paid. Rule XIX, §10.1(D) provides that a lawyer ordered to pay costs and expenses shall do so within thirty days of the date upon which the assessment becomes final unless a periodic payment plan has been approved by the Board and ODC. Respondent executed a promissory note on August 4, 2022. In the promissory note, Respondent confessed judgment and acknowledged her indebtedness to the Board for the principal amount of \$2,876.44 plus interest, costs, expenses and attorney's fees. Under the terms of the promissory note, Respondent agreed to pay monthly principal payments in the amount of \$100.00 plus interest until paid in full unless abated by order of the Court. The terms of the note also provide that failure to pay principal, interest, costs and fees in accordance with its terms may result in revocation of probation. *See* Ex. ODC-17, pp. 347-350.

In Paragraph 6 of her Probation Agreement, Respondent acknowledged that all costs and expenses in this matter are assessed against her in accordance with Louisiana Supreme Court Rule

¹⁷ The judge indicated that the sentence represented one hour for each witness subpoenaed and one hour for Respondent's client. Ex. ODC-13, p. 93, 203-204. Respondent testified that she served her sentenced.

XIX, §10.1, and that her failure to pay those costs in full or to execute and keep current a promissory note for same with the Louisiana Attorney Disciplinary Board may result in her ineligibility to practice pursuant to Louisiana Supreme Court Rule XIX, §10.1(E).¹⁸

Additionally, Respondent entered into a promissory note with the Board which provides:

Failure to pay principal, interest, costs and fees in accordance with the terms of this Note will result in being summarily certified ineligible to practice law by the Louisiana Supreme Court and may also result in the institution of disciplinary proceedings by the Office of Disciplinary Counsel and/or revocation of probation once Maker is reinstated by the Supreme Court to the active practice of law.

Ex. ODC-17, p. 348. Respondent has acknowledged her responsibility to the pay costs associated with this disciplinary proceeding and has failed in her obligation to keep current with her monthly payments to the Board. Under the terms of the promissory note with the Board, her probation may be revoked as a result of this failure.

Rule 1.1(a):¹⁹

Rule 1.1(a) requires that a lawyer provide competent representation to a client and states that competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Respondent was not prepared for trial in the underlying *Dennis* criminal matter. She admitted this in the e-mail she sent to the court on the day before the scheduled trial. *See* Ex. ODC-13, p. 110. Therefore, she failed to provide competent representation to Ms. Dennis in violation of Rule 1.1(a).

¹⁸ Rule XIX, §10.1(E) provides:

Failure to Comply with Assessment of Costs and Expenses. Any lawyer who fails to pay costs and expenses when ordered to do so or who fails to comply with the terms of an agreed upon periodic payment plan shall be mailed, by first class mail at the attorney's last known primary address, a notice of delinquency and imminent certification of ineligibility to practice law. Any attorney who fails to comply with this notice within thirty days of mailing will be summarily certified ineligible to practice law by the court upon notice of such failure received from the disciplinary board. The certification of ineligibility may be cancelled by the court subsequent to receipt of notice from the board that all outstanding costs and expenses have been paid.

¹⁹ *See* attached Appendix for full text of the Rules.

Rule 1.3:

Rule 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent was not prepared for the trial scheduled for October 25, 2022. Further, she did not appear in court on time and made no effort to contact the court, opposing counsel, or her client to advise that she would be late and the reasons for her tardiness. By this behavior, Respondent failed to exercise reasonable diligence and promptness in representing Ms. Dennis in violation of Rule 1.3.

Rule 3.4(c):

Rule 3.4(c) provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists. The trial in the *Dennis* matter was scheduled as a special setting for October 25, 2022 at 9:00 a.m. When the trial date was scheduled, the court noted that no further defense continuances would be granted. Respondent failed to timely appear for the scheduled trial. Thus, Respondent failed to comply with an obligation of the court in violation of Rule 3.4(c).

It is noted that ODC's allegation of a Rule 3.4(c) violation first appeared in its memorandum filed on September 18, 2024. ODC did not assert a violation of Rule 3.4(c) in the motion to revoke probation filed on September 6, 2024.

Under *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968), procedural due process demands that Respondent only be held accountable for the charged misconduct. The Court has held that due process requires that an attorney be given notice of the misconduct for which the disciplinary authority seeks to sanction him. *La. State Bar Ass'n v. Keys*, 88-2441 (La. 9/7/90), 567 So.2d 588, 591, citing *In re Ruffalo*. However, "formal and technical pleadings are not essential in disciplinary proceedings against an attorney. All that is required is that the charges

against the defendant shall be so specific as to fairly inform him of the misconduct of which he is accused.” *Louisiana State Bar Ass’n v. Martin*, 451 So.2d 561 (La. 1984).

Here, in the motion to revoke, while not specifically referencing Rule 3.4(c), ODC factually asserted that Respondent failed to appear for trial in the *Dennis* matter which is the basis for its allegation of a violation of Rule 3.4(c). Further, ODC’s memorandum referencing Rule 3.4(c) was filed only twelve days after the motion to revoke probation. Under these circumstances, the Board finds that it is appropriate to consider the Rule 3.4(c) allegation.

Rule 8.4(b):

Rule 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.

The record shows that Respondent was charged with and determined by the district court to have committed constructive contempt in failing to appear for trial in the *Dennis* matter. Respondent filed an appeal and the decision was affirmed by the Louisiana Second Circuit Court of Appeal in an opinion issued on January 10, 2024. *State v. Dennis (In re: Michelle A. Charles Contempt Proceedings)*, 55,462 (La.App. 2 Cir. 1/10/24), 379 So.3d 834; Ex. ODC-13, pp. 210-220. Respondent has filed an application for writ of certiorari to the Louisiana Supreme Court. To date, the Court has not ruled on the writ application.

ODC correctly argues that the fact that an attorney has not been convicted of a crime does not preclude ODC from proving by clear and convincing evidence that the attorney committed a criminal act in violation of Rule 8.4(b). *In re Williams*, 2011-1457 (La. 1/24/12), 85 So.3d 583, 591. Such Rule 8.4(b) violations are sometimes seen in matters such as DWI arrests which are not pursued criminally or the respondent has accepted diversion and matters where the evidence is

very strong and criminal proceedings are significantly delayed due to the respondent's avoidance of arrest. Generally, formal charge matters are often stayed until underlying criminal matters are concluded. Here, the judgment finding Respondent guilty of constructive contempt of court is not final because the proceeding currently remains pending before the Supreme Court. Given the current posture of the contempt proceeding, the Board declines to make any finding or recommendation relating to the Rule 8.4(b) allegation. A determination regarding the Rule 8.4(b) allegation is unnecessary in light of the other findings and recommendations made by the Board herein.

Rule 8.4(d):

Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. The trial of the *Dennis* criminal matter was scheduled for October 25, 2022. The judge, the opposing counsel, and Respondent's client were all present and prepared for trial, but Respondent did not timely appear, nor did she make any attempt to inform the court, opposing counsel, or her client that she would be late or the reason for her tardiness. Additionally, Respondent requested the issuance of subpoenas to twenty-one witnesses who were served with the subpoenas and many, if not all, of those witnesses appeared for the scheduled trial on October 25, 2022. By her failure to timely appear for trial or advise of her whereabouts, Respondent engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d). The criminal matter had to be continued; the business of the court and opposing counsel was disrupted; and the judge, opposing counsel, the client and the numerous witnesses were all inconvenienced.

Rule 8.4(a):

The violations of Rules 1.1(a), 1.3, 3.4(c), and 8.4(d) establish the derivative violation of Rule 8.4(a) which provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct.

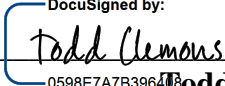
CONCLUSIONS AND RECOMMENDATIONS

ODC has presented sufficient evidence to demonstrate that Respondent has committed further violations of the Rules of Professional Conduct and failed to fulfill her obligation to pay disciplinary costs as detailed above which constitute grounds for the revocation of her probation under Supreme Court Rule XIX, Appendix C, Rules 6(A) and 6(C). Respondent has failed to meet her burden of refuting this evidence by clear and convincing evidence as required by Rule XIX, §§18(C) and 18(D).

Accordingly, the Board recommends that ODC's motion to revoke probation be granted, that Respondent's probation be revoked, and that the deferred portion of her nine-month suspension be made executory. The Board further recommends that Respondent be assessed with all costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, Section 10.1.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**R. Alan Breithaupt
Albert R. Dennis III
Valerie S. Fields
James B. Letten
Ronald J. Miciotto
M. Todd Richard
Erica J. Rose
Lori A. Waters**

By:  _____
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Todd S. Clemons
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 1.1. Competence

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

...

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

...

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

...

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

...

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

...