

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #038

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinion handed down on the **6th day of October, 2020** is as follows:

PER CURIAM:

2020-B-00117

IN RE: CANDACE POUSSON HOWAY

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record and the brief filed by the ODC, it is ordered that Candace Pousson Howay, Louisiana Bar Roll number 32508, be and she hereby is suspended from the practice of law for two years. It is further ordered that respondent refund the sum of \$3,000, with legal interest, to Russell Pawlowski. 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.
SUSPENSION IMPOSED.

Retired Judge James Boddie, Jr., appointed Justice pro tempore, sitting for the vacancy in Louisiana Supreme Court District 4.

Johnson, C.J., dissents in part and assigns reasons.

SUPREME COURT OF LOUISIANA

NO. 2020-B-0117

IN RE: CANDACE POUSSON HOWAY

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Candace Pousson Howay, an attorney licensed to practice law in Louisiana, but currently suspended from practice.¹

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 2009. She was suspended effective June 2, 2017 pursuant to this court’s order of discipline in *In re: Howay*, 17-0452 (La. 5/19/17), 219 So. 3d 1070 (“*Howay I*”). In that matter, we imposed a one year and one day suspension for respondent’s conversion of \$1,800 in funds belonging to her former law firm. Respondent has not sought reinstatement from her suspension in *Howay I*; thus, she remains suspended from the practice of law.

Against this backdrop, we now turn to a consideration of the misconduct at issue in the instant proceeding.

¹ Respondent is also admitted in Washington State, where she is likewise suspended from the practice of law.

FORMAL CHARGES

On May 8, 2018, the ODC filed one count of formal charges against respondent. The formal charges allege in pertinent part as follows:

Complainant in the instant matter is Mr. Russell Pawlowski. Complainant engaged Respondent to represent his step-daughter, Chynna B. Paris, in the succession of her natural father (James Paris) who had passed away on February 15, 2017. Shortly after Mr. Paris passed away, Complainant engaged and paid to Respondent \$3,000 for the representation. According to Complainant, Respondent told him that the matter was simple, given that Mr. Paris had passed away intestate, and Chynna was the sole living heir.

However, Complainant said that after several months, the matter had not been resolved. Complainant eventually discovered that Respondent never filed anything with the court to progress or advance the matter. Eventually, Complainant sent a message to Respondent requesting a refund of the fee he paid to her which would allow him to hire other counsel to open and complete Mr. Paris' succession. Respondent agreed to provide to Complainant an accounting and a refund of the fee. However, Respondent never provided either. Complainant said that he was then unable to successfully contact Respondent again.

Complainant hired new counsel for the Paris succession. The new counsel was able to resolve the succession in two days. Complainant also filed a civil claim against respondent for the \$3,000 fee and also for attorney fees, both of which resulted in a default judgment in favor of Complainant and against Respondent.

Respondent was sent a copy of the formal complaint, but she filed no response. Respondent was then subpoenaed by the ODC to appear for a sworn statement scheduled for January 11, 2018 at the ODC office in Baton Rouge. Respondent was personally served with the subpoena on December 13, 2017 by an ODC Investigator. Respondent failed to appear for her sworn statement.

Complainant submitted a sworn statement to the ODC. His testimony was consistent with the facts advanced in his formal complaint. Furthermore, during the entire time period that Respondent was engaged by Complainant, she was ineligible to practice law. The records for LSBA reflect that Respondent became ineligible to practice law on June 3, 2016 for failure to meet her MCLE requirements. On September 9, 2016, Respondent became ineligible to practice for failure to pay her bar dues and the Disciplinary Assessment, and for failure to report her Trust Accounting. As of this date, Respondent still remains ineligible to practice, having corrected none of the above-described deficiencies. No evidence has been provided to the ODC to reflect that Respondent advised Complainant that she was ineligible to practice law during the time of the representation.

The ODC alleges that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1 (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4(a) (failure to communicate with a client), 1.4(b) (a lawyer shall give a client sufficient information to participate intelligently in decisions concerning the objectives of the representation), 1.5(f)(5) (failure to refund an unearned fee), 5.5(a) (engaging in the unauthorized practice of law), 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

DISCIPLINARY PROCEEDINGS

Respondent was served with the formal charges by certified mail delivered on May 21, 2018. She failed to file an answer. Accordingly, the factual allegations of the formal charges were deemed admitted and proven by clear and convincing

evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the hearing committee's consideration.

Hearing Committee Report

The hearing committee accepted that the factual allegations contained in the formal charges were deemed admitted based upon respondent's failure to file an answer. The committee made findings of fact that are consistent with the factual allegations contained in the formal charges and made the following additional findings: (1) respondent undertook the representation of Ms. Paris during a time when she was actively suspended from the practice of law, and (2) respondent provided no services to either Ms. Paris or Mr. Pawlowski. Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as charged.

The committee determined that respondent violated duties owed to her client and the legal profession. She acted intentionally and her misconduct caused actual harm to Mr. Pawlowski, who did not receive a refund of the fees he paid. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee determined that the following aggravating factors are present: a prior disciplinary record, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules and orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, and indifference to making restitution. The committee determined that no mitigating factors are present, noting respondent "refused to address the current claims in any manner whatsoever."

After reviewing the case law cited by the ODC in its submission on sanctions,² the committee recommended respondent be suspended from the practice of law for three years. The committee also recommended respondent be ordered to pay restitution of \$3,000 to Mr. Pawlowski.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board acknowledged that the factual allegations in the formal charges were deemed admitted and proven. The board determined that the findings of the hearing committee are not manifestly erroneous and adopted same, with two clarifications. First, although the committee found respondent undertook Ms. Paris' representation when she was suspended from the practice of law, the board noted that respondent was primarily ineligible to practice law during the representation.³ Secondly, the board noted that although the committee found respondent provided no services to her client, the record shows respondent drafted several succession documents for Ms. Paris and/or Mr. and Mrs. Pawlowski to sign, communicated with Mr. Paris' former employer about death benefits to which Ms. Paris may have been entitled, drafted a letter to State Farm Insurance Company regarding Mr. Paris' estate, and consulted with Mr. Pawlowski about the succession. Based on these findings, the board determined that respondent violated the Rules of Professional Conduct as charged.

² The sanctions imposed in the cases cited by the ODC ranged from a fully deferred six-month suspension to a two-year suspension.

³ The representation commenced in early March 2017 and continued until June 4, 2017, when Mr. Pawlowski discharged respondent. As previously noted, respondent was declared ineligible to practice law on June 3, 2016; her suspension in *Howay I* became effective on June 2, 2017.

The board determined that respondent knowingly and intentionally violated duties owed to her client and the legal profession. Her actions caused harm to Mr. Pawlowski, who has not received a refund of the \$3,000 fee he paid, and to Ms. Paris, as the completion of her father's succession was delayed by at least four months. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the baseline sanction is a period of suspension which would require respondent to apply for reinstatement.

The board adopted the aggravating factors found by the hearing committee but declined to adopt the factor of multiple offenses, as only one count of misconduct was brought against respondent. The board found no mitigating factors present.

After further considering the court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day. The board also recommended respondent be ordered to make restitution to Mr. Pawlowski in the amount of \$3,000.

The ODC filed an objection to the disciplinary board's recommendation, asserting that the appropriate sanction in this matter is the three-year suspension recommended by the hearing committee. Pursuant to Supreme Court Rule XIX, § 11(G)(1)(b), the case was set on our docket. After filing its brief, the ODC agreed to submit the matter without oral argument. Respondent failed to file a brief and therefore waived her right to oral argument. Accordingly, we now consider the case based upon the record and the brief filed by the ODC.

DISCUSSION

The record in this deemed admitted matter supports a finding that respondent neglected a legal matter, failed to communicate with a client, failed to refund an unearned fee, practiced law while ineligible to do so, and failed to cooperate with

the ODC in its investigation. This misconduct is a violation of the Rules of Professional Conduct as alleged in the formal charges.

Respondent knowingly, if not intentionally, violated duties owed to her client and the legal profession, causing actual injury. The baseline sanction for this type of misconduct is suspension. The record supports the aggravating factors found by the disciplinary board. In mitigation, we note that respondent was pregnant during her representation of Ms. Paris, and in early June 2017, she advised Mr. Pawlowski that she had been hospitalized with complications following the premature birth of her baby.

Turning to the issue of an appropriate sanction, we find that the one year and one day suspension recommended by the disciplinary board is too lenient. Most significantly, respondent has a record of previous discipline for serious attorney misconduct, and she has demonstrated a disdain for the disciplinary process by failing to participate in these proceedings in any way. Under these circumstances, we will reject the board's recommendation and impose a two-year suspension. We will also order respondent to refund \$3,000 to Mr. Pawlowski.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record and the brief filed by the ODC, it is ordered that Candace Pousson Howay, Louisiana Bar Roll number 32508, be and she hereby is suspended from the practice of law for two years. It is further ordered that respondent refund the sum of \$3,000, with legal interest, to Russell Pawlowski. 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.

10/06/20

SUPREME COURT OF LOUISIANA

No. 2020-B-00117

IN RE: CANDACE POUSSON HOWAY

ATTORNEY DISCIPLINARY PROCEEDING

JOHNSON, C.J., dissents in part and assigns reasons.

I dissent in part, finding the sanction imposed too harsh. I agree with the Disciplinary Board's recommendation that respondent should be suspended from the practice of law for one year and one day.