

ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: GEORGE A. FLOURNOY

NUMBER: 16-DB-090

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

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This is a disciplinary proceeding based upon the filing of a motion to revoke probation by the Office of Disciplinary Counsel (“ODC”). ODC is seeking to revoke the probation of George A. Flournoy (“Respondent”), Louisiana Bar Roll Number 05620. 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 one-year suspension be made executory. The Board further recommends that Respondent be assessed with the costs and expenses of this matter.

PROCEDURAL HISTORY

On April 3, 2020, Respondent was suspended (effective 6/16/20) for one year, with all but thirty days deferred, subject to a one-year period of unsupervised probation following the active portion of the suspension. *In re Flournoy*, 2019-1479 (La. 4/3/20), ___ So.3d __; *see* Ex. ODC 2.¹ The suspension resulted from the filing of formal charges relating to misconduct in connection with the handling of two client matters.² The underlying facts were set forth in the Court’s opinion as follows:

Count I

In March 2004, Tammy DuBois was injured in the course and scope of her employment with Cubic Applications, Inc. (“Cubic”). Ms. DuBois subsequently retained respondent to represent her in a workers’ compensation claim and a personal injury matter arising out of the incident.

¹ Respondent was admitted to the practice of law in Louisiana on October 2, 1974. He was previously disciplined in 2004. He consented to imposition of a public reprimand for failing to fully protect the interests of two third-party medical providers in settlement funds. *In re Flournoy*, 2004-0015 (La. 2/13/04), 865 So.2d 708.

² The formal charges filed by the ODC included three counts, but only two of the counts resulted in findings of misconduct.

In February 2007, respondent negotiated a partial settlement in the workers' compensation matter of \$7,000 in penalties and \$6,000 in attorney's fees, for a total of \$13,000. In April 2007, Cubic's counsel sent respondent a \$13,000 check and a letter requesting that Ms. DuBois execute and return an Agreement and Partial Release of Claims. Ms. DuBois executed the form before a notary and two witnesses, and respondent provided Ms. DuBois with a settlement statement accounting for the disbursement of the \$13,000 partial settlement.

On April 12, 2007, the workers' compensation judge rendered judgment in favor of Ms. DuBois in the amount of \$3,717.95. On June 7, 2007, Cubic's counsel sent respondent a \$3,717.95 check. She also enclosed a Satisfaction of Judgment which she requested that Ms. DuBois execute and return. On June 8, 2007, respondent's legal secretary, Mary White (now Attenhofer), signed Ms. DuBois' name to the Satisfaction of Judgment without the consent of Ms. DuBois. Ms. White also placed respondent's signature on the document, indicating his approval as to form and content. Ms. White notarized the Satisfaction of Judgment and returned it to Cubic's counsel.

In November 2007, Ms. DuBois filed a complaint against respondent with the ODC. In his response to the complaint, filed in December 2007, respondent provided false information concerning the Satisfaction of Judgment. Respondent initially stated that Ms. DuBois signed both the Agreement and Partial Release of Claims and the Satisfaction of Judgment in April 2007, when she came to his office to pick up her settlement check. At that time, respondent suggested, Ms. DuBois left the date blank on the Satisfaction of Judgment, and when he finally received the \$3,717.95 payment, Ms. White filled in the date of June 8, 2007 and mailed the form to opposing counsel. However, the Satisfaction of Judgment was not in respondent's possession in April 2007, as Cubic's counsel did not mail the form to respondent until June 7, 2007. Moreover, Ms. DuBois was out of state from June 5, 2007 to June 9, 2007, and therefore could not have signed the Satisfaction of Judgment on June 8, 2007.

In April 2010, the ODC took respondent's sworn statement, during which he acknowledged that Ms. DuBois apparently did not sign the Satisfaction of Judgment. In his response to the formal charges, filed in January 2017, respondent admitted that he told Ms. White to sign his name and Ms. DuBois' name to the Satisfaction of Judgment. He explained that he did so because the \$3,717.95 check which accompanied the Satisfaction of Judgment was a reimbursement to his law firm for out-of-pocket costs and expenses in Ms. DuBois' case. Respondent stated that he had previously explained to Ms. DuBois that he would be receiving this check and that he would apply it to reduce her unpaid expenses on the firm's ledger, and she understood and was in agreement. He further stated that his initial response to the complaint, in which he indicated that Ms. DuBois had signed the Satisfaction of Judgment, was incorrect because he had not reviewed Ms. DuBois' file when he prepared his response. Respondent maintained that although his response was "sloppy and careless," there was no intent to mislead on his part.

Count III

In January 2009, Rubin and Sheila Webster retained respondent to represent them in a personal injury matter arising out of an automobile accident that occurred on December 29, 2008 in Evangeline Parish. In May 2009, respondent filed separate suits on behalf of the Websters. The two suits were consolidated.

By letter dated May 25, 2010, the Websters terminated respondent's representation and instructed him to forward their files to their new attorney, Paul Cox. On June 1, 2010, respondent intervened in the Websters' suits to preserve his claim for fees. The trial court granted the Petition of Intervention on June 2, 2010. On June 16, 2010, respondent filed a Motion to Withdraw as Counsel. On June 22, 2010, the trial court granted Mr. Cox's Motion to Enroll as the attorney of record for the Websters.

Despite having been terminated, respondent noticed the deposition of a fact witness for November 1, 2010. In response, on November 2, 2010, Mr. Cox filed a pleading entitled "Motion to Quash Deposition and Prevent Intervener from Attempting to Prosecute This Case." The trial court granted the motion and quashed the deposition set by respondent; ordered respondent not to advance or participate in any motions or depositions, or participate in the trial of the matter, or prosecute the case in any way now or in the future; and set a hearing on December 6, 2010 for respondent to show cause why these orders should not be upheld.

Meanwhile, Mr. Cox had noticed the deposition of the investigating state trooper for December 8, 2010. On December 7, 2010, respondent filed a Motion to Quash the deposition. The trial court denied respondent's motion.

Also on December 7, 2010, respondent filed two separate sets of interrogatories propounded to plaintiffs (his former clients) and defendants. On December 8, 2010, respondent submitted a supplemental interrogatory to defendants and requests for production of documents. On December 10, 2010, respondent wrote a letter to the trial judge requesting that a pre-trial order be issued.

On December 14, 2010, the trial court issued reasons for judgment following the show cause hearing that took place on December 6, 2010. He stated, "It is clear that [respondent's] interest in this matter is no more than a privilege which guaranties [sic] to him a reasonable fee for the services he rendered until he was terminated and is guaranteed the repayment of the expenses he has expended on behalf of the Websters. He is therefore ordered to remove himself from participating in any way in the prosecution of this case on behalf of the Websters."

On December 16, 2010, respondent filed into the record a motion and order to schedule a pre-trial conference. On December 21, 2010, respondent noticed the deposition of a fact witness for January 12, 2011. The personal injury claims of Rubin and Sheila Webster were settled at mediation on December 22, 2010.

In January 2011, the Websters filed a complaint against respondent with the ODC. In response to the complaint, respondent asserted that he was aware of no legal authority which precludes an intervener from participating in discovery depositions, submitting interrogatories, preparing for trial, and the like. Furthermore, he contended that in this case, there was "concern for adequate protection of my fee interests and expenses" in the manner in which plaintiffs' new

counsel was handling the case; therefore, he was simply ensuring that “all necessary steps had been taken to prove liability on defendants.”

Id. at *1-*3; Ex. ODC 2, pp. 002-006.

As to Count I, the Court found that, at the direction of Respondent, his secretary signed the name of Respondent and his client to a satisfaction of judgment and then notarized the document and returned it to opposing counsel for filing into the court record. The Court concluded this conduct violated Rules 5.3 (responsibilities regarding nonlawyer assistance), 8.4(a) (violate or attempt to violate the Rules of Professional Conduct or knowingly assist or induce another to do so, or do so through the acts of another), and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Court further found that Respondent acted knowingly; violated duties owed to his client, the legal system, and the legal profession; and caused the potential for great harm although no actual harm occurred.

As to Count III, the Court determined that Respondent continued to file pleadings into the record of his former clients’ cases despite the clear wording of an order of the trial court directing him to cease doing so, thereby disobeying an obligation under the rules of the tribunal in violation of Rule 3.4(c). The Court found that Respondent acted knowingly, violated duties to the legal system, and created the potential for interference with his former clients’ cases.

The Court deferred all but thirty days of the one-year suspension subject to a one-year unsupervised probation period following the active portion of the suspension. The Court ordered that the probationary period should commence from the date Respondent and the ODC signed a formal probation plan. The Court’s order further provided that “any failure of respondent to comply with these conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate.” *Id.* at *8; Ex. ODC 2, pp. 010.

Respondent's probation period commenced on August 20, 2020. *See* Ex. ODC 3. The Probation Agreement executed by Respondent and Disciplinary Counsel included the following Probation Condition:

PROBATION CONDITIONS – George A. Flournoy shall:

* * *

4. Acknowledge that any violation of the Rules of Professional Conduct and/or this Probation Agreement may result in revocation of his probation and making the deferred portion of his suspension executory and/or such other disciplinary action as may be appropriate under the Rules of Professional Conduct and Louisiana Supreme Court Rule XIX;

* * *

Id.

On March 23, 2021, ODC filed a Motion to Revoke Probation and Request For Expedited Hearing. ODC bases this request on several allegations which are reproduced below.

On March 29, 2021, an order was signed ordering that Respondent show cause on April 22, 2021, why his probation should not be revoked. By letter dated March 31, 2021, 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. This letter also instructed that initial briefs should be filed by April 16, 2021, with reply briefs due April 19, 2021.

ODC filed its pre-hearing memorandum in support of its motion to revoke probation on April 16, 2021. Respondent's reply brief was received in the Board office on April 19, 2021.

The hearing was convened before Board Panel "C" on April 22, 2021, as scheduled.³ Chief Disciplinary Counsel Charles B. Plattsmier appeared on behalf of the ODC. Respondent appeared pro se. The panel heard testimony from the following witnesses: Steven M. Oxenhandler (defense counsel in the underlying *Mayrand* matter); Mary Allison Johnson (defense counsel in the

³ Board Panel "C" was composed of Brian D. Landry (Chair), Lori A. Waters (Lawyer Member), and M. Todd Richard (Public Member).

underlying *Mayrand* matter); Brianne Hemmans (ODC Deputy Disciplinary Counsel/probation monitoring counsel); and Mary Attenhofer⁴ (secretary and bookkeeper for Respondent/notary). Exhibits ODC 1 through ODC 9 and Respondent's Exhibits RESP 1 through RESP 4 were admitted into evidence without objection. Exhibit RESP 5 was proffered after ODC's objection to the exhibit was sustained.

ODC'S ALLEGATIONS

In its motion to revoke probation and original supporting memorandum filed on March 23, 2021, ODC made the following allegations:

Motion to Revoke Probation

1.

By *Per Curiam* dated April 3, 2020, the Louisiana Supreme Court ordered that George A. Flournoy (hereinafter referred to as "Respondent"), Louisiana Bar Roll number 5620, be suspended from the practice of law for a period of one year, with all but thirty (30) days of the suspension deferred. Moreover, Respondent was ordered to be placed on unsupervised probation for one (1) year following the active portion of his suspension.

2.

The Court's Order imposing discipline further states "[a]ny failure of respondent to comply with the conditions 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."

3.

Following the period of active suspension, the Respondent was reinstated by the Louisiana Supreme Court effective August 5, 2020. Thereafter, on August 20, 2020, Respondent and ODC executed a Probation Agreement, which incorporated the conditions set forth in the Court's April 3, 2020 Order, including Probation Condition, paragraph 4 which states as follows:

George A. Flournoy shall:

4. Acknowledge that any violation of the Rules of Professional Conduct and/or this Probation Agreement may result in revocation of his probation and making the deferred portion of his suspension executory and/or such other disciplinary action as may be appropriate under the Rules of Professional Conduct and Louisiana Supreme Court Rule XIX.

4.

The ODC has become aware that Respondent has engaged in further violations of the Rules of Professional Conduct. As described with specificity in

⁴ Ms. Attenhofer is also known as Mary R. White. See Ex. ODC 9, Bates p. 099.

the *Memorandum in Support of Motion to Revoke Probation* ... filed contemporaneous herewith, Respondent has violated Louisiana Rules of Professional Conduct, Rules 5.3(b), (c)(1), (2), 3.3(a)(1), (3), 4.1(a), 8.4(a), (c) and (d).⁵

Memorandum in Support of Motion to Revoke Probation

Facts in Support of Revocation

1) Respondent Directed his Assistant to Falsify an Affidavit and Caused it to be presented to the Louisiana Supreme Court.

In anticipation of being reinstated by the Louisiana Supreme Court following his period of active suspension, Respondent drafted, or caused to be drafted, a Rule XIX, §23 affidavit, certifying to the Court that he has complied with the conditions of the April 3, 2020 order of the Louisiana Supreme Court. [Footnote omitted.] The affidavit was signed by Respondent and his signature was notarized by Mary White (Notary Public #42281), Respondent's assistant, purportedly on the 15th day of July, 2020 in the Parish of Rapides. In connection with the investigation of an unrelated complaint [Footnote omitted], the ODC later came to learn that Respondent was in Montana on July 15, 2020 [Footnotes omitted], and he directed his assistant to fraudulently notarize a document by certifying that he signed the affidavit on July 15, 2020, when in fact, Respondent signed the document on or before July 11, 2020. Thereafter, this document was presented to the Louisiana Supreme Court in connection with Respondent's reinstatement efforts. A copy of the affidavit was also provided to the ODC as required by Rule XIX, §23. [FN8] These facts are not in dispute. Respondent voluntarily appeared for his sworn statement on November 18, 2020, and admitted that he signed the affidavit on or before July 11, 2020, instructed his assistant to date it for July 15, 2020 and to file it with the Court. ...

[FN8 It is important to note that Mr. Flournoy was not reinstated on the basis of this affidavit as it was filed prematurely with the Court. However, Respondent's misstep does not change the fact that he engaged in additional rule violations by presenting a knowingly false affidavit to the Court.]

The ODC contends Respondent's conduct in connection with his reinstatement efforts, as described herein, constitutes a violation of Rules 5.3(b)(c)(1)(2) 3.3(a)(3), and 8.4(a), (c)

2) Respondent provided false information which was presented to a Tribunal, and made no efforts to correct the false statements

The ODC has learned that while on suspension, Respondent was untruthful to opposing counsel in a worker's compensation case and caused false information to be presented to the tribunal. Specifically, Respondent was representing the plaintiff in a worker's compensation case entitled *Miranda Mayrand v. City of Natchitoches Police Department*, Docket No 19-07214, District 2. The matter was set for hearing on defendant's exceptions on July 7, 2020, while Respondent was

⁵ See attached Appendix for full text of pertinent provisions of all Rules referenced in ODC's allegations.

on active suspension. On or about July 2, 2020, Respondent contacted Steven Oxenhandler, opposing counsel, and requested a continuance for what Respondent described as medical reasons. The truth is, Respondent could not appear in court because he was on active suspension and his request for a continuance had nothing to do with medical reasons. To compound matters further, that false information was placed in a Motion to Continue, which was drafted by opposing counsel, and filed with the worker's compensation court. [Footnote omitted.] Although Mr. Flournoy did not draft the motion or file it, he was provided a copy of the Motion to Continue and he supplied and allowed this false information to be presented to a tribunal for the purpose of having the matter continued. Respondent never made any efforts to correct the false statement made to the tribunal in support of the continuance.

The ODC contends Respondent's conduct in connection with seeking a continuance of the hearing, as described herein, constitutes a violation of Rules 3.3(a)(1), (3), 4.1(a), 8.4(a) and 8.4(c).

Moreover, Respondent has taken the position that although he knowingly presented false information to the Louisiana Supreme Court and to the worker's compensation court, he doesn't see anything wrong in his conduct and has no remorse. To that end, Respondent stated:

Q. So we have the instance of you presenting false documents to the court in the, by the, in the form of an affidavit and then we have an instance of you filing with the worker's compensation judge, or causing to be filed a motion to continue which states that it's for medical reasons when that not true. You don't see anything wrong with you falsely representing those facts to tribunals?

A. No -- [FN 11]

[FN 11 See ODC 7 – Sworn Statement of George A. Flournoy, 38677, November 18, 2020, page 55 [Bates p. 075], lines 7-17.]

EVIDENCE AND FINDINGS

ODC asserts that Respondent's conduct in connection with the July 15, 2020 affidavit submitted to the Court and the request for a continuance of the hearing in the *Miranda Mayrand* workers' compensation matter warrants revocation of his probation.

July 15, 2020 Affidavit:

Respondent admitted in his testimony at the hearing, in his brief, and in his sworn statement taken by ODC on November 18, 2020 that he was out of town on July 15, 2020, that he executed the affidavit in the presence of Ms. Attenhofer prior to leaving town, and that he instructed Ms. Attenhofer to date, notarize and file the affidavit with the Court on July 15, 2020. In her testimony

at the hearing, Ms. Attenhofer also confirmed that Respondent executed the affidavit in her presence prior to July 15, 2020, but he instructed her to show July 15, 2020 as the date of her notarization of the affidavit and to file the affidavit with the Court on that date. She further testified that she followed these instructions given to her by Respondent.

By his conduct in instructing Ms. Attenhofer to date the affidavit on a date after it was actually executed and then file the affidavit with the Supreme Court, Respondent violated the following Rules as alleged by ODC:

Rule 3.3(a)(3): This rule provides that “a lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal ...” Respondent submitted the affidavit in question to the Court in connection with the process for reinstatement following his active suspension period. He executed the affidavit prior to leaving town on July 11, 2020, but had Ms. Attenhofer date and file the affidavit on July 15, 2020 because at the time, he believed July 15, 2020 was the earliest date on which he could submit the affidavit to start the reinstatement process. He explained in his brief to the Board that he “just wanted to resume [his] practice as soon as possible.” Respondent’s Reply Brief in Opposition to Motion to Revoke Probation, p. 5.⁶ When he submitted the affidavit dated July 15, 2020 to the Court, Respondent submitted evidence he knew to be false in violation of Rule 3.3(a)(3).

⁶ See also Ex. ODC 7, Respondent’s sworn statement, Bates p. 073-074 (“I executed that before I left for Montana and told my secretary we’ll date it on the 15th and send it out on the 15th, so that would’ve been the 30th day.”; “To notarize it on the 15th and send it to the Supreme Court so that it would arrive at least 31 days after June 16.”; “I wasn’t going to be there on the 15th, I wanted to get it done so I could be reinstated. And so that’s what I told her to do and I don’t see anything wrong with that.”)

Rules 5.3(b), (c)(1), and (c)(2): Rule 5.3(b) provides that with respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. Rule 5.3(c) further provides that a lawyer shall be responsible for conduct of the nonlawyer employee that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer if the lawyer orders or ratifies the conduct involved or, if the lawyer has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. Respondent violated these provisions when he instructed his secretary to date the affidavit with a date after the day it was actually executed and to submit the affidavit to the Court which she did.

Rule 8.4(c): Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. In instructing his secretary to date the affidavit with a date other than the date it was executed and to submit that affidavit to the court, which she did, Respondent engaged in conduct involving dishonesty and misrepresentation in violation of Rule 8.4(c).

Rule 8.4(a): Violation of the other rules discussed above establishes 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.

Motion to Continue:

ODC presented testimony at the hearing from Steven M. Oxenhandler and Mary Allison Johnson, two attorneys who represented the defendant in the workers' compensation matter filed by Respondent on behalf of Miranda Mayrand. Mr. Oxenhandler testified that on July 2, 2020,

Respondent called Ms. Johnson to request a continuance of a hearing on the defendant's exception of res judicata which was set for July 7, 2020 in the *Mayrand* matter. Ms. Johnson then called Mr. Oxenhandler down to her office so that they could take the phone call with Respondent together.⁷ With both Mr. Oxenhandler and Ms. Johnson on the call, Respondent requested a continuance of the hearing because Respondent was having medical issues. Mr. Oxenhandler and Ms. Johnson agreed to the continuance on that basis. After the conclusion of that telephone call, Ms. Johnson called back to Respondent's office to request Respondent's agreement to a continuance of the September 2020 trial date set in the matter since the hearing on the exception was going to be continued. Mr. Oxenhandler's understanding was that Ms. Johnson talked to Respondent's secretary regarding the trial continuance and Respondent's secretary relayed Respondent's agreement to same.

Mr. Oxenhandler further testified that Ms. Johnson drafted the motion to continue and Mr. Oxenhandler signed the motion which was filed with the workers' compensation court. His client had no interest in continuing the matter. Mr. Oxenhandler agreed to the continuance only due to Respondent's representation that he was having medical issues which is the basis that was stated in the motion to continue which he signed. Mr. Oxenhandler gave moving testimony about how much the law profession means to him having entered the practice of law later in life after serving in the Army and working as a police officer. He emphatically stated that he would not knowingly submit false information to a court. Mr. Oxenhandler testified that he did not learn that Respondent

⁷ Mr. Oxenhandler testified that he and Ms. Johnson followed a practice of refraining from taking calls from other lawyers, including Respondent, by themselves. Ms. Johnson testified that as a matter of practice, she had another attorney present when she had a conversation with Respondent. She engaged in this practice based upon prior history for purposes of verification of the content of the call. To date, she followed this practice only for Respondent, not all opposing counsel.

had been suspended until Ms. Johnson received a letter from Respondent informing her of the suspension approximately one week after their phone call.

Ms. Johnson could not definitely recall whether Respondent first called Ms. Johnson or Mr. Oxenhandler on July 2, 2020. She stated that whichever attorney first received the call, that attorney got the other one on the call and both Mr. Oxenhandler and Ms. Johnson spoke with Respondent on the speakerphone. Ms. Johnson confirmed Mr. Oxenhandler's testimony that Respondent requested a continuance of the hearing due to medical reasons and that Respondent did not mention his suspension at any time during the call. They agreed to Respondent's request for a continuance based on medical reasons. Her client would not have agreed to a continuance of anything other than for medical reasons. Respondent also asked that they draft the motion to continue.

After the initial telephone call, Ms. Johnson called back to Respondent's office to request a continuance of the September trial date which would be needed if the hearing was continued at Respondent's request. She testified that she spoke with Mary in Respondent's office who said Respondent was not available. Ms. Johnson testified Mary relayed the request for the trial continuance to Respondent and then called Ms. Johnson back to tell Ms. Johnson that Respondent was agreeable to the trial continuance.

Ms. Johnson testified that she drafted the motion to continue based on the information regarding medical reasons supplied by Respondent. She would not have stated this reason if she knew the information was false. The certificate of service on the motion shows that it was faxed and mailed to Respondent on July 2, 2020. Her legal assistant would have been the person who physically faxed and mailed the motion.⁸ Ms. Johnson testified that she first learned of

⁸ Copies of the motion to continue and the order granting the motion were introduced into evidence as Ex. ODC 8. The motion was stamped filed on July 2, 2020, and the order granting the motion was signed on July 2, 2020.

Respondent's suspension when she received a letter in the mail from Respondent dated July 6, 2020 in which he stated he was suspended.

Respondent testified that when he called Mr. Oxenhandler and Ms. Johnson on July 2, 2020, he requested a continuance of the July 7, 2020 hearing because he had been suspended. He recalls saying to them that he was embarrassed to state that he was under suspension and would they grant him a continuance. They agreed to the continuance. He testified that he did not have any medical condition at that time and said nothing about a medical condition to them on the phone. Respondent stated that he requested that the defense counsel file the motion to continue because he was under suspension. He also requested they not reference the suspension in the motion.

Respondent was asked if he had any explanation as to why the defense counsel would put false information about the basis of the continuance in the motion and why they would give false testimony on this issue at the Board hearing. Respondent conjectured that they stated medical reasons as the basis in the motion because they had to have a reason to tell their client as to why they would agree to a continuance and that they were now not going to come forward and say they misrepresented information.

Respondent stated that he had not seen the motion to continue until he was questioned about it at his sworn statement taken on November 18, 2020.⁹ When he returned to his office after the statement, he confirmed that the motion had been received and was in his files. When the motion came into the office, Respondent had already told Ms. Attenhofer that the matter was being continued so she simply filed the motion away and he did not see it.

⁹ A copy of the transcript of Respondent's sworn statement taken on November 18, 2020 was admitted into evidence as Ex. ODC 7.

Ms. Attenhofer testified that she told Respondent that he had to do something about the hearing scheduled for July 7, 2020. Respondent later came to her and said defense counsel had agreed to continue the hearing and trial dates. She did not recall that when Ms. Johnson called back about the trial continuance, Respondent was away from his desk and that she had to relay Ms. Johnson's request. Ms. Attenhofer testified that more than likely she would have filed the motion to continue away and not have shown it to Respondent when it was received because he was already aware of everything, the dates for the hearing and trial had already been taken off their calendar, and she would be the one who would handle the call to select new dates.

The Board finds the testimony of Mr. Oxenhandler and Ms. Johnson to be credible. Respondent contacted defense counsel and requested that they agree to a continuance of the hearing set on July 7, 2020 on the basis of his medical issues and further asked defense counsel to file the motion to continue with the workers' compensation court. By engaging in this conduct, Respondent violated the following Rules:

Rule 3.3(a)(1): This rule provides that a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. Respondent knowingly requested a continuance of a hearing based on false information and requested that defense counsel file the motion to continue with the workers' compensation court knowing they would use this information. He further failed to correct the false information in the motion once it was filed. By this conduct, he has violated Rule 3.3(a)(1).

Rule 4.1(a): This rule provides that, in representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person. Respondent violated this

rule by falsely asserting medical reasons as the basis for his request to defense counsel for a continuance of the July 7, 2020 hearing.

Rule 8.4(c): By falsely asserting medical reasons as the basis for his request to defense counsel for a continuance of the July 7, 2020 hearing, Respondent engaged in conduct involving dishonesty or misrepresentation in violation of Rule 8.4(c).

Rule 8.4(d): By falsely asserting medical reasons as the basis for his request to defense counsel for a continuance of the July 7, 2020 hearing, Respondent has engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Rule 8.4(a): Violation of the other rules discussed above establishes 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 as detailed above which constitutes grounds for the revocation of his probation under Supreme Court Rule XIX, Appendix C, Rules 6(A) and 6(C). Respondent has failed to meet his burden of refuting this evidence by clear and convincing evidence as required by Rule XIX, §§18(C) and 18(D). Particularly troubling is the fact that Respondent's recent misconduct in connection with the July 15, 2020 affidavit is similar to conduct for which he was sanctioned in April 2020, and yet, Respondent still sees this recent misconduct as only a technical violation not warranting revocation.

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 his one-year probation 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

Susan P. DesOrmeaux
Alfreda Sellers Diamond
Laura B. Hennen
M. Todd Richard
Erica J. Rose
Melissa L. Theriot
Lori A. Waters
Charles H. Williamson, Jr.

By:  DocuSigned by:
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Brian D. Landry
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

...

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

...

Rule 5.3 Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

...

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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;

...

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

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

...