

The Supreme Court of the State of Louisiana

IN RE: AMANDA G. CLARK

No. 2022-B-01332

IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and
Recommendations (Formal Charges);

November 08, 2022

Suspension imposed. See per curiam.

JBM

JLW

JDH

SJC

JTG

WJC

PDG

Supreme Court of Louisiana

November 08, 2022



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-1332

IN RE: AMANDA G. CLARK

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

FORMAL CHARGES

In 2018, Marathon Resource Management Group, LLC (“Marathon”) hired respondent to defend it against two lawsuits. Specifically, on January 24, 2018, Marathon hired respondent with respect to *Danielle Shorter v. Marathon Resource Management Group, et al.*, Baton Rouge City Court Case No. 17-09687. Then on February 14, 2018, Marathon hired respondent with respect to *Derek Holmes, et al. v. Marathon Resource Management Group, et al.*, Baton Rouge City Court Case No. 18-00665. For a period of time, respondent represented Marathon in the lawsuits without issue.

However, respondent last communicated with Marathon via a February 6, 2020 email, wherein she stated, “I do want to represent Marathon in bringing this matter to resolution and quickly. I regret the delays, and I am scheduling a call with

¹ Since June 18, 2021, respondent has been ineligible to practice law for failing to comply with mandatory continuing legal education requirements. On November 1, 2021, she was additionally declared ineligible to practice for failing to pay bar dues and the disciplinary assessment.

plaintiffs' counsel to get a final number. I will give you his reply tomorrow afternoon." Since this email, respondent has not communicated with Marathon.

According to Marathon, respondent was mostly absent in the early months of 2020 after her law firm, Forrester & Clark, apparently dissolved. Although Marathon tried to contact respondent multiple times following her February 6, 2020 email, she did not respond. In March 2021, Marathon learned from opposing counsel handling the two lawsuits that respondent recently confirmed to him she was no longer representing Marathon.

In October 2020, Marathon filed a disciplinary complaint against respondent. The ODC provided respondent with notice of the complaint via certified mail and email. Respondent failed to respond to the complaint, necessitating the issuance of a subpoena to obtain her sworn statement. The sworn statement was scheduled for April 15, 2021. However, two hours before the start time, respondent contacted the ODC to reschedule. The ODC agreed, conditioned upon respondent submitting her written response to the complaint via email later that same day. Respondent failed to do so, later stating that she was unable to face the complaint because she "knew it wasn't good news."

During her rescheduled sworn statement on May 6, 2021, respondent admitted that she failed to communicate with Marathon following her February 6, 2020 email and failed to timely file an appeal in late 2019, which error she never disclosed to Marathon. In explaining why she abandoned Marathon as a client, respondent stated:

I just, kind of, checked out and have not been able to deal with the stuff, which is my obligation. I understand.... But anyway, the appeal was untimely.... It was a problem I had created in the file. I messed up in that. It interfered with my ability to handle the case, I guess, or to communicate with [Marathon].... I haven't had any communications with them. This has gone on and, I mean, obviously I knew.

During the sworn statement, the ODC instructed respondent to disclose in writing to Marathon the fact that she failed to timely file the appeal. Respondent promised to do so but ultimately did not. On June 14, 2021, Marathon confirmed via email to the ODC that “Marathon has still not heard from Ms. Clark.”

DISCIPLINARY PROCEEDINGS

In November 2021, the ODC filed formal charges against respondent, as set forth above, alleging that she violated the following provisions of the Rules of Professional Conduct: Rules 1.1(a) (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Respondent failed to answer the formal charges. Accordingly, the factual allegations contained therein 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

After considering the ODC’s submission on sanctions and acknowledging that the factual allegations set forth in the formal charges were deemed admitted, the hearing committee made factual findings consisted with the deemed admitted facts. Based on those facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee then determined respondent violated duties owed to her client, the legal system, and the legal profession. She acted negligently, knowingly, and intentionally, which caused actual harm to Marathon. Citing the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee found the following aggravating factors present: a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, substantial experience in the practice of law (admitted 1996), and indifference to making restitution. The committee found the absence of a prior disciplinary record to be the sole mitigating factor present.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee further recommended respondent be ordered to pay restitution to Marathon.

Neither respondent nor the ODC filed an objection to the committee's report. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

In this deemed admitted matter, the record supports a finding that respondent neglected a legal matter, failed to communicate with a client, and failed to cooperate with the ODC in its investigation. Accordingly, she has violated the Rules of Professional Conduct as alleged in the formal charges.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent knowingly, if not intentionally, violated duties owed to her client, the legal system, and the legal profession, causing actual harm to the client. We agree with the hearing committee that the applicable baseline sanction is suspension.

Aggravating factors include a pattern of misconduct, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law. As determined by the committee, the sole mitigating factor is the absence of a prior disciplinary record.

Turning to the issue of an appropriate sanction, we take guidance from two recent cases addressing similar misconduct. Like the instant matter, in both *In re: Collins*, 19-1746 (La. 2/26/20), 290 So. 3d 173, and *In re: Jackson*, 21-1488 (La. 1/12/22), 330 So. 3d 307, the attorney failed to answer the formal charges, and the factual allegations contained therein were deemed admitted.

In *Collins*, an attorney neglected a legal matter, failed to communicate with a client, and failed to respond to the ODC's notice of a disciplinary complaint filed against him. The attorney acted knowingly and caused potential harm. The attorney also had prior discipline for neglecting a legal matter and failing to communicate with a client. Under these circumstances, we suspended the attorney from the practice of law for one year and one day.

In *Jackson*, an attorney neglected two legal matters, failed to communicate with two clients, and failed to cooperate with the ODC in two investigations. The attorney acted knowingly and caused potential and actual harm. For this misconduct, we imposed a suspension from the practice of law for one year and one day.

In light of this case law, we will adopt the committee's recommendation and suspend respondent from the practice of law for one year and one day.²

² Although the hearing committee recommended that respondent be ordered to pay restitution to Marathon, we decline to adopt this recommendation. Nothing in the record establishes that Marathon paid any fees to respondent that she did not earn, or that Marathon was deprived of any funds to which it was entitled as a result of respondent's misconduct.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Amanda G. Clark, Louisiana Bar Roll number 24432, be and she hereby is suspended from the practice of law for one year and one day. 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.