

ORIGINAL

Louisiana Attorney Disciplinary Board

FILED by: *Donna P. Burgess*

Docket#

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12/9/2022

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: MAMIE L. FRANKLIN**

**DOCKET NO. 22-DB-025**

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**REPORT OF HEARING COMMITTEE # 8**

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**INTRODUCTION**

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Mamie L. Franklin (“Respondent”), Louisiana Bar Roll Number 35408.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4, 1.5(c), 1.16(d), 3.2, and 8.4(a).<sup>2</sup>

**PROCEDURAL HISTORY**

The formal charges were filed on June 3, 2022. By letters dated June 7, 2022, the formal charges were mailed via certified mail to Respondent’s primary and secondary registration addresses.<sup>3</sup> The charges were also emailed to franklin@franklinandagee.com, which is the email Respondent has registered with the LSBA. The mailing to the primary registration address was received on June 13, 2022. Respondent failed to file an answer to the charges. Accordingly, on August 11, 2022, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).<sup>4</sup> By order signed August 26, 2022, the factual

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<sup>1</sup> Respondent was admitted to the practice of law in Louisiana on March 7, 2014. Respondent is currently eligible to practice law.

<sup>2</sup> See the attached Appendix for the text of these Rules.

<sup>3</sup> 2349 Laurel St., New Orleans, LA 70130 (primary); 321 Bridgepointe Cir., Bossier City, LA 71111 (secondary).

<sup>4</sup> This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion

allegations contained in the formal charges were deemed admitted. On October 28, 2022, ODC filed its submission on sanction.

For the following reasons, the Committee finds that Respondent violated the Rules of Professional Conduct as set forth below and recommends that Respondent be suspended from the practice of law for one year and one day.

### **FORMAL CHARGES**

The formal charges read, in pertinent part:

The ODC received a complaint from Shaquitta Monique Adger on February 28, 2020. Ms. Adger hired Respondent in May of 2016 to represent her three minor children pertaining to injuries sustained in a motor vehicle accident. Respondent filed a *Petition for Damages* on behalf of Ms. Adger and her children on March 6, 2017 in the 1st JDC, Caddo Parish.

Respondent violated Rule 1.3 by failing to act with reasonable diligence and promptness in Ms. Adger's case by failing to respond to discovery and failing to communicate with opposing counsel, resulting in defendants filing two separate motions compelling responses to discovery. Respondent also violated Rule 1.4 by failing to keep Ms. Adger reasonably informed about the status of the matter and failed to comply with Ms. Adger's reasonable requests for information.

The Respondent violated Rule 3.2 by failing to make reasonable efforts to expedite the litigation consistent with the interests of Ms. Adger and her children for approximately two and a half years. Ms. Adger terminated Respondent in December of 2019 (via letter, text message and E-mail). Ms. Adger requested Respondent return all of her files, documentation, and provide a letter withdrawing from the case; however, Respondent failed to do so, in violation of Rule 1.16(d).

Ms. Adger began attempting to settle her case directly with the defendant (State Farm), but the court record reflected she was still represented by counsel. The Respondent did not file a *Motion to Withdraw*. It was only after Ms. Adger provided defendants with a copy of her disciplinary complaint that defendants worked directly with Ms. Adger in settlement of her claims. On July 14, 2020, a *Joint Motion to Dismiss* was filed and signed by Ms. Adger (*pro se*) and defense counsel.

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with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

Respondent was forwarded notice of the complaint on March 6, 2020. Respondent provided a sworn statement to the ODC in which she admitted that she was working Ms. Adger's case on a contingency fee basis, but she did not obtain a signed contingency fee agreement in writing with Ms. Adger, thus violating Rule 1.5(c).

Respondent also testified during her sworn statement that after she filed the petition for damages and State Farm hired Counsel, that Respondent continued to correspond directly with State Farm because the defense counsel never gave an actual settlement number. According to State Farm, there was no direct contact between a State Farm claim handler and Respondent after March 23, 2017, as all communication was through State Farm's defense counsel. Respondent violated or attempted to violate the Rules of Professional Conduct in violation of Rule 8.4(a).

There is clear and convincing evidence the Respondent has violated Rules 1.3, 1.4, 1.5(c), 1.16(d), 3.2, and 8.4(a) of the Rules of Professional Conduct.

### **EVIDENCE**

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1-13. Respondent did not submit evidence or argument for the Committee's consideration, nor did she request to be heard in mitigation pursuant to Rule XIX, §11(E)(4).

### **FINDINGS OF FACT**

The factual allegations in the formal charges are deemed admitted. Respondent was served with Formal Charges as required by Rule XIX, Section 13(A) and failed to provide answers. ODC filed motions asking that the factual allegations be deemed admitted and proven by clear and convincing evidence. Orders to that effect were issued by the hearing committee chair, which also allowed Respondent twenty days to move to recall the orders and allowed each of the parties to file a written submission on the issue of sanctions. The orders were served upon Respondent; however, she failed to move to have the orders recalled. Inasmuch as the procedural requirements of Louisiana Supreme Court Rule XIX, Section 11(E)(3) were met, the factual allegations alleged in the Formal Charges are proven by clear and convincing evidence.

## **RULES VIOLATED**

The Committee finds that the deemed admitted facts, as supplemented and supported by the ODC's documentary submissions, demonstrate clear and convincing evidence of Respondent's violations of the Rules of Professional Conduct as alleged in the formal charges.

In sum: Respondent demonstrated a complete lack of diligence towards her client's matters in violation of Rule 1.3; failed to communicate on a fair, regular, or reasonable basis in violation of Rule 1.4; failed to reduce a contingency fee agreement to writing in violation of Rule 1.5(c); failed to return a client file in violation of Rule 1.16(d); caused substantial delays to the underlying litigation in violation of Rule 3.2; and, through her actions, violated the Rules of Professional Conduct under Rule 8.4(a).

## **SANCTION**

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

- (1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the lawyer acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Respondent's actions have violated duties owed to her client, the public, the legal system, and to the profession. Her actions were taken knowingly, if not intentionally, and caused both potential and actual harm to her client.

Here, Respondent initiated a suit on her client's behalf, then consciously neglected the matter until Ms. Adger terminated Respondent's representation in December of 2019. Respondent's failure to move Ms. Adger's case forward for over two and a half years caused Ms. Adger substantial harm as she had to remain without a resolution to her case for longer

than would otherwise have been had Respondent exercised due diligence.<sup>5</sup> Respondent's failure to return her client's file upon Respondent's termination further compounded this harm, as it impinged on Ms. Adger's ability to hire new counsel and leverage such assistance to negotiate a settlement, which Ms. Adger ultimately had to undertake herself.

While the actual harm to Ms. Adger was substantial, the potential harm was catastrophic. Had a settlement not been reached, Ms. Adger's case could easily have been dismissed or proceeded to trial with no (or limited) discovery, witnesses, argument, or effective counsel.

Respondent's failure to communicate with her client, delays in responding to opposing counsel, neglect of court-ordered requests for discovery, and pattern of neglect severely prejudiced her client's legal rights and harmed the profession.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. ABA Standard 4.42(a) states, "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

In this case, both prongs are met. Respondent repeatedly ignored Ms. Adger's multiple requests for information in writing and by telephone. Respondent improperly handled her client's property by withholding and failing to return the client file, thereby causing the actual and potential injury discussed above. Respondent's conduct was knowing, if not intentional.

As aggravating factors, the Committee finds: a prior disciplinary record, a pattern of misconduct, multiple offenses, vulnerability of the victims (the minor children of Ms. Adger),

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<sup>5</sup> As established by the facts as admitted, the lawsuit was filed on March 6, 2017, and Respondent was terminated by her Ms. Adger in December of 2019.

indifference to making restitution, and proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency and of the courts. There are no mitigating factors, as the burden is on Respondent to establish any mitigating circumstances, and the record lacks any such evidence.

Disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *In re: McClanahan*, 2009-1883, p.17 (La.2/5/10), 26 So. 3d 756, 769 (per curiam). The discipline to be imposed in a given case depends upon the seriousness of the offense, the circumstances of the offense, and the extent of aggravating and mitigating circumstances. *In re: Abdallah*, 2011- 1631, p.7 (La. 10/14/11), 72 So. 3d 836, 841 (per curiam).

A line of cases supports that at least a one year and one day suspension is warranted. Like in the instant matter, in *In re: Collins*, 19-1746 (La. 2/26/20), 290 So. 3d 173, and *In re Aucoin*, 2017-0451 (5/26/17), 220 So.3d 710, the attorney failed to answer the formal charges, and the factual allegations were deemed admitted. (*See also In re Clark*, 2022-1332 (11/8/2022), 2022 WL 1675442.)

In *Collins*, an attorney neglected a legal matter, failed to communicate with a client, and failed to answer the formal charges 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. The Court suspended the attorney from the practice of law for one year and one day.

In *Aucoin*, an attorney failed to act with reasonable diligence and promptness (Rule 1.3), failed to communicate with a client (Rule 1.4), neglected obligations upon termination (1.16(d)), violated Rule 1.5 concerning fee arrangements, and violated the Rules of Professional Conduct

(8.4(a)). The Respondent was found to have acted knowingly. The Court suspended the attorney from the practice of law for one year and one day.

Considering the Court's prior jurisprudence addressing similar misconduct in conjunction with the *ABA Standards for Imposing Lawyer Sanctions*, the committee recommends Respondent be suspended from the practice of law for one year and one day.

### **CONCLUSION**

In light of the foregoing, the committee finds the appropriate discipline for Respondent's knowing, if not intentional, violations of the Rules of Professional conduct is a suspension of one (1) year and one (1) day. The committee further recommends that Respondent be charged with all costs and expenses of these disciplinary proceedings pursuant to Rule XIX, §10.1.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized the Chair to sign on their behalf.

New Orleans, Louisiana, this 9th day of December, 2022.

**Louisiana Attorney Disciplinary Board  
Hearing Committee # 8**

**Matthew J. Glodowski, Committee Chair  
Brian M. Ballay, Lawyer Member  
Vickie E. Shreves, Public Member**

*Matthew J. Glodowski*

**BY:**

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**Matthew J. Glodowski, Committee Chair  
For the Committee**

## APPENDIX

### Rule 1.3. Diligence

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

### Rule 1.4. Communication

(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

### Rule 1.5. Fees

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(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

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### Rule 1.16. Declining or Terminating Representation

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(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is



entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

### **Rule 3.2. Expediting Litigation**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

### **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;

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