ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: RICHARD WILLIAM HUYE III

DOCKET NO. 22-DB-037

REPORT OF HEARING COMMITTEE # 8

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Richard William Huye III ("Respondent"), Louisiana Bar Roll Number 38282.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 7.2(a)(2 & 3) and 7.4(B)(2)(d).[2]

PROCEDURAL HISTORY

The formal charges were filed on August 23, 2022. Respondent filed an answer to the charges on September 12, 2022. The hearing of this matter was held on December 12, 2022. Deputy Disciplinary Counsels Gregory L. Tweed and Paul E. Pendley appeared on behalf of ODC. Respondent appeared with counsel, Dane S. Ciolino and Clare S. Roubion.

For the following reasons, the Committee finds that the evidence is clear and convincing that Mr. Huye violated Rules 7.2(a)(2 & 3) and 7.4(B)(2)(d). As a sanction, the Committee recommends a suspension of six (6) months, fully deferred.

FORMAL CHARGES

The formal charges read, in pertinent part:

> Count 1 (ODC File No. 39803)
>
> In February 2022, ODC received copies of several unsolicited written communications you mailed out to prospective clients. The letters sought out

[1] Respondent was admitted to the practice of law in Louisiana on October 15, 2018. Respondent is currently eligible to practice law.
[2] See the attached Appendix for the text of these Rules.

potential clients that may have suffered damage from the hurricanes that have recently impacted the State of Louisiana. A review of the letters indicated that you failed to include the LSBA Registration Number on the letters and failed to disclose that another attorney may handle the case.

By letter dated April 7, 2022, you acknowledged that your firm spent $624,796 to mail approximately 1,119,207 unsolicited written communications to prospective clients. Each of these letters was mailed without the required LSBA filing number. You further contend that you intended to handle all matters that originated from the publication of the approximately 1,119,207 unsolicited written communications.

In connection with Count 1, there is clear and convincing evidence that RICHARD WILLIAM HUYE, III knowingly and intentionally violated Rules 7.2(a)(3) and 7.4(B)(2)(d) of the Rules of Professional Conduct.

Count 2 (ODC File No. 0039928)

In April 2022, Staff Investigator Allen Grimmis searched the LSBA's Lawyer Advertising Website. Mr. Grimmis learned that you submitted a billboard and bus advertisement to the LSBA for review/approval (LA-22-12926 & LA-22-12927). Based on his review of the website, the filings did not disclose, by city or town, a bona fide office location of the lawyers who would perform the services advertised.

By letter dated May 25, 2022, you acknowledged that both advertisements were displayed to the public without the required information.

In connection with Count 2, there is clear and convincing evidence that RICHARD WILLIAM HUYE, III knowingly and intentionally violated Rules 7.2(a)(2) of the Rules of Professional Conduct.

EVIDENCE

ODC Exhibits 1-7 and Respondent's Exhibits 1-2 were introduced and admitted without objection. ODC Exhibit 8 – a transcript of proceedings before the United States District Court, Western District of Louisiana – was introduced and admitted over Respondent's objection.[3] Respondent's Exhibit 3, submitted after the hearing in response to ODC Exhibit 8, has been admitted.

In addition to reviewing and considering the documentary evidence presented, the committee listened carefully and intently to the Respondent, and two witnesses. While all

[3] Hearing Transcript, pp. 47-48

evidence was considered, Respondent's testimony and ODC Exhibit 8 were critical in the Committee's formation of this recommendation.

FINDINGS OF FACT AND EVALUATION OF EVIDENCE

The underlying facts regarding Respondent's specific violations of Rules 7.2(a)(2) and 7.2(a)(3) of the Rules of Professional Conduct are not seriously in dispute, and the following has been established by clear and convincing evidence.[4] With Respect to Rule 7.4(B)(2)(d), the Committee finds clear and convincing evidence that Respondent knowingly violated this Rule by omitting from his direct mailers the name of another lawyer who would handle the underlying matters. The Committee discusses its findings below.

Rules 7.2(a)(3) and 7.2(a)(2)

Respondent is the Louisiana managing partner at McClenney Moseley & Associates, a law firm with principal offices in Houston, Texas.[5] Through his law firm, Respondent disseminated approximately 1,119,207 written communications advertising his firm's legal services. These communications were unsolicited, sent specifically to Louisiana residents who may have suffered property damage from recent hurricanes. Through prehearing memoranda and testimony at the hearing, Respondent acknowledged that his firm sent these letters without the requisite LSBA filing number and that he failed to disclose that an attorney other than himself would be responsible for handling any cases arising from these communications.[6]

In addition to the mail campaign, Respondent's firm displayed a billboard and bus campaign targeting the same individuals as the written solicitations – storm victims with

[4] Prehearing Memorandum of Respondent, pp. 1, 2.; Prehearing Memorandum of ODC, pp. 1, 2. *See also* Hearing Transcript pp. 10, 11; 11-12.
[5] Transcript p. 21, Lines 7, 14.
[6] Prehearing Memorandum of Respondent, pp. 1, 2.; Prehearing Memorandum of ODC, pp. 1, 2. *See also* ODC Exhibit 1.

commercial and/or residential damage. As with his admission in his written campaign, Respondent acknowledged that he did not disclose, by city or town, a bona fide office location of the lawyers who would perform the services advertised.[7]

By failing to make these required disclosures, Respondent admits to the facts underlying violations of Rules 7.2(a)(3) and 7.2(a)(2).[8] Specifically, Respondent admits to: (1) disseminating approximately 1,119,207 unsolicited written communications[9] without the required LSBA filing number; and (2) displaying billboard[10] and bus[11] advertisements to the public without disclosing, by city or town, a bona fide office location of the lawyers who would perform the services as advertised.

Through these admissions, the Committee finds the ODC to have proven the factual allegations underlying Rules 7.2(a)(3) and 7.2(a)(2) by clear and convincing evidence.

Rule 7.4(B)(2)(d)

The parties agree that the remaining issue relates to the interpretation and effect of Rule 7.4(B)(2)(d). As stated, "if a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client." Both ODC and Respondent's Counsel agree that this rule is not violated unless someone other than Respondent would handle the matters that were the subject of the solicitation. Put differently, the Committee was asked to decide the extent of *other* counsel's involvement in the claims[12] arising from

[7] Transcript page 14, Lines 11-14
[8] *Id.*
[9] ODC Exhibit 1
[10] ODC Exhibit 4
[11] ODC Exhibit 5
[12] Evidence submitted prior to and during the hearing, which the Committee finds reliable, indicated that only 26% of the mailers resulted in a prospective client calling the law firm, of which only 0.03% resulted in the firm signing up a claimant. That is, of the more than a million mailers sent, Respondent is alleged to have handled 2,072 claims. *See* Respondent's Exhibits 1 and 2.

Respondent's firm's unsolicited communications. The Committee finds by clear and convincing evidence that Respondent did not handle all such claims and therefore should have included a statement that another attorney would also handle these matters.

A key piece of evidence in reaching this conclusion is ODC Exhibit 7 – a McClenney Moseley & Associates retainer agreement. The retainer agreement identifies Respondent's firm by name and alerts the "undersigned" that "Co-counsel" would also be hired.[13] Footnote 1 to that agreement identifies Krause & Kinsman Trial Lawyers as this "Co-counsel" and contemplates Respondent's firm's "joint representation" and "fee-sharing" arrangement with this firm.[14]

The Respondent testified that the "the intent of this writing" was not "that we would refer out."[15] Rather, the intent of the agreement "was just the idea and understanding with prospective clients that they would know that, that we are in a joint venture agreement with Krause & Kinsman and they are assisting on their case."[16] "The full intent" of the agreement, according to the Respondent, "is that my law firm, McClenney Moseley & Associates, do all of the labor. And, in fact, that is what's happening."[17]

Notwithstanding the Respondent's testimony to the contrary, it is abundantly clear to the Committee that the signed Retainer Agreement did more than simply raise the prospective client's awareness of a "joint venture" between two firms. The agreement contemplates *joint representation,* and that is what happened.

This salient point was proven on direct examination in a revealing exchange regarding the fee split arrangement between McClenney Moseley & Associates and Krause & Kinsman.

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[13] ODC Exhibit 7
[14] *Id.*
[15] Transcript page 18, Lines 12-13
[16] *Id.* at 20-23
[17] *Id.* at 17-20

Q: So of the 2,072 cases that were generated through the unsolicited written communication, do you have an estimate as to how many Krause & Kinsman is assisting on?
A. They're, they're assisting in a very minority manner in all of them, but they're not assisting in a majority manner in any of them.
Q. Okay. But under the rules, in order for there to be a fee split among different firms both firms have to provide meaningful work?
A. That's correct.
Q. So they, they are providing meaningful work for that 25 percent?
A. That's correct.
Q. Okay. And they're involved in all -- to some extent in all 2,072 cases?
A. In a minority manner. From a strategic and a tech stack management perspective, yes.
Q. To which they are earning a 25 percent fee for that?
A. That's correct.
Q. And that information was not included in any of the written -- unsolicited written communications that we're here to discuss today?
A. That's Correct.[18]

The above sworn admissions of Respondent are credited as reliable support for the Committee's conclusion that Respondent's retainer agreement was indeed evidence that *other* attorneys would be handling the matters at issue. The Committee cannot agree with the proposition that McClenney Moseley & Associates paid Krause & Kinsman 25% of earned fees for less than meaningful joint representation of Respondent's clients. The Committee, moreover, finds it highly unlikely that Krause & Kinsman would knowingly accept a fee arrangement for less than meaningful work, lest that firm potentially violate the rules concerning fee-splitting arrangements. Rather than agree with Respondent's contention that no other lawyer or firm handled the matters arising from the unsolicited communications, the Committee finds that Krause & Kinsman handled at least part of the representation of at least some claims arising from the communications at issue. As such, the Respondent was required to include a statement that a lawyer other than himself would be handling the matters subject to the communications at issue. By not including this statement, the Respondent violated Rule 7.4(B)(2)(d)**.**

[18] Hearing Transcript pp. 19-20.

RULES VIOLATED

Apart from establishing whether ODC carried its burden to prove the facts as alleged by clear and convincing evidence, the Committee was asked to evaluate the Respondent's state of mind (negligence, knowing, intentional) in connection with these violations and to take testimony in mitigation to any proposed sanction.

As discussed below, the record fully supports that by clear and convincing evidence the Respondent was *negligent* and *knowing* in violating the following Rules of professional conduct.

Rules 7.2(a)(3) and 7.2(a)(2)

With respect to his answer to the formal charges in connection with the above-stated rules, the Committee finds that Respondent was *negligent* in causing to be disseminated unsolicited written communications that did not include an LSBA Registration Number (Rule 7.2(a)(3)) and billboard and bus advertisements that did not disclose, by city or town, a bona fide office location of the lawyers who would perform these services.

Negligence is defined in the *ABA Standards for Imposing Lawyer Sanctions* as "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *See* ABA Standards for Imposing Lawyer Sanctions.

The Committee finds Respondent's sworn admissions, found on pages 23 through 25 and 34 through 36 of the Hearing Transcript, credible to the extent they establish the Respondent's negligent state of mind in causing the publication of the communications and advertisements at issue. At most, Respondent disregarded the substantial risk of third-party outsourcing of mass communications to clients and potential clients. The Committee finds credible the Respondent's testimony regarding efforts to educate and monitor this third-party vendor – Velawcity – about the

rules surrounding attorney advertising, despite which Velawcity mailed out written communications without the required LSBA registration number.[19] The same holds true for the defects in the Respondent's bus campaign, which arose from the same negligence and lack of oversight.

In the Committee's opinion, the Respondent testified convincingly that he did not stand to gain more clients or greater fees by causing the defective advertisements to be introduced to the public.[20] In Respondent's words "[w]e should have done things correctly and followed the rules, but it certainly was a mistake. And we didn't gain anything from not having this information."[21] The Committee agrees.

Rule 7.4(B)(2)(d)

By contrast, the Committee finds that the Respondent was acting knowingly – with the conscious awareness of the attendant circumstances of his conduct[22] – when he advertised himself as the sole attorney on his firm's unsolicited mailer to potential clients.[23] The Respondent's affirmative defense in response to the rule violation – that he did not need to disclose that other attorneys would handle the matters because he would handle all the work himself – is strong evidence that he knew of the rules requiring disclosure in the event that he could not handle all these client matters. That he believed he could handle all matters himself – and that he did handle such matters – cannot be reconciled with the extensive testimony regarding his firm's use of third-party vendors, cloud-based platforms, and outside counsel to handle the thousands of claims which arose from the unsolicited communications. The Respondent's awareness of the rules and

[19] *See* Transcript page 24 lines 6 through 25; Transcript page 25 lines 1-7.
[20] *See* Transcript pages 35 through 36.
[21] Transcript page 36, lines 8-11.
[22] *See* ABA Standards for Imposing Lawyer Sanctions
[23] ODC Exhibit 1

appreciation of the attendant circumstances of his actions constitutes a knowing state of mind as defined by the ABA standards.

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.

Here, Respondent violated duties owed to the public, to the profession, and to the legal system. He acted negligently and knowingly. Respondent's misconduct caused actual harm to the legal system by causing to be filed thousands of claims in Federal District Court, many of which were duplicate matters of those already filed and, in some cases, were matters which had been dismissed or settled.[24] The Profession was equally harmed – specifically the defendants named in those lawsuits – in having to defend these duplicative and frivolous lawsuits.[25] Although ODC has not alleged – and the committee does not find – that any of the Respondent's clients were actually harmed, the potential harm to Respondent's clients arising from delays in processing caused by Respondent's duplicative and frivolous filings in District Court was significant.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. ABA Standard 7.2 states that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a

[24] ODC Exhibit 8
[25] See ODC Exhibit 8, p. 54.

professional and causes injury or potential injury to a client, the public, or the legal system. Here, Respondent engaged in conduct prejudicial to the legal system, the public and his clients.

The Committee finds the following mitigating factors: absence of a prior disciplinary record, inexperience in the practice of law, absence of a dishonest or selfish motive, and a cooperative attitude with the disciplinary process and disciplinary Counsel. In aggravation, the Committee finds multiple offenses and the vulnerability of Respondent's clients.

Respondent's Counsel cites *In re Eugene P. Redmann*, 2021-00955 (La. 10/5/21), 325 So.3d 366, and *In re John W. Redmann*, 2021-01060 (La. 10/5/21), 325 So.3d. 364 in support of a baseline sanction of Public Reprimand. These cases are of limited value in that both cases involved consent discipline and negligence on the part of Messrs. Redmann. The Respondent's knowing actions call for more a serious sanction than in the Redmann cases in light of the multiple offenses, knowing state of mind, and vulnerability of the hurricane victims who were the target of the solicitations at issue. The committee has, therefore, deviated upward from the Redman cases and the ABA baseline sanction.

CONCLUSION

Given the actual and potential harm caused by Respondent's misconduct, but considering several mitigating factors, the Committee recommends that Respondent be suspended from the practice of law for six (6) months, all of which should be deferred, with a probation period of one (1) year. The Committee further recommends that Respondent be assessed costs and expenses of the 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.

Metairie Louisiana, this 27th day of February, 2023.

Louisiana Attorney Disciplinary Board
Hearing Committee # 8

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

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

APPENDIX

Rule 7.2. Communications Concerning a Lawyer's Services

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:
(a) Required Content of Advertisements and Unsolicited Written Communications. … (2) Location of Practice. All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. In the absence of a bona fide office, the lawyer shall disclose the city or town of the primary registration statement address as it appears on the lawyer's annual registration statement. If an advertisement or unsolicited written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office or the lawyer's primary registration statement address, appropriate qualifying language must appear in the advertisement. (3) Louisiana State Bar Association Lawyer Advertising Filing Number. Additionally, all advertisements and unsolicited written communications pursuant to these Rules, except those subject to the exemptions stated in Rule 7.8, shall include a filing number assigned and provided by the Louisiana State Bar Association at the time of filing. Those advertisements and unsolicited written communications that are exempt from filing and review requirements of Rule 7.7, as per Rule 7.8, may also be filed with the Louisiana State Bar Association in keeping with Rule 7.7 if the lawyer or law firm desires to obtain and include a filing number within the content of the exempt advertisement or unsolicited written communication.
…

Rule 7.4. Direct Contact with Prospective Clients

…
(b) Written Communication Sent on an Unsolicited Basis. … (2) Unsolicited written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements: … (D) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client.
…