

The Supreme Court of the State of Louisiana

IN RE: MAMIE LENORIA FRANKLIN

No. 2023-B-00203

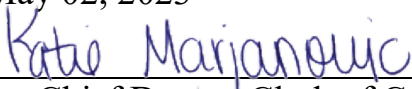
IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and
Recommendations (Formal Charges);

May 02, 2023

Suspension imposed. See per curiam.

SJC
JLW
JDH
JTG
WJC
JBM
PDG

Crichton, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
May 02, 2023


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-0203

IN RE: MAMIE LENORIA FRANKLIN

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Mamie Lenoria Franklin, an attorney licensed to practice law in Louisiana.

FORMAL CHARGES

In May 2016, Shaquitta Adger hired respondent to represent her three minor children with respect to injuries they sustained in an automobile accident. In March 2017, respondent filed a petition for damages on behalf of Ms. Adger and her children.

Thereafter, respondent failed to keep Ms. Adger reasonably informed about the status of the lawsuit or respond to Ms. Adger’s requests for information. Respondent also failed to communicate with opposing counsel or respond to opposing counsel’s requests for discovery, resulting in opposing counsel filing two separate motions to compel discovery. Respondent’s neglect of Ms. Adger’s legal matter continued for approximately two and a half years.

In December 2019, Ms. Adger terminated respondent’s services via letter, text message, and email. Ms. Adger also requested that respondent provide her with her file as well as a letter withdrawing as her counsel. Respondent failed to do so. Because respondent failed to file a motion to withdraw as Ms. Adger’s counsel,

opposing counsel would not negotiate the settlement of the lawsuit directly with Ms. Adger.

In February 2020, the ODC received a disciplinary complaint against respondent from Ms. Adger. In response to the complaint, respondent admitted that she had represented Ms. Adger on a contingency fee basis without reducing the fee agreement to writing. She also indicated that, after she filed the lawsuit and the defendant insurer hired counsel, she continued to correspond directly with the insurer because opposing counsel would not give her an actual settlement number. However, the insurer informed the ODC that, by March 27, 2017 (a couple of weeks after the lawsuit was filed), all of its communication with respondent was through the insurer's counsel.

After showing opposing counsel a copy of the disciplinary complaint she had filed against respondent, Ms. Adger was able to negotiate directly with opposing counsel. Presumably, Ms. Adger was able to negotiate a satisfactory settlement because, on July 14, 2020, she and opposing counsel filed a joint motion to dismiss the lawsuit.

DISCIPLINARY PROCEEDINGS

In June 2022, the ODC filed formal charges against respondent, alleging that her conduct, as set forth above, violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(c) (contingency fee agreements), 1.16(d) (obligations upon termination of the representation), 3.2 (failure to make reasonable efforts to expedite litigation), and 8.4(a) (violation of the Rules of Professional Conduct).

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 deemed admitted submission, the hearing committee determined that the factual allegations set forth in the formal charges were deemed admitted and proven by clear and convincing evidence. Based upon those facts, as well as the documentary evidence in the record, the committee determined respondent violated the Rules of Professional Conduct as charged.

The committee then determined respondent knowingly, if not intentionally, violated duties owed to her client, the public, the legal system, and the legal profession. Her conduct caused significant actual and potential harm to her client. Relying on 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 prior disciplinary record (a 2017 diversion), 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, vulnerability of the victims, and indifference to making restitution. The committee found that no mitigating factors are supported by the record.

After considering the court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day.

Respondent fax-filed an untimely objection to the committee's report on January 3, 2023 without service upon the ODC. The disciplinary board's appellate

clerk telephoned respondent and informed her that the filing of her objection would not be perfected until the board received an original of the objection and a certificate of service upon the ODC, pursuant to Supreme Court Rule XIX, Appendix A, Rules 9(d) and 9(f). The board's appellate clerk also informed respondent that, because her objection was filed one day late, she should file a motion for leave to file the objection late. Because respondent filed nothing further with the board, her objection was never perfected. Accordingly, pursuant to Supreme Court Rule XIX, § 11(G), the board submitted the committee's report directly 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.

The record in this deemed admitted matter supports a finding that respondent failed to reduce a contingency fee agreement to writing, neglected a legal matter,

failed to communicate with a client, failed to provide the client with her file upon written request, and failed to file a motion to withdraw after being terminated by the client. Based upon these facts, respondent 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. She caused actual and potential harm to her client and the legal system. We agree with the hearing committee that the baseline sanction is suspension.

Aggravating factors include a prior disciplinary record, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and refusal to acknowledge the wrongful nature of the conduct. No mitigating factors are discernable from the record.

Turning to the issue of an appropriate sanction, our prior case law addressing similar misconduct supports the sanction recommended by the committee. For example, in *In re: Clark*, 22-1332 (La. 11/8/22), 349 So. 3d 564, an attorney neglected two legal matters she was handling for a client, failed to communicate with the client, and failed to fully cooperate with the ODC's investigation. For this misconduct, we suspended the attorney from the practice of law for one year and one

day. Likewise, in *In re: Collins*, 19-1746 (La. 2/26/20), 290 So. 3d 173, an attorney neglected a legal matter, failed to communicate with a client, and failed to protect the client's interests upon the termination of the representation. For this misconduct, we suspended the attorney for one year and one day.

In light of this case law, and considering the lack of mitigating factors present, we will adopt the committee's recommendation and impose a suspension from the practice of law for one year and one day.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Mamie Lenoria Franklin, Louisiana Bar Roll number 35408, 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.