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**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: BERNARD B. PHARES, JR.**

**NUMBER: 07-DB-036**

**RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD**

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This is a disciplinary proceeding based on the filing of formal charges against Bernard B. Phares, Jr. ("Respondent") by the Office of Disciplinary Counsel ("ODC"). The charges allege that Respondent committed professional misconduct by signing a client's name to a retainer agreement without the client's consent. At the hearing on the matter, the parties stipulated to certain factual allegations as well as the Rule violation contained in the formal charges. Accordingly, the Hearing Committee found that Respondent violated Rule of Professional Conduct 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and recommended a public reprimand as the appropriate sanction for the misconduct.

For the reasons stated below, the Disciplinary Board ("Board") adopts the factual findings and legal conclusions of the Hearing Committee with regard to the formal charges. The Board also adopts the Committee's recommended sanction of a public reprimand.

**PROCEDURAL HISTORY**

Formal charges, consisting of one count, were filed by ODC against Respondent on July 24, 2007. In the charges, ODC alleges that Respondent violated Rule 8.4(c) of the Rules of Professional Conduct when he signed a client's name to a retainer agreement without the client's consent. The formal charges were served upon Respondent via certified mail at his primary registration address on August 2, 2007.

On August 27, 2010, an order was issued granting Respondent an additional thirty days within which to file an answer to the formal charges. On November 18, 2010, ODC filed

correspondence with the Board, attaching a letter from Respondent and requesting that the letter be considered as Respondent's answer in order for a hearing to be scheduled. In Respondent's letter to ODC, dated November 11, 2010, he clarified several of the proposed factual stipulations as discussed by the parties on October 13, 2010 and referred to two letters from ODC dated September 13, 2010 and November 4, 2010.

On November 23, 2010, the Board Administrator set the matter for hearing before Hearing Committee No. 29 ("Committee"). Respondent filed a Pre-hearing Memorandum on January 28, 2011.

ODC filed a Pre-hearing Memorandum on February 1, 2011 in which it recommended a public reprimand as the appropriate sanction given the "predominance" of mitigating factors and prior jurisprudence.

The hearing in the matter was held on February 8, 2011. Deputy Disciplinary Counsel, Robert S. Kennedy, Jr., appeared on behalf of ODC. Respondent represented himself. At the hearing, Respondent and ODC stipulated to the facts as set forth in the "Case Summary" portion of ODC's Pre-Hearing Memorandum. In addition to making these factual stipulations, Respondent stipulated to the Rule violation contained in the formal charges.[1] The hearing was allowed to proceed for the purposes of presenting evidence in mitigation and discussing the appropriate sanction. Neither Respondent nor ODC filed a post-hearing memorandum.

The Committee issued its report on May 19, 2011. Based on Respondent's stipulations, the Committee concluded that Respondent violated the Rules of Professional Conduct as charged. In light of the numerous mitigating factors present, the Committee recommended a public reprimand as the appropriate sanction for his misconduct.

[1] *See* Hearing Transcript, pp. 30-33.

Oral arguments were held before Panel "B" of the Disciplinary Board on June 30, 2011. Deputy Disciplinary Counsel, Robert S. Kennedy, Jr., appeared on behalf of ODC, and Respondent represented himself.

## FORMAL CHARGES

The formal charges in the matter read as follows:

### COUNT I

> In 2002, the respondent, Bernard "Bruce" Phares, was employed by the Michael Hingle Law Offices in Slidell, La. as an "investigator." He was a salaried employee and was neither a partner nor associate with the firm. Specifically, he was tasked among other things with traveling to meet with prospective clients seeking to have the law firm represent them primarily in personal injury cases.
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> In particular, the respondent was instructed to interview a prospective client, Bertha Taylor, after she telephoned and asked to meet with a lawyer from the firm. He traveled to her residence and presented her with a copy of the firm's standard contingency agreement which she declined to sign at that point, insisting that she wanted to review it before doing so. She nonetheless verbally authorized the firm to proceed on her behalf. The firm arranged for visits to a medical specialist and began handling the claim for Ms. Taylor.
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> Over the next several weeks, the respondent contacted Ms. Taylor on several occasions to retrieve the executed attorney-client contract but was singularly unsuccessful in doing so. On at least one occasion, he traveled to her house after being advised she would be available to give him the document, but when he arrived she was not there. Correspondingly, he was receiving repeated insistences from his employer that he retrieve the document.
>
> Allegedly out of sheer frustration, the respondent placed the client's signature on a blank contract and placed it in the firm's file. Ultimately, Ms. Taylor became dissatisfied with the manner in which her claim was being handled and discharged the firm. In response, Hingle recorded the executed attorney-client contract in the parish mortgage records. When the client learned of this, she advised Hingle that the signature on the contract filed in the public records was not hers. Hingle's office manager interviewed the respondent about the document and Phares freely admitted that he had placed the client's signature on the document.

> By his actions, the respondent has violated Rule 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation).

**THE PARTIES' STIPULATION OF FACTS**

At the February 8, 2011 hearing on the matter, Respondent and ODC stipulated to the facts as set forth in the "Case Summary" portion of ODC's Pre-Hearing Memorandum. These factual stipulations are reproduced in pertinent part as follows:

> In 2002, the respondent, Bernard "Bruce" Phares, Jr., was employed by the Law Offices of Michael Hingle in Slidell as a salaried case investigator. Mr. Phares was also a licensed legal practitioner. The Hingle Law Offices operated a high-volume personal injury plaintiff practice heavily reliant upon television advertising to generate clientele. The respondent was tasked with *inter alia*, responding to telephone inquiries from prospective clients, traveling to their homes, and meeting with them to procure their signatures on written contingency fee agreements with the law firm.
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> Respondent met with a prospective client, Bertha Taylor, who, after being involved in a minor traffic accident, contacted the firm and sought its representation. He traveled to Covington to meet with Ms. Taylor and, after briefly discussing her legal claim, presented her with a written fee agreement for her signature after she indicated she wished to hire the firm. At the time of that meeting, Ms. Taylor omitted to sign the contract, but did sign proffered medical and other releases to permit the firm to proceed on her behalf.
>
> Only later did the respondent discover that the client contract had not been signed. Despite repeated efforts to schedule a meeting with the client (including one occasion where the client agreed to meet but failed to keep the scheduled appointment), the respondent became frustrated because of pressure from supervisors to obtain the client's signature on the agreement. Approximating the client's signature, he signed the contract and submitted the document to his employer. Sometime later, the client became dissatisfied with the firm's efforts and discharged the Hingle Law Firm. Because modest costs had been incurred by the firm, Michael Hingle filed the contract into the public record in an effort to preserve his contractual intervention rights. When the client objected, Hingle withdrew the intervention.

## THE HEARING COMMITTEE'S REPORT

As noted above, the Committee issued its report on May 19, 2011. Based on the factual stipulations of the parties, the testimony presented at the hearing, and the evidentiary record, the Committee made the following findings of fact:

## FINDINGS OF FACT

> Respondent was employed by the Michael Hingle Law Offices in Slidell, Louisiana as an "investigator." He was not practicing as an attorney in the firm and his role was to meet with prospective clients seeking to have the firm represent them primarily in personal injury cases.
>
> Respondent was instructed to interview prospective client, Bertha Taylor, after she telephoned and asked to meet with a lawyer from the firm. Respondent traveled to St. Tammany Parish to meet with Ms. Taylor, who agreed to the firm's representation of her in her personal injury case. After discussing Ms. Taylor's legal claim, Respondent presented Ms. Taylor with several documents including a written fee agreement, medical releases and other forms to be signed as part of the firm's representation of Ms. Taylor. At the time of the visit, the respondent assumed that Ms. Taylor had signed all the documents necessary for the firm's representation of her in her personal injury case. The firm proceeded to schedule medical appointments for Ms. Taylor and proceeded with the representation of Ms. Taylor.
>
> Respondent was later advised by the paralegal or office administrator that the retainer agreement which was included in the package had not been signed. Over the next several weeks, the respondent contacted Ms. Taylor on several occasions to get the retainer contract signed but was unsuccessful in doing so. On at least one occasion, he traveled to her house after being advised that she would be available to sign the document, but when he arrived she was not there.
>
> Respondent testified that his employer had asked him on several occasions about his progress in getting the documents signed. He further testified that in order to avoid being reprimanded and embarrassed at office meetings and that due to the pressure from the office, he signed Ms. Taylor's name to the contract and submitted it to his office.
>
> Ms. Taylor became dissatisfied with the manner in which her claim was being handled and discharged the firm. In response, the Hingle firm recorded the executed attorney-client contract in the parish mortgage records to preserve the firm's intervention

> rights. When the client learned of this, she advised Mr. Hingle that the signature on the contract filed in the public records was not hers. When Mr. Hingle's office administrator interviewed Respondent about the document, he admitted that he had placed the client's signature on the document. The Hingle firm withdrew its intervention.

Based upon these findings, the Committee determined that Respondent violated Rule 8.4(c) by signing a client's name to a retainer agreement without the client's consent, thereby engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Once the Committee determined that Respondent had engaged in professional misconduct, it undertook consideration of the factors set forth in Rule XIX, §10(c). While the Committee did not fully address each of these factors, it did consider the existence of aggravating or mitigating factors under the *ABA Standards for Imposing Lawyer Sanctions* Standards 9.22 and 9.32. First, it looked at Respondent's experience in the practice of law but found that it could not be considered as an aggravating factor in this case. Although Respondent had been admitted to practice since 1973, the Committee found that he did not have substantial experience in the practice of law.[2] Respondent worked primarily as a "land man" in the oil and gas field and performed occasional title work for other attorneys. Prior to joining the Law Offices of Michael Hingle as an "investigator,"[3] Respondent worked as a solo practitioner for a period of about six months. This brief period was one of the rare occasions during which Respondent actually engaged in the practice of law.

The Committee determined that there were a substantial number of mitigating factors under ABA Standard 9.32. These included: (1) absence of prior disciplinary record; (2) absence

[2] Substantial experience in the practice of law is a factor which may be considered in aggravation under ABA Standard 9.22.

[3] As an "investigator" at the Law Offices of Michael Hingle, Respondent was a salaried employee who was neither a partner nor an associate of the firm. He was responsible for meeting with prospective clients who were interested in having the law firm represent them in order to go over various documents including the firm's standard, contingency representation agreement and having the prospective clients sign them.

of dishonest or selfish motive; (3) timely good faith effort to make restitution or rectify consequences of misconduct; (4) full and free disclosure to the Disciplinary Board or cooperative attitude toward proceedings; (5) delay in disciplinary proceedings; (6) imposition of other penalties or sanctions (Respondent was discharged from employment); and (7) remorse.

In determining the appropriate sanction, the Committee also relied upon ABA Standards 6.12 and 7.2. According to Standard 6.12, "Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding." Similarly, Standard 7.2 states that "[s]uspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." Based on the ABA Standards, the Committee determined that the baseline sanction for Respondent's misconduct is suspension.

After considering the ABA Standards, the substantial mitigating factors, and prior jurisprudence,[4] the Committee recommended a public reprimand as the appropriate sanction for Respondent's misconduct.

**RESPONDENT'S OBJECTION TO THE HEARING COMMITTEE'S REPORT**

Respondent did not file a Post-hearing Memorandum objecting to the Committee's report; however, he indicated during oral argument before the Board that he did not agree with the Committee's recommended sanction of a public reprimand. He argued that a private admonition was a more appropriate sanction in light of the numerous mitigating factors that were present, including the significant delay in disciplinary proceedings. Respondent alluded to some

[4] The Committee referenced "prior jurisprudence" but did not cite any case law regarding sanctions.

early discussions with ODC regarding the possibility of a private admonition but indicated that ODC proceeded with formal charges seeking a public reprimand for his misconduct. Respondent urged the Board to consider a private admonition as the more appropriate sanction under the circumstances.

According to Rule XIX §10(A)(5), "[a]n admonition cannot be imposed after formal charges have been issued." While a private admonition *may* have been an appropriate sanction in this matter, it is not within the Board's discretion to impose an admonition for Respondent's misconduct. *In re: Sutherland*, 02-DB-093 (1/6/2004).

## ANALYSIS

### I. The Standard of Review

The powers and duties of the Disciplinary Board are defined in Section 2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Subsection (G)(2)(a) states that the Board is "to perform appellate review functions, consisting of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges…and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004.

Here, the Committee was correct in accepting the facts as stipulated by the parties. Furthermore, the Committee's additional findings of fact do not appear to be manifestly erroneous.

*De novo* review indicates that the Committee was correct in concluding that Respondent violated Rule 8.4(c) as charged, since Respondent's stipulation at the hearing to the alleged misconduct and the Rule violation must be deemed conclusive. The Court has held that parties in disciplinary proceedings can freely enter into stipulations regarding rule violations, and that effect must be given to such stipulations unless they are withdrawn. *In re Gerard N. Torry*, 2010-B-0837 (10/19/10), 48 So.3d 1038.

Therefore, the sole issue for the Board's consideration is the appropriate sanction for Respondent's misconduct.

## II. THE APPROPRIATE SANCTION

### A. Application of Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, §10(C) states that in imposing a sanction after a finding of lawyer misconduct, the Court or Board 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 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 a client, the legal system, and the profession when he knowingly signed a client's name to a retainer agreement in conscious violation of the Rules of Professional Conduct. However, as ODC noted in its Pre-hearing Memorandum, the injury caused by Respondent's conduct was *de minimis* in nature.[5] Moreover, there are substantial mitigating factors to consider, including: absence of a prior disciplinary record; absence of a dishonest or selfish motive; timely good faith effort to make restitution or to rectify

[5] Hearing Transcript, p. 12, line 8.

consequences of misconduct; full and free disclosure to the Disciplinary Board or cooperative attitude toward proceedings; delay in disciplinary proceedings; and remorse. Arguably, the fact that Respondent lost his job as a result of his actions could be considered as an additional factor in mitigation. The Committee considered it as such under the "imposition of other penalties or sanctions" under ABA Standard 9.32.

**B. The ABA Standards and Case Law**

As mentioned above, Standards 6.1 and 7.0 of the *ABA Standards for Imposing Lawyer Sanctions* are relied upon in determining the appropriate sanction. Standard 6.12 states, "[s]uspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding." Standard 7.2 provides that "[s]uspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system."

The ABA Standards indicate that suspension is the baseline sanction for the misconduct at issue here. However, there are numerous mitigating factors present that suggest a more lenient sanction may be appropriate. While the Committee recommended a public reprimand for Respondent's misconduct, it did not cite any cases to support this recommendation. A review of the applicable case law indicates that it is indeed the appropriate sanction here.

There are a number of cases decided by the Louisiana Supreme Court involving lawyers handling documents known to contain forged signatures or false information, with sanctions ranging from deferred suspension to public reprimand. One such case is *In re Wahlder*, 98-2742

(La. 1999), 728 So.2d 837, which resulted in a fully-deferred, six-month suspension with one year of conditional probation. In this case, the respondent permitted his client to place his wife's signature on settlement documents and then witnessed the signature knowing that his client's wife did not personally sign them. The respondent then refused to produce the documents upon request in an attempt to conceal his misconduct. Despite the respondent's cover-up attempts, the Court found there were significant mitigating factors, including a lack of selfish or dishonest motive as well as timely good faith efforts to rectify the consequences of his misconduct.

A similar case that resulted in public reprimand is *In re Roger C. Sellers*, 95-2764 (La. 3/15/1996), 669 So.2d 1204. In this case, the respondent failed to disclose the existence of a collateral mortgage to a third party and notarized mortgage certificates verifying that the property was free and clear of liens and encumbrances. Because the respondent had no prior discipline and received no monetary benefit from the transaction, the Court ordered public reprimand.

There are several Board opinions in which public reprimands were imposed that are relevant to the present matter. The first of these is *In re Gauthier*, 00-DB-081 (Board Op. 6/21/2001), in which the respondent notarized a mortgage that was not executed in his presence and was later found to have been forged. The Board found numerous mitigating circumstances warranting a public reprimand, including: 1) absence of prior discipline; 2) absence of a dishonest motive; 3) timely good faith effort to make restitution and rectify the consequences of his actions; 4) full and free disclosure to the board and cooperation in the disciplinary process; 4) good character or reputation; and 5) remorse. There were no aggravating circumstances.

The second is *In re Guillory*, 01-DB-047 (Board Op. 11/19/2002), in which the respondent admitted that he notarized an Act of Exchange involving real property that was not

signed by all of the owners in his presence. The Board imposed a public reprimand on the respondent, noting that several mitigating factors, including absence of a dishonest or selfish motive, were present.

The third relevant Board opinion in which public reprimand was imposed is *In re Deshotel*, 97-DB-063 (Board Op. 4/8/1999). In this matter, the respondent notarized and backdated a marriage contract to pre-date the signatories' marriage, knowing that a post-nuptial execution of a marriage contract without court authority was null. The Board found that respondent was sincere, although misguided, in his motives, which were fueled by his affection and loyalty to his client who begged him to help her execute the document. The Board also found numerous mitigating factors to be present that included no prior discipline, absence of a dishonest or selfish motive, full and free disclosure and cooperative attitude towards the proceedings, good character or reputation, and remorse.

One case in which the Court declined to impose formal discipline is *In re: Hartley*, 02-DB-030 (La. 4/2/2004), 869 So.2d 799. In this case, the respondent directed another attorney at his firm to notarize a document which stated that the affiant and one witness had "personally appeared" before the notary when they had not done so. The hearing committee dismissed the charges. The Disciplinary Board reversed the dismissal of the charges and imposed a public reprimand. On appeal, the Court found that the respondent's actions constituted a minor violation of the Rules of Professional Conduct. There was no dishonest or selfish motive, and no actual harm was caused by his misconduct. In addition, the respondent had no disciplinary record in over 30 years of practice. Under the totality of the circumstances, the Court found that formal discipline was not warranted. While the Court did not condone the respondent's actions and cautioned him to avoid similar professional lapses in the future, it declined to impose formal

discipline and dismissed the charges. *See, e.g., In re: Marullo*, 96-2222 (La. 4/8/1997), 692 So. 2d 1019.

Finally, worth noting, are two consent discipline cases—*In re Turnage*, 2008-0359 (La. 3/14/2008), 976 So.2d 705, and *In re Doggett*, 2004-0349 (La. 3/25/2004), 869 So.2d 792. While these cases are of limited jurisprudential value, the consent discipline accepted by the Court is consistent with discipline it has imposed for similar misconduct in other proceedings. In *In re Turnage*, the Court imposed a six-month, fully-deferred suspension with one year of unsupervised probation upon the respondent who notarized a pleading that contained the forged signature of her client and then filed it into the public record. In *In re Doggett*, the Court imposed public reprimand upon the respondent who relied upon an improper power of attorney clause in his contingency agreement to sign his client's name to settlement checks and negotiate them without informed consent. There was found to be little or no resulting harm to the client.

Based on the cases highlighted above, an appropriate sanction for the misconduct at issue here is a short-term, fully-deferred suspension or a public reprimand. In light of the substantial mitigating factors weighing heavily in Respondent's favor, a more lenient sanction is warranted. It should also be noted that Respondent is not currently engaged in the practice of law[6] and has no foreseeable plans to return to the practice.[7] Accordingly, the Board agrees with the Committee that a public reprimand is the appropriate sanction in this matter.

**CONCLUSION**

The Board adopts the factual findings of the Committee as well as its findings with respect to mitigating factors. The Board also adopts the Committee's conclusion that Rule 8.4(c) has been violated by Respondent as was stipulated by the parties. Moreover, the Board adopts

[6] *See* Hearing Transcript, p. 24, lines 14-16.
[7] *See* Hearing Transcript, pp.43-44.

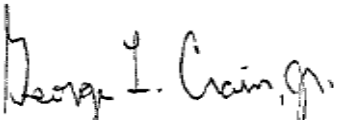
the sanction recommended by the Committee of a public reprimand and orders that Respondent be assessed with all costs and expenses of these proceedings.

**RULING**

For the foregoing reasons, the Board hereby rules that Respondent, Bernard B. Phares, Jr., be publicly reprimanded for engaging in professional misconduct. The Board further orders that Respondent be assessed with all costs and expenses of these proceedings pursuant to Rule XIX, §10.1.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**Carl A. Butler**
**Stephen F. Chiccarelli**
**Dow M. Edwards**
**Jamie E. Fontenot**
**Edwin G. Preis, Jr.**
**R. Lewis Smith, Jr.**
**Linda P. Spain**
**R. Steven Tew**



**BY:** _____
**George L. Crain, Jr.**
**FOR THE ADJUDICATIVE COMMITTEE**