

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MICHAEL A. BETTS

NUMBER: 15-DB-054

RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

INTRODUCTION

This is a discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Michael A. Betts (“Respondent”), Louisiana Bar Roll Number 19485.¹ The charges, which consist of one count, allege violations of Rules of Professional Conduct 1.3 (diligence), 1.4 (communication), 1.16(d) (failure to return file), and 8.1(c) (failure to cooperate with ODC’s investigation).² The Hearing Committee assigned to this matter concluded that Respondent only violated Rule 1.4 and recommended that he be publicly reprimanded. For the following reasons, the Board adopts the Committee’s findings, conclusions, and recommendation. Accordingly, the Board will impose a public reprimand.

PROCEDURAL HISTORY

ODC filed the formal charges on October 2, 2015. The charges state, in pertinent part:

Complainant, Mr. Randall Shane Sanders, was involved in a domestic matter with his former spouse and hired Respondent to represent him in the matter. Specifically, Complainant was seeking to modify an existing child support order in such a way as to lower his monthly obligation, of which he was statutorily entitled. Complainant paid to respondent a fee of \$2,000.00 on January 21, 2014. It was the understanding of Complainant that Respondent was supposed to begin work on the pleadings immediately. However, Complainant alleged that after the initial meeting with Respondent, it took Complainant three months for him to reach Respondent by telephone, and it appeared to Complainant that Respondent had performed no work on his file by that time. Complainant was unable to reach Respondent to secure status updates, and on June 29, 2014, Complainant filed a formal complaint with the Office of Disciplinary Counsel.

¹ Respondent is currently eligible to practice law.

² The text of the Rules is contained in the attached Appendix.

Respondent did not respond to the complaint, and Deputy Disciplinary Counsel G. Fred Ours issued a subpoena to compel Respondent to appear at ODC for a sworn statement. Respondent appeared for his statement on November 20, 2014. In his sworn statement, Respondent acknowledged that he was hired by Complainant to file a motion for modification of Complainant's child support order for his minor child. Apparently, Respondent had difficulty contacting Complainant's former spouse who had relocated to Texas and was uncooperative with the proceeding. Respondent was able to convince the presiding judge to sign an order of support modification, although at the time there appeared to be some question as to whether or not service of process for notice of the hearing had been perfected on the former spouse. It appears from Respondent's sworn statement that he ceased work on the case after the submitted order was signed by the judge, but Respondent did not formally withdraw as counsel of record or refund to Complainant any of the advanced fee deposit.

It was the position of Respondent that the matter had been resolved, and Respondent represented to ODC that Complainant was satisfied and the complaint was rendered moot. Complainant was sent a copy of the transcribed sworn statement, as well as letters from Respondent to ODC, indicating the matter had been resolved. Complainant responded to ODC on October 10, 2014 stating that he did not consider the matter resolved in any way, and all of his complaints still stood, uncured. Complainant alleged that Respondent contacted him for the purposes of scolding him for having filed a formal complaint with ODC. Furthermore, Complainant indicated that he was made to hire another attorney in an attempt to perfect the child support modification since it was revealed that Respondent did not properly serve Complainant's former spouse with the notice of hearing, therefore rendering the signed order null and void.

ODC sent letters to Respondent in an attempt to discover the status of the litigation and whether or not the matter with Complainant was truly resolved. Respondent did not respond to the letter from ODC dated May 5, 2015. Respondent was sent a follow-up letter on June 2, 2015. Respondent sent a response letter to ODC, but he appeared evasive, unhelpful, and ultimately, uncooperative.

In an effort to find out the current disposition of the litigation, as well as the position of Complainant, ODC Senior Investigator Robin Mitchell contacted both Complainant and current counsel for Complainant, attorney Brian Prendergast. On July 10, 2015, Investigator Mitchell spoke with Complainant about the matter. Complainant confirmed he had hired Respondent to seek a reduction in child support, and that the matter was reduced to judgment. However, the judgment was voided because of service issues. Complainant was unable to obtain resolution to the matter, and felt he had no other option but to hire another attorney to press the matter to completion. Complainant hired Brian Prendergast, who successfully completed the motion for support reduction. However, hiring other counsel added significantly to the time it took to have Complainant's

obligation reduced. This added time resulted in a longer support obligation for Complainant.

Attorney Brian Prendergast was also interviewed by ODC. Mr. Prendergast indicated that he met with Complainant on October 2, 2014 to discuss his case. After hire, Mr. Prendergast attempted to secure Complainant's file from Respondent. However, after at least two requests by Mr. Prendergast, Respondent never tendered the file. Mr. Prendergast was able to file to have a new rule set for hearing and was able to arrange for the opposing party to be properly served. Complainant received judgment in his favor on July 8, 2015. It was the opinion of Mr. Prendergast that Complainant was harmed because of the fees paid to Respondent and the work never being completed, and by the amount of time Complainant was made to pay a larger monthly support obligation than what he was obligated to pay by statute.

By Respondent's failure to timely communicate to Complainant information about the progress of his case, as well as his failure to timely prosecute his client's claims, Respondent's pattern of neglect with regard to Complainant's case, his refusal to tender Complainant's file on request, and Respondent's lack of cooperation with an official ODC investigation, Mr. Betts has violated Rules of Professional Conduct Rule 1.3, Rule 1.4, Rule 1.16(d) and Rule 8.1(c).

After receiving an extension of time in which to answer the charges, Respondent filed his answer on December 30, 2016. In his answer, Respondent denied violating the Rules.

The hearing of this matter was held on July 7, 2016, before Hearing Committee Number 2.³ Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Damon S. Manning appeared on behalf of Respondent. The Committee heard the testimony of Randall Shane Sanders (complainant); Brian Prendergast (fact witness, Mr. Sanders' subsequent counsel); Respondent; Laurie Kilpatrick (fact witness, Respondent's secretary); Tom Roe (character witness); Ben Hawkins (character witness); and Peter Hunter (character witness). The Committee also accepted into evidence ODC Exhibits 1-12 and Respondent Exhibits 1-31.

³ The Committee was composed of Michael R.D. Adams (Chair), James A. Taylor (Lawyer Member), and Vallan Corbett (Public Member).

The Committee issued its report on September 14, 2016. The Committee made the following findings, conclusions, and recommendation:

[ODC] charged Respondent with violating Rule 1.3, Lack of Diligence; Rule 1.4, Lack of Communication; Rule [1.16(d)] Failure to Return Client's File Upon Request Following Termination of the Representation; and Rule 8.1(c) Failure to Cooperate with ODC's Investigation.

The Committee considered all of the evidence and applied the clear and convincing standard. The Committee also considered all mitigating circumstances including the fact that the Respondent suffered from Multiple Sclerosis, his [personal] references, and the fact that he had qualified in an election for Judge in the 21st Judicial District Court.

The Committee believes that the Office of Disciplinary Counsel failed to meet its burden by clear and convincing evidence regarding the violation of Rule 1.3. The Committee believes that the Office of Disciplinary Counsel fail to meet its burden of clear and convincing evidence regarding the alleged violation of Rule 1.6(d). The Committee believes that the Office of Disciplinary Counsel failed to meet its burden of clear and convincing evidence in regards to alleged Rule 8.1(c).

The Committee does believe that Office of Disciplinary Counsel did [reach] its burden and showed by clear and convincing evidence that the Respondent did in fact violate Rule 1.4(a)(b). The Respondent did in fact fail to communicate with his client and the Committee believes that much of the frustration and lack of getting the result the client paid the Respondent for was a result of the failure of Respondent to communicate with the Complainant. The Committee believes that the Complainant's multiple attempts to reach the Respondent and the failure of the Respondent to return phone calls and/or meet with the Respondent after many attempts was in fact a violation of Rule 1.4.

...

The Committee does in fact believe that the standard applied In Re: Dalton, 09-1288 (La. 10-02-2009), 18 So.3d 743 should be applied in this matter. In that case the Supreme Court set the following standard:

Not every violation of the rules of professional conduct warrants the imposition of formal discipline. Given the limited resources of the Disciplinary System, the ODC should act wisely to ensure that the charges it chooses to file will satisfy the overarching goals of the disciplinary process, namely, maintaining high standards of conduct, protecting the public, preserving integrity of the profession, and deterring future misconduct.

The Committee believes that the Respondent should receive a public reprimand for violating Rule 1.4. The Committee believes that it is in the public's interest and the integrity of the profession that a public reprimand is in order in

this situation. The Committee has indeed considered the Respondent's prior admonishments as well as all of the mitigating factors surrounding this case.

Hearing Committee Report, pp. 2-3.

ODC filed an objection to the Committee's conclusion that Rules 1.3 and 8.1(c)⁴ were not violated. For reasons that are not explained in its objection or brief, ODC does not object to the Committee's conclusion that Rule 1.16(d) was not violated. Presumably, ODC has abandoned that allegation. ODC also objects to the Committee's recommendation that a public reprimand be imposed. ODC argues that a one-year suspension, with all but three months deferred, is the appropriate sanction.

Respondent also filed an objection to the Committee's report and recommendation. Respondent argues that the Committee erred in concluding that he violated Rule 1.4. In the alternative, even if the Board concludes that Respondent violated Rule 1.4, Respondent argues that the charges should be dismissed pursuant to *In re Dalton*, which was cited by the Committee.⁵

Oral argument of this matter was heard on February 16, 2017, before Board Panel "B".⁶ Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Respondent appeared with his counsel, Damon S. Manning.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

⁴ ODC also objects to the Committee's failure to conclude that Respondent violated Rule 8.1(b). However, ODC did not charge Respondent with violating that Rule in the formal charges. Thus, it would inappropriate to consider the alleged violation at this point in the proceeding.

⁵ The Committee's recommendation is confusing. On the one hand, the Committee states that the standard in *Dalton* should apply, which suggests that the formal charges be dismissed. However, the Committee recommended that a public reprimand be imposed.

⁶ Board Panel "B" was composed of Melissa Theriot (Chair), Linda Bizzarro (Lawyer Member), and Evans Spiceland, Jr. (Public Member).

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is “to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, 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, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

A. The Manifest Error Inquiry

The factual findings of the Committee are supported by the record and are not manifestly erroneous.

B. De Novo Review

The Committee correctly applied the Rules of Professional Conduct. However, given the limited findings and analysis provided by the Committee, further discussion of each Rule is warranted.

Rule 1.3: Rule 1.3 states that a lawyer shall act with reasonable diligence and promptness in representing a client. Here, Mr. Sanders first visited Respondent on January 15, 2014. He paid Respondent \$2,000 on January 21, 2014. On June 18, 2014, Respondent filed a motion to enroll in the child support matter. Respondent Exhibit 17. Respondent was able to secure a court date by July 15, 2014, and had a signed judgment amending the child support obligation on September 2, 2014. Respondent Exhibits 22 & 24. On its face, this timeline does not

demonstrate a lack of reasonable diligence or promptness by Respondent. Respondent explained that the delay from January to June was caused by Mr. Sanders' failure to pay the full retainer amount of \$4,000. (Mr. Sanders contends that the retainer was \$1,500 and he paid \$2,000 to provide extra funds in case the additional retainer was expended. Transcript, pp. 73-74.) Respondent and Mr. Sanders did not execute a written fee agreement. Thus, the amount of the retainer is not clear in the record. Nonetheless, at some point in May or June 2014, Mr. Sanders convinced Respondent to move forward with the matter. As evidence of this, Respondent sent correspondence to Mr. Sanders' ex-wife on June 4, 2014.⁷ Respondent Exhibit 16. After the September 2, 2014 order was signed, Respondent testified that there would have to be a "second phase" to the representation to execute the judgment. However, Respondent also testified that he told Mr. Sanders that he could not pursue the second phase until Mr. Sanders paid the remainder of the retainer. Transcript, pp. 278-282. By October of 2014, Mr. Sanders decided to hire a new attorney to finish the matter.

ODC's argument as it pertains to Rule 1.3 appears to focus more on the methods Respondent chose to pursue Mr. Sanders' goal than on Respondent's diligence in pursuing that goal. However, even if Respondent chose incorrect or inefficient methods to pursue Mr. Sanders' matter, that issue is not before the Board. That would be a competence issue. ODC did not charge Respondent with a Rule 1.1 (competence) violation. With regard to Respondent's diligence (Rule 1.3), Respondent's actions during the time period discussed above appear to be reasonable. Thus, the Board adopts the Committee's conclusion that Respondent did not violate Rule 1.3.

⁷ Mr. Sanders filed his complaint with ODC on June 5, 2014. However, ODC did not send the complaint to Respondent until July 8, 2014. Respondent Exhibit 1.

Rule 1.16(d): Rule 1.16(d) states that a lawyer shall take steps to the extent reasonably practicable to protect a client's interests upon termination of representation. This rule further states: "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." Here, ODC did not object to the Committee's conclusion that Respondent did not violate this rule by failing to promptly return Mr. Sanders' file. Nonetheless, the record supports the Committee's conclusion. First, neither Mr. Sanders nor his subsequent attorney, Mr. Prendergast, requested the file in writing. Second, Respondent and Mr. Prendergast both testified that they discussed the file, but there appears to have been confusion between the two of them as to who was supposed to deliver or retrieve the file. Mr. Prendergast testified that he did not pursue retrieving the file because he did not need it. Transcript, p. 135. Mr. Prendergast stated, rather, that he was able to proceed based upon the September 2, 2014 judgement. Thus, the Board adopts the Committee's conclusion that Respondent did not violate this rule.

Rule 8.1(c): Rule 8.1(c) states that a lawyer shall cooperate with ODC in its investigation of any matter before it. Here, the record indicates there was confusion on behalf of Respondent and, perhaps, ODC throughout the investigation of this matter. While Respondent should have been more diligent and thorough in responding to ODC's inquiries, his actions do not appear to rise to the level of a lack of cooperation. Again, as with Rule 1.3, a timeline of events is illustrative. On June 9, 2014, ODC received a complaint from Mr. Sanders. Respondent Exhibit 1. On July 8, 2014, ODC mailed the complaint to Respondent, which he received on July 9th. Respondent Exhibits 1 and 21. Upon receiving the complaint, Respondent called Mr. Sanders, who agreed to Respondent's continued representation and stated he would drop the complaint with ODC. Respondent Exhibit 2. At this point, Respondent assumed the complaint was resolved.

However, on August 29, 2014, ODC issued an investigatory subpoena for Respondent's sworn statement because it had not received a response to Mr. Sanders' complaint and Mr. Sanders had not communicated with ODC. Respondent Exhibit 3. Respondent communicated with ODC about his confusion and ODC agreed to cancel the sworn statement scheduled for September 17, 2014. Respondent Exhibit 4. On October 10, 2014, Mr. Sanders reinstituted his complaint with ODC. Respondent Exhibit 5. In response to this, Respondent agreed to voluntarily appear for a sworn statement on November 20, 2014. Respondent Exhibits 6-8. After giving his sworn statement, on or about December 9, 2014, Respondent filed with ODC a detailed response to Mr. Sanders' complaint. Respondent Exhibit 9. Respondent heard nothing more from ODC until April 16, 2015, when ODC sent the following correspondence to Respondent:

We received a letter from Mr. Sanders after you submitted your initial response to the complaint. Mr. Sander's letter specifically stated that the issues raised in his complaint have not been resolved. Please advise as to the current status of the litigation, and whether or not the legal issues have been adjudicated. It appears the primary issue between the parties may involve a fee dispute. As part of the investigation by ODC into Mr. Sanders's allegations, please forward to us a copy of the contractual agreement signed by the parties. Also, please forward to us a copy of your Attorney Fee Voucher for Mr. Sanders's file showing the itemized time worked on the case, with billing rate. Please forward these materials to us within 15 days. This matter may ultimately be best suited to the Louisiana State Bar Association Fee Dispute Program. See Louisiana Rules of Professional Conduct, Rule 1.5(f)(5).

Respondent Exhibit 10. Respondent interpreted this correspondence to mean that Mr. Sanders had filed a response to his December 9, 2014 letter to ODC. As ODC had not forwarded such a response to Respondent, Respondent requested a copy from ODC by letter dated May 1, 2015. Respondent Exhibit 11. In response, ODC sent Respondent's October 10, 2014 letter, which Respondent had already seen and already responded to. Respondent Exhibit 12. On June 2, 2015, ODC sent another letter to Respondent requesting a response to Mr. Sanders' October 10th letter. On June 11, 2015, Respondent sent a letter to ODC expressing his confusion, since he had

already responded to the October 10th letter, and providing a brief update on the status of Mr. Sanders' matter.⁸ The next activity that occurred was ODC's request for permission to file formal charges in this matter, which was filed on July 29, 2015, and granted on August 4, 2015. On August 12, 2015, ODC sent a letter to Respondent offering him consent discipline. ODC Exhibit 10. Presumably this was rejected, because ODC filed the formal charges in this matter on October 2, 2015.

A review of the record demonstrates that Respondent failed comply with two requests from ODC: providing a copy of his fee agreement (which does not exist) and a copy of his billing statement. ODC made this request in its April 16, 2015 letter. However, at that point, Respondent was confused as to the status of the investigation, believing there was correspondence from Mr. Sanders he had not seen. ODC did not attempt to clarify Respondent's confusion. Rather, it proceeded with formal charges. While there is a technical failure to cooperate here, Respondent's actions (or non-action) appears to be rooted in confusion as opposed to his intent to obstruct or not cooperate with ODC's investigation. Accordingly, the Board adopts the Committee's conclusion that Respondent did not violate Rule 8.1(c).

Rule 1.4: Rule 1.4(a) states, generally, that a lawyer shall maintain prompt and reasonable communication with a client. Rule 1.4(b) states that a lawyer shall give a client sufficient information to participate intelligently in the decisions regarding the representation. Here, the Committee found that Respondent failed to promptly and adequately communicate with Mr. Sanders. This finding is largely based upon the testimony of Mr. Sanders, which, presumably, the Committee found credible. There is nothing in the record indicating this credibility

⁸ At that point, Respondent had not represented Mr. Sanders since September/October of 2014. Thus, he could not provide details on the status of the matter.

determination was erroneous.⁹ The testimony of Mr. Sanders, taken as a whole, also demonstrates that he was not provided with enough information to participate intelligently in the representation. Accordingly, the Board adopts the conclusion of the Committee that Respondent violated Rule 1.4.

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, §10(C) states that when 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 negligently violated a duty owed to his client. The findings of the Committee, which are supported by the record, indicate that Respondent failed to adequately communicate with Mr. Sanders and failed to provide him with enough information to participate intelligently in the representation. Respondent's misconduct appears to have caused, at most, minor harm to Mr. Sanders in the form of delay of the resolution of his matter. However, some of the delay appears to have been caused by Mr. Sanders' failure to pay the rest of Respondent's retainer, which prompted Respondent to not pursue the "second phase" of the representation.

⁹ There is evidence of correspondence between Respondent and Mr. Sanders in June and July of 2014. However, Mr. Sanders testified that he had problems communicating with Respondent between January and June of 2014 and after the court issued its ruling in September of 2014.

The two aggravating factors supported by the record are Respondent's prior disciplinary history, which consists of two admonitions,¹⁰ and his substantial experience in the practice of law.¹¹ The mitigating factors present in the record are the remoteness of Respondent's prior disciplinary offenses, his good character and reputation,¹² his personal problems,¹³ and the absence of a dishonest or selfish motive.

B. The ABA Standards and Case Law

The *ABA Standards for Imposing Lawyers Sanctions* suggests that public reprimand is the appropriate sanction in this matter. Standards 4.43 states: "Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." Standard 4.44 states: "Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client." First, there is no standard that directly addresses a lawyer's duty to communicate with his/her client. However, a lawyer's duty to communicate with a client can be assumed to fall under a lawyer's general duty of diligence, which makes the standards above the most analogous guidelines for the particular facts of this matter. Second, both standards are applicable here because Respondent's misconduct was negligent, as opposed to knowing or intentional. However, admonition is not available as a sanction in Louisiana after formal charges have been filed. *See* Louisiana Supreme Court Rule XIX, §10(A)(5). Thus, public reprimand is the appropriate sanction under the ABA Standards.

¹⁰ One admonition was issued on April 8, 2003, for Respondent's violation of Rules 1.4 (failure to communicate), 1.5(c) (failure to render an accounting for a fee), 1.15 (improper handling of third-party fee), and 8.4(a) & (c) (violating the Rules and engaging in dishonest conduct). The other admonition was issued on June 6, 2005, for Respondent's violation of Rule 1.18 (duties to prospective clients).

¹¹ Respondent was admitted to the practice of law in Louisiana on October 6, 1989.

¹² Several friends of Respondent testified to his good character and reputation in the community. Transcript, pp. 384-411.

¹³ Respondent testified about his diagnosis of multiple sclerosis in 2009 and how it has affected his daily life. Transcript, pp. 430-32. However, there is no evidence that his condition caused or contributed to his failure to communicate with Mr. Sanders.

There is little analogous case law from the Court dealing with a negligent and isolated violation of Rule 1.4. ODC cites several cases in support of its argument that a one-year suspension, with all but three months deferred, is the appropriate sanction. Of these cases, only three are somewhat analogous to the facts of this matter. In *In re Tooke*, the Court suspended Mr. Tooke for four months, all deferred, for neglecting a legal matter and failing to communicate with the client. 2004-0533 (La. 9/3/04), 881 So.2d 741. Mr. Tooke allowed the formal charges to become and remain deemed admitted. Mr. Tooke neglected a legal matter from several years (1993 – 2000), which resulted in the matter being dismissed as abandoned. The Court found that Mr. Tooke’s misconduct was partly negligent and partly knowing. The following aggravating factors were present: prior disciplinary offenses¹⁴ and substantial experience in the practice of law. The following mitigating factors were present: absence of a dishonest or selfish motive, cooperative attitude toward the proceeding, and remorse. The Court deferred the suspension because of the absence of a dishonest or selfish motive.

In *In re Stanton*, the Court suspended Mr. Stanton for six months, all deferred, for neglecting a personal injury matter for over three years and failing to communicate with that client. 2008-1472 (La. 10/3/08), 991 So.2d 458. Mr. Stanton allowed the formal charges to become and remain deemed admitted. The Court found that Mr. Stanton acted knowingly and caused harm to his client. The aggravating factors were bad faith obstruction of the disciplinary proceeding, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, and substantial experience in the practice of law. The mitigating factors were absence of a prior disciplinary record and absence of a dishonest or selfish motive.

In *In re Regan*, the Court suspended Mr. Regan for six months, all deferred, for neglecting a client’s matter for over four years, which resulted in the matter being dismissed as

¹⁴ The prior misconduct was an admonition for failure to communicate the terms of a fee arrangement to a client.

abandoned. 2004-1365 (La. 10/15/04), 885 So.2d 514. The Court found that Mr. Regan's misconduct was knowing. The following aggravating factors were present: prior disciplinary offenses¹⁵ and substantial experience in the practice of law. The following mitigating factors were present: absence of a dishonest or selfish motive, personal problems, and cooperative attitude toward the proceeding.

The facts of the cases above are more egregious than those present in this matter in several regards. First, the cases above involve a lack in diligence in addition to a failure to communicate. Second, the length of neglect and lack of communication in the cases above lasted between three and seven years. Here, Respondent's representation of Mr. Sanders lasted only nine months. Third, because of the length of neglect and failure to communicate in the cases above, there was significantly more harm to those clients than there was to Mr. Sanders in this matter. Given the facts of this matter in light of the cases above, a period of suspension, whether actual or deferred, appears to be inappropriate. Rather, a public reprimand is more appropriate given the unique facts of this case.¹⁶

CONCLUSION

The Board adopts the factual findings, legal conclusions, and recommendation of the Committee. Accordingly, the Board will impose a public reprimand.

¹⁵ Mr. Regan was publicly reprimanded for allowing a paralegal, who was a disbarred attorney, to actively participate in approximately twenty depositions. Mr. Regan was also admonished for failing to supervise his office personnel.

¹⁶ The Board considered Respondent's argument that even if there was a violation in this matter, it does not rise to the level of sanctionable misconduct. The Board reviewed several cases in which the Court declined to impose a sanction despite the presence of a violation. See *In re Dalton*, 2009-1288 (La. 10/2/09), 18 So.3d 743; *In re Cabibi*, 2005-1217 (La. 2/22/06), 922 So.2d 490; and *In re Hartley*, 2003-2828 (La. 4/2/04), 869 So.2d 799. However, considering the totality of the circumstances in this matter, the Board has concluded that a sanction is appropriate.

RULING

Considering the foregoing, the Board orders that Respondent, Michael A. Betts, be publicly reprimanded. The Board also orders that Respondent be assessed with the costs and expenses of this matter in the manner described above.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**Linda G. Bizzarro
Pamela W. Carter
Anderson O. Dotson, III
Sheila E. O'Leary
Danna E. Schwab
Melissa L. Theriot
Walter D. White
Charles H. Williamson, Jr.**

BY:



Evans C. Spiceland, Jr.

FOR THE ADJUDICATIVE 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.

...

Rule 1.16. Declining or Terminating Representation

(a)...

(b)...

(c)...

(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 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a)...

(b)...

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.