2023 Legislative CLE

Louisiana Lawyer Discipline Cases

Friday, December 1, 2023

1:45 p.m. – 2:45 p.m.

By

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PERMANENT DISBARMENT

In re: J. Maurice Thomas, 2023-B-00136 (La. 4/25/23)

In August 2007, the Louisiana Supreme Court interimly suspended respondent from the practice of law for threat of harm to the public. *In re: Thomas*, 07-1720 (La. 8/23/07), 962 So.2d 1074. In 2009, the Court considered three sets of formal charges against respondent and determined that he neglected legal matters, failed to communicate with clients, failed to refund unused costs, failed to pay a third-party medical provider despite signing a guarantee of payment, misrepresented the status of a case to a client, practiced law while ineligible to do so, allowed his trust account to become overdrawn, failed to file a proper registration statement with the Louisiana State Bar Association, failed to register his trust account with the ODC, and failed to cooperate with the ODC in its investigation. For this knowing and intentional misconduct, the Court suspended respondent from the practice of law for three years, retroactive to the date of his interim suspension, and ordered him to pay restitution. *In re: Thomas*, 09-0867 (La. 6/19/09), 10 So.3d 1223 ("I"). Respondent has not yet applied for reinstatement from his suspension imposed in *Thomas I* and remains suspended from the practice of law.

Following his suspension in *Thomas I*, respondent began providing legal assistance to Albertha Dionne Badon with respect to a case she had pending in the United States District Court for the Middle District of Louisiana. Specifically, Ms. Badon paid respondent more than $700 to review and prepare legal pleadings on her behalf, to coach her about how to file the documents *pro se*, and to help her rehearse for her deposition. Respondent advised Ms. Badon that he knew a lot about the law and agreed to assist her since she was representing herself. However, respondent failed to inform Ms. Badon that he was suspended from the practice of law.

At some point during the representation, Ms. Badon learned respondent was a suspended attorney and confronted him about misleading her. In a series of E-mails, respondent responded to her with extremely vulgar, aggressive, and threatening language. In the E-mails, respondent also admitted to intentionally engaging in the unauthorized practice of law.

In July 2021, Ms. Badon filed a disciplinary complaint against respondent. Notices of the complaint sent to respondent's primary, secondary, and preferred addresses were returned. The ODC then issued a subpoena to obtain respondent's sworn statement. The ODC's investigator attempted to serve respondent with the subpoena at several addresses but was unsuccessful. The investigator also tried to contact respondent via telephone and E-mail, to no avail. To date, respondent has not responded to the complaint or otherwise contacted the ODC.

In August 2022, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 5.5(a)(b) (engaging in the unauthorized practice of law), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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 committee's consideration.

The Court:

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 practiced law during his period of suspension ordered in *Thomas I*, misled Ms. Badon about his status as a suspended attorney, and failed to cooperate with the ODC in its investigation. This conduct amounts to a violation of the Rules of Professional Conduct as charged.

The record further supports a finding that respondent intentionally violated duties owed to his client, the public, the legal system, and the legal profession. His conduct had the potential to cause serious harm to these entities. The Court agreed with the hearing committee that the applicable baseline sanction is disbarment. The Court also agreed with the committee's determination that no mitigating factors are present. Aggravating factors include a prior disciplinary record, a dishonest or selfish motive, and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency.

Turning to the issue of an appropriate sanction, the Court noted the committee has recommended that respondent be permanently disbarred. On May 4, 2022, the Court adopted amendments to Supreme Court Rule XIX related to permanent disbarment. As is set forth in the order, permanent disbarment may be imposed only "upon an express finding of the presence of the following factors: (1) the lawyer's conduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future." Respondent's misconduct was undoubtedly egregious. He collected legal fees from Ms. Badon, provided her with legal services in such a way as to conceal his unauthorized practice of law, and intentionally misled her regarding his status as a suspended attorney. When Ms. Badon finally discovered his true identity and confronted him about being suspended from the practice of law, he verbally abused and threatened her. In light of this conduct and given his prior disciplinary history, the Court found no reasonable expectation of significant rehabilitation in respondent's character in the future and permanently disbarred respondent.

Hughes J., dissents and would impose disbarment.

Griffin, J., dissents and would order regular disbarment.

Crain, J., concurs and assigns reasons.

I agree permanent disbarment is the correct discipline for respondent's actions. I write separately to emphasize that the hearing committee, before recommending this sanction, should confirm the presence of the factors adopted by this court in the 2022 amendment to Supreme Court Rule XIX, Section 10A(1).

In re: W. Glenn Soileau, 2022-B-01764 (La. 3/7/23)

Respondent was admitted to the practice of law in Louisiana in 1972. He received a formal private reprimand (with notice) in 1985. In 1987, while serving as a judge of the Breaux Bridge City Court, respondent was charged with the following judicial misconduct: (1) during the 1986 Breaux Bridge Crawfish Festival, respondent committed a battery upon a law enforcement official and directed verbal abuse and obscenities towards numerous individuals at the Crawfish Festival Headquarters and grounds, including stating that he "owned the goddam town," resulting in his plea of no contest to simple battery and disturbing the peace; (2) engaging in an altercation during a game of pool at a bar in Breaux Bridge which necessitated the response of police, during which respondent informed the police officer that he had no authority to intervene because respondent "ran the town." Subsequent to the incident, the victim pressed charges of simple battery against respondent before a St. Martinville justice of the peace, resulting in respondent's arrest. After being released on a personal recognizance bond, respondent then pressed charges of simple battery against the victim in his own court and fixed bond at $1,000; (3) in his capacity as judge of the Breaux Bridge City Court, respondent issued an arrest warrant for an individual whom he was opposing in civil litigation for criminal charges instituted by his client in the civil litigation; and (4) respondent filed a suit on open account in his own court in an attempt to collect attorney's fees due him for legal services rendered. For this misconduct, the Louisiana Supreme Court suspended respondent from judicial office for six months without pay. *In re: Soileau*, 502 So.2d 1083 (La. 1987).

In 1997, respondent pleaded guilty in federal court to three Class B misdemeanor hunting violations under the Migratory Bird Treaty Act, 16 U.S.C. § 703. Respondent was sentenced to serve six months in prison, followed by a five-year probationary period with conditions, the maximum penalty for a Class B misdemeanor. In imposing the sentence, the federal judge considered, among other things, the severity of the charges and respondent's four prior convictions of the Migratory Bird Treaty Act. She also concluded that respondent had intentionally attempted to mislead the court concerning the relevant facts of the prior convictions. Respondent served six and a half months on interim suspension based on his criminal conviction. On June 18, 1999, the Court suspended respondent from the practice of law for two years, with one year deferred, and with credit for the period of his interim suspension, for his criminal conviction and his misrepresentations to the federal court. Following the active portion of his suspension, the Court ordered that respondent be placed on supervised probation for two years, with the special condition that he enroll in the Judges and Lawyers Assistance Program. *In re: Soileau*, 99-0441 (La. 6/18/99), 737 So.2d 23.

In 2013, respondent was admonished by the disciplinary board for a violation of Rule 1.16(d) (declining or terminating representation) of the Rules of Professional Conduct.

Count I

On August 7, 2017, respondent was arrested in Lafayette and charged with DWI following a traffic accident. According to the police report, respondent's speech was slurred and he was physically unsteady. He was placed under arrest for suspicion of operating a vehicle under the influence of an intoxicating substance and taken to the police department, where his name was entered into the NCIC computer. This search revealed that respondent had previously been arrested for DWI on February 28, 2013, and August 1, 2015. After his arrest in the instant matter, respondent refused to provide a breath sample; however, he did agree to submit a urine sample, which was positive for alprazolam, amphetamine, methamphetamine, and Tramadol. Respondent was booked on charges of DWI third offense. The criminal charge was ultimately resolved via a pre-trial diversion program.

Count II

On December 28, 2017, the Louisiana State Police and members of the Lafayette Metro Narcotics Task Force made contact with Idalia Hotz, whom they had reason to believe was distributing crystal methamphetamine from a room at the Staybridge Suites hotel in Lafayette. While Ms. Hotz was detained in the room, agents noticed that she received a text message on her cell phone alerting her to the presence of police cars in the hotel parking lot. A follow-up text directed Ms. Hotz to "Get rid of whatever you have and hurry." The messages were sent by a contact named "Glenn," whom Ms. Hotz identified to agents as respondent. A short time later, respondent appeared at the hotel and introduced himself to agents as Ms. Hotz's attorney. Respondent said that he paid for the room and requested that the agents vacate the premises. Respondent was advised by the agents of the criminal investigation underway. Respondent then left the hotel.

Meanwhile, a judge signed a search warrant for the hotel room, which was then executed by agents. During the search, agents found nine grams of crystal methamphetamine and a glass smoking pipe. After Ms. Hotz was placed under arrest, she advised the agents that respondent often pays for rooms in different hotels and provides her with meals while she conducts prostitution activities in the various hotel rooms. Agents seized Ms. Hotz's cell phone for further investigation, and text messages found on the phone confirmed that respondent was knowingly financing Ms. Hotz's illegal activities. The messages further established that respondent is also a paying client of Ms. Hotz's.

On March 1, 2018, a warrant was issued for respondent's arrest on charges of pandering, a felony, in violation of La. R.S. 14:84(A); letting premises for prostitution, a misdemeanor, in violation of La. R.S. 14:85(A); prostitution, a misdemeanor, in violation of La. R.S. 14:82(A); and obstruction of justice, a felony, in violation of La. R.S. 14:130.1(A)(1)(a). Respondent was arrested pursuant to the warrant on March 2, 2018. He ultimately pleaded no contest to an amended misdemeanor charge of interfering with a law enforcement investigation; the remaining charges were dismissed.

In May 2022, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.2(d) (a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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 committee's consideration.

The Court:

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 counseled a client to engage in criminal conduct, committed criminal acts, and engaged in dishonest conduct. This conduct violates the Rules of Professional Conduct as charged. Respondent intentionally violated duties owed to his client, the public, the legal system, and the legal profession. He caused actual harm to his client and the public, and he damaged the reputation of the legal profession. The Court agreed with the hearing committee that the applicable baseline sanction is disbarment.

The committee found the following aggravating factors present: a prior disciplinary record, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and illegal conduct. The committee determined that no mitigating factors are present. The Court also agreed with the committee's determination of aggravating and mitigating factors. The committee recommended that respondent be permanently disbarred. On May 4, 2022, the Court adopted amendments to Supreme Court Rule XIX related to permanent disbarment. As is set forth in our order, permanent disbarment may be imposed only "upon an express finding of the presence of the following factors: (1) the lawyer's conduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future." The committee found that both of these criteria are satisfied. The Court agreed stating the following:

> Respondent's misconduct was undoubtedly egregious. By interfering with a police investigation and counseling a client to destroy evidence, respondent has demonstrated a convincing lack of ethical and moral fitness to practice law. Furthermore, respondent's long prior disciplinary history, both as an attorney and a judge, demonstrates that there is no reasonable expectation of significant rehabilitation in his character in the future. Based on this reasoning, we will adopt the committee's recommendation and permanently disbar respondent.

Weimer, C.J., concurs and assigns reasons.

Permanent disbarment means that the respondent can never practice law again-an appropriate sanction given the long history of behavior outlined in this court's opinion. Permanent disbarment does not mean that the respondent cannot change his behavior and become a productive member of society. It is obvious that the success he achieved in graduating from law school and being elected to serve his community as a judge have been overshadowed by a serious substance abuse issue. I urge the respondent to seek treatment and healing from the clutches of a disease and return to being a successful member of his community.

Hughes, J., dissents and would impose disbarment.

DISBARMENT

In re: Derrick K. Williams, 2023-B-00949 (La. 10/10/23)

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Derrick K. Williams, a suspended attorney. On May 24, 2022, the Louisianan Supreme Court suspended respondent from the practice of law for one year and one day for misconduct that occurred between 2016 and 2019 and involved allowing his client trust account to become overdrawn on numerous occasions, engaging in the unauthorized practice of law during a period of ineligibility, and failing to cooperate with the ODC in several investigations. *In re: Williams*, 22-0350 (La. 5/24/22), 338 So.3d 39. Respondent has not yet applied for reinstatement following this suspension; therefore, he remains suspended from the practice of law.

On January 17, 2020, Curtis Stewart hired respondent to defend him against a lawsuit filed by his neighbor. Mr. Stewart paid respondent $1,000 for the representation, and respondent filed an answer to the lawsuit on Mr. Stewart's behalf. Thereafter, respondent took no further action and failed to communicate with Mr. Stewart.

On August 20, 2020, Mr. Stewart hired respondent to represent him in a personal injury matter. Respondent never discussed his fee with Mr. Stewart and never provided him with a written contingency fee contract. On December 15, 2020, respondent received an $11,500 settlement check on Mr. Stewart's behalf. Respondent offered Mr. Stewart $5,000 of this total settlement, but Mr. Stewart refused and requested an accounting. Respondent did not provide the requested accounting, did not contact Mr. Stewart again, and failed to respond to Mr. Stewart's telephone calls. On December 21, 2020, respondent deposited the settlement check into his client trust account after forging Mr. Stewart's endorsement without Mr. Stewart's authority. Respondent never paid Mr. Stewart any money from the settlement. Respondent also failed to pay from the settlement $4,320 owed to Mr. Stewart's third-party medical provider.

On August 24, 2021, Mr. Stewart filed a disciplinary complaint against respondent. Respondent failed to cooperate with the ODC's investigation of the complaint. On January 2023, the ODC filed formal charges against respondent, alleging that his 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(a) (charging an unreasonable fee), 1.5(b) (rate of fees and expenses must be communicated to the client), 1.5(c) (contingency fee agreements), 1.15(d) (failure to timely remit funds to a client or third person), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent failed to file an answer to 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 committee's consideration.

The Court:

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 of this deemed admitted matter supports a finding that respondent neglected a legal matter, failed to communicate with a client, charged an unreasonable fee, failed to explain a fee arrangement to a client, failed to reduce a contingency fee agreement to writing, forged a client's endorsement on a settlement check, failed to pay settlement proceeds to a client and the client's third-party medical provider, and failed to cooperate with the ODC in its investigation. Based upon these facts, respondent has violated the Rules of Professional Conduct as charged.

Respondent has knowingly and intentionally violated duties owed to his client, the public, and the legal profession. His conduct has caused significant actual harm to his client and his client's third-party medical provider and has caused potential harm to the attorney disciplinary system. The Court agreed with the hearing committee that the baseline sanction is disbarment. The Court also agreed with the committee's determination of aggravating factors of a prior disciplinary record, a dishonest or selfish motive, 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 victim, substantial experience in the practice of law (admitted 2006), and indifference to making restitution. The Court also agreed that the record did not support the presence of any mitigating factors.

This Court's prior case law indicates that the committee's recommended sanction of disbarment is reasonable. Regarding respondent's conversion of client funds by failing to pay Mr. Stewart or his third-party medical provider, in *Louisiana State Bar Ass'n v. Hinrichs*, 486 So.2d 116 (La. 1986), the Court established guidelines for disciplining attorneys who have engaged in such conduct. More specifically, in *Hinrichs*, the Court stated that disbarment is appropriate when one or more of the following are present:

> the lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings.

The deemed admitted facts in this matter indicate that most, if not all, of the above elements are present in this matter, thereby warranting disbarment.

The imposition of disbarment is further supported by the more recent case of *In re: Merritt*, 23-0134 (La. 5/31/23), 361 So.3d 451, wherein an attorney neglected a legal matter, failed to communicate with his clients, converted approximately $11,500 in client funds, and failed to cooperate with the ODC in its investigation. The Court determined that the attorney acted knowingly, if not intentionally, and caused significant actual harm. For this misconduct, the Court imposed disbarment and ordered the attorney to make full restitution. The Court found in light of *Merritt*, as well as respondent's prior disciplinary record, a downward deviation from the baseline sanction was unwarranted and disbarred Respondent. The Court also ordered respondent to make full restitution.

In re: Jeffery Dee Blue, 2023-B-00968 (La. 10/10/23)

Count I - The Atkins Matter

In March 2017, Channel Atkins hired respondent to handle her divorce and to obtain a restraining order on her behalf. The fee agreement was $2,000, plus expenses. Thereafter, Ms. Atkins made several attempts to contact respondent but was unsuccessful. Respondent delayed the completion of the matter, which caused Ms. Atkins to incur a significant amount of debt because she had to live off of credit cards after her interim spousal support expired.

In February 2020, the ODC received Ms. Atkins' disciplinary complaint against respondent. The ODC granted respondent's request for an extension of time to submit a written response to the complaint. Nevertheless, he failed to do so, necessitating the issuance of a subpoena to obtain his sworn statement. On July 28, 2020, respondent appeared for his sworn statement, during which he informed the ODC that he was in the process of shutting down his law practice. During the sworn statement, the ODC gave respondent thirty days to submit a written response to the complaint and provide a copy of Ms. Atkins' file and proof that he had refunded the unearned fee. Respondent failed to provide any of this requested information and never refunded Ms. Atkins' fee.

Subsequently, the ODC received notice that respondent was declared ineligible to practice law on October 20, 2020, for failing to pay his bar dues. On June 18, 2021, he was additionally declared ineligible for failing to comply with mandatory continuing legal education requirements for 2020.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1 (Competence), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5 (fee arrangements), 1.15(a) (safekeeping property of clients or third persons), 1.16(d) (obligations upon termination of the representation), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Count II - The Holmes Matter

In February 2018, Cassi Holmes hired respondent to handle her father's succession, paying him a $2,500 flat fee. Ms. Holmes believed that the paperwork for her father's annuity account had been fraudulently changed. Therefore, she brought in a handwriting expert to examine the documents. Respondent failed to communicate with the expert by a certain date, as Ms. Holmes had requested, and the expert is now retired.

Respondent also failed to meet with Ms. Holmes when she would travel to Louisiana from California and did not provide any proof that he had actually worked on her father's succession. Ms. Holmes had another attorney check with the court, and the attorney discovered that, as of August 2019, no succession pleadings had been filed. On August 16, 2019, Ms. Holmes wrote to respondent to terminate the representation and to request a refund of the $2,500. Respondent failed to comply with the refund request.

In January 2020, the ODC received Ms. Holmes' disciplinary complaint against respondent. Despite accepting the notice of the complaint, respondent failed to submit a written response, necessitating the issuance of a subpoena to obtain his sworn statement. On July 28, 2020, respondent appeared for his sworn statement. During the sworn statement, the ODC gave respondent thirty days to submit a written response to the complaint and provide a copy of Ms. Holmes' file and proof that he had refunded the unearned fee. Respondent failed to provide any of this requested information and never refunded Ms. Holmes' fee. The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c).

Count III - The Berryhill Matter

In August 2018, Thomas Berryhill hired respondent to represent him in a criminal matter, paying him a total of $4,000. Respondent neglected the matter and failed to provide Mr. Berryhill with copies of documents related to his case. More specifically, although Mr. Berryhill wished to proceed to trial to prove his innocence, respondent convinced him to accept a plea agreement he did not want.

In September 2019, Mr. Berryhill was sentenced and was given thirty days to file an appeal. Mr. Berryhill told respondent he wanted to appeal his conviction. Thereafter, respondent did not return telephone calls from Mr. Berryhill's family and did not respond to Mr. Berryhill's letters.

In August 2020, the ODC received Mr. Berryhill's disciplinary complaint against respondent. Although respondent accepted the notice of the complaint, he failed to submit a response. He also failed to refund any portion of the fee Mr. Berryhill paid.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c).

In May 2022, the ODC filed formal charges against respondent as set forth above. Respondent failed to file an answer to 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 committee's consideration.

The Court:

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 of this deemed admitted matter supports a finding that respondent abandoned his law practice, resulting in the neglect of three client matters, failed to communicate with the clients, failed to refund their unearned fees, failed to return their files, and failed to cooperate with the ODC in its investigations. The record further supports a finding that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

Respondent knowingly and intentionally violated duties owed to his clients and the legal profession. His conduct caused actual harm to his clients and the attorney disciplinary system. Regarding the baseline sanction, Standard 4.41 of the ABA's Standards for Imposing Lawyer Sanctions is applicable here. Pursuant to Standard 4.41, disbarment is appropriate when any of the following occur:

> (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
> (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
> (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In light of respondent's abandonment of his law practice, the Court agreed with the disciplinary board that the applicable baseline sanction in this matter is disbarment.

Aggravating factors include 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 board's findings regarding mitigating factors of absence of a prior disciplinary record and personal or emotional problems are also supported by the record.

Case law further supports disbarment as the baseline sanction. For example, in *In re: Hawkins*, 22-0675 (La. 6/28/22), 341 So.3d 519, an attorney abandoned his law practice, resulting in the neglect of at least six client matters, failed to communicate with said clients, failed to provide some of the clients with their file, and failed to cooperate with the ODC in its investigations. For this knowing misconduct, the Court disbarred the attorney. Likewise, in *In re: Boutte*, 18-0901 (La. 9/21/18), 252 So.3d 862, an attorney abandoned her law practice, resulting in the neglect of at least two client matters, failed to communicate with said clients, failed to refund unearned fees and return a file to one client, and failed to cooperate with the ODC in its investigation. For this knowing misconduct, the Court disbarred the attorney and ordered her to make restitution.

The Court found in light of this case law, as well as the numerous aggravating factors present, a downward deviation from the baseline sanction was unwarranted. Accordingly, the Court adopted the board's recommendation and disbarred respondent. The Court further ordered respondent to make restitution in the amount of $2,000 to Ms. Atkins, $2,500 to Ms. Holmes, and $4,000 to Mr. Berryhill and order him to provide each of them with their file.

In re: Justice Taft Merritt, 2023-B-00134 (La. 5/31/23)

In 2019, Brady and Melinda Abshire hired respondent to perform legal services in connection with their acquisition of interests in immovable property located in Terrebonne Parish (the "property"). Respondent prepared and executed two cash sales, which were subsequently filed

in the conveyance records on behalf of the Abshires. Respondent also prepared an affidavit of small succession and act of cash sale, whereby the Abshires would acquire an additional undivided interest in the property. In connection with this last matter, the Abshires gave respondent $2,306.43 towards the payment of the purchase price. The Abshires gave respondent an additional $9,225.00 for future acquisitions of interests in the property.

In May 2020, respondent transmitted the affidavit of small succession and act of cash sale to the seller. Respondent indicated that he would issue checks for the purchase price upon completion and return of the documents. The seller executed the documents and returned them to respondent, but he never tendered the funds to the seller. The Abshires tried to contact respondent on several occasions to inquire about the status of the matter, but he would not accept their communications or respond to their inquiries.

The Abshires retained attorney Paul G. Moresi III, who successfully contacted respondent by telephone on March 24, 2021. At that time, respondent indicated that he would get back to Mr. Moresi with an explanation by April 1, 2021. Respondent failed to do so and never returned the $11,531.43 paid to him by the Abshires. Mr. Moresi has since filed suit against respondent on behalf of the Abshires.

In June 2021, Mr. Moresi filed a disciplinary complaint against respondent with the ODC on behalf of the Abshires. The ODC attempted to send notices of the complaint to respondent at his primary and secondary bar registration addresses as well as his post office box address. In each case, the notices were returned. The ODC then issued a subpoena to obtain respondent's sworn statement. The ODC's investigator attempted to serve respondent with the subpoena at his bar registration addresses but was unsuccessful. The investigator also tried to contact respondent via telephone and E-mail, to no avail. To date, respondent has not responded to the complaint or otherwise contacted the ODC.

In June 2022, the ODC filed formal charges against respondent, alleging that his conduct 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(f)(5) (failure to refund an unearned fee), 1.15(d) (failure to timely remit funds to a client or third party), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

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 committee's consideration.

The Court:

The record in this deemed admitted matter supports a finding that respondent neglected a legal matter, failed to communicate with his clients, converted client funds, and failed to cooperate with the ODC in its investigation. This conduct violates Rules 1.3, 1.4, 1.15(d), 8.1(c), 8.4(a), and 8.4(b) of the Rules of Professional Conduct. The ODC also alleged that respondent failed to refund unearned fees, in violation of Rule 1.5(f)(5), which mandates a lawyer to immediately refund to the client the unearned portion of any fixed fee, minimum fee, or fee drawn from an advanced deposit which the client has paid. However, there is nothing in the deemed admitted facts or in the evidence presented which would suggest that any portion of the funds paid by respondent's

clients represented a legal fee. No violation of Rule 1.5(f)(5) has been established. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So.2d 715.

The record supports a finding that respondent knowingly, if not intentionally, violated duties owed to his clients, the public, the legal system, and the legal profession, causing significant actual harm. The applicable baseline sanction is disbarment. The record supports the aggravating and mitigating factors found by the committee.

The committee has recommended that respondent be permanently disbarred. However, the Court found that a more appropriate sanction for respondent's misconduct is ordinary disbarment. Relying on *In re: Weber*, 15-0982 (La. 8/28/15), 177 So.3d 106, wherein an attorney neglected a legal matter, failed to communicate with a client, converted client funds, and failed to cooperate with the ODC. The attorney acted knowingly, causing actual harm, and numerous aggravating factors were present. For the attorney's misconduct, the Court imposed ordinary disbarment and ordered the attorney to make full restitution to his client. As in the instant case, the misconduct involved only one client matter, and the attorney did not have a prior disciplinary record.

In support of permanent disbarment, the ODC cited *In re: Beauchamp*, 11-1144 (La. 9/23/11), 70 So.3d 781, wherein an attorney neglected legal matters, failed to communicate with clients, failed to refund unearned fees, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and failed to cooperate with the ODC in several investigations. Unlike the instant matter, there were repeated or multiple instances of intentional conversion of client funds, and unlike respondent, the attorney did have a prior disciplinary record.

While the Court acknowledged that respondent has engaged in serious misconduct, it found the imposition of permanent disbarment to be overly harsh and, therefore, unwarranted. The misconduct in *Beauchamp*, which involved thirteen counts of misconduct, is more egregious, whereas the misconduct in *Weber*, involving only one count of misconduct, is most similar. Under the circumstances, the Court found that ordinary disbarment, as was imposed in *Weber*, is the more appropriate sanction to address respondent's misconduct. The Court ordered respondent to be disbarred. The Court further ordered respondent to make full restitution to his clients and/or to the Client Assistance Fund, as appropriate.

Weimer, C.J., dissents in part and assigns reasons.

I agree with much of what Justice Crichton wrote in his dissent. Although permanent disbarment is a severe sanction, it is unfortunately justified in this matter because the respondent filed no response, demonstrated no regret or remorse, and made no restitution. Accordingly, I respectfully dissent from the sanction imposed by the majority of this court.

Crichton, J., concurs in part, dissents in part, and assigns reasons.

I agree with the majority's finding that respondent has violated the Rules of Professional Conduct as charged. However, I disagree with the imposition of regular disbarment and find the egregious circumstances of this matter warrant permanent disbarment.

Supreme Court Rule XIX § 10(A)(1) provides that "the court shall only impose permanent disbarment upon an express finding of the presence of the following factors: (1) the lawyer's misconduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future." Respondent's serious misconduct includes the conversion of over $11,000 in client funds, of which there has been no restitution or effort at restitution, despite the former clients being forced to hire another attorney to file a civil suit to recover the funds. These serious charges and the resulting proceedings have been met with total apathy and indifference by

respondent, including a failure to answer the charges, failure to present anything in his own mitigation with the Hearing Committee, failure to object to the Hearing Committee's report, failure to file a brief in accordance with the order from this Court directing him to do so, and a total absence of any expression of remorse or regret.

In my view, respondent's serious misconduct and failure to participate in these proceedings warrants permanent disbarment under the standards set forth in Rule XIX § 10(A)(1). As I have previously remarked, "an attorney's failure to participate in disciplinary proceedings is not only alarming, it prevents this Court from considering mitigating evidence (if any) and is a blatant disregard for the structure in place designed to protect the public") (collecting cases). *In re White*, 2022-01701 (La. 2/24/23), 355 So.3d 1085, 1093 (Crichton, J., dissenting, finding the facts of the case warranted permanent disbarment). Here, the record reflects that respondent has contempt for the proceedings necessary to maintain his law license and lacks the ethical and moral fitness to practice law. I therefore dissent and would impose permanent disbarment.

In re: Clint L. Pierson, Jr., 2022-B-1822 (La. 5/5/23)

The Kraus Matter

By way of background, in 2008 respondent and others established an LLC ("the LLC") for the purpose of acquiring approximately 170 acres in Yukon, Oklahoma from the Archdiocese of Oklahoma City ("the Archdiocese"). At all pertinent times, respondent owned a 33.3% interest in the LLC. According to respondent, at all pertinent times, the LLC had debts but no assets.

In March 2015, Bridgette Kraus hired respondent to handle her divorce. On March 16, 2015, respondent filed a petition for divorce on Ms. Kraus' behalf. On September 21, 2015, Ms. Kraus received a partial community property settlement check from her estranged husband in the amount of $804,155.52, and she deposited the check into her personal bank account the same day.

Also on September 21, 2015, while respondent still represented Ms. Kraus in the divorce proceeding, she met with respondent and another partial owner of the LLC named Carey Meredith. Mr. Meredith is not an attorney. Following this meeting, Ms. Kraus agreed to loan the LLC $500,000.57. That same day, respondent and Mr. Meredith (both as representatives of the LLC) executed an unsecured promissory note in favor of Ms. Kraus in the amount of $500,000, with interest at the rate of 10% per year, payable on or before September 2016. The promissory note also included an attorney's fee provision of 15% in the event the note was not paid timely and legal assistance was necessary to collect on the note.

Ms. Kraus transferred the $500,000.57 to the LLC in two separate transactions as follows:

1. On September 21, 2015, Ms. Kraus wrote a personal check made payable to "Clint Pierson" in the amount of $95,460. Respondent endorsed the check over to the LLC, and the transaction cleared Ms. Kraus' bank account on September 28, 2015. According to respondent, the $95,460 was used to pay the LLC's operating expenses; and

2. On September 22, 2015, Ms. Kraus electronically transferred $404,540.57 directly into a MidFirst Bank account under the ownership and control of the Archdiocese. According to respondent and corroborated by a September 22, 2015, E-mail from respondent to the Archdiocese, the $404,540.57 was to satisfy an interest payment the LLC owed to the Archdiocese.

Although there was a written promissory note, according to Ms. Kraus, she did not understand that respondent was signing the note as a representative of the LLC instead of personally, and respondent conceded this was never explained to her. Respondent also never advised Ms. Kraus that he was not representing her interests in this transaction, and he failed to disclose to her that the LLC had no assets. Furthermore, Ms. Kraus was never advised to seek independent legal counsel before providing the loan.

The note matured without repayment to Ms. Kraus. Thereafter, respondent continued to assure Ms. Kraus that either he or the LLC would repay her. Although the LLC paid Ms. Kraus $50,000 in interest on November 3, 2016, she has not been able to collect any of the principal amount.

In September 2017, Ms. Kraus filed a lawsuit against the LLC, respondent, and Mr. Meredith in an effort to collect the amount due on the promissory note. After the lawsuit was filed, Ms. Kraus received another $25,000. The lawsuit is still pending.

The Verges Matter

In 1998, Donna Verges hired respondent to represent her in her pending child support matter, which was very contentious. Respondent enrolled as additional counsel of record for Ms. Verges in May 1998. During the course of the eighteen-year representation, respondent successfully obtained a much higher child support payment for Ms. Verges. Respondent withdrew from the representation in July 2016 after Ms. Verges obtained new counsel.

In February 2009, during the representation, respondent borrowed $5,000 from Ms. Verges. The terms of the loan were never reduced to writing, and respondent never advised Ms. Verges to seek independent counsel before providing him the loan. Over the next seven years, Ms. Verges requested repayment of the loan several times. Respondent finally repaid the $5,000 in August 2016, but he did not pay Ms. Verges any interest.

The Saucier Matter

Respondent has represented Michael Saucier and his company, Gulf States Real Estate Services, regarding various legal matters for more than twenty years. On November 13, 2020, while respondent was representing Mr. Saucier in one of these matters, Mr. Saucier loaned respondent $27,671.04 to purchase a new vehicle for respondent's wife. Although the loan was memorialized in a promissory note and secured through a lien on the vehicle, respondent never advised Mr. Saucier to seek independent counsel before providing him the loan. Furthermore, Mr. Saucier did not give written informed consent to respondent's role in the transaction. Nevertheless, respondent repaid the loan in a timely manner.

In June 2021, the ODC filed formal charges against respondent. With respect to the Kraus matter, the ODC alleged that respondent violated Rules 1.8(a) (a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless certain conditions are met), 2.1 (in representing a client, a lawyer shall exercise independent professional judgment and render candid advice), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct. With respect to the Verges and the Saucier matters, the ODC alleged that respondent violated Rules 1.8(a), 2.1, and 8.4(a) of the Rules of Professional Conduct.

Respondent answered the formal charges and denied the allegations of misconduct.

The Court:

The record of this matter supports a finding that respondent entered into improper business transactions with three clients by obtaining loans from them for himself and his LLC. Based on these facts, respondent has violated the Rules of Professional Conduct as follows:

> 1. In the Kraus matter, respondent persuaded Ms. Kraus to provide a $500,000 loan to the LLC without fully disclosing the terms of the transaction and without advising her to seek the advice of independent counsel before providing the loan. As a one-third owner of the LLC, respondent benefited from the loan and was partly responsible for the LLC's default to the detriment of Ms. Kraus. Under these circumstances, he violated Rules 1.8(a), 2.1, 8.4(a), and 8.4(c) as charged;
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> 2. In the Verges matter, respondent obtained a personal loan from Ms. Verges in the amount of $5,000. He did not reduce the terms of the loan to writing, took several years to repay Ms. Verges, and failed to pay any interest. As in the Kraus matter, respondent also failed to inform Ms. Verges to seek the advice of independent counsel before agreeing to the loan. He personally benefited from the loan to the detriment of Ms. Verges. Under these circumstances, he violated Rules 1.8(a), 2.1, and 8.4(a) as charged; and
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> 3. In the Saucier matter, respondent obtained a personal loan from Mr. Saucier in the amount of $27,671.04. The loan was reduced to writing. Mr. Saucier obtained a lien on the vehicle to secure the loan. Respondent timely repaid the loan with interest. Nevertheless, at the time of the loan, respondent was representing Mr. Saucier and should have advised him to seek the advice of independent counsel before providing the loan. Under these circumstances, respondent violated Rules 1.8(a), 2.1, and 8.4(a) as charged.

The Louisiana Supreme Court took guidance from *In re: Baggette*, 09-1091 (La. 10/20/09), 26 So.3d 98, and *In re: Gross*, 03-2268 (La. 11/21/03), 860 So.2d 1105. In *Baggette*, an attorney borrowed $600,000 from his elderly client without disclosing the terms of the transaction to her, without giving her a reasonable opportunity to seek the advice of independent counsel, and without obtaining her written consent to the transaction. The attorney also entered into an agreement to purchase his client's interest in two successions without disclosing the terms of the transaction to her, without giving her a reasonable opportunity to seek the advice of independent counsel, and without obtaining her written consent to the transaction. For this intentional misconduct, the Court imposed disbarment. In *Gross*, an attorney obtained a $25,000 loan from a client but failed to reduce the terms of the loan to writing. He also failed to advise the client that, prior to entering into the agreement, she was entitled to seek the advice of independent counsel in the transaction. The attorney then failed to repay the loan. Because the attorney had a prior disciplinary record involving similar misconduct, the Court imposed disbarment and ordered repayment of the $25,000 plus legal interest.

This case law supports disbarment as the baseline sanction in this matter. In light of the numerous aggravating factors present, the Court found a downward deviation from the baseline is not warranted. Accordingly, the Court disbarred respondent and further order him to (1) make restitution to Ms. Kraus in the principal amount of $500,000, plus interest owed under the terms

of the September 21, 2015, promissory note through the date of payment, subject to a credit of $75,000; and (2) make restitution to Ms. Verges in the amount of $1,416.13.

In re: Christopher Alexander Gross, 2022-B-01471 (La. 3/14/23)

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Christopher Alexander Gross, an attorney licensed to practice law in Louisiana but currently on interim suspension for threat of harm to the public. *In re: Gross*, 19-2084 (La. 1/8/20), 286 So.3d 1035.

Count I - The Unauthorized Practice of Law Matter

On May 31, 2019, respondent was declared ineligible to practice law for failing to comply with mandatory continuing legal education requirements. On June 19, 2019, during the period of his ineligibility, respondent represented a client in the 24th Judicial District Court for the Parish of Jefferson.

Respondent's opposing counsel then filed a disciplinary complaint against him. In August and September 2019, the ODC sent respondent notice of the complaint at three separate addresses. Respondent received at least one of the notices but failed to respond to the complaint.

Count II - The Cao Matter

Attorney Anh Cao of the Cao Law Firm is respondent's former employer. On October 1, 2018, the Cao Law Firm hired respondent as a full-time associate. He was paid an annual salary of $58,500, plus 6% of the attorney's fees for cases he brought to the firm.

In May 2019, Quang Le contacted the Cao Law Firm and requested representation for his nephew Quoc Ta Nguyen, who was being detained at an immigration detention center in Jena, Louisiana. Mr. Cao quoted Mr. Le a flat fee of $5,000 for the representation and requested a retainer of $2,500. Mr. Cao directed respondent to attend Mr. Nguyen's May 13, 2019, hearing, at which time he was to collect the retainer fee. Three weeks later, Mr. Le contacted Mr. Cao to inquire about the status of his nephew's immigration matter. Mr. Cao reminded Mr. Le that he required a retainer of $2,500. Mr. Le then communicated to Mr. Cao that he had paid respondent $2,500 in cash. When Mr. Cao confronted respondent about Mr. Le's payment, respondent stated that he only received $2,000 from Mr. Le and that he had deposited the money into his Apple Pay account.

In August 2019, Paul Schillesi contacted the Cao Law Firm and complained that respondent had not filed the documents he promised to file on behalf of D Jay's Cosmetology School against the Louisiana State Board of Cosmetology ("LSBC"). During a subsequent meeting with Mr. Cao, Mr. Schillesi indicated that he had called the Cao Law Firm in December 2018 about the problems he was having with the LSBC. Thereafter, respondent traveled to Baton Rouge and met with Mr. Schillesi at his cosmetology school. Respondent communicated to Mr. Schillesi that Mr. Cao was not interested in the case, which was untrue. Instead, respondent told Mr. Schillesi that he would handle the case and that the retainer should be paid directly to him. Mr. Schillesi wrote a check to the Gross-Tillero Law Firm in the amount of $2,500. Respondent cashed the check the next day but did nothing for Mr. Schillesi for the next eight months. When Mr. Cao learned in August 2019 what had transpired, he contacted respondent, demanded that he return the money to Mr. Schillesi, and terminated his employment with the Cao Law Firm.

Further, while employed with the Cao Law Firm, respondent communicated to client Martha Menjivar that he had taken care of her traffic tickets and that she had nothing to worry about.

However, respondent did not handle Ms. Menjivar's traffic tickets, resulting in the court issuing attachments against Ms. Menjivar and the suspension of her driver's license.

In January 2019, Thu Pham contacted the Cao Law Firm to handle a DWI matter in Avoyelles Parish. Mr. Cao instructed respondent to tell Mr. Pham that it would be less expensive to hire a criminal attorney in that area. Mr. Cao was not sure what respondent told Mr. Pham, but thereafter, Mr. Pham wrote respondent two checks totaling $3,000. Mr. Pham contacted the Cao Law Firm on several occasions, and respondent communicated to him that "everything was done." In fact, nothing was done. Respondent failed to appear in court on behalf of Mr. Pham, which resulted in the issuance of an attachment for Mr. Pham's arrest. Consequently, Mr. Cao was compelled to enroll as counsel of record in order to assist Mr. Pham. Mr. Cao then had the bench warrant recalled and a trial date set.

On October 1, 2019, the ODC sent notice of Mr. Cao's disciplinary complaint to respondent at his primary bar registration address. The notice was returned to the ODC unclaimed.

Count III - The Foucher Matter

In January 2019, Charissa Foucher retained respondent to handle an immigration matter on behalf of her husband. At that time, respondent quoted Ms. Foucher a $1,600 fee for the representation. On March 18, 2019, Ms. Foucher paid respondent $800 in cash. On April 12, 2019, respondent told Ms. Foucher that the fee for the representation had increased to $3,170, and she paid him another $800 in cash that day. Thereafter, respondent ceased communicating with Ms. Foucher.

In September 2019, Ms. Foucher contacted what she believed to be respondent's law firm. Ms. Foucher was told that respondent no longer worked there and that there was no record of respondent handling an immigration matter on behalf of her husband.

On October 7, 2019, the ODC sent notice of Ms. Foucher's disciplinary complaint to respondent at his primary bar registration address. The notice was returned to the ODC unclaimed, and respondent has never responded to the complaint.

Count IV - The Tran Matter

Evon Tran retained respondent to prepare a power of attorney and to handle litigation regarding a life insurance matter, paying respondent $350 in cash for the preparation of the power of attorney. After respondent prepared the power of attorney, he delivered same to Ms. Tran, who then paid respondent $2,600 in cash to begin litigating the life insurance matter. After receiving payment, respondent failed to communicate or meet with Ms. Tran. When Ms. Tran was finally able to schedule a meeting with respondent for September 11, 2019, respondent failed to show up for the meeting. The next day, Ms. Tran texted respondent about the missed meeting, but respondent did not respond. Ms. Tran has not heard from respondent since.

On October 21, 2019, the ODC sent notice of Ms. Tran's disciplinary complaint to respondent at his primary bar registration address. The notice was returned to the ODC unclaimed.

Count V - The Chapman Matter

Ronald Chapman hired respondent to handle a claim for damages against the Department of Veterans Affairs. According to Mr. Chapman, respondent failed to keep him informed of the status of the matter and was hostile toward him.

On June 5, 2020, the ODC sent notice of Mr. Chapman's disciplinary complaint to respondent. On July 13, 2020, the ODC sent a second notice of the complaint to respondent at his

primary and secondary bar registration addresses. On July 23, 2020, respondent emailed the ODC to request additional time to respond, and the ODC gave him an extension of fifteen days. Respondent had no further contact with the ODC.

In February 2022, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.1 (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(e) (division of fees), 1.15(a) (safekeeping property of clients or third persons), 5.5 (engaging in the unauthorized practice of law), 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). 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 committee's consideration.

The Court:

The record in this deemed admitted matter supports a finding that respondent neglected legal matters, failed to communicate with clients, failed to refund unearned fees, practiced law while ineligible to do so, engaged in deceitful conduct, and failed to cooperate with the ODC in its investigations. More specifically, respondent represented a client in court during a period of ineligibility, in violation of Rules 1.1 and 5.5 of the Rules of Professional Conduct. He collected attorney's fees from clients and never turned them over to the Cao Law Firm, in violation of Rules 1.15(a) and 8.4(c). He accepted legal fees, neglected the legal matters, either failed to communicate with the clients or deceived them regarding the status of their legal matters, and then failed to refund the unearned fees, in violation of Rules 1.3, 1.4, 1.5(f)(5) (failure to refund an unearned fee), and 8.4(c). Respondent also failed to cooperate with the ODC's investigations of the numerous complaints filed against him, in violation of Rules 8.1(b) and 8.1(c). Finally, in violating the aforementioned rules, respondent also violated Rule 8.4(a) of the Rules of Professional Conduct.

The record further supports a finding that respondent knowingly and intentionally violated duties owed to his clients, the Cao Law Firm, the legal system, and the legal profession. His conduct caused both potential and actual harm. The actual harm was significant in that at least two clients had attachments issued for their arrests due to respondent's neglect of their legal matters. Furthermore, respondent collected at least $11,700 in attorney's fees from several clients and then did little to no work on their behalf. He also did not refund any of the unearned fees to his clients or reimburse the Cao Law Firm when it stepped in to complete some of the representations for which he had been paid. The Court agreed with the hearing committee's determination of aggravating and mitigating factors. The committee found the following aggravating factors present: a dishonest or selfish motive, 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, substantial experience in the practice of law (admitted 2008), and indifference to making restitution. The committee determined the sole mitigating factor present is the absence of a prior disciplinary record.

The Court also agreed with the committee that the baseline sanction is disbarment. The committee recommended that respondent be permanently disbarred, but the Court found recent case law suggests a more appropriate sanction for respondent's misconduct is ordinary disbarment. For example, in *In re: Dantzler*, 21-1235 (La. 11/3/21), 326 So.3d 868, an attorney neglected legal matters, failed to communicate with clients, failed to return client files upon request, failed to refund unearned fees, allowed his client trust account to become overdrawn on numerous occasions, converted client funds, practiced law while ineligible to do so, practiced law after being placed on interim suspension, illegally sold pain pills to another person, and failed to cooperate with the ODC in numerous investigations. The Court determined the attorney acted knowingly and intentionally, causing significant actual and potential harm. The Court further determined that numerous aggravating factors were present, and the sole mitigating factor was the absence of a prior disciplinary record. The Court imposed ordinary disbarment and ordered the attorney to make restitution totaling $9,696 to four clients, provide another client with an accounting and payment of any funds due, and provide two other clients with their files.

The Court found the misconduct in *Dantzler* to be more egregious than respondent's misconduct. For example, although respondent has neglected legal matters, failed to communicate with clients, failed to refund unearned fees, practiced law while ineligible to do so, engaged in deceitful conduct, and failed to cooperate with the ODC in its investigations, he did not practice law after being placed on interim suspension or illegally sell pain pills to another person. Additionally, respondent's misconduct did not include mismanagement of his client trust account. In light of *Dantzler*, the Court concluded that the imposition of permanent disbarment for respondent's misconduct would be overly harsh and, therefore, unwarranted. Instead, the Court imposed ordinary disbarment, retroactive to January 8, 2020, the date of respondent's interim suspension. The Court further ordered respondent to make full restitution to all harmed parties, including his clients, the Cao Law firm, and the Client Assistance Fund, for all funds and unearned fees he improperly converted to his own use.

Crichton, J., concurs in part and dissents in part and assigns reasons.

I agree with the majority's finding that respondent has violated the Rules of Professional Conduct as alleged. Specifically, respondent's conduct violated: Rules 1.1 (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client, 1.5(f)(5) (failure to refund an unearned fee), 1.15(a) safekeeping property of clients or third persons, 5.5 (engaging in the unauthorized practice of law), 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority, 8.1(c) (failure to cooperate with ODC in its investigation, 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). However, I disagree with the imposition of regular disbarment and find the circumstances of this matter warrant permanent disbarment. Not only did respondent repeatedly fail to respond to the charges against him, he failed to file anything in mitigation and did not object to the Hearing Committee report which detailed the serious misconduct in which he engaged. Moreover, respondent ignored a specific order from this Court to file a brief regarding the appropriate sanction under these circumstances. In my view, the record in this matter establishes that respondent has satisfied this Court's newly adopted amendments to Supreme Court Rule XIX related to permanent disbarment.

As this Court's order states, permanent disbarment may be imposed only "upon an express finding of the presence of the following factors: (1) the lawyer's conduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future." I find both of these provisions to be satisfied. Accordingly, I would permanently disbar respondent. See also *In re Bell*, 22-1331 (La. 11/8/22), 349 So.3d 551 (Crichton, J., dissents and would impose permanent disbarment); *In re Nalls*, 2020-1126 (La. 3/24/21), 347 So.3d 675, reh'g denied, 2020-01126 (La. 5/13/21), 320 So.3d 414 (Crichton, J., dissents and would impose permanent disbarment); *In re Whalen*, 20-0869 (La. 9/29/20), 301 So.3d 1170 (same); *In re: Mendy*, 16-0456 (La. 10/19/16), 217 So.3d 260 (same).

In re: Richard Forrest White, 2022-B-01701 (La. 2/24/23)

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Richard Forrest White, an attorney licensed to practice law in Louisiana but currently ineligible to practice.

In January 2021, the ODC filed formal charges against respondent under disciplinary board docket number 21-DB-006. In May 2021, the ODC filed formal charges against respondent under disciplinary board docket number 21-DB-031. Respondent failed to answer either set of 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).

The two sets of formal charges were considered by separate hearing committees. No formal hearings were held, but the parties were given an opportunity to file with the committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for either committee's consideration.

Before being considered by the disciplinary board, the matters were consolidated. The board then filed a single recommendation in this court encompassing both sets of formal charges.

21-DB-006

Count I - The LaFleur Matter

In August 2015, Jasmine LaFleur hired respondent to represent her with respect to a worker's compensation claim and a related lawsuit. Respondent never filed any pleadings on Ms. LaFleur's behalf despite his repeated assurances to her that he had done so. According to Ms. LaFleur, on several occasions, respondent failed to respond to her inquiries regarding the status of her legal matter to any degree of satisfaction. Instead, he continued to make assurances to her that he had taken care of everything, when in fact he had not done so.

In January 2019, Ms. LaFleur filed a disciplinary complaint against respondent. Although respondent provided an initial response to the complaint, he failed to cooperate with the ODC's investigation thereafter, including failing to respond to the ODC's multiple emails and letters. Respondent also failed to appear for his sworn statement scheduled for August 24, 2020. More specifically, approximately thirty minutes before the sworn statement was to begin, respondent's son informed the ODC that respondent was hospitalized. Respondent did not respond to the ODC's August 31, 2020, letter requesting proof of the hospitalization.

The ODC alleged that respondent's conduct 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 cooperate with a client), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Count II- The Criminal Conduct Matter

On May 22, 1995, respondent was scheduled to be arraigned on ten counts of obtaining controlled dangerous substances by fraud. However, he failed to appear in court, and on May 24, 1995, a bench warrant was issued for his arrest. The bench warrant remained active for more than five years before respondent finally appeared in court on January 5, 2001. At that time, he was found in contempt of court and sentenced to serve five days in jail, with credit for time served. On February 16, 2001, respondent pleaded guilty to the ten counts of obtaining controlled dangerous substances by fraud. He was placed on probation for two years, subject to certain conditions, and ordered to pay a fine.

On February 20, 2020, respondent was arrested on charges of felony possession of less than two grams of a Schedule II controlled dangerous substance and misdemeanor possession of drug paraphernalia. At this time, the matter is still pending.

Respondent failed to cooperate with the ODC's investigation of these matters, which began in August 2020.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal), 8.1(c), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(d).

21-DB-031

The Campbell Matter

In May 2018, respondent began representing Scott Campbell in a criminal matter. Respondent represented Mr. Campbell in the case through Mr. Campbell's plea of no contest to the charges and his sentencing, which occurred on December 18, 2019. Thereafter, Mr. Campbell made several written and verbal attempts to contact respondent to request his file in order to proceed with post-conviction relief. Despite his efforts, Mr. Campbell was neither able to communicate with respondent nor obtain his file.

In October 2020, Mr. Campbell filed a disciplinary complaint against respondent. Despite the ODC's numerous attempts to contact respondent and obtain his response to the complaint, respondent did not cooperate with the ODC's investigation.

The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3, 1.4, 1.16(d) (obligations upon termination of the representation), 8.1(c), and 8.4(a) (violation of the Rules of Professional Conduct).

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 Court:

The records of these two deemed admitted matters support a finding that respondent neglected a legal matter and continuously misled the client about the status of the legal matter,

engaged in criminal conduct involving illegal drugs, failed to appear for his arraignment and evaded a bench warrant for more than five years, ignored a client's multiple requests for the return of his file, and failed to cooperate with the ODC in three investigations. Based upon these facts, respondent has violated the Rules of Professional Conduct as follows:

1. He violated Rules 1.3 and 8.4(d) by neglecting Ms. LaFleur's legal matter.
2. He violated Rules 1.4 and 8.4(c) by continuously misleading Ms. LaFleur regarding the status of her legal matter;
3. He violated Rules 3.4(c) and 8.4(d) by failing to appear in court for his arraignment and then evading a bench warrant for more than five years;
4. He engaged in criminal conduct on multiple occasions, in violation of Rule 8.4(b);
5. He again violated Rule 1.4 by failing to communicate with Mr. Campbell regarding the return of his file;
6. He violated Rule 1.16(d) by failing to return Mr. Campbell's file despite numerous requests;
7. He failed to cooperate with the ODC in its three investigations, in violation of Rule 8.1(c); and
8. By violating the Rules of Professional Conduct as discussed above, he violated Rule 8.4(a).

Respondent knowingly and intentionally violated duties owed to his clients, the public, the legal system and the legal profession. His conduct caused actual and potential harm.

Turning to the issue of an appropriate sanction, case law suggests that the baseline sanction for respondent's combined misconduct in the LaFleur and Campbell matters is a suspension from the practice of law for one year and one day. See *In re: Taylor*, 14-0646 (La. 5/23/14), 139 So.3d 1004, in which the Court imposed a suspension for one year and one day upon an attorney who neglected a legal matter, failed to communicate with a client, failed to promptly return a client's file upon request, failed to refund an unearned fee, and failed to cooperate with the ODC in its investigation. With the exception of failing to refund an unearned fee, respondent's misconduct is identical, if not worse, than the misconduct in *Taylor*. Regarding respondent's criminal conduct, the case of *In re: Martin*, 18-0900 (La. 9/21/18), 252 So.3d 867, is instructive. In *Martin*, an attorney possessed drug paraphernalia associated with heroin use, possessed cocaine, engaged in a sexual relationship with a client and introduced the client to drugs, represented the client while she was ineligible to practice law, was involved in a motor vehicle accident while driving with a suspended driver's license, and was a fugitive from justice with multiple warrants issued for her arrest. For this misconduct, the Court imposed disbarment. Arguably, respondent's conduct is not as egregious as the misconduct in *Martin*, in that respondent did not engage in a sexual relationship with a client, did not get into an accident while driving with a suspended license, and did not represent any clients while he was ineligible to practice law. Nevertheless, the Court found the discipline imposed in *Taylor* and *Martin* supports disbarment as the overall sanction for the entirety of respondent's misconduct in both sets of formal charges. The Court adopted the board's recommendation to disbar respondent and ordered respondent to return M. Campbell's file.

Crichton, J., dissents and assigns reasons:

Although the majority correctly finds that due to respondent's failure to answer any of the charges against him, the factual allegations contained therein are deemed admitted and proven by clear and convincing evidence pursuant to La. S.Ct. Rule XIX §11(E)(3), I disagree with the

imposition of regular disbarment and would permanently disbar respondent. See La. S.Ct. Rule XIX §10(A)(1) (. . . "the court shall only impose permanent disbarment upon an express finding of the presence of the following factors: (1) the lawyer's misconduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future."). Respondent's serious misconduct includes violations of Rules 1.3, 1.4, 1.16(d), 3.4(c), 8.4(a), and 8.4(c) and (d) of the Rules of Professional Conduct, but, importantly, respondent also has completely failed to respond to any of the charges against him and failed to file anything for consideration by the Hearing Committee or this Court. In my view, this warrants nothing less than permanent disbarment.

I have consistently noted that an attorney's failure to participate in disciplinary proceedings is not only alarming, it prevents this Court from considering mitigating evidence (if any) and is a blatant disregard for the structure in place designed to protect the public. See *In re: Kelly*, 20-118 (La. 6/3/20), 298 So.3d 161 (Crichton, J., additionally concurring, finding permanent disbarment appropriate in light of respondent's serious misconduct, coupled with his failure to answer formal charges against him nor participate in any meaningful way in the disciplinary process); *In re Dangerfield*, 20-B-0116 (La. 5/14/20), 296 So.3d 595; (Crichton, J., additionally concurring, highlighting respondent's "stunning indifference to the disciplinary process, resulting in no viable and reasonable choice other than permanent disbarment."); *In re: Gilbert*, 17-524 (La. 9/22/17), 232 So.3d 1221 (Crichton, J., additionally concurring, noting that permanent disbarment is appropriate, particularly in light of respondent's failure to participate in the disciplinary process); and *In re Mendy*, 16-B-0456 (La. 10/19/16), 217 So.3d 260 (Crichton, J., dissenting in part and assigning reasons, stating permanent disbarment was warranted because respondent's "evident lack of interest in defending these serious charges against him, coupled with his past sanctions, has no place in this noble profession"). The record reflects that respondent has zero interest in his license to practice and maintains a contempt for our noble profession. Accordingly, I would permanently disbar respondent.

McCallum, J., dissents for reasons assigned by Justice Crichton.

In re: Robert Bartholomew Evans, III, 2022-B-1439 (La. 1/27/23)

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Robert B. Evans III, an attorney licensed to practice law in Louisiana, but currently on interim suspension for threat of harm to the public.

Count I

Respondent and Cesar R. Burgos practiced law together in a law firm known as Burgos & Evans, LLC until May 1, 2015, when their partnership terminated. On June 4, 2015, Mr. Burgos filed suit against respondent for breach of contract. *Cesar R. Burgos, et al. v. Robert B. Evans III*, et al., No. 2015-05337, Div. "N", Civil District Court for the Parish of Orleans. Mr. Burgos was represented in the litigation by attorneys Richard C. Stanley and William M. Ross. Respondent was represented in the litigation by attorneys E. John Litchfield and Carey B. Daste.

On July 8, 2015, the parties entered into a Settlement and Release Agreement which was intended to resolve all disputes between them. In 2016, with the approval of the district court, Mr. Burgos deposited funds into the registry of the court which represented certain sums that were disputed under the Agreement. After hearing competing motions filed by respondent and Mr.

Burgos, the court released some of the funds in the registry to Mr. Burgos, leaving a balance of $207,394.48 remaining for administration.

On June 6, 2018, respondent filed an *ex parte* motion to withdraw the balance of the disputed funds from the registry of the court. Respondent filed the motion on his own behalf, despite the fact that he was represented by counsel in the litigation. Respondent's motion represented that "[c]ounsel for the plaintiffs have been contacted and have not expressed any opposition to this Motion." Respondent's motion also included a certificate of service indicating that he had served the pleading upon all counsel of record. Both of these representations by respondent were false - i.e., plaintiffs' counsel were not contacted in advance about the motion and did not receive a service copy of the motion, and Mr. Burgos would have vigorously opposed any such motion and the removal of disputed funds from the registry of the court.

On June 12, 2018, based on respondent's false representations in the motion, Judge Ethel Simms Julien signed an order granting the motion and releasing the disputed funds to respondent. On June 14, 2018, a check in the amount of $207,394.48 was issued to respondent by the clerk of Civil District Court. Respondent immediately deposited the check into his personal bank account and spent the funds.

On June 15, 2018, plaintiffs' counsel learned about the motion for the first time as a result of an online search by their paralegal. After that discovery, Mr. Ross contacted the court's chambers and spoke to Judge Julien's law clerk, who stated that an order releasing the funds had already been signed. Mr. Ross then called Ms. Daste to discuss the matter. Ms. Daste advised that she had no prior knowledge of the filing of the motion by her client, respondent.

Later on June 15, 2018, Judge Julien held a telephone conference with Mr. Ross and Ms. Daste. Following the call, Ms. Daste sent a letter to Judge Julien reiterating that neither she nor Mr. Litchfield was aware that respondent "would be filing or had filed" the motion to withdraw funds from the registry of the court, and that they had not received a copy of the motion from respondent. Ms. Daste further advised:

> I spoke with Mr. Evans after our telephone conference to let him know that you advised that his actions would be considered contempt of court, and could potentially subject him to criminal charges. I also asked Mr. Evans whether the check he received from the Clerk of Court yesterday had been negotiated. He told me the check had been negotiated. Apparently the Clerk of Court's registry account is with Chase Bank, and Mr. Evans also has an account with Chase. Mr. Evans said that the funds have already been spent, and that he cannot return the funds.

On June 15 and 18, 2018, plaintiffs' counsel filed multiple motions objecting to respondent's withdrawal of the disputed funds from the registry of the court. In an opposition to one of the motions, respondent represented that Ms. Daste had previously advised him that plaintiffs did not object to his withdrawal of the disputed funds. This representation was false.

On July 5, 2018, Judge Julien issued an order which set the hearing on plaintiffs' motions for August 17, 2018. Following the issuance of the order, respondent filed an application for supervisory writs with the Court of Appeal, Fourth Circuit, seeking reversal of the trial court's ruling and a remand to reset the hearing on the pending motions "for a date no earlier than October 1, 2018." Respondent sought expedited attention and a decision by the court of appeal no later than July 15, 2018. The writ application contained an affidavit in which respondent swore under oath that a copy of the application had been "emailed and mailed to all counsel of record this 11th

day of July." This affidavit was false, as plaintiffs' counsel did not receive a copy of the writ application via e-mail on July 11, 2018. Instead, plaintiffs' counsel only received a mailed copy of the writ application on July 18, 2018, two days after the Fourth Circuit had already denied in part and granted in part the writ application.

The hearing on plaintiffs' motions was finally scheduled to take place on April 17, 2019. Just prior to the start of the hearing, respondent agreed to return $207,394.48 to the registry of the court in four installment payments, the last of which would occur on August 15, 2019, and to pay $10,000 in attorney's fees and costs to plaintiffs. On May 8, 2019, Judge Julien signed a judgment to this effect and dismissed plaintiffs' motions as moot.

In 2019, respondent and Mr. Burgos again filed competing motions seeking the release of certain funds from the registry of the court. Following a hearing on the motions, Judge Julien ruled in favor of Mr. Burgos. On January 31, 2020, Judge Julien signed a judgment ordering the clerk of Civil District Court to release the sum of $180,000 from the registry of the court to Mr. Burgos.

The ODC alleges that respondent's conduct violated Rules 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.

Count II

In August 2018, the ODC filed a petition in the Court seeking respondent's immediate interim suspension for threat of harm to the public. At the Court's request, respondent filed a response to the petition for interim suspension. After considering the positions of both parties, the Court remanded the matter for a hearing. However, prior to the hearing, respondent and the ODC filed a "Joint Consent Petition for Interim Suspension Pursuant to Louisiana Supreme Court Rule XIX, § 19.2," in which respondent stated that he withdrew his opposition to the ODC's petition and consented to the entry of an order of interim suspension. On September 28, 2018, the Court granted the petition and placed respondent on interim suspension for threat of harm to the public. *In re: Evans*, 18-1433 (La. 9/28/18), 253 So.3d 133.

Notwithstanding the Court's order of interim suspension, respondent has continued to engage in the practice of law. The ODC alleges that respondent received, disbursed, and otherwise handled client funds through his law firm's trust account; negotiated with opposing counsel in pending client legal matters (the Vaughn, Alexander, and Ogbor matters); corresponded with opposing counsel to advance the prosecution of pending client legal matters (the Faucheaux and Barre matters); and corresponded with opposing counsel to advance discovery in pending client legal matters (the Alexander and Arriaga matters).

The ODC alleges that respondent's conduct violated Rule 5.5 (engaging in the unauthorized practice of law) of the Rules of Professional Conduct.

In March 2019, the ODC filed formal charges against respondent as set forth above. Respondent answered the formal charges and denied any intentional misconduct. He admitted that he filed an *ex parte* motion to withdraw funds from the registry of the court, but stated that he had discussed the motion with his attorneys prior to the filing and believed, based on those conversations, that the motion was unopposed. Respondent attributed his "genuine misunderstanding" in this regard to his mental state at the time. Likewise, respondent indicated that "any misrepresentations" he subsequently made in pleadings or communications with the

courts were a result of his mental impairment and misunderstanding. Finally, respondent denied that he practiced law after he was placed on interim suspension.

The Court:

The record establishes by clear and convincing evidence that respondent made multiple misrepresentations in connection with the filing of an *ex parte* motion to withdraw more than $200,000 in disputed funds from the registry of the court. Specifically, respondent represented to the trial court that his former law partner had no opposition to the withdrawal of the funds, when respondent knew this was not the case. Furthermore, respondent did not serve a copy of the motion on his former law partner or his counsel of record, contrary to his representations to that effect in the certificate of service. Respondent then filed two additional pleadings - an opposition filed in the trial court and a writ application filed in the court of appeal - in which he made additional misrepresentations of fact. Finally, respondent repeatedly engaged in the unauthorized practice of law after he was placed on interim suspension. Under these circumstances, respondent violated the Rules of Professional Conduct as charged in the formal charges. Respondent acted intentionally, and violated duties owed to his clients, the legal system, and the profession, causing both actual and potential harm. The applicable baseline sanction is disbarment. The aggravating factors of a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law are supported by the record. The mitigating factors of an absence of a prior disciplinary record and personal or emotional problems (health problems during the time of the misconduct) is supported by the record. Respondent's misconduct was undoubtedly egregious. However, the Court found no compelling reason to deviate from the baseline sanction of disbarment in this matter. The Court imposed disbarment, retroactive to September 28, 2018, the date of respondent's interim suspension.

Crichton, J., concurs in part and dissents in part and assigns reasons.

On May 4, 2022, this Court amended the provisions of Supreme Court Rule XIX related to permanent disbarment to state that permanent disbarment shall only be imposed upon "an express finding of the presence of the following factors: (1) the lawyer's misconduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future." Respondent's misconduct in this matter satisfies two of the permanent disbarment guidelines as found in Appendix D of Supreme Court Rule XIX (intentional corruption of the judicial process and, following notice, engaging in the unauthorized practice of law during a period of suspension), and in my view, his behavior also clearly falls within the recently amended aforementioned factors. For the reasons below, while I agree with the majority that the allegations against respondent have been proven, I dissent from the imposition of regular disbarment and would permanently disbar respondent.

As the majority's opinion reflects, respondent prepared an *ex parte* motion to withdraw disputed funds amounting to over $200,000 deposited in the court registry and represented to the court that the motion was unopposed when, in fact, respondent had no personal knowledge that the motion was unopposed. Moreover, respondent included with his motion a certificate of service certifying he had served the motion on all counsel of record. This certification was also patently false. Based upon respondent's false representations to the court, the court released the deposited funds to respondent, who immediately deposited the check and spent the money. Upon receiving

a later-filed opposition to the motion to withdraw, respondent again represented to the court that his original motion to withdraw was unopposed. Respondent also verified under oath that, following the trial court's refusal to continue a hearing on his opponent's Motion for New Trial regarding restoration of the funds to the court registry, he had emailed and mailed a copy of his writ application to the court of appeal to all counsel of record. Again, this representation was false. Opposing counsel only received a copy of the application in the mail after the appellate court had granted supervisory relief and ordered the trial court to select a new hearing date. When ultimately confronted about these repeated falsities, respondent consistently attempted to shift blame to others, primarily his non-lawyer support staff. As the Disciplinary Board noted, respondent's intentional corruption of the judicial process in this regard most certainly qualifies under our amended rule as well as the guidelines for permanent disbarment.

Further, despite respondent's 2018 suspension as a result of this serious misconduct, *In re: Evans*, 18-1433 (La. 9/28/18), 253 So.3d 133, respondent continued to communicate with opposing counsel in several pending matters, engaged in settlement negotiations, and received, disbursed, and otherwise handled client funds by way of his trust account (upon which he was the only signatory) during his suspension. Although respondent claimed his unauthorized practice of law was based upon "an honest misunderstanding of the terms of his suspension," I find his behavior falls within the guidelines for permanent disbarment (unauthorized practice of law) and demonstrates that there is no reasonable expectation for a rehabilitation of respondent's character in the future.

Respondent's continued lack of remorse for his egregious behavior, his multiple intentional misrepresentations to the trial court and the court of appeal, and his flagrant disregard for this Court's authority by continuing to practice law after being prohibited from doing so demonstrate a clear lack of ethical and moral fitness to practice law. Accordingly, I find the only appropriate sanction under these circumstances is permanent disbarment from the practice of law. I therefore dissent.

McCallum, J., concurs in part and dissents in part for the reasons assigned by Justice Crichton.

SUSPENSION

In re: David Band, Jr., 2023-B-0284 (La. 11/17/23)

In June 2019, Mortimer Bishop sold immovable property to Christine Bowers. Thereafter, Mr. Bishop refused to vacate the premises, claiming that Ms. Bowers had granted him a lifetime usufruct over the property. Ms. Bowers then filed a rule for eviction against Mr. Bishop, and Mr. Bishop sued Ms. Bowers to rescind the sale based on theories of lesion and fraud. Mr. Bishop was represented by respondent in the litigation. Ms. Bowers was initially represented by attorney Eric Person. In August 2019, Ms. Bowers discharged Mr. Person and retained attorney F. Evans Schmidt to represent her. During the litigation, respondent contacted Ms. Bowers multiple times to discuss the legal matter. These communications were through social media, email, and by telephone, and were made without the authorization of Ms. Bowers' counsel. Some of the communications were also peculiar. In one message, respondent requested that Ms. Bowers "wear something low cut."

In November 2020, Ms. Bowers filed a complaint against respondent with the ODC. In his written response to the complaint, respondent suggested that he had contacted Ms. Bowers during time periods when he believed she was not represented by counsel. However, in one of his

messages to Ms. Bowers via Facebook, respondent stated that he knew she had an attorney. Moreover, in his sworn statement to the ODC, respondent testified that he communicated directly with Ms. Bowers even though she was represented by Mr. Schmidt because he was having trouble contacting Mr. Schmidt.

In November 2021, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated Rules 4.2(a) (communications with persons represented by counsel) and 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter) of the Rules of Professional Conduct. Respondent filed an answer to the formal charges, stating that he did not violate the rules as charged because he had a reasonable belief Ms. Bowers did not have an attorney at the time he communicated with her.

The Court:

The underlying facts of this matter are not seriously in dispute. Respondent communicated with a person known to be represented by counsel and made a false statement to the ODC during its investigation. This conduct violates the Rules of Professional Conduct as charged in the formal charges. Respondent violated duties owed to the legal system and the legal profession. His actions were knowing and intentional, and caused actual and potential harm. The applicable baseline sanction ranges from reprimand to suspension. The aggravating factors present in this matter include a dishonest or selfish motive, multiple offenses, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. The only mitigating factor present is the absence of a prior disciplinary record. A period of actual suspension is warranted for respondent's knowing and intentional communications with Ms. Bowers without the consent of her counsel. Furthermore, respondent made false statements of material fact to the ODC during its investigation, thereby compounding the misconduct. Nevertheless, the Court found it significant that respondent has no prior disciplinary record in more than fifty years of practicing law. Under these circumstances, the Court deferred all but thirty days of the six-month suspension recommended by the board. Regarding the recommendation of the committee and the board that respondent be required to submit to an examination by a licensed mental health care professional, the Court agreed that respondent behaved in a bizarre manner towards Ms. Bowers, yet seems unable to understand why she was offended by his remarks. Respondent's persistent focus on the underlying property matter during these proceedings is also somewhat puzzling. To resolve any concerns about respondent's mental state, the Court required that before he may be reinstated from his suspension, Respondent must consult with JLAP and undergo, at his cost, an evaluation by a neuropsychologist or other mental health professional designated by JLAP to determine his competency to continue to practice law. A report of the evaluation shall be promptly submitted by the evaluator to JLAP, and provided by JLAP to the ODC and respondent within five days of receipt of the report. After receipt of the evaluator's report, the ODC shall take any further action it deems appropriate under the circumstances.

Hughes, J., dissents and assigns reasons.

Respectfully, I believe the discipline imposed is overly onerous and therefore dissent.

Genovese, J., dissents and assigns reasons.

I dissent, finding the discipline too lenient.

Crain, J., dissents and assigns reasons.

I dissent, finding the discipline too lenient.

In re: Tim L. Fields, 2023-B-0343 (La. 9/19/23)

Count I

Dr. George Van Wormer is a chiropractor who has had a longstanding arrangement with respondent to provide his personal injury clients with medical care and receive payment for those services upon settlement of the clients' claims. From February 2016 to August 2016, Dr. Van Wormer treated three of respondent's clients, namely Edwin Brooks, Mathieu Fletcher, and Mateo Fletcher. Respondent settled the claims of all three clients in early 2017. Nevertheless, and despite Dr. Van Wormer's staff contacting respondent's office numerous times in an effort to collect the three clients' debts, respondent failed to pay Dr. Van Wormer's bills, which totaled $6,916. On December 13, 2018, the ODC received a disciplinary complaint from Dr. Van Wormer. The ODC sent notice of the complaint to respondent, which he received on January 1, 2019. On January 3, 2019, respondent issued a $6,916 check from his trust account to Dr. Van Wormer. This check was signed by respondent's CPA, who is not an attorney. Upon further investigation, the ODC received copies of the three trust account checks respondent issued to the clients who were the subject of Dr. Van Wormer's complaint. Two of the checks were dated February 21, 2017 and one check was dated April 21, 2017. The checks were signed by respondent's former paralegal instead of an attorney. On June 19, 2019, respondent appeared with his counsel at the ODC's office to provide a sworn statement. During the sworn statement, respondent testified that his CPA and his former paralegal both had authority to sign his trust account checks. Respondent also testified that his former secretary Mary Samuels left the firm, and he was not aware Dr. Van Wormer was not paid because the matter was never brought to his attention. Respondent further testified that he never had a problem with this type of issue before the current situation occurred. Also during the sworn statement, respondent testified that his law practice has consisted of "almost exclusively personal injury" cases since 1999. However, respondent later acknowledged that he did not maintain a trust account between approximately 2006 and 2011. Furthermore, on the trust account disclosure statements he filed with the disciplinary board from November 10, 2006 to November 14, 2012, respondent falsely certified that he did not handle client or third-party funds.

On August 14, 2019, respondent again appeared with his counsel at the ODC's office, at which time he participated in a recorded interview with Deputy Disciplinary Counsel Robin Mitchell as well as the ODC's forensic auditor, Angelina Marcellino. During this interview, respondent acknowledged that he "wasn't exactly candid" during his sworn statement. He then indicated that, in approximately March 2015, he discovered Ms. Samuels had failed to pay his clients' medical providers and other third parties (approximately 50 third parties associated with at least 300 clients) a combined total of approximately $4.2 million between 2009 and 2015. He explained that Ms. Samuels had been indiscriminately transferring client settlement funds from his trust account to his operating account. Those client funds in his operating account were then used to pay his personal and office expenses. Respondent further explained that he contacted the third parties to whom he owed the majority of the client settlement funds, namely Louisiana Primary Care, Health Care Center, Metropolitan Health Group, and Magnolia Diagnostics, and those third

parties agreed to continue working with him and his current and future clients. However, they required respondent to pay the oldest client accounts first. Therefore, between 2015 and August 2019, his pattern and practice was to use third-party funds from settlements obtained for his current clients to pay the older third-party invoices generated by his previous clients between 2009 and 2015. Finally, respondent advised the ODC during the interview that he had recently ceased this pattern and practice. The ODC then obtained bank statements and trust account records from respondent for the period between January 1, 2017 and January 31, 2019. Respondent's CPA also provided the ODC with documentation he had compiled relevant to respondent's trust account and money owed to third parties. Upon reviewing this information, Ms. Marcellino confirmed that respondent had converted $4,148,944.59 as of July 10, 2015 and had engaged in "rolling conversion" between 2015 and August 2019 just as he had admitted to during the August 14, 2019 recorded interview. According to Ms. Marcellino and the records provided by respondent, by September 30, 2019, respondent's trust account was still short.

Evidence in the record indicates that, in addition to using current client settlement funds to pay the old outstanding third-party debt, respondent also obtained business and personal loans in August 2015, borrowed from his individual retirement account in July 2015, sold two pieces of real property in 2019, cashed in an annuity in 2019, and withdrew from his investment accounts in 2019 and 2020 $1,840,366.54 needed to repay the original third-party debt. By June 14, 2020, respondent had reduced the shortage to $814,268.69. The ODC also obtained a copy of respondent's standard contingency fee contract used for all personal injury clients. The contract stated, "A standard file charge of One hundred twenty-five dollars ($125.00) shall be assessed at the time of distribution of any funds received in judgment or settlement." This $125 fee appeared on various disbursement statements provided by respondent and was not attributable to any costs or services undertaken for those specific clients. Respondent has since deleted this fee from the contract and no longer lists the charge on disbursement statements.

Count II

In August 2018, Sam Montgomery hired respondent to handle his personal injury claim. Mr. Montgomery signed respondent's standard contingency fee contract, which conveyed "complete settlement authority" to respondent. Mr. Montgomery also signed a power of attorney in favor of his relative, Calvin Stewart. In April 2019, respondent settled Mr. Montgomery's claim for the $15,000 insurance policy limits because it was his normal practice to accept the policy limits as full and final settlement. When respondent received the settlement check in May 2019, someone from his office endorsed Mr. Montgomery's signature on the back of the check. The check was then deposited into respondent's trust account. Mr. Stewart stopped by respondent's office in June or July 2019 and was told Mr. Montgomery's case had settled. In August 2019, Mr. Stewart and Mr. Montgomery went to respondent's office to view the insurance policy limits and a copy of the settlement check. Mr. Montgomery then signed the release and the disbursement statement and accepted $4,529.52 as his portion of the settlement proceeds. On August 29, 2019, the ODC received a disciplinary complaint from Mr. Montgomery, alleging that respondent settled his claim without his knowledge or consent. In response to the complaint, respondent admitted that he settled Mr. Montgomery's claim without his permission but asserted he had the authority to do so pursuant to the contingency fee contract. Respondent has since removed such authority from his standard contingency fee contract. He also admitted that he had someone in his office sign Mr. Montgomery's name on the back of the settlement check but asserted Mr. Montgomery had given him verbal authority to do so.

In June 2020, the ODC filed formal charges against respondent. In *Count I*, the ODC alleged that respondent violated the following provisions of the Rules of Professional Conduct: Rules 1.1(c) (failure to submit accurate trust account information), 1.8(e)(3) (overhead costs of a lawyer's practice, which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client), 1.15(a) (safekeeping property of clients or third persons), 1.15(d) (failure to timely remit funds to a client or third person), 1.15(f) (every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer), 1.15(g) (a lawyer shall create and maintain a trust account for funds belonging to clients and third persons), 5.3 (failure to properly supervise a non-lawyer assistant), 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

In *Count II*, the ODC alleged respondent violated Rules 1.2 (scope of the representation) and 1.8(k) (a lawyer shall not solicit or obtain a power of attorney or mandate from a client which would authorize the attorney, without first obtaining the client's informed consent to settle, to enter into a binding settlement agreement on the client's behalf or to execute on behalf of the client any settlement or release documents) of the Rules of Professional Conduct. Respondent, through counsel, filed an answer to the formal charges on July 27, 2020. In his answer, he denied engaging in any misconduct. However, if he were to be found to have engaged in misconduct, he claimed that he did so negligently and asserted the affirmative defense of prescription, pursuant to Supreme Court Rule XIX, § 31, against allegations of misconduct occurring more than ten years ago. He also indicated he still owed $735,079.39 to third-party providers but asserted he would have this amount paid in full within approximately six months.

The Court:

The record establishes by clear and convincing evidence that respondent failed to properly supervise his non-lawyer staff, resulting in the conversion of approximately $4.2 million belonging to third parties, intentionally continued to convert third-party funds totaling approximately $1.8 million in order to pay older third-party debts, failed to maintain a trust account for several years, lied on his trust account disclosure statements that he did not handle client funds, allowed nonlawyers to sign trust account checks, charged clients for inappropriate office expenses, settled a client's personal injury claim without the client's knowledge or consent, and lied to the ODC during its investigation. This conduct amounts to a violation of the Rules of Professional Conduct as found by the hearing committee and modified by the disciplinary board. The record further establishes that respondent acted negligently, knowingly, and intentionally in violating duties owed to his clients, the public, the legal system, and the legal profession. His conduct caused actual and potential harm to his clients, third-party providers, and the legal profession. The Court agreed with the committee and the board that disbarment is the baseline sanction. Aggravating factors include a pattern of misconduct, multiple offenses, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, and substantial experience in the practice of law. Mitigating factors include the absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct, character or reputation, and remorse. Considering the mitigating factors present, in particular the significant restitution respondent has already made and continues to make, the Court found a downward deviation from the baseline sanction to be appropriate. The Court imposed a three-year suspension

from the practice of law. The Court further ordered respondent to make full restitution to the third-party providers to whom money is still owed.

Weimer, C.J., concurring in part and dissenting in part.

I concur in the majority's conclusion that discipline is warranted in this matter, but respectfully dissent from the discipline imposed, believing that disbarment is not only appropriate but required based on respondent's prolonged and egregious course of misconduct. The majority documents extensively and in great detail the misconduct proved by clear and convincing evidence that (the majority agrees) warrants the baseline sanction of disbarment: "respondent failed to properly supervise his non-lawyer staff, resulting in the conversion of approximately $4.2 million belonging to third parties, intentionally continued to convert third-party funds totaling approximately $1.8 million in order to pay older third-party debts, failed to maintain a trust account for several [6] years, lied on his trust account disclosure statements that he did not handle client funds, allowed non-lawyers to sign trust account checks, charged clients for inappropriate office expenses, settled a client's personal injury claim without the client's knowledge or consent, and lied to the ODC during its investigation." *In re: Tim L. Fields*, 23-0343 (La. 11/ __/23), slip op. at 25. While respondent acknowledged that he "wasn't exactly candid" during the ODC's investigation, in fact, he lied during a sworn statement and continued his deception by claiming that a "woman" at the LSBA whose name who he could not remember and whose identity he made no attempt to verify contacted him and advised that he did not need a trust account because he only handled personal injury matters. Id. , slip op. at 12-13. This claim is unbelievable and, quite frankly, preposterous.

In describing the conversion of funds in which respondent engaged as a "rolling conversion," akin to "robbing Peter to pay Paul," the sheer breadth and volume of respondent's transgressions is understated. Between 2009 and 2019 (a 10-year period), respondent converted a total of approximately $6 million. Id., slip op. at 10. Respondent's behavior is more akin to robbing Peter and Paul to pay John, James, Matthew and Luke.

The majority acknowledges all of these facts and yet finds a downward deviation from the baseline sanction of disbarment is appropriate, citing respondent's lack of a prior disciplinary record, remorse, and "good faith" efforts at restitution. Respectfully, I disagree.

As to the absence of a prior disciplinary record, I note that respondent's conduct extended over a period of ten years and was comprised of multiple deeds warranting disciplinary action. The sheer length and breath of respondent's misconduct, and the fact that respondent was able to avoid the day of disciplinary reckoning for such a long period of time, in my view, mitigates against respondent receiving any credit for lack of a prior disciplinary record. As to respondent's remorse and efforts at restitution, both are admirable, but cannot erase or mitigate the fact that efforts at restitution only occurred after respondent was called out for his misconduct. And, even those efforts involved a Ponzi-like scheme of "rolling conversions." The majority's imposition of a three-year period of suspension, based largely on respondent's "significant" restitution, serves only to empower individuals to misappropriate funds and then, if caught, pay them back. Such a result is counterintuitive to our responsibility to "maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct." Id., slip op. at 26.

Given the depth, breadth, and volume of respondent's misconduct, as outlined above, and the lack of any excuse therefor, disbarment is the minimum sanction I would consider in this matter.

Crichton, J., concurs in part, dissents in part, and assigns reasons.

I agree with the majority's finding that respondent has violated the multitude of Rules of Professional Conduct as alleged. However, I disagree with the significant downward deviation made by the majority to impose the sanction of three years suspension, as I find it unduly lenient. The majority determined that the mitigating factors, notably restitution made by respondent, support the downward deviation. In my view, the restitution that respondent made does indeed support such a deviation, but only from the permanent disbarment recommended by the Disciplinary Board to regular disbarment. See *In re: Perricone*, 18-1233 (La. 12/5/18), 263 So. 3d 309 (Crichton, J., additionally concurring and explaining the difference between permanent disbarment and regular disbarment). See also, e.g., In re: *Pullins Gorham*, 20-0692 (La. 12/11/20), 315 So. 3d 187 (Crichton, J., concurring in part and dissenting in part, noting respondent's "timely good faith efforts to make restitution"); In Re: *Connie P. Trieu*, 19-1680 (La. 3/9/20), 290 So. 3d 658 (Crichton, J., concurring in part and dissenting in part, noting the majority failed to consider the numerous mitigating factors and would therefore impose a lesser sanction).

As thoroughly set forth by the majority, respondent has engaged in egregious rule violations that, in my view, demonstrate a deliberate disregard for our noble profession and a lack of moral fitness to practice law. In addition to the specific and intentional conversion of millions of dollars belonging to third parties, respondent has engaged in flagrant dishonesty in the face of these violations. I therefore would impose the sanction of disbarment.

In re: Mark Jeffrey Neal, 2023-B-0344 (La. 9/19/23)

In September 2020, respondent's attorney notified the ODC that respondent had been arrested for battery. An online search produced a news report of the attack that respondent committed upon Frederick Cascio, the owner and operator of a restaurant located in Monroe, Louisiana. By way of background, Mr. Cascio and respondent (and their families) are longtime friends. Respondent, his wife, and children visited Mr. Cascio's restaurant regularly. In the fall of 2020, respondent asked Mr. Cascio to hire his teenaged son, Noah, for a part-time job in the restaurant. Mr. Cascio agreed and hired Noah to work as a bus boy. On the evening of September 19, 2020, Mr. Cascio believed Noah was more than an hour late for his scheduled shift. Mr. Cascio sent respondent a text message to advise that Noah had not arrived for work and to ask for his son's phone number. Respondent replied with an abusive, insulting, and racially improper text message, which included a threat to "beat your ass." Mr. Cascio then ended the texting and returned to completing preparations for dinner service. After completing the preparations, Mr. Cascio was conversing with his staff and sitting at a counter near the rear of the bar area. Suddenly, respondent burst through the rear door of the restaurant in a rage. Respondent approached Mr. Cascio, who had his leg propped up on a railing, grabbed Mr. Cascio's ankles, swiveled him around, and pulled him the length of and off the preparation counter, causing Mr. Cascio to fall onto his back and head to the concrete floor. From there, respondent dragged Mr. Cascio into the kitchen area and knelt on his upper chest and neck. Respondent then grabbed Mr. Cascio's head, which he repeatedly pounded into the floor, and was heard to say, "I will kill you." The attack ended when a female employee, in an effort to pull Mr. Cascio free from respondent, reached out and grabbed Mr. Cascio as he lay on the kitchen floor. Other employees who witnessed the attack called 911 and summoned police. Respondent disengaged and left the premises. During the disciplinary investigation, the ODC obtained text messages sent by respondent to Mr. Cascio on the day after the event. In the messages, respondent asked Mr. Cascio to provide false information to police and suggest to police that the attack was all a big misunderstanding. Mr. Cascio declined

to offer the false information to law enforcement. As a result of the incident, Mr. Cascio sustained injuries that required medical treatment. Mr. Cascio initiated a civil claim against respondent. In resolution of the claim, respondent paid $50,000 in general damages to Mr. Cascio and reimbursed Mr. Cascio for the $6,186 in medical expenses he incurred.

The entirety of the text message exchange is as follows:

> Mr. Cascio: Is Noah working tonite? I can't find his number. He is suppose to[.]
>
> Respondent: You're fucking kidding me. You don't have his fucking number? You, your life, your family and your business is more than fucked up as a n[*]gger's checkbook. Your staff wants to quit. You can't communicate with people and you're a manic depressive. Your passive aggressive daughter is equally stupid[.] I'll return your documents Tuesday.
>
> Mr. Cascio: You will be ok. Don't talk about my family.
>
> Respondent: Fuck you. I will come beat your ass right now.
>
> Mr. Cascio: Whatever[.]

In June 2021, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent, through counsel, answered the formal charges and admitted that he had "engaged in a physical altercation with Cascio in the restaurant," but denied that he had "asked Cascio to provide false information to the police."

Prior to a formal hearing, the parties filed joint stipulations into the record. Therein, respondent stipulated to most of the underlying facts and to violations of Rules 8.4(a) and 8.4(b).\

The Court:

The events of September 19, 2020 are not in dispute, having been stipulated to by the parties. Respondent acknowledges that he physically attacked a restaurant owner at his place of business after the owner contacted respondent to inquire about the whereabouts of respondent's son who worked at the restaurant as a bus boy and was late in reporting for his shift. The parties have also stipulated, and the evidence supports, that respondent violated Rules 8.4(a) and 8.4(b) of the Rules of Professional Conduct. The Court found that a violation of Rule 8.4(c) had not been proven by clear and convincing evidence.

During the hearing, respondent testified that he has known Mr. Cascio for a long time. In addition to notarizing documents for him, respondent also helped Mr. Cascio with "technical matters," such as email, texting, saving telephone numbers, and applying for "PPP money." On the evening of the incident in question, respondent was feeling exasperated over Mr. Cascio's disorganization and failure to follow instructions. Respondent indicated that the text about his son

also "irritated" him so much so that he engaged in "the most disproportionate behavior of my adult life." He added that the incident happened about three weeks after Hurricane Laura and days after he had taken testosterone shots, although the testosterone did not cause his actions. Respondent noted that he could not recall some actions detailed by Mr. Cascio. He stated: I have very little rational memory of a whole lot that happened thereafter other than getting in my sequoia and doing something I've never done. It was - - the term cognitive dissonance is the best thing I can describe. The committee noted that respondent does not have a diagnosis and that those words were his, not the testimony of a medical professional.

Respondent violated duties owed to the public and the legal profession. Respondent had an extreme reaction to a relatively minor incident, which not only calls into question his fitness to practice law, but could also be an indicator of his inability to handle himself professionally in stressful or difficult circumstances while practicing law. His actions were intentional, and caused physical and emotional harm to Mr. Cascio. His actions also created the potential for even more serious injuries, or even death, to Mr. Cascio. Respondent's actions also caused harm to the public, who witnessed the violent attack, and to the reputation of the legal profession.

The applicable baseline sanction in this matter is suspension. The aggravating factors present in this matter were vulnerability of the victim, substantial experience in the practice of law (admitted 1996), and illegal conduct. The mitigating factors present are the absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify consequences of misconduct, imposition of other penalties, and remorse.

The Court agreed that the sanction recommended by the board was appropriate. and suspended respondent from the practice of law for one year and one day, with six months deferred, followed by a two-year period of probation governed by the following conditions set forth by the board:

> 1. Upon finality of the court's judgment, respondent shall be ordered to consult with Judges and Lawyers Assistance Program ("JLAP") in order to be evaluated by a JLAP-designated licensed mental health care professional to determine any underlying mental and/or emotional condition that may cause violent conduct. This evaluation shall include a drug/alcohol assessment and the need for further anger management counseling. Respondent shall also be subject to the following conditions concerning this evaluation and any recommended treatment:
>
> a. Within thirty days of the finality of the court's judgment, respondent shall submit to the evaluation by the JLAP-designated licensed mental health care professional and begin compliance with any plan of treatment prescribed by that professional, at respondent's cost;
>
> b. Respondent shall further advise JLAP and the ODC of the results of the evaluation as well as any recommended treatment, and shall provide his medical records to JLAP and the ODC upon their request
>
> c. If treatment is ordered, respondent shall provide JLAP and the ODC with monthly reports from the licensed mental health care professional to ensure he complies with treatment;
>
> 2. In the event respondent fails to comply with these conditions, or if he engages in any misconduct during the period of probation, the deferred suspension may become executory, or additional discipline may be imposed, as appropriate; and

3. Respondent must be in compliance with the above conditions prior to his reinstatement to the practice of law.

The board further recommended that respondent be assessed with the costs and expenses of these disciplinary proceedings.

Weimer, C. J., concurring in part and dissenting in part.

I concur in the majority's conclusion that respondent violated Rules 8.4(a) and 8.4(b) of the Rules of Professional Conduct and that the baseline sanction in this matter is suspension. Where I depart from my colleagues is in the length of the suspension imposed. Based on the original text sent to the victim, which is quoted at footnote 1 of the per curiam, and on the lack of candor in respondent's initial response to the Office of Disciplinary Counsel, I would impose a lengthier period of actual suspension.

Crain, J., dissents and assigns reasons.

I dissent, finding the discipline too lenient.

In re: Craig J. Fontenot, 2023-B-00759 (La. 9/19/23)

On November 22, 2017, at approximately 6:49 p.m., officers from the Baton Rouge Police Department responded to a hit-and-run vehicle crash on LA Highway 73. The victim had followed respondent's vehicle to his home address and waited for police to arrive. As detailed in the police report and confirmed through videos taken by officers, respondent initially lied to the investigating officer about the accident and the extent of his alcohol consumption.

Approximately two hours after officers had arrived, respondent volunteered to give a breath sample. The test result showed that his blood alcohol concentration was .238%. Respondent was arrested for first offense DWI, hit and run, and failure to maintain control.

On April 6, 2021, respondent appeared in court with counsel. The charge of hit-and-run driving was dismissed. On the DWI charge, respondent withdrew his plea of not guilty and entered a plea of nolo contendre.

In October 2022, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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 committee's consideration.

The Court:

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 evidence in the record of this deemed admitted matter supports a finding that respondent was arrested for first offense DWI, hit and run, and failure to maintain control. Respondent also lied to the investigating officer about the accident and the extent of his alcohol consumption. This conduct amounts to a violation of the Rules of Professional Conduct as charged.

The record supports a finding that respondent knowingly and intentionally violated duties owed to the public and the legal profession. Both actual and potential harm are present. The Court agreed with the hearing committee that the applicable baseline sanction is suspension. The record supports the aggravating and mitigating factors found by the committee. The Committee found a dishonest or selfish motive, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge wrongful nature of conduct, substantial experience in the practice of law (admitted 1996), and illegal conduct to be aggravating factors. The committee found the absence of a prior disciplinary record to be the only mitigating factor present.

Turning to the issue of an appropriate sanction, the Court found guidance from the case of *In re: Baer*, 09-1795 (La. 11/20/09), 21 So.2d 941. In *Baer* the Court stated the following with respect to appropriate sanctions for DWI offenses:

> The Court has imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, we tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.

Respondent committed a single DWI offense. However, due to his lack of cooperation with the disciplinary investigation, the Court could not determine whether he suffers from a substance abuse problem. An actual suspension is therefore warranted. The sanction of a one year and one day suspension means respondent will have to file a formal application for reinstatement in the event he wishes to return to the practice of law. Prior to being reinstated, respondent will have to address the question of whether he has a substance abuse disorder, and, if so, show an effort at recovery. The Court adopted the committee's recommendation and suspended respondent from the practice of law for one year and one day.

In re: Flynn Kempff Smith, 2023-B-00596 (La. 6/21/23)

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Flynn K. Smith, an attorney licensed to practice law in Louisiana, but currently ineligible to practice.

Counts I & II

On October 20, 2020, respondent was declared ineligible to practice law for failure to pay his bar dues and the disciplinary assessment. On October 1, 2021, he was declared ineligible to

practice for failure to file his trust account registration statement. Finally, between July 1, 2020, and February 17, 2022, respondent was ineligible to practice for failure to comply with the mandatory continuing legal education requirements.

Notwithstanding respondent's ineligibility during these periods, on January 27, 2022, he appeared in Section "G" of Orleans Criminal District Court representing a defendant during arraignment. Respondent enrolled as counsel and entered a not guilty plea on the defendant's behalf. In February 2022, the clerk in Section "G" and the victim in the criminal case filed complaints against respondent with the ODC.

Count III

In 2022, the ODC learned that respondent was involved in a motor vehicle accident in 2020 and was found to have been highly intoxicated. Respondent's vehicle collided with another vehicle parked near the intersection of Cherokee Street and Dominican Street in New Orleans. Respondent's vehicle was still running and he was asleep at the wheel when the investigating officer arrived. The officer noted that there was a very strong odor of alcohol on respondent's breath and in his vehicle, where an open container of alcohol was found to be present. Respondent was awakened and upon exiting the vehicle was unsteady on his feet. He also slurred his speech and had bloodshot eyes. A breath test revealed that respondent's blood alcohol level was .235g%.

The officer conducted a search of respondent incident to his arrest. A small baggie containing a white powder-like substance fell from respondent's pocket during the search. Field testing confirmed that the substance was cocaine.

In September 2022, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.1(c) (a lawyer is required to comply with all requirements of the Supreme Court's rules regarding annual registration, including payment of bar dues and the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information), 5.5(a) (engaging in the unauthorized practice of law), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

Respondent was personally served with the formal charges but failed to answer. 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.

The Court:

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 evidence in the record of this deemed admitted matter supports a finding that respondent practiced law while ineligible to do so and was arrested for DWI and possession of cocaine. Based on these facts, respondent has violated the Rules of Professional Conduct as charged by the ODC.

Respondent knowingly, if not intentionally, violated duties owed to his client, the public, the legal system, and the legal profession. Both actual and potential harm are present. The Court agreed with the hearing committee that the applicable baseline sanction is suspension. The aggravating and mitigating factors found by the committee are supported by the record. The committee found the following aggravating factors are present: multiple offenses, substantial experience in the practice of law (admitted 2006), and illegal conduct. In mitigation, the committee found the absence of a prior disciplinary record.

With regard to the issue of an appropriate sanction, the Court agreed with the committee that respondent's misconduct, taken as a whole, warrants a two-year suspension from the practice of law. Respondent has practiced law after becoming ineligible to do so, which itself generally warrants a one year and one day suspension. See *In re: Hardy*, 03-0443 (La. 5/2/03), 848 So.2d 511. Furthermore, respondent has engaged in criminal conduct involving DWI and possession of cocaine, and there is no evidence in the record that respondent has addressed his apparent substance use disorder. This conduct would warrant a period of suspension with no deferral under *In re: Baer*, 09-1795 (La. 11/20/09), 21 So.2d 941. The Court suspended Respondent for two years and cast him with all costs of the disciplinary proceeding.

Crichton, J., additionally concurs and assigns reasons:

I agree with the Court's imposition of a two-year suspension in this matter. However, I write separately to again note my continued astonishment at lawyers who, facing serious sanctions resulting from their own grave misconduct, fail to answer the charges against them or file anything in mitigation for their own defense. Such an awesome display of stunning indifference to the disciplinary process is not only disheartening but also worthy of suspension under these circumstances. See *In re: Harvey*, 19-1829 (La. 2/18/20), 289 So.3d 1000 (Crichton, J., concurring, noting respondent's lack of concern for his law license warranted suspension) (citing *In re: Quiana Marie Hunt*, 19-1412 (La. 11/12/19), 282 So.3d 213 (Crichton, J., dissenting, finding that because respondent failed to cooperate in disciplinary proceedings, a period of actual suspension should be imposed); *In Re: Jennifer Gaubert*, 18-1980 (La. 2/11/19), 263 So.3d 408 (Crichton, J., additionally concurring, noting the troublesome nature of an attorney refusing to participate meaningfully in disciplinary proceedings); *In re: Reid*, 18-0849 (La. 12/5/18), ___ So.3d __, 2018 WL 6382109 (Crichton, J., dissenting, noting that "lack of cooperation with ODC, the Hearing Committee, the Disciplinary Board, and this Court demonstrates (a) stunning indifference to this noble profession"); *In Re: Neil Dennis William Montgomery*, 18-0637 (La. 8/31/18), 251 So.3d 401 (Crichton, J., dissenting, finding disbarment appropriate where respondent made "zero effort" to respond to any of the accusations against him); and *In re: Klaila*, 18-0093 (La. 3/23/18), 238 So.3d 949

Respondent herein, personally served with the formal charges, failed to answer them. Moreover, although respondent was given an opportunity to file a response with the hearing committee, he filed nothing. Given that this respondent clearly is either unable or unwilling, or both, to represent and defend himself, this Court can safely assume he is not able, willing, or competent to represent a client. It is well settled that the attorney disciplinary process is designed

to protect the public and preserve the integrity of the profession. See *In re: Miles*, 23-0028, p. 8 (La. 4/25/23), 359 So.3d 960 (mem.); *In re Giraud*, 18-1646, p. 7 (La. 6/26/16), 284 So.3d 1186, 1191. Our ruling today accomplishes that objective. Unless and until respondent has proven that he is worthy of a seat at this table, I concur in the Court's finding that his misconduct warrants a substantial period of suspension.

In re: Henry L. Klein, 2023-B-0066 (La. 5/18/23)

Respondent represented Regina Heisler in connection with a suit brought by Girod Loan Co, LLC ("Girod"), in which it sought to enforce certain promissory notes executed by Mrs. Heisler both individually and in her capacity as the executrix of her late husband's succession. On March 12, 2019, Girod filed a "Verified Petition for Foreclosure by Executory Process" against Mrs. Heisler in the 24th Judicial District Court for the Parish of Jefferson. Two days later, respondent removed the action to federal court on the alleged basis of diversity jurisdiction. On June 5, 2019, the federal court remanded the matter to the 24th JDC, finding the undisputed evidence in the record established that Mrs. Heisler and Girod are both citizens of Louisiana.

On June 21, 2019, the district court entered an "*Order for Writ of Seizure and Sale*" in favor of Girod. Respondent filed an exception of lack of jurisdiction on the ground that Girod was an "unauthorized foreign entity" and Louisiana has no jurisdiction to hear any claims by such an entity. The court denied the exception, and the court of appeal denied writs. Respondent also filed a motion captioned, "*Motion To Vacate Order of Executory Process, Peremptory Exception of No Right of Action, Request for Expedited Hearing and Motion to Dismiss*." In denying this motion, the court stated that the relief requested was duplicative of the relief previously requested and previously denied. Again, the court of appeal denied writs.

On October 7, 2019, the district court issued *sua sponte* an "*Order to Show Cause Why Attorney Should Not Be Held in Contempt*." The order alleged that respondent had sent "threatening and disrespectful correspondence" to the court's fax number and to the personal email address of the court's law clerk. The order also alleged that these communications were *ex parte* efforts by respondent to influence the court to reverse its previous rulings in the Heisler litigation. The show cause hearing was scheduled for October 29, 2019.

Before the hearing could be held, respondent filed two writ applications directly with the Louisiana Supreme Court, under docket numbers 19-CD-1582 and 19-CD-1633, seeking "protection" from the district court's show cause order. The Court denied both applications. *Girod Loanco, LLC v. Heisler,* 19-1582 (La. 10/9/19), 280 So.3d 594; *Girod Loanco, LLC v. Heisler*, 19-1633 (La. 10/16/19), 280 So.3d 1159.

Respondent then filed a second "*Notice of Removal*," suggesting that the show cause order created a federal question supporting the exercise of subject matter jurisdiction by the federal court. On December 23, 2019, the federal court again remanded the matter to the 24th JDC, finding respondent "did not have an 'objectively reasonable basis' for seeking removal, and sought to remove only to delay a state court show cause hearing regarding contempt." The federal court awarded attorney's fees and costs in favor of Girod due to the improper removal.

Following remand, respondent resumed the filing of motions in state court. On May 27, 2020, respondent filed a "*Motion to Set a Hearing Pursuant to Precedent Set in NASCO v. Calcasieu and Chambers v. NASCO*, 501 U.S. 32 (1991)." This motion alleged that the "vulture fund" Girod had perpetrated a fraud upon the court and requested an independent investigation to protect the integrity of the court. On June 3, 2020, the district court denied respondent's motion, refused to accept certain exhibits as part of the record, and prohibited respondent from filing further

motions in the case without first seeking leave of court and obtaining permission to make such filings. In written reasons, the court found that respondent had engaged in a pattern of filing repetitive motions, abuse of process, and refusing to follow proper procedures.

On August 3, 2020, respondent filed a motion to recuse the district judge. In his motion, respondent accused Girod's counsel of aiding and abetting its client's fraud and the district judge of "turning a blind eye to the fraud." Respondent also stated that the relationship between the district judge and Girod's counsel was "nothing short of shocking" because counsel had made a campaign contribution to the district judge, and that the district judge's integrity had been compromised with counsel's participation. Throughout the pleading, respondent accused the district judge of partiality towards Girod's counsel and its clients, without regard to Mrs. Heisler. Respondent cited no evidence for these allegations. On August 10, 2020, the district judge denied the motion to recuse.

On August 19, 2020, respondent filed a petition in Orleans Parish Civil District Court on behalf of himself and his wife. The Orleans Parish Civil Sheriff was named as defendant. In the suit, respondent represented that the foreclosure order against Mrs. Heisler was unconstitutional and argued that the Sheriff was not legally obligated to execute the "constitutionally infirm" order. In paragraph 43 of the petition, respondent again alleged that Girod's counsel had actively participated in compromising the integrity of the district judge.

On October 16, 2019, the clerk of the Louisiana Supreme Court sent correspondence to the ODC enclosing copies of respondent's writ applications in 19-CD-1582 and 19-CD-1633, which involved the contempt proceedings arising from respondent's *ex parte* communications. The correspondence was not in the nature of a complaint, but requested that the ODC review the filings for the purpose of determining whether any ethical violations may have occurred.

The ODC opened an investigation into the matter. During its investigation, the ODC took the sworn statement of Girod's counsel. Counsel testified that respondent sent messages to the law firm's managing partner in which he threatened to file a legal malpractice claim against the firm. Respondent, in pleadings, also accused the firm of aiding and abetting criminal activity on the part of its client, demanded that the firm dismiss Girod's claims, and pay a settlement of three million dollars. Respondent also sent harassing messages to non-attorney employees of the firm, including the Chief Finance Officer, the Chief Operating Officer, the Human Resources manager, and the Information Technology staff.

In January 2021, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated Rules 3.1 (a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous), 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal), 3.5(a) (a lawyer shall not seek to influence a judge, juror, prospective juror or other official by means prohibited by law), 3.5(b) (a lawyer shall not communicate *ex parte* with a judge, juror, prospective juror or other official during the proceeding unless authorized to do so by law or court order), 3.5(d) (a lawyer shall not engage in conduct intended to disrupt a tribunal), 4.4(a) (in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person), 8.2(a) (a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in

conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.

Respondent answered the formal charges and denied any misconduct. He asserted that his work to protect Mrs. Heisler was "above board, yet sabotaged by the district judge and by the ruthless tactics" of Girod. Respondent also stated that the district judge was "corrupted" by Girod and its counsel.

The Court:

The charges in this case allege that in the course of representing a client in pending litigation, respondent made unsubstantiated, disparaging remarks about the trial judge and opposing counsel, engaged in *ex parte* communications with the trial court's law clerk, continued to file duplicative pleadings into the record although ordered by the trial court to refrain from doing so without leave of court, and removed the case to federal court solely for the purpose of delay. Respondent's sole defense to these charges is based on his assertion that he was acting as a zealous advocate for his client and was seeking to address what he perceived as a significant injustice.

While the Court has recognized attorneys must be vigorous advocates on behalf of their clients, the Court has consistently rejected any attempts by lawyers to justify their unethical conduct under the guise of "zealous advocacy." *In re: Zohdy*, 04-2361 (La. 1/19/05), 892 So.2d 1277, 1289 at n.15. See also *In re: Young*, 03-0274 (La. 6/27/03), 849 So.2d 25, 31 ("While respondent's motivation may have been to protect the interests of his client, he may not violate his professional obligations as an officer of the court under the guise of being a zealous advocate.").

Respondent's actions in the instant case clearly crossed the boundary between zealous advocacy and professional misconduct. As the hearing committee found, many of respondent's actions, such as his removal of the case *Heisler* to federal court to avoid the state court contempt hearing, had no basis in fact or law and were intended solely for purposes of delay. He filed multiple pleadings into the record without leave of court, in clear violation of the trial court's order. He improperly entered into *ex parte* communications with the trial court's law clerk, which the committee found represented an "inappropriate and disruptive attempt to influence the court." Finally, he has repeatedly made unfounded accusations of improper conduct against opposing counsel and the trial court.

Significantly, respondent's harassing conduct did not abate after the filing of formal charges but has continued during the course of these disciplinary proceedings. Respondent's filings in this disciplinary matter are replete with unsubstantiated attacks on the integrity of the ODC, the trial judge, and opposing counsel. When asked during oral argument to provide proof for these assertions, respondent merely referred to vague "inferences" which he claims to have drawn from the facts. Such unsupported attacks clearly exceed the bounds of mere advocacy. See *In re: Milkovich*, 493 So.2d 1186, 1198-99 (La. 1986) (finding an attorney "far exceeded the limits of zealous advocacy" by leveling "a vicious attack on the integrity of the prosecutor and the judge which is not in any manner suggested by the record.").

Respondent has also burdened the Louisiana Supreme Court during these disciplinary proceedings by filing multiple motions and pleadings, the vast majority of which have no bearing on the issues presented in his disciplinary case. Instead, respondent has consistently attempted to re-litigate the merits of the *Girod* matter in the context of his disciplinary case. Such actions are clearly inappropriate and any attempt by respondent to covertly re-litigate final judgments will not be countenanced by this court.

Taken as a whole, respondent's actions, both in the context of the underlying litigation and the disciplinary proceedings, display a disturbing lack of respect for the judicial system and his obligations as a professional. As aptly stated by Justice Crichton, "[i]t is unfortunate that respondent does not seem to understand that being a zealous advocate does not equate to such repugnant disrespect for the system we are charged to honor and serve." *In re: McCool*, 15-0284 (La. 6/30/15), 172 So.3d 1058, 1090 (Crichton, J. concurring). It is beyond question that the formal charges have been proven by clear and convincing evidence.

Respondent submits his actions should not be a basis for discipline as he caused no actual harm to any client. The Court disagreed. Even a cursory review of the facts demonstrates respondent violated duties owed to the legal system and the legal profession. His actions were knowing and intentional, and caused actual harm to the administration of justice.

The applicable baseline sanction is suspension. The committee determined the following aggravating factors are present: a prior disciplinary record, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law (admitted 1968). The committee determined the only mitigating factor present is respondent's full and free disclosure to the disciplinary board. The aggravating and mitigating factors found by the hearing committee are supported by the record.

In fashioning an appropriate sanction, the Court took guidance from *In re: Abadie*, 20-1276 (La. 5/13/21), 320 So.3d 1073, 1081, cert. denied sub nom. *Abadie v. Louisiana Att'y Disciplinary Bd.*, 212 L.Ed.2d 11, 142 S.Ct. 1114 (2022), in which it imposed a year and a day suspension on an attorney who filed improper pleadings, failed to follow court procedures, and attacked the integrity of the presiding judge. In doing so, the Court stated:

> It is clear respondent was frustrated that her client did not obtain the relief to which she believed he was legally entitled. It is an unfortunate fact that in many instances, litigation leaves one of the parties and its counsel disappointed by the outcome. However, this does not give an attorney license to make unsupported and reckless allegations of collusion and conspiracy on the part of the judges who participated in the matter. Rather, lawyers are expected to be professionals and to honor their obligations to the legal system and to the profession. Respondent failed to do so, and for this misconduct, she must be sanctioned.

Based on this reasoning, and considering respondent's complete lack of remorse, the Court suspended respondent from the practice of law for one year and one day.

Similarly, in this case, the Court found a one year and one day suspension, which will require respondent to file a formal application for reinstatement pursuant to Supreme Court Rule XIX, § 24, to be an appropriate sanction. As in *In re: Simon*, 04-2947 (La. 6/29/05), 913 So.2d 816, 826-27, "[w]e urge respondent to take this opportunity to reflect upon his professional and ethical duties as a member of the bar of this state, in particular the need to balance the zealous advocacy of a client's cause with his oath as an attorney to 'maintain the respect due to courts and judicial officers.'"

Crichton, J., concurs in part and dissents in part and assigns reasons.

I agree with the majority's finding that respondent has violated the multitude of Rules of Professional Conduct as alleged. However, I disagree with the sanction of one year and one day suspension, as I find it unduly lenient. Respondent has not only continued to deny any

responsibility for his misconduct, he has engaged in a pattern of filing repetitive and unnecessary documents in this Court since the Office of Disciplinary Counsel filed its formal charges against him on January 18, 2023. In fact, other than his objection and brief responding to the Petition filed by Office of Disciplinary Counsel, as of May 17, 2023, respondent has filed approximately fourteen documents in this Court since the Office of Disciplinary Counsel's initial filing, many of which seek only to address the underlying litigation and have no actual relevance to (or express remorse for) respondent's misconduct. This Court's rules setting forth the Code of Professionalism in the Courts provides that lawyers will "speak and write civilly and respectfully in all communications with the court" and "will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice." La. S.Ct. Rules, Part G, § 11. Respondent's filings here have attempted to re-litigate the underlying matter which brought rise to the original allegations against him, they have requested this Court give special order and consideration to his disciplinary case, and they have maligned his opposing counsel following oral argument before this Court. See La. S.Ct. Rule VII, § 7 ("[t]he language used in any brief or document filed in this court must be courteous, and free from insulting criticism of any person, individually or officially, or of any class or association of persons, or of any court of justice, or other institution.") These meritless documents have served no other purpose than to harass and detract from the important work of this Court.

In my view, respondent's prior misconduct throughout his career, coupled with the present violations, demonstrate that his abusive disregard for the most basic rules of decorum outweighs any alleged "advocacy" he may claim. He has caused needless delay and disruption and has shown zero remorse for his actions. Accordingly, I would impose a lengthier suspension than that set forth by the majority.

McCallum, J., concurs in part and dissents in part for the reasons assigned by Crichton, J.

In re: William A. Roe, 2022-B-1803 (La. 5/5/23)

Respondent was admitted to the practice of law in Louisiana in 1980. In 1990, respondent was elected as a judge of the 25th Judicial District Court for the Parish of Plaquemines. In 2006, the Louisiana Supreme Court imposed judicial discipline of a public censure upon respondent for giving a newspaper interview about a pending case and for publicly criticizing one of the attorneys involved in the case. *In re: Roe*, 06-1243 (La. 6/23/06), 931 So.2d 1076.

On July 11, 2008, a grand jury indicted respondent on three counts of felony theft and three counts of malfeasance in office, all arising out of allegations that he had "double-dipped" on expense reimbursements relating to the 2005, 2006, and 2007 Summer School for Judges in San Destin, Florida. On July 31, 2008, the Court disqualified respondent from exercising any judicial function, pending subsequent proceedings before the Judiciary Commission. *In re: Roe*, 08-1641 (La. 7/31/08), 987 So.2d 250. No proceedings occurred in the Commission before respondent's term of judicial office ended on December 31, 2008, and thus jurisdiction of the matter passed to the ODC under Supreme Court Rule XIX, § 6.

Following a bench trial in September 2009, respondent was convicted of three misdemeanor counts of unauthorized use of a movable valued under $1,000. On October 14, 2009, the Court placed respondent on interim suspension based upon his conviction of a serious crime. *In re: Roe*, 09-2117 (La. 10/14/09), 22 So.3d 867. On January 6, 2010, respondent was sentenced to serve six months in jail with three months suspended, followed by eighteen months of active probation. He was also fined $1,500 and ordered to perform 240 hours of community service.

On January 22, 2010, the ODC filed formal charges against respondent arising out of his conviction. The disciplinary proceedings were then stayed pending the finality of the conviction. On November 10, 2010, the court of appeal affirmed respondent's conviction and sentence in an unpublished opinion. The Louisiana Supreme Court denied respondent's writ application on November 14, 2011. *State v. Roe*, 10-2731 (La. 11/14/11), 75 So.3d 935. On March 2, 2012, respondent consented to the imposition of disbarment, retroactive to the effective date of his interim suspension. *In re: Roe*, 12-0264 (La. 3/2/12), 82 So.3d 266.

On August 24, 2016, respondent filed a petition seeking readmission to the practice of law. The ODC took no position on respondent's readmission. Following a hearing in the matter, the hearing committee recommended that readmission be denied. Respondent objected to this recommendation, and the matter was reviewed by the disciplinary board. The board recommended that respondent be readmitted to the practice of law. On December 15, 2017, the Court accepted the board's recommendation and readmitted respondent to the practice of law in Louisiana. *In re: Roe*, 17-1862 (La. 12/15/17), 231 So.3d 604.

Against this backdrop, we now turn to a consideration of the misconduct at issue in the instant proceeding. In October 2019, Anna Stevenson Dobard ("Anna") consulted respondent because she was concerned that her elderly widowed mother, Mrs. Mattie Stevenson, could no longer care for herself. Furthermore, according to Anna, two of her sisters, Dorothy Stevenson Exler ("Dorothy") and Stephanie Stevenson ("Stephanie"), had gained access to their mother's bank accounts and had expended her funds in ways that were inconsistent with her best interests. Respondent agreed to accept Anna's representation on a pro bono basis.

After reviewing the matter, respondent decided to seek the interdiction of Mrs. Stevenson and file for injunctive relief against Dorothy and Stephanie. In connection with that effort, respondent drafted affidavits that were to be executed by Mack Stevenson, Jr. ("Mack"), Lois Stevenson ("Lois"), and Richard Stevenson ("Richard"), three of Anna's other siblings. Respondent had never met these siblings, and he did not interview them before he drafted the affidavits. Instead, the content of the affidavits was based solely upon the information Anna had provided to respondent.

Respondent then gave the affidavits to Anna, ostensibly so that she could take them to Mack, Lois, and Richard to see if they agreed with the content of the affidavits. Respondent purportedly intended that if the siblings agreed with the content, they would execute the affidavits in the presence of a notary. However, Anna returned the affidavits to respondent allegedly signed by Mack, Lois, and Richard but not notarized.

Although the affidavits were not executed in respondent's presence, he nonetheless notarized the signatures of Mack, Lois, and Richard. He then attached the three affidavits to a "Petition for Interdiction and Injunctive Relief" which he filed with the court on October 10, 2019. *Interdiction of Mattie Mason Stevenson*, No. 65-606 on the docket of the 25th JDC for the Parish of Plaquemines, Division "A," Judge Kevin D. Conner presiding. Paragraph XIX of the petition filed by respondent specifically referenced the three affidavits, stating:

> As evidenced by the attached affidavits, other adult children of the proposed interdict concur with these interdiction proceedings and the appointment of Anna Stevenson Dobard as the curator for the proposed interdict, including the other two adult children with whom the proposed interdict resides.

In July 2020, Judge Conner conducted a hearing in the matter. During the hearing, Stephanie (who was not then represented by counsel) attempted to question Dorothy about whether the affidavits had been executed in respondent's presence. Respondent objected to Stephanie's questions on hearsay grounds, and Judge Conner sustained the objections. Respondent never informed Judge Conner that he had not properly notarized the affidavits or that he had drafted the affidavits without the input of the affiants. Moreover, Dorothy testified that the affidavit purportedly signed by Mack could not have been signed by him in the fashion reflected on the affidavit because Mack is sight impaired. Once again, respondent did not disclose to Judge Conner the issues surrounding the creation and notarizing of the affidavits.

At the conclusion of the hearing, Judge Conner ordered Mrs. Stevenson interdicted; appointed Anna as Mrs. Stevenson's curator; appointed Dorothy and Lois as co-undercurators to provide daily physical care for Mrs. Stevenson; and ordered a permanent injunction prohibiting Dorothy and Lois from taking any funds or property of Mrs. Stevenson.

In June 2020, Dorothy and Stephanie filed complaints against respondent with the ODC. During its investigation of the complaints, the ODC requested the trial transcript from Judge Conner in an effort to determine what representations respondent made to the court regarding the affidavits in question. Judge Conner provided the trial transcript by letter dated March 5, 2021. Although he expressed concern about the affidavits, Judge Conner concluded that "because of other testimony and evidence provided," they did not affect the outcome of the case.

In April 2021, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated Rules 3.3(a)(3) (a lawyer shall not knowingly offer evidence that the lawyer knows to be false; if a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.

Respondent answered the formal charges and denied any intentional misconduct. Respondent admitted that he did not personally witness the signatures on the affidavits. Nevertheless, he maintained that he notarized the affidavits in an effort to appease Anna, whom he described as "frantic and desperate to redress the misappropriation of funds from her now-destitute mother." He indicated that he had no intention of using the affidavits because he had decided not to move forward with his original plan to seek *ex parte* relief in the interdiction proceeding, but nonetheless, the affidavits were inadvertently attached to the petition for interdiction. Respondent further noted that at the hearing on the interdiction, he did not refer to the affidavits, offer them into evidence, or call the affiants as witnesses. Therefore, he suggested the affidavits were irrelevant and without legal effect.

The Court:

Respondent notarized three affidavits which were not signed by the affiants in his presence. He then attached the improperly notarized affidavits to his petition for interdiction and filed it with the court. Respondent has not taken any remedial action to withdraw the affidavits from the record. Based on these facts, respondent violated Rules 8.4(a), 8.4(c), and 8.4(d) of the Rules of Professional Conduct.

The ODC also alleges that respondent violated Rule 3.3(a)(3) by attaching the improperly notarized affidavits to the petition for interdiction. To find a violation of this rule, the ODC must prove that respondent acted knowingly. Knowing means "actual knowledge of the fact in question.

A person's knowledge may be inferred from circumstances." Rule 1.0(f) of the Rules of Professional Conduct. Thus, to successfully prove its allegation that respondent violated Rule 3.3(a)(3), the ODC must prove more than the simple fact that respondent "attached" the improperly notarized affidavits to the petition for interdiction. Rather, the ODC must prove that respondent actually knew he had attached the improperly notarized affidavits to the petition filed with the court.

Despite the hearing committee's conclusion that respondent violated Rule 3.3(a)(3), it acknowledged in its report that "[w]hile Respondent may have intended to attach the Affidavits, the evidence is not clear and convincing in that respect." In other words, the committee itself questioned whether respondent's conduct was done with actual knowledge. Our review of the record leads us to the same question. Respondent testified at the hearing that the affidavits were inadvertently attached to the petition he filed in October 2019, and that he did not realize his error until he appeared before Judge Conner in July 2020. While there is evidence in the record from which one might infer that respondent intended to include the affidavits, we find such evidence does not rise to the clear and convincing level required in a bar discipline proceeding.

Respondent knowingly violated duties owed to his client, the public, the legal system, and the legal profession. His conduct caused both actual and potential harm. The applicable baseline sanction is suspension. The following aggravating factors are present: a prior disciplinary record and substantial experience in the practice of law. The following mitigating factors are present: full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings and remorse.

The Court found respondent's prior disciplinary record is significant, and he has substantial experience in the practice of law as both a former judge and a practitioner. Under these circumstances, the Court found the one-year suspension recommended by the hearing committee to be appropriate.

Weimer, C.J., dissents and assigns reasons.

I respectfully dissent from the sanction imposed in this case in light of the conclusion, with which I concur, that a violation of Rule 3.3(a)(3) of the Rules of Professional Conduct was not established by clear and convincing evidence. According the words of the rule their plain and ordinary meaning, I agree that no violation of Rule 3.3(a)(3) was proved.

Because the rules governing the conduct of attorneys have the force and effect of substantive law, in interpreting those rules, the rules of statutory interpretation provide guidance. Pursuant to those rules, the starting point of any analysis is the language of the provision itself. *Hartman v. St. Bernard Parish Fire Department &Fara*, 20-00693, p. 9 (La. 3/24/21), 315 So.3d 823, 829.

Rule 3.3(a)(3) states:

A lawyer shall not knowingly: ....

> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Under the plain language of the rule, the threshold requirement is knowledge: a lawyer shall not "knowingly" offer evidence that the lawyer knows to be false. As the majority notes, as defined by Rule 1.0(f), "knowingly ... denotes actual knowledge of the fact in question." Such knowledge may be inferred from the circumstances. Id.

At the formal hearing, Respondent explained that he prepared alternative petitions for interdiction: one requesting an immediate, *ex parte* order of interdiction and one requesting a preliminary interdiction. Although it was ultimately decided to seek the preliminary interdiction (thereby eliminating the need for the supporting affidavits), the affidavits in question were nevertheless inadvertently attached to the petition for interdiction filed in October 2019. Respondent testified that he did not realize the error until he appeared before Judge Conner in July 2020.

Based on the foregoing, the Hearing Committee acknowledged in its report that "[w]hile Respondent may have intended to attach the Affidavits, the evidence is not clear and convincing in that respect." I agree with that finding. The evidence that respondent "knowingly" attached the affidavits does not rise to the level of clear and convincing evidence required in a bar discipline proceeding.

In addition to "knowing" conduct, Rule 3.3(a)(3) is quite specific in what it prohibits: a lawyer shall not knowingly "offer evidence that the lawyer knows to be false." The words "offer evidence" are key here, as the facts below are undisputed. Respondent did not offer the improperly notarized affidavits in evidence at the interdiction hearing. Both the Hearing Committee and the Disciplinary Board acknowledged this fact, noting that the affidavits "were not offered into evidence in the formal sense." Nevertheless, both entities concluded that despite not being formally introduced in evidence, the affidavits had "evidentiary value." With all due respect to the Hearing Committee and Disciplinary Board, I find this conclusion legally erroneous.

First, because the affidavits were not introduced, they were not "evidence" that could be considered by the district court. *Denoux v. Vessel Management Services, Inc.*, 07-2143, p. 6 (La. 5/21/08), 983 So.2d 84, 88 ("Evidence not properly and officially offered and introduced cannot be considered, even if it is physically placed in the record."). Further, the affidavits were clearly hearsay, La. C.E. art. 801, as the district court recognized in sustaining an objection to questioning surrounding the execution of the affidavits at the interdiction hearing.

Moreover, the affidavits were not required, nor even necessary for the preliminary interdiction. See, La. C.C.P. art. 4549. Because they were not necessary to the proceeding, the affidavits could hardly be characterized as "material evidence," thereby triggering an obligation on respondent's part to move to withdraw the affidavits from the record or to disclose their falsity to the district court. See, Rule 3.3(a)(3) ("If a lawyer ... has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal.")

Given the foregoing, it is clear that the affidavits could not legally have carried "evidentiary value," as the Hearing Committee and the Disciplinary Board found. The district court judge acknowledged as much when he testified before the Hearing Committee that the judgment granting the interdiction was "based on the evidence presented at the trial and nothing else," and when he wrote in a letter addressed to disciplinary counsel that "because of other testimony and evidence provided to this Court, the final judgment and outcome in this case were not affected [by the affidavits]."

Based on the facts and circumstances of this matter and particularly for the reasons set forth above, I agree that the charge that respondent violated Rule 3.3(a)(3) was not proved by clear and convincing evidence.

Respondent admits, however, that he notarized three affidavits which were not signed by the affiants in his presence, conduct which violates the provisions of Rule 8.4(a), (c) and (d). Therefore, a sanction is appropriate for this misconduct. Because the sanctions recommended by the Hearing Committee and Disciplinary Board were based, in part, on a finding that a violation of Rule 3.3(a)(3) was proved, it is appropriate, in determining the sanction here, to deviate downward from those recommendations. Juxtaposing respondent's prior disciplinary record and substantial experience in the practice of law (aggravating factors) against his remorse, his acceptance of responsibility for his acts and full cooperation with the disciplinary proceedings, the fact that no harm resulted from the improperly notarized affidavits, and his unselfish motive (having handled the case pro bono), all mitigating factors, I believe a one-year suspension from the practice of law with all but 60 days deferred is the appropriate sanction in this case. Therefore, I respectfully dissent from the sanction imposed by the majority.

Crain, J., concurs and assigns reasons.

I agree with the sanction imposed. However, I also believe a violation of Rule 3.3(a)(3) occurred. Rule 3.3(a)(3) provides a lawyer shall not knowingly offer evidence that the lawyer knows to be false; if a lawyer has offered material evidence and comes to know if its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. Here, the improperly notarized affidavits were attached to the Petition for Interdiction and Injunctive Relief. The affidavits were also expressly referred to in the petition as support that three other siblings, including two who lived with Mrs. Stevenson, concurred in the relief sought.

A lawyer owes a duty of diligence before signing a petition. See La. Code of Civ. Proc. art. 863 ("[T]he signature of an attorney or party shall constitute a certification by him that he has read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry . . . certifies . . . each allegation or other factual assertion in the pleading has evidentiary support . . . ."). This due diligence requires that I conclude the attachments were intentional, even if intentions and litigation strategies may have later changed. Further, respondent has not taken any remedial action to withdraw the affidavits from the record. Thus, I concur in the result, but would additionally find respondent violated Rule 3.3(a)(3).

In re: Mamie Lenoria Franklin, 2023-B-00203 (La. 5/2/23)

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.

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.

The Court:

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.

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. The Court agreed 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.

The Court noted that its 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, the Court suspended the attorney from the practice of law for one year and one. 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, the Court suspended the attorney for one year and one day. The Court imposed discipline of a one year and one day suspension.

Crichton, J., additionally concurs and assigns reasons.

I agree with the Court's suspension of respondent for one year and one day, which will require respondent to seek readmission pursuant to La. S.Ct. Rule XIX, § 24. I write separately to note the seriousness of respondent's misconduct that has given rise to this sanction. Specifically, respondent engaged in multiple violations of the Rules of Professional Conduct in representation of a client (Rules 1.3, 1.4, 1.5(c), 1.16(d), 3.2 and 8.4(a)), and even in the face of these serious Rule violations, respondent failed to answer the formal charges levied against her. Furthermore, although respondent intended to object to the Hearing Committee's report, she failed to do so timely, and even with instruction to do so, did not file a motion for leave to file the objection late. Thus, respondent filed nothing beyond her untimely fax-filed objection and therefore failed to perfect service. If respondent lacks the competence to adequately represent herself in her own proceedings, certainly her competence to represent clients may be questioned. See generally La. *State Bar Ass'n v. Reis*, 513 So.2d 1173, 1178 (La. 1987) ("Disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct."). In my view, the combination of these factors demonstrates respondent's carelessness and disregard for the seriousness of her misconduct and clearly warrants the one year and one day suspension imposed by the Court.

In re: Meredith Wiggins Benoit, 2023-B-00342 (La. 5/2/23)

On July 18, 2021, respondent entered the Target store in Metairie with reusable shopping bags. She was initially observed by Target security personnel opening a container of pet flea medication and emptying the contents into her shopping bag, then returning the empty container to the shelf. Focused camera surveillance was begun and video evidence captured respondent placing various items of merchandise into her shopping bags as she moved throughout the store. Eventually she exited the store and went into the parking garage without paying for any of the items she had placed in her bags.

Using video surveillance, the security team was able to identify the items respondent had taken, totaling $324.91; however, security was unable to capture the license plate of respondent's vehicle so as to make a positive identification at that time. Moreover, no attempt was made to apprehend respondent on this occasion due to COVID policy restrictions then in effect.

On July 28, 2021, respondent returned to Target, again carrying reusable shopping bags. A security officer positively identified respondent as the same female who had engaged in shoplifting at the store ten days earlier, and focused camera surveillance was again commenced. Respondent was observed as she selected a pair of shoes from a shelf, removed them from the box, placed them on her feet and confirmed the fit, then placed her old shoes into the shoe box and returned the box to the store shelf.

Security officers contacted the Jefferson Parish Sheriff's Office about a shoplifting incident in progress. Officers arrived on the scene and gathered with security officers in the surveillance area of the store as they collectively watched respondent continue to place items in her shopping

bags for nearly four hours. The officers apprehended respondent and found items totaling $1,763.00. She had no cash, check book, credit cards, or debit cards in her possession that would have evidenced a means of payment. Respondent was arrested for felony theft (over $1,000), in violation of La. R.S. 14:67(B)(3). She was also charged with misdemeanor theft in connection with the previous shoplifting incident.

In February 2022, respondent self-reported her arrest to the ODC. In connection with its investigation, the ODC discovered that in 2014, respondent was arrested in Mississippi and charged with speeding and driving with a suspended driver's license. She was allowed to enter a plea and pay a fine of $185. She failed to pay the fine and an attachment was issued and remained outstanding at the time of the ODC's investigation in 2022. Moreover, respondent was also arrested in Jefferson Parish in 2017 for speeding, expired insurance, and driving while under suspension. There were three attachments outstanding when she was arrested on the theft charges stemming from her Target shoplifting activities.

In September 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 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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.

The Court:

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 was arrested for shoplifting and has warrants outstanding for failure to appear and/or pay associated fines or costs in connection with moving violations. Based upon these facts, respondent has violated the Rules of Professional Conduct as charged.

Respondent intentionally violated duties owed to the public and the legal profession. Her conduct caused actual harm to Target and to the legal profession. The applicable baseline sanction is disbarment.

The record supports the following aggravating factors: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, substantial experience in the practice of law, and illegal conduct. The sole mitigating factor present is the absence of a prior disciplinary record.

Turning to the issue of an appropriate sanction, the instant matter presents an almost identical factual scenario as the *In re: LaMartina,* 17-0430 (La. 12/6/17), 235 So.3d 1061. In *LaMartina*, the respondent pleaded guilty to two shoplifting charges and failed to cooperate with the ODC in

its investigation. She had a prior disciplinary record, among other aggravating factors, and no mitigating factors were found to be present. The Court suspended Ms. LaMartina for three years for her misconduct. In light of *LaMartina*, and considering the aggravating and mitigating factors present, the Court found the committee's recommended sanction to be appropriate and suspended respondent for three years.

Crichton, J., concurs in part and dissents in part and assigns reasons.

Because respondent failed to answer the formal charges against her, as the per curiam notes, the factual allegations concerning theft contained therein are deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). Thus, I concur with the majority's finding that respondent has violated the Rules of Professional Conduct as charged. However, I disagree with a three year suspension, as I find that sanction unduly lenient. Not only has respondent displayed her indifference to the disciplinary process designed to protect the public, the record demonstrates that respondent has a history of disregard for the legal system as it pertains to her personally. Respondent was also charged with misdemeanor theft in connection with her previous shoplifting incident, for which she was offered pre-trial diversion, but she inexplicably failed to complete the diversion program. Furthermore, in addition to the serious misconduct herein, respondent has received several moving violations that have resulted three attachments for nonpayment of fines and driving while under suspension. In my view, respondent's behavior displays her blatant disinterest in and consistent inability to maintain the integrity required of this profession. See *In re: LaMartina*, 17-430 (La. 12/6/17), 235 So.3d 1061 (Crichton, J., dissenting from a three-year suspension, and would impose disbarment based upon respondent's shoplifting conviction "coupled with her lack of cooperation with and flippancy towards her disciplinary proceedings . . . .") Accordingly, under the facts of this matter, I would impose disbarment.

In re: Keelus Renardo Miles, 2023-B-00028 (La. 4/25/23)

Respondent was admitted to the practice of law in 2005. In 2014, he participated in the diversion program and attended the Louisiana State Bar Association's Trust Accounting School to address an overdraft in his client trust account. In 2019, the Louisiana Supreme Court accepted a joint petition for consent discipline and publicly reprimanded respondent for neglecting a legal matter, failing to communicate with a client, and failing to timely refund an unearned fee. *In re: Miles*, 19-1279 (La. 10/21/19), 280 So.3d 1135 ("*Miles I*").

Against this backdrop, we now turn to a consideration of the misconduct at issue in the present proceeding.

In July 2013, Charles and Gwendolyn Washington sustained serious injuries in a vehicle-pedestrian accident. Shortly thereafter, the Washingtons retained respondent to represent them on a 15% contingency fee basis. In the course of the representation, respondent collected a total of $229,530 on behalf of the Washingtons, as follows:

> 1. State Farm provided the Washingtons with UM and medical payments coverage. In 2014, State Farm paid its full policy limits of UM coverage in two checks, each in the amount of $15,000, payable to respondent and Mr. or Mrs. Washington. Nine checks, totaling $9,530, were issued in 2013 payable to respondent and Mr. or Mrs. Washington for medical payments. Respondent endorsed the State Farm checks on behalf of the Washingtons, claiming to the ODC that he had verbal authority from his clients to do so. However, the Washingtons

maintain that they did not authorize respondent to sign their names on the checks. Furthermore, the Washingtons were unaware of the issuance of the medical payments checks, and they only learned of the issuance of the UM checks from State Farm, not respondent.

2. Agricultural Workers Mutual Auto Insurance Company ("AgWorkers") provided liability insurance to the tortfeasor. Respondent placed Mr. and Mrs. Washington's signatures on the releases in favor of AgWorkers, improperly notarized those signatures, and transmitted the releases to AgWorkers. The Washingtons maintain that they did not authorize respondent to sign their names on the releases. Furthermore, the Washingtons were unaware that any releases had been signed until they were shown copies by the ODC. In 2013 and 2014, AgWorkers paid its full policy limits of liability coverage in two checks, each in the amount of $50,000, payable to respondent and Mr. or Mrs. Washington. Respondent endorsed the AgWorkers checks on behalf of the Washingtons, claiming to the ODC that he had verbal authority from his clients to do so. However, the Washingtons maintain that they did not authorize respondent to sign their names on the checks. Furthermore, it was not until 2018 that Mr. and Mrs. Washington learned from defense counsel, not respondent, that their claims against AgWorkers had been paid.

3. A lawsuit filed on behalf of the Washingtons against the City of Winnfield settled in July 2018 for the sum of $90,000. The Washingtons confirm that they signed their names to the release in favor the defendant and that respondent gave them the settlement check issued by Louisiana Municipal Risk Management Agency, which they in turn deposited into their bank account. Respondent did not maintain the funds he received from State Farm and AgWorkers, totaling $139,530, in his client trust account. Between 2014 and 2018, respondent paid a total of $92,000 to Mr. and Mrs. Washington from his operating account. Banking records also establish respondent's misuse of the trust account in the form of cash withdrawals and repeated online transfers to his personal account.

In October 2014, respondent advised Mrs. Washington that he was holding funds in his trust account to pay medical expenses. Respondent later informed the ODC that he thought he had paid some of the Washingtons' medical bills, but he provided no documentation to substantiate this assertion. In March 2015, Mrs. Washington received a text message from respondent containing an image of five checks totaling $957.89 and payable to third-party medical providers. Only two of these checks could be confirmed as having been received by the provider. The remainder of the Washingtons' medical expenses were satisfied by their own medical insurance, by payments received by the providers directly from the Washingtons, and by adjustments to charges in accordance with the providers' contracts with the Washingtons' medical insurer.

At the end of the legal representation, and after deducting a 15% attorney's fee from the gross proceeds respondent received on behalf of the Washingtons, the sum of $11,742.61 could not be accounted for and was not being held in respondent's trust account. On October 19, 2021, respondent, through counsel, delivered a cashier's check to the Washingtons in this amount.

In October 2019, the Washingtons filed a complaint against respondent with the ODC. Respondent did not file an answer to the complaint, necessitating the issuance of a subpoena to

compel his response and the production of specific documentation. Respondent responded to the subpoena in January 2020 and answered the complaint. He also supplied some, but not all, of the requested documents. Respondent subsequently gave a sworn statement to the ODC in November 2020.

In April 2021, the ODC filed formal charges against respondent arising out of his representation of the Washingtons. The ODC alleged that respondent's conduct violated Rules 1.5(c) (written contingency fee agreement, disbursement statement), 1.15(a) (safeguarding client funds, recordkeeping, conversion), 1.15(d) (failure to timely remit funds to a client or third party), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

Respondent did not answer the formal charges, and the factual allegations contained therein were deemed admitted. In July 2021, respondent's counsel filed an unopposed motion to be heard in mitigation, which was granted.

The Court:

A review of the record reveals that respondent failed to maintain necessary client and financial records, misused his client trust account, converted client funds, failed to timely remit funds to his clients and their third-party medical providers, and signed his clients' names to the backs of settlement checks and releases without their authority and then notarized the signatures. This misconduct amounts to a violation of the Rules of Professional Conduct as found by the hearing committee.

The record further supports a finding that respondent knowingly, if not intentionally, violated duties owed to his clients, the public, and the legal profession. While his conduct harmed the Washingtons, the Court acknowledged that they have now been made whole, lessening their injury. The potential harm to the profession was, nevertheless, significant. The Court found the following ABA's Standards for Imposing Lawyer Sanctions applied: (1) Standard 4.11, which indicates disbarment is appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client; and (2) Standard 4.62, which indicates suspension is appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client. Based on these ABA Standards, the Court found the baseline sanction ranges from suspension to disbarment. In aggravation, the record supports a prior disciplinary record and substantial experience in the practice of law. Mitigating factors present are personal or emotional problems (the flooding of respondent's home in 2016) and remorse.

Turning to the issue of an appropriate sanction under the specific circumstances presented the Court found that respondent's most serious misconduct is his conversion of client funds coupled with his improper signing of his clients' names to checks and releases. Because the instant case was presented in the context of a deemed admitted filing, the hearing committee did not have the opportunity to make detailed factual or credibility findings. Nonetheless, the committee's references to respondent's "unstructured practice of law" and his "unconventional attorney/client relationship with the Washingtons" strongly suggests the committee believed his actions were the result of negligence rather than intent. Moreover, it is undisputed that after charges were filed, respondent made full reimbursement to his clients in the amount of $11,742.61, which was the sum agreed to by the parties. Respondent is remorseful for his conduct and recognizes the need for additional training and supervision in the future. Based on the foregoing, the Court found the appropriate sanction is a three-year suspension from the practice of law.

Hughes, J., dissents and would impose a 2 year suspension.

Crichton, J., additionally concurs and assigns reasons.
I agree with the discipline imposed. In 2019, I dissented from the acceptance of the joint petition for consent discipline for this respondent, explaining that I believed the conduct at issue warranted more significant discipline. *In re: Miles*, 19-1279 (La. 10/21/19), 280 So.3d 1135 (Crichton, J., dissents). In the instant matter, respondent admitted to what I believe are serious violations of the Rules of Professional Conduct, including misuse of the client trust account, conversion of client funds, and improper check signing. In my view, these significant, repeated violations of our professional rules warrant the three-year suspension imposed.

Griffin, J., dissents and would impose a lesser suspension.

In re: Edward J. McCloskey, 2022-B-01680 (La. 3/14/23)

In August 2018, the ODC received notice from Capital One Bank that four checks drawn on respondent's client trust account were returned unpaid for insufficient funds. Respondent attributed the overdrafts to an accounting error by his CPA.

In connection with its investigation of the overdrafts, the ODC's forensic auditor, Angelina Marcellino, reviewed respondent's trust account records for the period from September 1, 2017, through August 31, 2018. Ms. Marcellino determined that during this period, respondent collected at least $1,476.17 in refunds from various clerks of court for unused cost deposits. Although these refunds were owed to respondent's former clients, respondent acknowledges that he did not make any attempt to contact the clerks of court to determine which clients were owed the funds, nor did he refund the money to his former clients. Instead, respondent deposited the funds into his trust account under a miscellaneous income sub-account number (50003) and then disbursed the funds to himself, typically to pay himself for pro bono or non-billable work he performed for current clients. Respondent advised the ODC that he had handled the refund checks in this manner for more than ten years because "the fees associated with reviewing the client files and writing letters to return the checks would have exceeded the amounts received."

In addition to the deposits during the one-year audit period, an additional $15,775.33 was deposited to respondent's sub-account number 50003 during the five years preceding the audit (April 1, 2012, through August 31, 2017). Based on the records provided to the ODC, it could not be determined if each deposit made during this five-year period is a clerk of court refund, but the practices described by respondent suggest it is likely that the sum of $15,775.33 includes clerk of court refunds that would be due to clients.

Ms. Marcellino also determined that respondent made disbursements from his trust account in excess of the associated client balances. However, based upon the records provided to the ODC, the exact balances that should remain in the trust account at the end of the audit period could not be quantified.

In July 2021, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.15(a) (safekeeping property of clients and third persons) and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent answered the formal charges and admitted that four checks drawn on his client trust account were returned for insufficient funds. Respondent denied that he intentionally

converted the clerk of court refunds to his own use, suggesting that any misconduct in this regard was the result of negligence. He also denied that he intentionally made disbursements from his trust account in excess of the associated client balances.

The Court:

Respondent converted at least $10,288.15 in clerk of court refunds owed to his clients. He paid these funds to himself based on invoices he created for work performed for other clients for which he never intended to charge those other clients. Respondent also allowed his trust account to become overdrawn and made disbursements from his trust account in excess of the associated client balances. This misconduct violated Rules 1.15(a) and 8.4(c) of the Rules of Professional Conduct as charged.

Respondent violated duties owed to his clients, the public, and the legal profession. He acted knowingly in converting the clerk of court refunds to his own use, and caused actual harm. He acted negligently in mishandling his client trust account. The applicable baseline sanction ranges from suspension to disbarment.

The aggravating and mitigating factors found by the board are supported by the record. The board determined the following aggravating factors are present: a dishonest or selfish motive, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. The board determined the following mitigating factors are present: the absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct (only as to the overdrafts and the disbursements from the trust account in excess of the associated client balances which were identified in the audit report, not as to the conversion of the clerk of court refunds), full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and character or reputation.

Turning to the issue of an appropriate sanction, the board recommended that respondent be suspended for two years, with all but one year deferred, followed by a period of probation with conditions. The Court agreed that the record supports this sanction, given that respondent's conduct was not motivated by greed or self-enrichment. Moreover, the mitigating factors present are significant, in particular the fact that respondent is an accomplished and respected lawyer who has practiced for more than fifty years without any prior discipline.

Weimer, C.J., dissents and assigns reasons.

I would order additional briefing on the issue of sanctions pursuant to Supreme Court Rule XIX, § 11(G)(1)(a).

Hughes, J., dissents and would impose a lesser sanction.

In re: Quiana Marie Hunt, 2022-B-01792 (La. 3/14/23)

The Probation Violation Matter

In November 2019, respondent was suspended from the practice of law for one year and one day, fully deferred, subject to two years of supervised probation with conditions, for mishandling her trust account and failing to cooperate with the ODC in its investigation. *In re: Hunt*, 19-1412 (La. 11/12/19), 282 So.3d 213 ("*Hunt I*"). On January 2, 2020, respondent executed a probation contract, which required her to: (1) comply with her annual professional obligations; (2) promptly

notify the ODC of any change of address during the probationary period; and (3) respond to all requests by, and make herself reasonably available for conference with, the ODC.

On June 18, 2021, during her probationary period, respondent was certified ineligible to practice law for failing to comply with mandatory continuing legal education requirements. On June 25, 2021, also during her probationary period, respondent was certified ineligible to practice law for failing to pay the costs associated with her discipline in *Hunt I*. On October 1, 2021, again during her probationary period, respondent was certified ineligible to practice law for failing to file her annual trust account disclosure form.

The ODC made several attempts to contact respondent via telephone, email, regular mail, and personal service regarding her ineligibility. However, the ODC's attempts were unsuccessful.

The Morgan Matter

On February 11, 2022, the ODC received a disciplinary complaint against respondent from her client, Patricia Morgan. Ms. Morgan alleged that she had been trying to contact respondent via telephone, text messages, and social media with no success. Between February 23, 2022, and April 28, 2022, the ODC made several attempts to notify respondent of Ms. Morgan's complaint via certified mail, regular mail, email, and telephone. These attempts were unsuccessful, and respondent never submitted a response to the complaint or otherwise cooperated with the ODC's investigation.

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 1.1(b) (failure to comply with MCLE requirements), 1.1(c) (failure to comply with professional obligations), 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), 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.

The Court:

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 fulfill her professional obligations, failed to pay costs associated with a prior disciplinary matter, and failed to cooperate with the ODC in two investigations. Based upon these facts, respondent has violated the Rules of Professional Conduct as charged.

Respondent violated duties owed to her clients and the legal profession, causing actual harm to the disciplinary system and potential harm to her clients. In light of her prior disciplinary history, she acted knowingly, if not intentionally. The Court agreed with the hearing committee that the baseline sanction is suspension. Based upon the record submitted, the Court agreed with the committee's finding of aggravating factors as well as its finding that no mitigating factors are present. The committee found the following aggravating factors present: a prior disciplinary record, a pattern of misconduct, and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency.

Turning to the issue of an appropriate sanction, the instant matter presents an almost identical factual scenario as the case of *In re: Fahrenholtz*, 09-0748 (La. 10/2/09), 18 So.3d 751. In *Fahrenholtz*, an attorney was declared ineligible to practice law for failure to pay his bar dues and the disciplinary assessment and separately for failure to comply with MCLE requirements. He also failed to cooperate with the ODC in two investigations. For this knowing, if not intentional, misconduct, the Court suspended the attorney from the practice of law for one year and one day. In light of *Fahrenholtz* and the aggravating factors, the Court found the committee's recommended sanction is appropriate and adopted the hearing committee's recommendation and imposed a suspension from the practice of law for one year and one day.

Crichton, J., dissents and assigns reasons.

As with respondent's original disciplinary matter before this Court, I would impose harsher sanctions than those elected by the majority. I find her recalcitrance toward the disciplinary process - particularly in light of her history of misconduct - warrants a longer period of suspension. See *In re: Quiana Marie Hunt*, 2019-1412 (La. 11/12/19), 282 So.3d 213, 219 (Crichton, J., dissenting). Specifically, respondent's failure to cooperate with the ODC, failure to file an answer, and failure to present anything to the hearing committee or this Court, collectively demonstrate a stunning indifference to her license to practice law and this noble profession that is gravely concerning. See also *In re Hingel*, 2019-1459 (La. 11/19/19), 300 So.3d 815, 820 (Crichton, J., additionally concurring, noting "the violations alone warrant significant discipline, but the indifference towards one's license to practice law is most concerning"); *In re: Jennifer Gaubert*, 18-1980 (La. 2/11/19), 263 So.3d 408 (Crichton, J., additionally concurring, noting the troublesome nature of an attorney refusing to participate meaningfully in disciplinary proceedings); *In re: Reid*, 2018-0849 (La. 12/5/18), 319 So.3d 252 (Crichton., J., dissenting, noting that "lack of cooperation with ODC, the Hearing Committee, the Disciplinary Board, and this Court demonstrates [a] stunning indifference to this noble profession"); *In Re: Neil Dennis William Montgomery*, 18-0637 (La. 8/31/18), 251 So.3d 401 (Crichton, J., dissenting, finding disbarment appropriate where respondent made "zero effort" to respond to any of the accusations against him); *In re: Klaila*, 2018-0093 (La. 3/23/18), 238 So.3d 949 (Crichton, J., additionally concurring, emphasizing respondent's failure to cooperate warranted the suspension imposed). For the foregoing reasons, I would impose a longer period of suspension than one year and one day.

In re: Erin L. Tyrer, 2022-B-01632 (La. 2/14/23)

In June 2019, respondent was telephoned by a friend who indicated that she was being placed under arrest for DWI. Respondent drove to the scene and began seeking information about the arrest. The on-scene officer instructed respondent to leave several times, but she continued to argue with him. At this point, the officer detected an odor of alcohol on respondent's breath and asked for her driver's license. Respondent refused to submit to a field sobriety test, and the officer

attempted to place her under arrest. After initially resisting his efforts, respondent submitted to a field sobriety test and a Breathalyzer test, which showed a blood alcohol level of .129g%. Respondent was arrested and charged with DWI and resisting an officer.

Respondent self-reported her arrest to the ODC. The ODC referred her to the Judges and Lawyers Assistance Program ("JLAP") for an evaluation. Based on the information provided by respondent at her initial evaluation, the evaluator concluded that respondent did not have a substance use disorder requiring treatment. However, respondent was recommended for counseling regarding other issues. During one such counseling session, respondent acknowledged that she recently used cocaine and had used it historically, something she failed to truthfully disclose to the JLAP evaluator previously.

In June 2020, 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 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

Prior to the hearing, respondent and the ODC filed a joint stipulation of facts and rule violations. In this document, respondent admitted to the facts set forth in the formal charges, with limited variation, and admitted that she violated the Rules of Professional Conduct as charged. The parties stipulated that she violated duties owed to the public; that her actions were at all times knowing; and that her conduct caused the potential for harm to others and actual harm to the legal profession. The parties also stipulated to the presence of aggravating and mitigating factors, all of which are outlined in the disciplinary board's report. The matter then proceeded to a mitigation hearing, which was conducted by the hearing committee on July 2, 2021.

The Court:

Respondent has stipulated that she engaged in professional misconduct by driving while intoxicated and by using cocaine. In doing so, respondent has violated the Rules of Professional Conduct as alleged in the formal charges and as set forth in the joint stipulation submitted by the parties. Therefore, the sole question presented for the Court's consideration is the appropriate sanction for this misconduct.

The record supports a finding that respondent knowingly violated duties owed to the public and the legal profession. Her actions had the potential to cause harm to others and caused actual harm to the legal profession. The applicable baseline sanction is suspension.

In determining an appropriate sanction, the Court found guidance from the case of *In re: Baer*, 09-1795 (La. 11/20/09), 21 So.3d 941. In *Baer,* the Court stated the following with respect to appropriate sanctions for DWI offenses:

> We have imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, we tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.

After self-reporting her arrest to the ODC, respondent reached out to JLAP and followed their recommendations for evaluation and treatment. Respondent then signed a five-year JLAP recovery agreement on February 1, 2021. Despite the initial deficiencies with compliance, JLAP

reports that she is now fully compliant with the agreement. The disciplinary board's recommended sanction includes a probationary period that coincides with the duration of the agreement, which will encourage her commitment towards recovery and protect the public by providing a mechanism to remove her from practice if she relapses into substance abuse in the future.

The court suspended respondent from the practice of law for eighteen months, with all but one year deferred, subject to the following conditions:

1. Upon reinstatement after the active portion of her suspension, respondent shall be subject to a probationary period coinciding with the term of her current, five-year JLAP monitoring agreement executed in February 2021;
2. Respondent shall at all times remain in compliance with her current JLAP monitoring agreement, with periodic reports to be provided to the ODC; and
3. Any failure of respondent to comply with her current JLAP monitoring agreement or any other conditions of probation or any misconduct during the deferral or probationary periods will be grounds for making the deferred suspension executory, or for imposing additional discipline, as appropriate. Finally, the board recommended respondent be assessed with the costs and expenses of this proceeding.

The Court further ordered that respondent's suspension run retroactive to November 4, 2020, the date of her interim suspension.

In re: Carl Joseph Rachal, 2022-B-01636 (La. 2/14/23)

By way of background, in August 2016, Donna Turner underwent a hair transplant procedure performed by Dr. Frank Campisi at Bosley Medical Institute, Inc. ("Bosley"). Following the procedure, Ms. Turner developed an open wound on the back of her head.

Dissatisfied with the results of the procedure, in September 2016, Ms. Turner hired respondent to represent her with respect to a medical malpractice claim against Dr. Campisi and Bosley. On July 27, 2017, respondent fax-filed a petition for damages against Dr. Campisi and Bosley on Ms. Turner's behalf. He then physically filed the petition into the court record on August 1, 2017.

Thereafter, respondent failed to conduct any discovery. On August 23, 2018, Dr. Campisi and Bosley filed a motion for summary judgment. In an October 3, 2018, email to respondent, Ms. Turner asked him about the status of the motion, indicating he had informed her of same. Ultimately, though, respondent failed to file an opposition to the motion and failed to attend the October 9, 2018, hearing on the motion. As a result of respondent's failures, on October 18, 2018, the judge signed a judgment granting the motion and dismissing Ms. Turner's lawsuit with prejudice.

On December 18, 2018, respondent filed a motion and order to appeal the judgment. In April 2019, respondent filed his appellate brief. He then attended oral argument, which was scheduled for September 11, 2019. On October 16, 2019, the court of appeal affirmed the dismissal of Ms. Turner's lawsuit.

Meanwhile, on February 21, 2019, respondent met with Ms. Turner for the first time since the motion for summary judgment was granted. Although respondent indicated he discussed with Ms. Turner the granting of the motion, he admitted that he did not tell her why the motion had been granted and did not disclose his failures to her either prior to this meeting or during the meeting.

On March 7, 2019, Ms. Turner sent respondent an email, in which she requested a copy of her file. Respondent mailed Ms. Turner a copy of the file sometime between April 8, 2019, and April 12, 2019.

On March 30, 2019, the ODC received a disciplinary complaint against respondent from Ms. Turner. In her complaint, Ms. Turner alleged that respondent did not inform her of the appeal he had filed until their meeting on February 21, 2019, at which time he did not explain why the appeal was necessary. She also alleged that, during the representation, he ignored her repeated requests for a status update and missed three scheduled appointments with her.

The ODC received a supplemental complaint from Ms. Turner on April 17, 2019. In the supplement, Ms. Turner indicated that she had received a copy of her file from respondent on April 15, 2019. In reading over the file materials, Ms. Turner learned for the first time that respondent did not appear at the hearing on the motion for summary judgment.

On April 25, 2019, the ODC received respondent's response to Ms. Turner's complaint. In his response, respondent admitted that he failed to show up for one scheduled meeting with Ms. Turner. He also claimed that, during the February 21, 2019, meeting, he informed Ms. Turner of the granting of the motion for summary judgment and his appeal of same.

Although respondent answered the complaint, the ODC took his sworn statement on July 15, 2019. During the sworn statement, respondent provided the following relevant testimony:

1. With respect to his failure to perform discovery, respondent stated, "I guess, in retrospect, I can't tell you a reason why or not."
2. Regarding his failure to file an opposition to the motion for summary judgment or appear for the hearing, respondent stated, "[I]t was an error in scheduling… I got served with the motion at my home… I don't know what happened at that time as to why that was missed… I didn't calendar the deadlines, nor did I calendar the hearing date."
3. Regarding the alleged missed appointments with Ms. Turner, respondent again admitted missing only one meeting, stating, "There was one that I missed that I had scheduled… I just missed the meeting." He also admitted canceling one meeting shortly before it was scheduled to take place.
4. Respondent admitted that, as of the date of the sworn statement, he had not yet informed Ms. Turner of the reason why the motion for summary judgment was granted and had not yet disclosed to her his failures regarding the motion.

On July 23, 2019, respondent finally sent Ms. Turner a letter, in which he disclosed that he had failed to file an opposition to the motion for summary judgment and had failed to attend the hearing on the motion. In the letter, respondent also informed Ms. Turner of the potential malpractice claim she had against him, provided her with the contact information for his malpractice insurer, and advised her to consult another attorney regarding the malpractice claim.

Ms. Turner subsequently filed a malpractice lawsuit against respondent. On September 28, 2020, Ms. Turner and respondent's malpractice insurer settled the lawsuit.

In February 2020, the ODC filed formal charges against respondent alleging that his conduct violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct. Respondent filed an answer to the formal charges, denying that he violated the Rules of Professional Conduct and requesting that the charges be dismissed.

The Court:

The record of this matter supports a finding that respondent neglected Ms. Turner's legal matter, which resulted in the dismissal of her lawsuit. He then failed to promptly communicate to Ms. Turner that his malpractice caused the dismissal. Based on these facts, respondent has violated the Rules of Professional Conduct as alleged in the formal charges.

Respondent negligently and knowingly violated duties owed to his client, causing her actual harm. The Court agreed with the hearing committee and the disciplinary board that the baseline sanction is suspension. In aggravation, the board found a dishonest or selfish motive, multiple offenses, submission of a false statement during the disciplinary process (respondent stated that he had "done [his] best to be truthful with Ms. Turner during the handling of her case"), and substantial experience in the practice of law. In mitigation, the board found the absence of a prior disciplinary record, personal or emotional problems (only as to respondent's failures to oppose the motion for summary judgment and appear at the hearing), and remorse. The Court agreed with the board with respect to the applicable aggravating and mitigating factors.

The Court found a short period of suspension, fully deferred, as recommended by the board, as the appropriate for respondent's misconduct. Respondent's lack of diligence with respect to the motion for summary judgment was negligent and occurred at a time of personal hardships in his life. Had respondent notified Ms. Turner of his negligence and referred her to his malpractice insurer immediately, then this matter would arguably not be before the Court. Instead, for approximately nine months, respondent knowingly kept Ms. Turner in the dark about his failures to oppose the motion for summary judgment and to attend the hearing. The Court found this ongoing deception, even while facing a disciplinary complaint by Ms. Turner, is the heartland of respondent's misconduct and warrants discipline.

The Court considered similar misconduct in two recent cases, *In re: Claiborne*, 22-0492 (La. 10/21/22),___ So. 3d___, and *In re: Charles*, 21-1853 (La. 5/13/22), 340 So.3d 901. In *Claiborne*, an attorney neglected a legal matter, resulting in the dismissal of a client's lawsuit due to abandonment, failed to communicate with the client and opposing counsel, failed to advise the client of the potential malpractice claim against him, and knowingly made a false statement of fact when responding to the client's disciplinary complaint. For this negligent and knowing misconduct, the Court suspended the attorney from the practice of law for six months, with all but thirty days deferred. In *Charles*, an attorney failed to file her state income tax return, which resulted in her disqualification as a judicial candidate, neglected a client's legal matter, and then misled the client regarding the status of the client's case. For this negligent and knowing misconduct, the Court suspended the attorney from the practice of law for nine months, with six months deferred, followed by a two-year period of probation with conditions. Arguably, respondent's misconduct is not as egregious as the misconduct in either *Claiborne* or *Charles*. Unlike in *Claiborne*, respondent eventually informed his client of his malpractice and advised her to seek independent counsel to pursue a claim against him, which she was able to do. Unlike in *Charles*, respondent did not engage in the additional misconduct of failing to file his state income tax return. The Court adopted the board's recommendation and suspended respondent from the practice of law for sixty days, fully deferred, subject to the condition that any misconduct by respondent during the deferral period may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate.

Genovese, J., dissents and would reject the disciplinary board's recommendation.

In re: Jason Brozik, 2022-B-01576 (La. 2/7/23)

Respondent structured his written fee agreement as an hourly-fee arrangement ("the fee agreement") but routinely treated the fee agreement as a flat-fee arrangement. Because the fee agreement was structured as an hourly-fee arrangement, respondent was required to place client funds paid as advanced fees into his client trust account and keep accurate records of the account for reconciliation purposes. Nevertheless, respondent routinely deposited these advanced fees into his operating account, using these funds for operating costs and for the payment of attorney's fees that were not yet earned.

Specifically regarding the advanced fee, the fee agreement stated that this fee was non-refundable. The fee agreement also stated that work would not commence until the entire advanced fee was paid. Notwithstanding this provision, the fee agreement further stated that, if the client did not pay the entire advanced fee within thirty days of signing the fee agreement, respondent had the right to cancel the fee agreement without refunding any portion of the advanced fee already paid.

Specifically regarding the hourly rates charged, the fee agreement stated that "secretarial services will be billed at $50 per hour." The fee agreement also included a provision for after hours and rush work, stating, "Any legal services performed between 5:30 p.m. and 7:30 a.m. or on weekends, holidays, or on a rush basis will be charged at the rate of $400 per hour."

At some point in 2013, the ODC received information about respondent's fee agreement during its investigation of alleged misconduct by another attorney. In September 2013, respondent provided a response to the ODC's inquiries regarding the fee agreement. In November 2013, respondent provided the ODC with a sworn statement, during which he revealed the following:

> 1. Respondent set up his law firm as an LLC called Civil Law Center, LLC ("CLC") and hired attorneys to work for CLC as independent contractors. He provided these attorneys with free office space and use of a conference room. He also paid their bar dues and disciplinary assessment and maintained malpractice insurance for them;
> 2. Respondent admitted that he was wrongly treating the advanced fees as flat fees despite the language of the fee agreement, but he claimed he never enforced any part of the fee agreement;
> 3. Because respondent considered the advanced fee to be a flat fee, he immediately paid a portion of the fee to the attorney assigned to the case and deposited the remainder into his operating account;
> 4. Despite the fee agreement's language, respondent claimed he never billed his clients by the hour, never charged for secretarial work, and never charged any client $400 per hour for after hours or rush work. He stated that he included the $400 per hour fee to discourage clients from calling him on the weekends.

In December 2013, respondent sent letters to all of his current clients, advising them that he had revised the fee agreement to ensure compliance with the Rules of Professional Conduct and inviting them to sign a revised fee agreement. Between 2014 and 2021, respondent provided the ODC with documentation in an effort to prove he did not convert client funds.

The ODC's forensic auditor, Angelina Marcellino, conducted multiple audits of respondent's financial records and ultimately determined in December 2021 that respondent failed to refund a total of $3,524.50 in unearned fees as follows:

1. $468.25 to William Tholborn;
2. $737.50 to Pearline Foley;
3. $1,531.25 to Ryan Fletcher; and
4. $787.50 to Keandra Augustine.

The record reflects that respondent has not yet provided these clients with refunds.

In March 2021, the ODC filed formal charges against respondent. In addition to alleging some of the facts as set forth in the underlying facts section above, the formal charges also alleged the following:

> 1. Despite claiming in his sworn statement that his clients "never ever got actually charged $400," respondent provided the ODC with an invoice showing he charged his client, Michael Evans, $412.50 at the "special rate" on March 30, 2013;
>
> 2. As part of his law practice, respondent had arrangements with several other attorneys to whom he would refer cases. Upon receiving an advanced deposit from a client, respondent would immediately give a portion of those funds to one of these referral attorneys assigned to handle the client's case. The fee agreement provided that these funds represented an advanced deposit from which respondent was to draw hourly fees, and respondent was required to deposit these funds into his trust account. Therefore, in failing to deposit these advanced deposits into his trust account, he immediately received a share of the fee even though he did no work on the case. The evidence establishes that respondent's involvement in the individual client matters was limited to signing the client up and referring the case to another attorney. The attorneys to whom he referred cases were independent contractors, and the arrangement between respondent and the independent contractors was never disclosed to the client, in writing, as required by the Rules of Professional Conduct. Furthermore, respondent did not render meaningful legal services to the clients in these matters; and
>
> 3. A review of respondent's financial records uncovered a pattern of conversion of client funds, primarily related to his failure to deposit advanced fees into his trust account. Based upon the initial documentation respondent provided to the ODC, as of June 17, 2014, respondent received a minimum of $40,896.13 in funds attributable to advanced deposits for fees and/or costs that he failed to deposit into his trust account. Due to respondent's inability to account for the time associated with all individual client matters, there were several cases where it appeared respondent owed a refund to the client. Yet, he could not account for those client funds. He also failed to maintain proper documentation to account for deposits and disbursements related to those client funds.

Based upon the entirety of the factual allegations set forth in the formal charges, the ODC alleged that respondent violated the following provisions of the Rules of Professional Conduct: Rules 1.5 (fee arrangements), 1.5(f)(3) (when the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account), 1.8(e) (conflict of interest), 1.15(a) (safekeeping property of clients or third persons), 8.4(a) (violation of the Rules of Professional

Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent filed an answer to the formal charges, essentially arguing that the fee agreement was a flat-fee arrangement, in contrast to his sworn statement testimony. Therefore, he denied engaging in any misconduct.

The Court:

The record of this matter supports a finding that respondent structured his written fee agreement as an hourly-fee arrangement and then routinely treated it as a flat-fee arrangement, included provisions in the fee agreement charging unreasonable and improper fees, included provisions in the fee agreement making the advanced fee non-refundable, failed to deposit clients' advanced funds into a trust account, and failed to refund unearned fees totaling $3,524.50 to four clients. Based on these facts, respondent has violated the Rules of Professional Conduct as found by the disciplinary board. The record further supports a finding that respondent knowingly violated a duty owed to his clients, causing at least four of them actual harm. The baseline sanction is suspension.

Aggravating factors include a dishonest or selfish motive, a pattern of misconduct, and indifference to making restitution (although respondent has expressed an intention to make restitution to the four clients to whom he owes refunds, he has failed to do so). Mitigating factors include the absence of a prior disciplinary record, full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings, inexperience in the practice of law, and a delay in the disciplinary proceedings.

The Court considered somewhat similar misconduct in the case of *In re: Webre*, 17-1861 (La. 1/12/18), 318 So.3d 667. In *Webre*, an attorney was hired to defend a client against a personal injury claim. The client paid the attorney a $2,000 advanced fee towards an hourly rate of $150. Instead of depositing the advanced fee into his client trust account, the attorney deposited the funds into his personal account. The attorney then neglected the client's legal matter, and when the client terminated the representation and requested a refund, the attorney waited four months before refunding $1,728 in unearned fees to the client. The ODC's subsequent review of the attorney's trust account also revealed several debit card and/or ATM withdrawals from the account. After determining that the attorney's misconduct was negligent and caused potential and actual harm, the Court suspended the attorney from the practice of law for one year and one day, fully deferred, subject to one year of supervised probation with conditions.

While *Webre* involves additional misconduct not found here, the Court found respondent's failure to deposit into his trust account the advanced fees he collected based on hourly fee agreements is much more egregious than Mr. Webre's considering respondent's misconduct affected more than fifty clients. Furthermore, respondent's continued failure to refund unearned fees to four clients is much more egregious than Mr. Webre's four-month delay in refunding his client's unearned fee. The Court found the more lenient sanction than was imposed in *Webre*, as has been recommended by the board, is unwarranted here. The Court rejected the board's recommended sanction and suspend respondent from the practice of law for one year and one day, fully deferred, subject to a two-year period of probation with the following conditions:

1. Respondent shall make restitution to William Tholborn, Pearline Foley, Ryan Fletcher, and Keandra Augustine in the total amount of $3,524.50;

2. During the first year of the probationary period, respondent shall attend the Louisiana State Bar Association's Trust Accounting School and attend training on office management procedures; and

3. If respondent maintains a client trust account, he shall have the account audited quarterly and report the results to the ODC.

Weimer, C.J., concurs in part, dissents in part and assigns reasons.

I dissent in part because I would impose some period of actual suspension.

Genovese, J., dissents and would reject the disciplinary board's recommendation.

Crain, J., dissents and assigns reasons.

I agree that respondent violated the Rules of Professional Conduct and that discipline is appropriate. However, I find any violations fully mitigated. The investigation of a professional is the exercise of an awesome power with the potential for career altering effects. That power must be exercised judiciously, efficiently and timely.

The ODC began investigating this matter in 2013, having received information suggesting that respondent was operating with an improper fee structure, a serious matter. Respondent answered the ODC's inquiry and in November 2013 provided them with a sworn statement. In December 2013, he revised his fee agreement and notified his clients.

Yet, an audit was not performed by the ODC until February 2017. At that time the ODC believed respondent could not account for $40,896.13, representing unearned fees and unused costs that were not in his trust account. They were wrong, and respondent provided documentation for all but $3,524.50. After responding to the four-year delayed audit, respondent heard nothing from the ODC until he was formally charged with these violations in March 2021.

Respondent does not admit that the $3,524.50 are not earned fees, but after many years, and unlike the remaining $37,371.63 he was accused of not earning, he cannot produce documentation proving that fact. I find the remaining amount that cannot be accounted for fully mitigated by the inexcusable investigation delay of roughly a decade.

A delayed investigation can be abusive. I believe the nearly ten years that this process has burdened this attorney is itself a form of punishment. Attorneys are bound by ethical rules which must be honored and complied with every day and in every detail of their professional lives. Those rules and the oath which enables them are the foundation of our profession and the public's confidence in it. The firm, but fair, enforcement of those rules is a critical responsibility of all lawyers. Thus, the reporting obligations for lawyers who observe or are aware of potential violations. But when the discipline enforcement power is abused, the entire ethical mosaic begins to erode. We must be vigilant in protecting against that.

I respect the work of the ODC, and I am certain that a supporting timeline can be constructed to argue justification for these delays. But, ten years to conclude this matter is too long, and in my opinion, professionally indefensible. The Board found the following additional mitigating factors, with which I agree: no prior disciplinary history, inexperience in the practice of law, full and free disclosure during the proceedings, and cooperation. Coupled with the investigation delays, these factors are fully mitigating.

Therefore, I dissent and would impose a public reprimand as appropriate discipline.

In re: W. James Singleton, 2022-B-01338 (La. 1/27/23)

In 2011, Nicholas Johnson and Brandon Hewitt were hit by a Federal Express freight truck while changing a flat tire on the shoulder of I-20 in Bossier Parish. Mr. Hewitt was killed in the accident, and Mr. Johnson suffered serious injuries. On September 1, 2011, Mr. Johnson hired respondent to represent him in a claim for damages against Federal Express.

Respondent filed suit on Mr. Johnson's behalf in federal district court in Shreveport. In 2012, the parties participated in mediation and reached a $750,000 settlement. On May 24, 2012, Federal Express issued a settlement check in the amount of $750,000 payable to Mr. Johnson and respondent. Both Mr. Johnson and respondent endorsed the check, and on June 7, 2012, respondent deposited $640,000 of the settlement funds into his client trust account. Respondent split the remaining $110,000 between two non-trust bank accounts, placing $80,000 into an "expense" account and $30,000 into his operating account. On July 3, 2012, the balance of respondent's client trust account dropped below the amount he was required to hold on behalf of Mr. Johnson.

Under the contingency fee agreement signed by Mr. Johnson, respondent was entitled to 40% of the gross amount of any recovery obtained after the filing of a lawsuit, or $300,000. In addition, respondent was due reimbursement for costs and sums he advanced to Mr. Johnson during the representation. According to a March 18, 2021, audit report prepared by the ODC's forensic auditor, these reimbursements totaled $47,840.75, leaving the sum of $402,159.25 available to be distributed to Mr. Johnson and to third parties on his behalf. The audit report indicates that of this sum, the third parties were collectively owed $112,183.35, and Mr. Johnson was entitled to $289,975.90.

Respondent did not disburse the settlement proceeds in a prompt and timely manner. At least one of the third-party medical providers, Med-Trans, was not paid. Furthermore, respondent failed to provide Mr. Johnson with a settlement disbursement statement, as required by the Rules of Professional Conduct. The ODC's audit report reflects that respondent paid Mr. Johnson a total of $283,295.10 in twelve payments made between June 21, 2012, and September 23, 2016. Therefore, respondent still owes $6,680.80 to Mr. Johnson. Finally, the audit report indicates that respondent paid himself a total of $428,700 in attorney's fees, well in excess of the $300,000 fee due to him under the contingency fee agreement.

In December 2016, Mr. Johnson filed a complaint against respondent with the ODC. During its investigation of the complaint, the ODC requested that respondent provide financial records related to his trust account. Respondent provided some records, but the documentation was incomplete, necessitating the issuance of a subpoena to Capital One Bank to obtain the trust account records.

In August 2020, the ODC filed formal charges against respondent. The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.5(c) (upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination), 1.15(a) (safekeeping property of clients or third persons; complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation), 1.15(d) (a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request, shall promptly render a full accounting regarding such property), 8.1(a) (a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or

misrepresentation). Respondent answered the formal charges and denied the allegations of misconduct.

The Court:

The record establishes by clear and convincing evidence that respondent grossly mishandled Mr. Johnson's settlement. The entire amount of the settlement proceeds respondent received on behalf of Mr. Johnson should have been deposited into a client trust account. These proceeds then should have been disbursed in accordance with Rule 1.15 of the Rules of Professional Conduct and the written contingency fee contract signed by Mr. Johnson. Moreover, respondent was required by Rule 1.5(c) to provide Mr. Johnson with a written settlement statement showing the remittance to the client and an itemization of the fees and expenses incurred. However, respondent did none of these things. As a result, there is no proof of exactly where Mr. Johnson's settlement money went. Respondent's attempts to explain where the money went fail because there is nothing to corroborate his claims. His breach of the duty to create a disbursement sheet creates an adverse evidentiary presumption that the disbursement sheet would not have been in his favor.

Respondent acted knowingly and intentionally, and violated duties owed to his client and the legal profession. Respondent caused actual injury to Mr. Johnson. Respondent also caused harm to the profession and the disciplinary system, in that the ODC was forced to spend its limited resources and an excessive amount of time unraveling respondent's shoddy accounting. The aggravating and mitigating factors found by the board are supported by the record. The board determined that the following aggravating factors are present: a dishonest or selfish motive, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution. The board determined that the sole mitigating factor present is the absence of a prior disciplinary record.

The Court found the appropriate sanction for respondent's misconduct is a one year and one day suspension from the practice of law. This sanction will require respondent to apply for reinstatement pursuant to the provisions of Supreme Court Rule XIX, § 24 and demonstrate that he has remedied the problems that caused his misconduct before he is reinstated.

Weimer, C.J., concurs in part and dissents in part and assigns reasons.

I respectfully dissent as to the sanction imposed.

The facts of this case are egregious as detailed in the majority opinion. The record indicates that respondent has shown no remorse but rather has offered excuses and engaged in perpetrating falsehoods. The only mitigating factor found is a lengthy career without a prior ethical complaint, which is offset by a host of aggravating factors, which the majority opinion recognizes are supported by the record. See *In re: Singleton*, 22-1338, pp. 9-11 (La. 1/__/23), __ So.3d.__, __.

Respondent caused harm to the profession and the disciplinary system in that the Office of Disciplinary Counsel (ODC) was required to spend its limited resources and an excessive amount of time unraveling the accounting nightmare respondent created while withholding an amount in excess of the agreed fee and withholding the client's money for a lengthy period of time. I agree with the majority's significant and important finding that violating "the duty to create a

disbursement sheet creates an adverse evidentiary presumption that the disbursement sheet would not have been in [respondent's] favor." See Id., 22-1338 at 11, __So.3d. at___.

Based on the ABA's Standards for Imposing Lawyer Sanctions, the hearing committee and the disciplinary determined the baseline sanction is disbarment. I very respectfully dissent as, based on the record, I would follow the unanimous recommendations of the hearing committee and disciplinary board and impose disbarment as the sanction in this case.

Crichton, J., additionally concurs and assigns reasons.

I agree with the majority that respondent has violated the Rules of Professional Conduct. I write separately to note that, in my view, respondent's principal mistake was his association with and seemingly unfettered reliance on a young lawyer in his firm, Chris Sices. Through respondent's failure to adequately supervise Mr. Sices, the underlying matter giving rise to the charges of misconduct spiraled out of control, resulting in delinquent record-keeping and mismanagement of settlement funds.

By way of background, Mr. Sices was permanently disbarred in 2020 by a majority of this Court for multiple violations of the Rules of Professional Conduct, including six separate instances of conversion over four years (2014-2017), constituting criminal acts which caused actual harm to clients, the public, and the legal profession. See *In re: Sices*, 2019-1875 (La. 2/18/20) 289 So.3d 1013. A majority of this Court agreed with the Hearing Committee and the Disciplinary Board that Mr. Sices' misconduct warranted permanent disbarment:

> The record further supports a finding that respondent violated duties owed to his clients, the public, and the legal profession. His misconduct was knowing and intentional, and caused significant actual harm. The baseline sanction for this type of misconduct is disbarment. The record supports the aggravating and mitigating factors found by the disciplinary board.
>
> In their respective reports, the hearing committee and the disciplinary board have concluded respondent's offenses are so egregious that he should be permanently prohibited from applying for readmission to the bar. We agree.

In re: Sices, 19-1875, p. 12 (La. 2/18/20), 289 So.3d 1013, 1022 (emphasis added). (Johnson, C.J. and Hughes, J., dissented and would impose regular disbarment.).

In relation to the instant charges, respondent represented that Mr. Sices handled the underlying matter through settlement, "from A to Z." Further, at the last meeting between Singleton and the complainant, complainant was seemingly "represented" by Mr. Sices, who at that time was no longer employed by respondent's law firm at all. During this meeting, Mr. Sices was "advising or consulting" with complainant, despite having assisted complainant in crafting a disciplinary complaint against respondent a mere six days prior. Such timing is not a coincidence and, again, I find Mr. Sices' continued involvement in the underlying matter muddies the unique facts presented here.

I also have grave concerns over the impeachment evidence of complainant Nicholas Johnson, as set forth in his pre-hearing deposition and which, in my view, should have been admitted in accordance with La. Code of Civil Procedure 1450. But, the Hearing Committee, comprised of two lawyers and a psychologist, refused to admit or even consider the impeachment evidence, ignoring La. S.Ct. Rule XIX, Sec. 18(B), which provides that "[t]he Louisiana Code of Evidence

shall guide, but not restrict the development of a full evidentiary record." The deposition was instead filed in the record as an offer of proof, the Hearing Committee "let[ting] it in as a proffer."

As set forth below, complainant's deposition (as well as his testimony at the hearing) demonstrates a stunning lack of credibility and manipulation of the circumstances, apparently engineered by the now-permanently disbarred Mr. Sices. For example, complainant indicated that Mr. Sices told him respondent was not trustworthy, testifying: "[w]ell, after Pastor Ashley saying it's a possibility and then me talking to Chris, then I started to question it." However, complainant also stated towards the end of his testimony that "Mr. Singleton did all he could for me, I can say that, but I just had some doubts, you know, and I wanted to find out the truth. That's all." In my view, however, complainant's self-professed noble intention of seeking the truth is belied by his own actions which toe the line of extortion.

During his deposition, complainant admitted he had "no personal knowledge" of how much money respondent presently owes him:

> MR. DAVIS: My question again was, as we sit here this afternoon, do you have any personal knowledge whether or not Mr. Singleton still owes you any money from this lawsuit?
> MR. JOHNSON: No. I do not.
> MR. DAVIS: Okay. As we sit here today, this afternoon, do you know the amount of money that you have received from Mr. Singleton, the total amount, any personal knowledge? Do you know that?
> MR. JOHNSON: I do not.

Regarding the purchase of a car during respondent's representation of complainant, complainant indicated only his girlfriend/ex-wife at the time (Vanessa Adger) purchased the car (which he confirmed was with money received from respondent Singleton), but a few questions later, admitted it was his signature was on the Car Depot form as well:

> MR. DAVIS: Okay. What about you purchased a car from Car Depot. Is that correct?
> MR. JOHNSON: Vanessa did.
> MR. DAVIS: You did too. Did you not?
> MR. JOHNSON: [NEGATIVE NOD].
> MR. DAVIS: You're shaking your head. Is that a yes or a no?
> MR. JOHNSON: No. Vanessa did.
> MR. DAVIS: You never signed any papers at Car Depot to purchase a vehicle?
> MR. JOHNSON: I don't recall. ***
> MR. DAVIS: I see several signatures on there, Nicholas Johnson. Are those your signatures? Take your time and look back through. I count one, two, three, four signatures of Nicholas Johnson. Are those your signatures?
> MR. JOHNSON: Yes, sir.
> MR. DAVIS: Okay, and they are from Car Depot. Is that correct?
> MR. JOHNSON: Yes, sir.
> MR. DAVIS: Vanessa Adger's name is on there. That's correct.
> MR. JOHNSON: That's correct.

MR. DAVIS: And that's the purchase of a 2006 Pontiac four-door, gray. Is that correct?
MR. JOHNSON: Yes, sir.
MR. DAVIS: Is that the vehicle y'all got?
MR. JOHNSON: Yes, sir.
MR. DAVIS: So are you denying that you didn't sign these documents?
MR. JOHNSON: It's been so long ago. I didn't - couldn't remember, but my signature is there. So I signed it.
MR. DAVIS: Correct. So when you made the statement before you did not, that was not true. Is that correct?
MR. JOHNSON: Correct.

Also during his deposition, when asked whether complainant conferred with anyone else about filing his complaint against respondent, he answered "I don't want to give that information." He refused a second time to give the information but eventually reluctantly answered it was the pastor at his place of employment (Pastor Alvin Ray Ashley at Christ Center Church).

The deposition also reveals that at some point prior to the filing of the complaint, Mr. Johnson emailed respondent indicating "his attorney" asked him to reach out and obtain copies of documents, but admitted in his deposition he did not have counsel at that time but was trying to "find out some information." Specifically, complainant admitted he was lying and stated he did this "because me [sic] and Mr. Singleton were going back and forth and I wasn't pleased with his answers, and I was trying to make him tell me the truth."

Finally, I note that respondent, a well-respected lawyer since 1986, has never had a disciplinary complaint filed against him or had any sanction imposed upon him by this Court. He has served as a member of the Louisiana Law Institute and as a representative to the Louisiana Legislature from 1983 to 1996, during which time he chaired the House Committee on the Judiciary. In short, respondent's history of service to his profession constitutes compelling mitigation evidence, which, in my view, has allowed this Court to depart from the more serious sanction as recommended by the ODC.

Again, while I take respondent's misconduct seriously, I do not find the recommended sanction by the Disciplinary Board appropriate under these circumstances. Accordingly, I agree with the majority's imposition of a less severe sanction in this matter.

In re: Alton Bates, II, 2022-B-1357 (La. 1/27/23)

Respondent was admitted to the practice of law in Louisiana in 2001. Respondent has prior discipline. On November 11, 2015, respondent and the ODC filed with the Louisiana Supreme Court a joint petition for consent discipline, wherein respondent admitted to neglecting a legal matter, failing to communicate with a client, mishandling his client trust account, which resulted in commingling and conversion of client funds, and notarizing an affidavit outside the presence of the signatory. Respondent's admitted misconduct occurred between 2011 and late 2014. For this misconduct, the parties proposed that respondent be suspended from the practice of law for one year and one day, fully deferred, subject to a two-year period of supervised probation with conditions. On January 15, 2016, the Court accepted the petition for consent discipline and imposed upon respondent the parties' proposed sanction. *In re: Bates*, 15-2102 (La. 1/15/16), 184 So.3d 670 ("*Bates I*").

In September 2011, Aljilia Prelow was involved in a three-car accident. In January 2012, Ms. Prelow hired respondent to represent her in a personal injury matter stemming from the accident. In September 2012, respondent filed a petition for damages on Ms. Prelow's behalf. In February 2014, respondent settled Ms. Prelow's claim for $300.

The record contains no evidence that respondent consulted Ms. Prelow about the settlement, and she denied agreeing to the settlement. When he received the settlement check, respondent deposited the check into his operating account instead of his client trust account. Ms. Prelow also confirmed that the endorsement on the settlement check is not hers. Moreover, respondent did not prepare a written disbursement statement, and Ms. Prelow did not receive any of the proceeds from the settlement.

On March 26, 2014, the judge signed an order dismissing Ms. Prelow's case. Nevertheless, for several years thereafter, respondent continued to communicate with Ms. Prelow without disclosing to her that the case had settled and was dismissed. For example, on March 14, 2019, Ms. Prelow and respondent engaged in the following text message exchange:

> Ms. Prelow: Is my accident case still pending???
> Respondent: Sorry, I can't talk right now. I'm still in with client
> Ms. Prelow: I just need to know if my case still pending I know if it is not messed with after three years they close it. The accident was in 2011
> Respondent: It's three years from the last time something transpired.... will explain when I'm free
> Ms. Prelow: Yall really messed over me and someone is going to pay. I will not let yall get away with this
> Respondent: What are you talking about I have been paying you because she messed up the case.... haven't I been paying you And your insurance company settled with the other people
> Ms. Prelow: My insurance company paid the lady I got ran into because Chenetra [respondent's secretary] signed the letter to okay it. You knew when you was trying to so call settle it with me you didn't have enough funds to pay me. That money you have paid me didn't even pay for my car. I waited 5 years before I bought another car

Four days later, on March 18, 2019, the ODC received a disciplinary complaint against respondent from Ms. Prelow. In the complaint, Ms. Prelow alleged that respondent did not work her case and that respondent's secretary forged her signature on documents. She also indicated that she did not know if her case was still open. In response to the complaint, respondent provided the ODC with documentary evidence proving he worked extensively on Ms. Prelow's case, including documentation of the $300 settlement. He also denied that his secretary forged Ms. Prelow's signature on any documents.

In July 2021, the ODC filed formal charges against respondent, alleging that his misconduct violated the following provisions of the Rules of Professional Conduct: Rules 1.4 (failure to communicate with a client), 1.5(c) (contingency fee agreements), 1.15(a) (safekeeping property of clients or third persons), 1.15(d) (failure to timely remit funds to a client or third person), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent filed an answer to the formal charges, admitting to negligently failing to deposit the settlement check into his client trust account and negligently failing to prepare a written

disbursement statement. He also admitted that he did not pay Ms. Prelow any money from the settlement. However, he denied the remainder of the alleged misconduct and asserted the existence of factors that would mitigate his actual misconduct.

The Court:

The record of this matter supports a finding that respondent settled a case without his client's knowledge or consent, failed to deposit the settlement funds into a client trust account, failed to prepare a disbursement statement, failed to disburse the client's portion of the funds to her, and failed to inform the client of the settlement for years. Based on these facts, respondent violated the Rules of Professional Conduct as charged. More specifically, respondent violated Rule 1.4 by settling Ms. Prelow's case without discussing the settlement with her and then by failing to inform her of the settlement for years. He violated Rule 1.5(c) by failing to prepare a disbursement statement, and he violated Rule 1.15(d) by failing to disburse Ms. Prelow's portion of the settlement to her. He violated Rule 1.15(a) by failing to deposit the settlement funds into his trust account. Additionally, he violated Rule 8.4(c) by settling Ms. Prelow's case without informing her and depositing the settlement funds into his operating account instead of his trust account. He also violated Rule 8.4(c) since he knew or should have known Ms. Prelow's endorsement on the settlement check was forged given that he never informed her of the settlement. Respondent knowingly violated duties owed to his client and the legal profession, which caused actual harm. Therefore, the baseline sanction is suspension. The aggravating and mitigating factors found by the board are supported by the record. In aggravation, the board noted only that respondent has substantial experience in the practice of law. The board agreed with the committee that the sole mitigating factor is respondent's personal or emotional problems

Turning to the issue of an appropriate sanction, the Court agreed with the disciplinary board that, based upon *Louisiana State Bar Ass'n v. Chatelain, 573 So.2d 470 (1991)* the misconduct in the instant matter should be considered along with the misconduct in *Bates I*. In *Chatelain*, the Court determined that it is generally inappropriate to impose additional discipline upon an attorney for misconduct that occurred before or concurrently with violations that resulted in a prior disciplinary sanction; rather, the overall discipline to be imposed should be determined as if both proceedings were before the court simultaneously.

The appropriate sanction in this matter would address respondent's misconduct in allowing his trust account to become overdrawn, paying personal bills from his trust account, failing to promptly pay funds owed to a third-party medical provider, depositing funds belonging to two clients into his operating account instead of his trust account, neglecting one legal matter, failing to communicate with two clients, notarizing an affidavit outside the presence of the signatory, settling a case without the client's knowledge or consent, and failing to disburse the client's portion of the settlement proceeds.

The board determined that, had the Court considered the instant misconduct together with the misconduct in *Bates I*, the Court would have imposed a more severe sanction than the fully deferred suspension imposed in *Bates I*. The Court agreed. The Court suspended respondent for a one year and one day suspension, with all but six months deferred. The Court also ordered respondent to make restitution to Ms. Prelow in the amount of $300 and assessed all costs and expenses in this matter against respondent.

Weimer, C.J., concurs in part and dissents in part and assigns reasons.

I respectfully dissent regarding the sanction.

As recognized by the majority, respondent has a prior disciplinary record. He received a one year and one day suspension, fully deferred, subject to a two year period of supervised probation with conditions in a prior disciplinary proceeding. *In re: Bates*, 15-2102 (La. 1/15/16), 184 So.3d 670. The conduct at issue in that proceeding overlapped with the conduct currently at issue.

Given this history and the facts of the current proceeding, I would impose a one year and one day suspension as recommended by both the hearing committee and the disciplinary board. The fact that the endorsement of the settlement check was forged establishes the recommended sanction is the appropriate sanction. See La. R.S. 14:72.

Crichton, J., concurs in part and dissents in part and assigns reasons.

As indicated by my rejection of respondent's previous discipline (a fully deferred suspension of one year and one day) as unduly lenient in *In re: Bates*, 152102 (La. 1/15/16), 184 So.3d 670, in my view, respondent's present misconduct also warrants a period of actual suspension. However, while I agree the allegations against respondent have been proven, I disagree with the majority's imposition of one year and one day suspension with all but six months deferred, as I believe the circumstances of this case merit a one year and one day suspension with all but forty-five days deferred.

When determining the appropriate sanction in attorney disciplinary matters, underlying misconduct that occurs within the same general time period as the misconduct forming the basis of a previously imposed sanction should be considered together. *Louisiana State Bar Ass'n v. Chatelain*, 573 So.2d 470 (La. 1991). In other words, this Court will generally not impose additional discipline upon an attorney for misconduct that occurred before or concurrently with violations that resulted in a prior disciplinary sanction. Rather, the overall discipline to be imposed by this Court shall be determined as if both proceedings were before the court simultaneously. See also, *In re Fazande*, 20-1415 (La. 3/20/21), 312 So.3d 571 (after respondent had been disbarred, the Court considered additional and similar misconduct as part of a continuing series of professional breaches and permanently disbarred respondent), citing *Chatelain*, supra; *In re: Wilson*, 18-1800 (La. 1/14/19), 260 So.3d 1203 (after respondent had been disbarred, this Court determined further misconduct which occurred during the same general time period in which the first misconduct occurred, should be considered with the original misconduct, if and when respondent applies for readmission from her disbarment), citing *Chatelain*, supra; *In re: Fradella*, 15-981 (La. 8/28/15), 177 So.3d 119 (in applying *Chatelain*, this Court's "overriding consideration has been to determine the appropriate overall sanction for the lawyer's misconduct, ignoring any distortions which may be caused by the timing of the formal charges."); *In re: Hebert*, 12-2102 (La. 11/16/12), 125 So.3d 1074 (applying *Chatelain*, the Court found no additional discipline was necessary for misconduct, but additional misconduct should be considered with underlying misconduct when respondent files an application for reinstatement); *In re: Szuba*, 04-1571 (La. 2/4/05), 896 So.2d 976 (applying *Chatelain*, finding misconduct before the Court was nearly identical to and occurred within the same relevant time frame as previously considered misconduct, and noted the Court will adjudge respondent guilty of additional violations which will be added to his record for consideration in the event he applies for reinstatement). But see, *In re: Tyson*, 22-1607 (La. 1/18/23), -- So.3d -- (Crichton, J., concurring, noting the *Chatelain* analysis did not apply where the respondent's recent misconduct did not occur in the same time frame as the misconduct in his previous disciplinary matter). Thus, notwithstanding respondent's serious

misconduct involved herein, the peculiar circumstances in this matter dictate the application of the rule and spirit of *Chatelain* per the above jurisprudence.

As the per curiam explains, a majority of respondent's misconduct leading to his 2016 fully deferred suspension occurred between 2011 and 2014. The instant misconduct occurred from February 2014 until complainant filed a disciplinary complaint against respondent in March 2019. Although respondent's misconduct presently before the Court extends beyond his original misconduct, I find the overlap nonetheless material. The original accident for which complainant retained respondent to represent her occurred in 2011. Despite not receiving complainant's permission to settle her case, the record reveals respondent was the third attorney complainant retained and respondent did inform complainant that her case was problematic due to the fact her insurance company had settled with the other two drivers involved. Moreover, the record also reveals that during 2016 or 2017, complainant received a total of approximately $1,000 in advances from respondent, which complainant believed were advances on any settlement amount she would receive in the future. While these facts certainly do not excuse respondent's behavior, they should be taken into consideration.

Finally, and most notably, the record establishes that respondent represented complainant in multiple criminal matters on a pro bono basis both before and during the time frame at issue herein. Even after complainant filed her disciplinary complaint against respondent in 2019, she asked respondent to represent her in an additional criminal matter. Thus, even though she felt respondent's lack of communication regarding the settlement of her personal injury matter warranted filing a disciplinary complaint, she apparently believed respondent still competent to represent her again in another case.

To be clear, I do not make light of respondent's serious misconduct as alleged and proven by clear and convincing evidence, but I do not agree with the majority's imposition of a one year and one day suspension with six months deferred. In my view, respondent should receive a one year and one day suspension, with all but forty-five days deferred. Furthermore, in addition to this period of suspension, I would also require that respondent attend educational seminars regarding trust accounts, ethics, and professionalism during a probationary period.

Genovese, J., concurs in part and dissents in part for the reasons assigned by Chief Justice Weimer.

Crain, J., concurs.

In re: Juan Carlos Labadie, 2022-B-01552 (La. 1/18/23)

Respondent was admitted to the practice of law in Louisiana in 1996. In 2011, respondent consented to be suspended from the practice of law for one year and one day, fully deferred, subject to a two-year period of supervised probation with conditions, for maintaining incomplete records of his client trust account, which resulted in a negligent commingling and conversion of funds. *In re: Labadie*, 11-1021 (La. 6/24/11), 65 So.3d 152 ("*Labadie I*").

In 2016, the Louisiana Supreme Court placed respondent on interim suspension for threat of harm to the public. *In re: Labadie*, 16-0884 (La. 8/31/16), 199 So.3d 607. In 2018, the Court disbarred respondent, retroactive to the date of his interim suspension, for neglecting legal matters, failing to return unearned fees, making false statements regarding the integrity of a judge, committing multiple acts of domestic violence, and failing to cooperate with the ODC in its investigation. *In re: Labadie*, 18-1033 (La. 10/29/18), 255 So.3d 558 ("*Labadie II*").

In 2018, Detective John Wiebelt III of the Jefferson Parish Sheriff's Office served as a member of a tactical team conducting police surveillance on a Terrytown residence pursuant to a Crimestoppers complaint. A confidential informant had advised the surveillance team that cocaine was being sold from the residence.

On the evening of March 8, 2018, respondent appeared at the residence and went inside. A short time later, respondent exited the residence, entered his vehicle, and departed the location. He then committed a traffic violation, which provided Detective Wiebelt with probable cause to pull over the vehicle.

The Jefferson Parish District Attorney's Office notified the ODC of respondent's arrest in August 2018. After the criminal charges were resolved, Detective Wiebelt provided a sworn statement to the ODC. During his statement, Detective Wiebelt indicated that respondent appeared to be extremely nervous at the time of the traffic stop. Detective Wiebelt added that he summoned a K-9 unit to the scene to perform a drug detection, and after the K-9 detected an odor of a narcotic substance, respondent was placed under arrest and searched. During the search, a clear bag containing a white powdery substance was found in respondent's rear pocket. The substance was field-tested and confirmed to be cocaine, a Schedule II Controlled Dangerous Substance.

In February 2022, the ODC filed formal charges against respondent, alleging that his conduct, as set forth above, violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(b) (commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

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.

The Court:

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.

In this deemed admitted matter, the record supports a finding that respondent was arrested for possession of cocaine. Accordingly, he has violated the Rules of Professional Conduct as alleged in the formal charges.

The record also supports a finding that respondent knowingly violated duties owed to the public and the legal profession. His conduct caused the potential for serious harm. The baseline sanction for this type of misconduct is suspension. The Court agreed with the hearing committee's assessment of the aggravating factors and its determination that no mitigating factors are supported by the record. The committee determined the following aggravating factors are present: a prior disciplinary record, a dishonest or selfish motive, a pattern of misconduct, bad faith obstruction of

the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, substantial experience in the practice of law, and illegal conduct.

Of the cases cited by the committee, *In re: Clark*, 09-1631 (La. 12/1/09), 25 So.3d 728, is the most instructive. In *Clark*, an attorney was charged with possession with intent to distribute marijuana, distribution of marijuana, possession of cocaine, and possession of drug paraphernalia. Several mitigating factors were present, including the absence of a disciplinary record. For his misconduct, the Court suspended the attorney from the practice of law for two years.

Notably, the "distribution" issues in *Clark* are not present in the instant case. Therefore, the facts in Clark are arguably more severe. However, the attorney in *Clark* had several mitigating factors present, including the absence of a prior disciplinary record. Respondent, on the other hand, has a significant disciplinary record and no mitigating factors are present. On balance, these additional considerations provide a sufficient basis for imposing the sanction imposed in *Clark*. The Court suspended respondent from the practice of law for two years

Crichton, J., dissents and assigns reasons.

In light of respondent's previous suspension in 2011, *In re: Labadie*, 11-1021 (La. 6/24/11), 65 So.3d 152, and his interim suspension in 2016 which ultimately resulted in his disbarment in 2018, see, respectively *In re: Labadie*, 16-0884 (La. 8/31/16), 199 So.3d 607, and *In re: Labadie*, 18-1033 (La. 10/29/18), 255 So.3d 558, I find the Court's suspension of respondent herein woefully inadequate. Specifically, regarding his most recent misconduct, respondent was arrested for possession of a Schedule II Controlled Dangerous Substance and, while the charge for possession was nolle prosequied by the State after respondent enrolled in a pre-trial diversion program, respondent failed to even provide a response to the most recent formal charges filed against him. Accordingly, the factual allegations against him are deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX § 11(E)(3). Thus, due to respondent's consistent inability to adhere to the solemn oath which he took when he was admitted to this noble profession, I would strongly consider permanent disbarment as an appropriate sanction

Crain, J., dissents and assigns reasons.

Because the respondent is already disbarred, I would defer discipline on the current charge until he actually seeks readmission to the practice of law.

McCallum, J., dissents for reasons assigned by Justice Crichton.

In re: Todd Michael Tyson, 2022-B-01607 (La. 1/18/23)

Respondent has prior discipline. On November 10, 2021, the Louisiana Supreme Court accepted a petition for consent discipline in which respondent stipulated that he had neglected a legal matter, failed to communicate with a client, failed to return the client's file upon request, failed to refund an unearned fee, and failed to cooperate with the ODC in its investigation. For this misconduct, the Court imposed a one year and one day suspension, with all but sixty days deferred, subject to a two-year period of probation with conditions. The Court further ordered that, prior to being reinstated to the practice of law, respondent must submit to an appropriate evaluation by the Judges and Lawyers Assistance Program and comply with any recommendations for treatment and/or the execution of a monitoring agreement. *In re: Tyson*, 21-0990 (La. 11/10/21), 326 So.3d 1230 ("*Tyson I*"). Respondent has not complied with the court's order and therefore remains suspended from the practice of law.

In July 2021, Angel Macedo hired respondent to represent Richard Briggs in a criminal matter. She paid respondent a $1,500 fee as well as an additional $1,500 that was earmarked for the purpose of paying a bail bond company upon the securing of a successful bond reduction for Mr. Briggs. Although the latter funds constitute an advance for costs, there is no evidence that respondent ever placed the funds into his client trust account.

Respondent misled Ms. Macedo into believing that he had or would secure a significant reduction in the bond. He provided no such service. Mr. Briggs remained incarcerated for weeks and could not return to work. Although Mr. Briggs bonded out after the bond was reduced from $87,500 to $27,500, the reduction was not obtained through any effort on the part of respondent but due to the fact that the district attorney independently decided not to pursue two of the original charges.

The funds entrusted to respondent were neither returned to Ms. Macedo nor used for the payment of bond. Ms. Macedo requested a refund of the attorney's fee and the bond payment. Respondent indicated that he would return the funds, but there is no evidence that he did so. Respondent also failed to return Ms. Macedo's phone calls.

On September 14, 2021, the ODC received a disciplinary complaint against respondent from Ms. Macedo. A copy of the complaint was forwarded to respondent as well as to the attorney who represented him in *Tyson I*. Despite the urgings of his former attorney, respondent did not provide an answer to the complaint.

In April 2022, the ODC filed formal charges against respondent, alleging that his conduct, as set forth above, violated 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(f) (failure to refund an unearned fee), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) 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.

The Court:

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 neglected a legal matter, failed to communicate with a client, failed to promptly refund an unearned fee, and failed to cooperate with the ODC in its investigation. Based on these facts, respondent has violated the Rules of Professional Conduct as charged. The record supports a finding that respondent knowingly, if not intentionally, violated duties owed to his client, the legal system, and the legal profession, causing actual harm to the client. The Court agreed with the hearing committee that

the applicable baseline sanction is suspension. The record supports the aggravating factors found by the hearing committee. The committee found the following aggravating factors are present: a prior disciplinary record, a dishonest or selfish motive, 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, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and substantial experience in the practice of law (admitted 2013). No mitigating factors are apparent from the record.

Turning to the issue of an appropriate sanction, the Court agreed that a one year and one day suspension is appropriate for respondent's misconduct. In *In re: Taylor*, 14-0646 (La. 5/23/14), 139 So.3d 1004, an attorney collected a $2,500fee to pursue a post-conviction relief matter. He then failed to perform any substantive work on the matter, failed to communicate with the client, and failed to return the fee. He also failed to cooperate with the ODC's investigation. Numerous aggravating factors were present, and the only mitigating factor present was the lack of a prior disciplinary record. For his misconduct, the Court imposed a one year and one day suspension from the practice of law and ordered the attorney to refund the unearned fee.

The Court noted the *Taylor* case presented the Court with a similar set of circumstances as presented in the instant case. The Court suspended respondent from the practice of law for one year and one day.

Crichton, J., additionally concurs and assigns reasons.

I agree with the majority's imposition of a one year and one day suspension, particularly in light of respondent's consistent misconduct and disregard for the disciplinary process. See *In re: Tyson*, 21-990 (La. 11/10/21), 326 So.3d 1230. I write separately to note that although respondent has previously been suspended by this Court, the misconduct in the instant matter did not occur in the same time frame as the misconduct in his previous disciplinary matter. Thus, the sanction analysis set forth in *Louisiana State Bar Ass'n v. Chatelain*, 573 So.2d 470 (1991) (it is generally inappropriate to impose additional discipline upon an attorney for misconduct that occurred before or concurrently with violations that resulted in a prior disciplinary sanction but rather, the overall imposed discipline should be determined as if both proceedings were before the court simultaneously), is inapplicable here. Accordingly, the Court's sanction in this matter is commensurate with respondent's misconduct.

PETITION TO EXTEND PROBATION

In re: Jesse P. Lagarde, 2022-B-01635 (La. 25, 2023)

This disciplinary matter arises from a motion to revoke probation filed by the Office of Disciplinary Counsel ("ODC") against respondent, Jesse P. Lagarde, for his violation of additional Rules of Professional Conduct while on court-ordered probation imposed in *In re: Lagarde*, 21-0797 (La. 9/27/21), 323 So.3d 862 ("*Lagarde I*"), as well as for his failure to comply with his probation agreement for that matter. After the ODC filed the motion, the parties entered into a joint stipulation regarding respondent's violations and jointly recommended that respondent's probation be extended for one year with additional conditions. The disciplinary board accepted the stipulations and filed the instant recommendation in this court.

The record in *Lagarde I* demonstrated that respondent was retained to represent Michael Scott Hollis in his pending child custody case. Respondent failed to appear in court for a scheduled hearing, resulting in a judgment being entered against Mr. Hollis. Thereafter, respondent ignored

the many attempts made by Mr. Hollis and his wife to communicate with him. Lastly, respondent failed to cooperate with the ODC in its investigation of the disciplinary complaint filed against him.

Prior to the filing of formal charges in the Hollis matter, respondent and the ODC filed a joint petition for consent discipline with the Louisiana Supreme Court. The parties proposed that respondent be suspended from the practice of law for six months, fully deferred, subject to a one-year period of probation governed by the following conditions:

1) During the period of probation, respondent shall complete the Ethics School program offered by the Louisiana State Bar Association.
2) Six of respondent's mandatory MCLE hours, during the term of probation, shall be in the area of law office/practice management.
3) Respondent agrees to pay all costs of these proceedings.

The Court accepted the petition for consent discipline in *Lagarde I* on September 27, 2021. The Court's order provided that "[a]ny failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate."

Respondent's probation commenced on November 3, 2021, when he executed a formal probation agreement with the ODC. The probation agreement required that respondent promptly respond to all requests of the ODC and provided that any violation of the Rules of Professional Conduct may result in the revocation of probation and/or the imposition of additional discipline.

After respondent was placed on probation in *Lagarde I*, the ODC received disciplinary complaints from Patrick Ledet and Michael and Cynthia Bourg. On October 5, 2022, the ODC filed a motion to revoke probation, alleging that respondent failed to promptly respond to Mr. Ledet's complaint and violated additional Rules of Professional Conduct in both the Ledet and Bourg matters. Accordingly, the ODC prayed for the revocation of respondent's probation and the imposition of the previously deferred six-month suspension. Respondent did not file an answer to the ODC's motion to revoke probation.

The Court:

Respondent and the ODC have stipulated that respondent violated his probation agreement by failing to promptly respond to requests from the ODC and by committing additional violations of the Rules of Professional Conduct. As a sanction for respondent's violation, the parties have agreed, and the disciplinary board has recommended, that the period of respondent's probation will be extended for one year with additional conditions.

Although respondent's new misconduct is relatively minor, the Court noted that it is very similar to the misconduct for which he was originally placed on probation. This ongoing pattern suggests that continued supervision and additional education are necessary to ensure that respondent conforms his conduct to the Rules of Professional Conduct. The sanction proposed by the parties accomplishes this goal by extending the *Lagarde I* probationary period through the beginning of 2024 and requiring that respondent receive training in law practice management. Therefore, the Court believed the stipulations of the parties appropriately address respondent's misconduct. Based on this reasoning, the Court accepted the disciplinary board's recommendation.

Crichton, J., dissents and assigns reasons.

I disagree with the majority decision to extend this respondent's probation and would instead revoke probation. In *In re Lagarde*, 2021-00797 (La. 9/27/21), 323 So.3d 862, I dissented from the acceptance of the petition for consent discipline, finding that the discipline imposed was too lenient. Id. ("In my view, the facts and circumstances presented here, including respondent's initial failure to cooperate with the ODC's investigation and the actual harm to his client caused by his actions, warrant greater discipline."). Respondent has now breached his original probation agreement in several ways, including by failing to promptly respond to requests from the Office of Disciplinary Counsel and committing additional rule violations. In my view, the conduct described in the per curiam warrants revocation of probation, not an extension thereof.

Genovese, J., dissents and would revoke probation.

PETITION TO REVOKE PROBATION

In re: Sonya Eloyace Hall, 2023-B-01081 (La. 9/26/23)

This disciplinary matter arises from a motion for revocation of probation filed jointly by the Office of Disciplinary Counsel ("ODC") and respondent, Sonya Eloyace Hall, based upon respondent's violation of the conditions of her probation imposed in *In re: Hall*, 21-1389 (La. 12/21/21), 329 So.3d 281 ("*Hall I*").

The record in *Hall I* established that respondent mishandled her client trust account and failed to cooperate with the ODC's investigation. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline, proposing that respondent be suspended from the practice of law for one year and one day, with all but thirty days deferred, followed by a two-year period of probation with conditions. The Court accepted the petition for consent discipline on December 21, 2021. The Court's opinion specifically provided that "[a]ny failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate."

Respondent was reinstated to the practice of law effective January 24, 2022. She and the ODC executed a two-year probation agreement on February 7, 2022. The probation agreement provided, in pertinent part, that respondent shall:

> 1. Promptly respond to all requests by and make herself reasonably available for conferences with the Office of Disciplinary Counsel ("ODC");
> ***
> 6. On a quarterly basis (periods ending March 31st, June 30th, September 30th, and December 31st) and at her expense, submit her client trust account to audits by an Office of Disciplinary Counsel approved accountant and provide the ODC with written audit reports and supporting documentation in a form and manner approved by the ODC no later than 5:00 p.m. on April 30th, July 30th, October 30th, and January 30th;
> ***
> 7. Attend an additional twelve (12) hours of continuing legal education over the course of the two-year probationary period, with

six (6) hours in the first year of probation and six (6) hours in the second year of probation. All twelve (12) hours must have an emphasis on proper accounting practices, small firm practice, law office management, and/or ethics. These hours are in addition to the standard 12.5 hours of annual, mandatory continuing legal education; [and]

***

9. Acknowledge that any violation of the Rules of Professional Conduct and/or this Probation Agreement may result in summary revocation of her probation and making the deferred suspension executory and/or may result in the imposition of additional discipline as appropriate.

On August 4, 2023, the parties filed the instant joint motion. In the motion, the parties stipulate that respondent is not in compliance with paragraphs one and six of the probation agreement because the documentation she submitted with her trust account audits for the periods ending March 31, 2022, and June 30, 2022, was insufficient or nonresponsive. Respondent did not respond to the ODC's efforts to obtain the required documentation. Furthermore, respondent failed to provide trust account audits for the periods ending September 30, 2022, December 31, 2022, March 31, 2023, and June 30, 2023.

The parties further stipulate that respondent is not in compliance with paragraphs one and seven of the probation agreement because respondent failed to assist the ODC in accessing her continuing legal education transcript through a faulty link respondent provided. When the ODC independently obtained respondent's continuing legal education transcript for 2022 from the Louisiana State Bar Association, it showed that respondent failed to attend the additional six hours in courses "with an emphasis on proper accounting practices, small firm practice, law office management, and/or ethics."

Under these circumstances, the parties agree that respondent has failed to comply with the terms of her probation. Accordingly, they asked the Court to revoke her probation and make the previously-deferred portion of the one year and one day suspension imposed in *Hall I* executory, which will require respondent to apply for reinstatement to the practice of law pursuant to Supreme Court Rule XIX, § 24.

The Court:

Respondent recognizes that she has violated several conditions of her probation. She has, therefore, consented to having her probation revoked and having the previously-deferred portion of the one year and one day suspension imposed in *Hall I* made executory.

Therefore, the Court revoked respondent's probation and make the previously-deferred portion of the one year and one day suspension imposed in *Hall I* executory.

PETITION FOR REVOCATION OF CONDITIONAL ADMISSION

In re: Dustin Paul Segura, 2022-B-01462 (La. 3/14/23) \

On July 22, 2020, the Court waived the written Bar Exam and ordered the emergency admission for certain "Qualified Candidates." The Order issued by the Court (Part II, No. 4) required the Qualified Candidates to complete additional requirements as stated below:

> In addition, Qualified Candidates who are admitted upon emergency waiver of the written examination pursuant to Section II.1 above must fulfill the additional requirements set forth below no later than December 31, 2021. Failure to complete these requirements shall result in a Qualified Candidate being certified ineligible to practice law in Louisiana until such requirements are fulfilled:
>
> a. Complete 25 hours of CLE. 12.5 of the credits shall be obtained in accordance with the requirements set forth in Supreme Court Rule XXX (3) (b), and the remaining 12.5 hours may be in any other approved subject matter.
>
> b. Complete all requirements of the Louisiana State Bar Association's "Transition Into Practice" program.

The Transition Into Practice (TIP) program requires mentees to complete eleven (11) Annual Activities and twenty (20) Quarterly Discussion Activities with mentors. The mentees self-report and certify completion of the Annual Activities and Quarterly Discussions online through the Louisiana State Bar Association ("LSBA"). The mentees are required to provide the dates in which they completed the activities and discussions, and in some instances, the courts in which they completed the Annual Activities. Once a mentee has entered and certified completion of their requirements into the LSBA online system, an E-mail is sent to the LSBA and the mentee's assigned mentor. The E-mail informs the mentor that the mentee has completed all of their activities and gives the mentor a link to review the mentee's worksheet.

The Respondent was a Qualified Candidate, as described above, and was admitted to the Louisiana Bar on July 30, 2021. Respondent's status was eligible upon his admission; however, Respondent's current status with the LSBA is "Ineligible – TIP."

The Respondent enrolled in the LSBA TIP Program on August 17, 2021, and was assigned to his mentor, Attorney Sharon Morris, on August 25, 2021. Respondent signed and submitted a Mentoring Plan Acknowledgement in which Respondent agreed to devote the time, effort and to engage in the highest level of ethics and professionalism while dealing with the mentor.

The Respondent self-reported multiple dates in which he claimed to have completed his Annual Activities, as well as multiple dates he claimed to have completed his Quarterly Discussion Activities. Respondent certified his purported completion of these Annual Activities and Quarterly Discussion Activities by logging into his LSBA account and inputting the information and date he completed each requirement. Respondent certified that he completed twenty (20) of the Quarterly Activity Discussions on the following dates:

> September 20, 2021 – two (2) Quarterly Discussion Activities
> September 21, 2021 – three (3) Quarterly Discussion Activities
> November 11, 2021 – ten (10) Quarterly Discussion Activities
> November 18, 2021 – four (4) Quarterly Discussion Activities
> November 25, 2021 – one (1) Quarterly Discussion Activities

Respondent certified that he completed the last of his requirements - Annual Activity #8 (attending a deposition with his mentor) - as having been completed on December 2, 2021. The computer system then forwarded the self-reported information to the LSBA and the mentor, Ms. Morris, on December 6, 2021.

Ms. Morris received the E-mail and became concerned about Respondent's certification of completion of the activities after only meeting with him briefly on two occasions. Ms. Morris contacted the LSBA about her concerns, but did not mention Respondent's name. It was suggested to Ms. Morris that she should reach out to the mentee to inquire about his completion of activities without the assistance or involvement of the LSBA. Ms. Morris E-mailed Respondent on December 9, 2021, and again on December 17, 2021, inquiring as to how Respondent completed his requirements without her, and whether he found another attorney to assist. Respondent failed to immediately respond to Ms. Morris.

Having received no response from Respondent, Ms. Morris ultimately contacted the LSBA on February 1, 2022. Ms. Morris reported that she did not attend any of the Annual events with Respondent; specifically, she did not attend a deposition with the Respondent. Ms. Morris also reported to the LSBA that she only met with the Respondent on two occasions for a total of two hours. Ms. Morris advised that her discussions with Respondent involved a first meeting with Respondent on September 21, 2021, when she signed his mentoring plan. The second meeting occurred on November 11, 2021, but did not involve discussions of the numerous Quarterly Discussion topics as certified by the Respondent.

After the concerns by Ms. Morris were brought to the attention of the LSBA, the LSBA TIP Program Coordinator (Brooke Theobold) made several phone calls and E-mails to Respondent in February of 2022, regarding his purported completion of the TIP program; however, the Respondent failed to respond to the LSBA. On March 2, 2022, the LSBA Tip Program Coordinator and the Chairman on the Committee on the Profession (Barry Grodsky) sent Respondent a letter (via U.S Mail and E-mail) advising Respondent that they had repeatedly attempted to contact him at his registered telephone and E-mail address without success. The letter informed Respondent that the purpose of the contact stemmed from information the LSBA received which indicated Respondent had not timely and successfully completed the TIP Program as required by the Supreme Court. The LSBA provided Respondent fifteen (15) days to provide evidence of completion, but Respondent failed to provide a response or documentation to the LSBA.

On April 19, 2022, the LSBA Tip Program Coordinator (Ms. Theobold) forwarded Respondent a letter advising Respondent of a May 19, 2022, deadline to provide satisfactory documentation of compliance with the TIP program or he would become ineligible to practice law. Respondent failed to respond or provide additional documentation.

On April 25, 2022, the ODC received information from the LSBA pertaining to Respondent's participation in the TIP program; specifically, information that raised concerns that extend beyond Respondent's failure to timely complete the TIP requirements, but included allegations of Respondent's dishonesty regarding falsifying completion of requirements. The ODC opened a disciplinary complaint (ODC Investigative File No. 39966) and on May 13, 2022, the ODC mailed Respondent a notice of complaint with a request to provide an answer within fifteen (15) calendar days. Respondent received and signed certified return receipt for the complaint on May 14, 2022; however, Respondent failed to respond to the ODC.

Because Respondent failed to respond to the complaint, the ODC issued and personally served Respondent with a Subpoena on June 9, 2022, commanding his appearance for a sworn

statement at the ODC. On July 12, 2022, Respondent appeared at the ODC for his sworn statement and testified to the following information. Respondent stated that he was allowed to complete several of the annual activities via Zoom attendance and ultimately provided the ODC with some documentation of same. Respondent admitted that he falsified the completion of the Annual Activity that required him to attend a deposition with a mentor. Respondent admitted that he did not reach out to his mentor to request help in locating a deposition to attend. Respondent also admitted that he certified completion of all of the Quarterly Discussion Activities with his mentor, but a large part of the information he provided was false. Respondent admitted that he did not meet with his mentor on some of the dates he certified to the LSBA, and also admitted that even on the dates he did meet with his mentor, he did not discuss all of the subjects in depth in the manner the TIP program required. Respondent further admitted that he received the calls, E-mails and letter from the LSBA, but he failed to respond to the LSBA out of "ignorance and fear" because he knew he lied about the deposition. Respondent admitted that he received the ODC notice of complaint and signed receipt for same, but failed to respond to the ODC disciplinary complaint out of "ignorance and fear." Lastly, Respondent denied any personal problems or health related issues (including alcohol or drug problems) that prevented him from completing the requirements of the TIP program.

The Court:

Considering the Petition for Revocation of Conditional Admission filed by the Office of Disciplinary Counsel, and the report of the hearing committee,

IT IS ORDERED that respondent's conditional admission to the practice of law in the State of Louisiana be revoked, effective immediately.

IT IS FURTHER ORDERED that respondent may not file any new application for admission to the bar for a period of one year from the date of this order. Should respondent thereafter choose to submit an application for admission, he shall comply with all requirements of Supreme Court Rule XVII applicable to new applicants to the bar, including, but not limited to, taking and passing the written bar examination and demonstrating that he possesses the requisite good moral character and fitness to practice law. The incident forming the basis of the current proceeding may be considered in determining respondent's character in the event he applies for admission.

IT IS FURTHER ORDERED that respondent shall pay all costs associated with these proceedings.

Crichton, J., additionally concurs and assigns reasons.

I agree with the immediate revocation of respondent's conditional admission. I also write separately to note that in the midst of the pandemic, this Court instituted an order for emergency admission of Qualified Applicants out of necessity and after significant debate and solemn consideration. See July 22, 2020, Order of the Louisiana Supreme Court, available at https://www.lasc.org/COVID19/Orders/ 2020-07-22_LASC_BarExam.all.pdf. The Court made this decision in light of the "unprecedented and extraordinary burden" that the COVID-19 pandemic had placed on bar examination applicants and the mitigation measures the Governor had in place in this State. In my view, respondent's actions in this case demonstrate a violation of the trust and grave responsibility this Court put in all Qualified Applicants-the vast majority of which have acted in accordance therewith.

McCallum, J., concurs and assigns reasons.

Presumably Respondent is no less competent now than when he was given the opportunity to become a member of the bar without having to take the bar examination. This is now a disciplinary matter, pure and simple. The allegations made concern misconduct, not competence. Respondent will now be required to pass the bar examination because he did not take advantage of the opportunity presented to him. I join in the result of the majority because Respondent should have been required to take the bar examination in the initial instance.

RECIPROCAL DISCIPLINE

In re: Jonathan B. Andry, 2023-B_00374 (La. 11/15/26)

In the months following the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, hundreds of individual and class actions were filed in state and federal courts on behalf of the thousands of victims. Many of those claims were consolidated in the Eastern District of Louisiana Deepwater Horizon multi-district litigation ("MDL"). In 2012, BP reached a settlement with the MDL plaintiffs, which established the Court-Supervised Settlement Program ("CSSP") to evaluate and award the payment of economic damages to individuals and businesses affected by the oil spill. Respondent was among the attorneys who represented claimants in the CSSP.

In 2013, respondent was accused of funneling $40,000 to a CSSP staff attorney through improper referral payments. The MDL district court appointed Louis Freeh as special master to investigate the alleged misconduct. Respondent made false statements during this investigation. The special master's report 11/15/23 recommended that respondent be prevented from representing CSSP claimants. United States District Judge Carl Barbier, the district court judge overseeing both the MDL and CSSP, ordered respondent to show cause why he should not adopt the recommendation. Following an evidentiary hearing and an opportunity to respond in writing, Judge Barbier determined that respondent violated the Rules of Professional Conduct and disqualified him from participating further in the CSSP or collecting fees.

Respondent then appealed to the United States Fifth Circuit Court of Appeals, arguing that the district court misapplied the Rules of Professional Conduct and that its sanctions were excessive. The court of appeals disagreed, holding that the district court "did not abuse its discretion in finding that [respondent] violated the Louisiana Rules of Professional Conduct or in fashioning an appropriate sanction." *In re Deepwater Horizon*, 824 F.3d 571, 586 (5th Cir. 2016) (per curiam).

At Judge Barbier's direction, the special master filed a disciplinary complaint against respondent with the en banc court of the Eastern District of Louisiana. Following a hearing, the en banc court found that respondent clearly violated duties owed to the legal system, the court, and the profession through his violation of Rules 1.5(e) (division of fees between lawyers who are not in the same firm), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct. The en banc court suspended respondent from practicing law in the Eastern District of Louisiana for one year (three concurrent one-year suspensions) for violating Rules 1.5(e), 8.4(a), and 8.4(d); for respondent's violation of Rule 8.4(c), the court ordered a public reprimand.

Respondent again appealed to the United States Fifth Circuit Court of Appeals, arguing that the en banc court misapplied the Rules of Professional Conduct and abused its discretion by imposing an excessive sanction. The court of appeals agreed with respondent that the en banc court erred in finding he violated Rules 1.5(e) and 8.4(a); however, the court of appeals found respondent's conduct did violate Rule 8.4(d):

> Rule 8.4(d), more than Rule 1.5(e), gets to the heart of Andry's misconduct. The core of the wrongdoing was not the way fees were split between attorneys, but the fact that money was sent to an attorney involved in the claims administration process by an attorney representing claimants. Thus, the en banc court did not err in finding that Andry violated Rule 8.4(d).
>
> *In re Andry*, 59 F.4th 203 (5th Cir. 2023) (on rehearing).

With regard to sanction, the court of appeals reversed the en banc court's order suspending respondent from the practice of law for one year each for violations of Rules 1.5(e) and 8.4(a). The court of appeals remanded the matter to the en banc court for further proceedings, stating that "[o]n remand, the court is free to impose on Andry whatever sanction it sees fit for the 8.4(d) violation, including but not limited to its previous one-year suspension."

On remand, the en banc court suspended respondent for one year for his violation of Rule 8.4(d). The effective date of the suspension was April 20, 2022.

After receiving notice of the federal court order of discipline, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. Copies of the orders issued by the en banc court were attached to the petition, as well as the opinions of the Fifth Circuit. On March 14, 2023, the Court rendered an order giving respondent and the ODC thirty days to demonstrate why the imposition of identical discipline would be unwarranted. Both parties timely filed a response to the order.

In his initial response, respondent argued that the imposition of reciprocal discipline was premature because he was appealing the Fifth Circuit's decision in his case to the United States Supreme Court. The Court then held the matter to await the decision of the United States Supreme Court. On October 2, 2023, the United States Supreme Court denied respondent's petition for writ of certiorari.

The Court:

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

> Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline … unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
> (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
> (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or

> (4) The misconduct established warrants substantially different discipline in this state; …
>
> If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In determining the appropriate measure of reciprocal discipline, the Court is not required to impose the same sanction as that imposed by the jurisdiction in which the misconduct occurred. Nevertheless, only under extraordinary circumstances should there be a significant variance from the sanction imposed by the other jurisdiction. *In re: Aulston*, 05-1546 (La. 1/13/06), 918 So. 2d 461. See also *In re Zdravkovich*, 831 A.2d 964, 968-69 (D.C. 2003) ("there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority"). In the instant case, the imposition of reciprocal discipline against respondent based upon the federal court's judgment (a one-year suspension, which has become final upon the denial of certiorari by the United States Supreme Court) is clearly appropriate. Respondent has presented no evidence that imposition of this sanction in Louisiana would result in a grave injustice for purposes of Supreme Court Rule XIX, § 21, and there is no suggestion of such upon the face of the record before us. Moreover, there is little doubt that respondent's conduct would warrant discipline in Louisiana, given that it involves improper referral payments to another attorney. Under these circumstances, the Court found it is appropriate to defer to the federal court judgment imposing discipline upon respondent. The Court imposed reciprocal discipline in the form of a one-year suspension from the practice of law. The Court also stated that nothing in its order should be read as precluding the reinstatement of respondent in the United States District Court for the Eastern District of Louisiana if permitted under the rules of that court.

In re: Myles Julian Johnson, 2023-B-00480 (La. 6/26/23)

This matter arises from a Petition to Initiate Reciprocal Discipline Proceedings filed by the Office of Disciplinary Counsel ("ODC") against respondent, Myles Julian Johnson, an attorney licensed to practice law in Louisiana and Washington, based upon discipline imposed by the Supreme Court of Washington.

The Scholoff Matter

On March 7, 2022, the Washington State Bar Association's Office of Disciplinary Counsel ("WODC") received a grievance from respondent's former client Donald Scholoff. According to the grievance, Mr. Scholoff paid respondent $15,000 for representation in a federal criminal matter. Thereafter, respondent neglected the matter, eventually withdrew due to health reasons, and failed to refund the unearned fee after promising to do so.

The WODC sent respondent notice of the grievance, but respondent failed to timely respond. When respondent finally did respond, he claimed he had earned the entire fee. On April 27, 2022, the WODC requested additional information and documents to support this contention, but respondent failed to provide any of the requested information or documents.

On June 15, 2022, the WODC issued a subpoena to respondent to provide a deposition and to produce the previously-requested records. Respondent accepted service of the subpoena and appeared for the deposition on August 3, 2022, but he did not produce any records. The deposition ended early when respondent requested an opportunity to hire counsel. After numerous

continuances, respondent finally obtained counsel. Although his counsel advised the WODC respondent would provide the requested records by December 16, 2022, respondent failed to do so.

On December 21, 2022, respondent's counsel informed the WODC that respondent would not be providing the requested records due to health reasons and would provide a letter from his doctor. The WODC never received a letter from respondent's doctor. On February 3, 2023, respondent informed the WODC he planned to hire new counsel and would sign medical release forms. Respondent failed to do either.

The Simms Matter

On September 26, 2022, the WODC received a grievance from respondent's former client Keon Simms. According to the grievance, respondent accepted payment and agreed to represent Mr. Simms in two separate criminal matters but then neglected the matters. Mr. Simms further alleged that respondent failed to disclose his suspension from the practice of law and failed to provide Mr. Simms with a refund or a copy of his client file.

The WODC sent respondent two notices of the grievance, but he failed to respond. On November 15, 2022, the WODC issued a subpoena to respondent to provide a deposition on January 5, 2023, and to produce all records related to his representation of Mr. Simms. Although respondent accepted service of the subpoena on December 7, 2022, he emailed the WODC on January 4, 2023, to advise he would be unable to appear for his deposition the next day due to health issues. Respondent also indicated he would provide the WODC with a letter from his doctor. The WODC requested that respondent sign medical release forms. Respondent failed to provide the WODC with any medical records from his doctor or signed medical release forms. On February 3, 2023, respondent informed the WODC he intended to hire counsel and would sign the medical release forms. The WODC never received a notice of appearance from an attorney on respondent's behalf, and respondent never answered Mr. Simms' grievance or signed the requested medical release forms.

The Morrison Matter

On September 24, 2022, the WODC received a grievance from Robert Morrison. According to the grievance, respondent agreed to represent Mr. Morrison in a civil matter but then neglected the matter, failed to communicate with him, and lied to him. Mr. Morrison further alleged that respondent failed to disclose his suspension from the practice of law.

The WODC sent respondent two notices of the grievance, but he failed to respond. On November 15, 2022, the WODC issued a subpoena to respondent to provide a deposition on January 5, 2023, and to produce certain records. Although respondent accepted service of the subpoena on December 7, 2022, he emailed the WODC on January 4, 2023, to advise he would be unable to appear for his deposition the next day due to health issues. Respondent also indicated he would provide the WODC with a letter from his doctor. The WODC requested that respondent sign medical release forms. Respondent failed to provide the WODC with any medical records from his doctor or signed medical release forms. On February 3, 2023, respondent informed the WODC he intended to hire counsel and would sign the medical release forms. The WODC never received a notice of appearance from an attorney on respondent's behalf, and respondent never answered Mr. Morrison's grievance or signed the requested medical release forms.

Additional Matters

A review committee of the Washington State Bar Association's Disciplinary Board has ordered a public hearing on four other grievances involving allegations that respondent failed to cooperate with a disciplinary investigation. In each matter, respondent failed to respond to the WODC's requests for information and records, necessitating the issuance of a subpoena to take his deposition. In each matter, respondent failed to comply with the subpoena to produce records. In two of the matters, respondent failed to appear for his deposition.

On February 9, 2023, the WODC filed with the Supreme Court of Washington a petition for respondent's interim suspension, pursuant to Rule 7.2(a)(3) of the Rules for Enforcement of Lawyer Conduct. Upon respondent's failure to appear for a show cause hearing on March 14, 2023, the Supreme Court of Washington considered the WODC's petition without oral argument and interimly suspended respondent from the practice of law.

After receiving notice of the Washington order of discipline, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. A certified copy of the decision issued by the Supreme Court of Washington was attached to the motion. On April 3, 2023, the Louisiana Supreme Court rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline in this state would be unwarranted. Respondent filed an opposition to the ODC's motion to initiate reciprocal disciplinary proceedings in Louisiana.

The Court:

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

> Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline ... unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
>
> (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
> (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
> (4) The misconduct established warrants substantially different discipline in this state
> .

If the Court determines that any of those elements exists, the Court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In the instant case, respondent's sole objection to reciprocal discipline rests on his contention that the interim suspension ordered by the Supreme Court of Washington is not a disciplinary sanction. Therefore, he submits the Louisianan Supreme Court should not impose reciprocal discipline.

Rule 7.2(a)(3) of the Washington Rules for Enforcement of Lawyer Conduct provides for an interim suspension when a lawyer fails to cooperate in a disciplinary investigation:

> Failure To Cooperate with Investigation. When any lawyer fails without good cause to comply with a request under rule 5.3(g) or rule 15.2(a) for information or documents, or with a subpoena issued under rule 5.3(h) or rule 15.2(b), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the lawyer pending compliance with the request or subpoena. A petition may not be filed if the request or subpoena is the subject of a timely objection under rule 5.5(e) and the hearing officer has not yet ruled on that objection. If a lawyer has been suspended for failure to cooperate and thereafter complies with the request or subpoena, the lawyer may petition the Court to terminate the suspension on terms the Court deems appropriate.

Notably, nothing in this rule expressly provides that the suspension for failure to cooperate is not deemed to be a disciplinary suspension, as respondent argues. Instead, respondent relies on a notice issued by the Washington State Bar Association, which states:

> PLEASE TAKE NOTICE that by order of the Washington Supreme Court entered the 14th day of March 2023, a copy of which is attached, lawyer Myles Julian Johnson, who practices in the City of Tukwila, WA, was suspended from the practice of law in the State of Washington, pursuant to ELC 7.2(a)(3), effective March 14, 2023 Myles Julian Johnson is suspended from the practice of law pending compliance with the request or subpoena. This suspension is not a disciplinary sanction. [emphasis added].

Despite the Washington State Bar Association's characterization, the Court believed the suspension is in fact in the nature of a disciplinary sanction. While it is not final discipline, it is similar to the sanction of civil contempt insofar as it has the effect of removing respondent from practice unless and until he complies with the disciplinary counsel's request. From a reciprocal discipline standpoint, the Court believed it would undermine the Washington Supreme Court's order if we were to allow respondent to continue to practice in Louisiana while he flouts the authority of the Washington Supreme Court. See, e.g., *In re Zdravkovich*, 831 A.2d 964, 968-69 (D.C. 2003) ("there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority").

Moreover, Rule 7.2(a)(3) of the Washington Rules for Enforcement of Lawyer Conduct provides that if the lawyer "complies with the request or subpoena, the lawyer may petition the

Court to terminate the suspension on terms the Court deems appropriate." In the event the Washington Supreme Court terminates the suspension, respondent may file notice in this court and seek reinstatement in Louisiana pursuant to the provisions of Supreme Court Rule XIX, § 24(K).

The Court found it was appropriate to defer to the Washington judgment imposing discipline upon respondent and imposed reciprocal discipline and interimly suspended respondent from the practice of law.

In re: Larue Haigler, III, 2023-B-00446 (La. 6/7/23)

On February 28, 2023, the Disciplinary Board of the Alabama State Bar issued an order transferring respondent to disability inactive status. The order provides that "pursuant to Rule 27(c), Ala. R. Disc. P.,[2] LaRue Haigler, III, is hereby transferred to Disability Inactive Status, effective immediately."

After receiving notice of the order transferring respondent to disability inactive status in Alabama, the ODC filed a petition with the Louisiana Supreme Court to initiate reciprocal disability inactive status proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. A certified copy of the decision and order of the Disciplinary Board of the Alabama State Bar was attached to the motion. On March 29, 2023, the Court rendered an order giving respondent and the ODC thirty days to demonstrate why transferring him to disability inactive status in this state would be unwarranted. Respondent failed to file any response with the Court.

In response to the Court's order, the ODC indicated that the documentation submitted to the Disciplinary Board of the Alabama State Bar in support of the petition to transfer to disability inactive status indicates that respondent is unable to assist in his defense of pending disciplinary proceedings due to incapacity as a result of substance use and other disorders for which he is currently undergoing treatment.

The Court:

The standard for transferring an attorney to disability inactive status on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides, in pertinent part:

> Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose … disability inactive status unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
> … (5) the reason for the original transfer to disability inactive status no longer exists.
> If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

On February 28, 2023, the Disciplinary Board of the Alabama State Bar transferred respondent to disability inactive status. The imposition of reciprocal disability inactive status in Louisiana is appropriate, and there is no suggestion otherwise upon the face of the record. The Court transferred respondent to disability inactive status.

In re: Mary Holly Hammett, 2023-B-00222 (La. 425/23)

In 2021, respondent was hired to represent the mother of a minor in a child custody proceeding in the Chancery Court of Lamar County, Mississippi. Attorney Erik Shawn Lowery served as opposing counsel. Chancellor Deborah Gambrell, who presided over the case, ruled against respondent's client in the custody proceeding. However, the ruling was reversed on appeal. The Supreme Court of Mississippi granted certiorari to consider the case, but later withdrew the writ that was granted.

Before a mandate was issued by the Supreme Court of Mississippi, respondent advised her client to withdraw the child that was the subject of the custody proceeding from the school where she was enrolled and enroll her in another school district. After the mandate was issued, Mr. Lowery scheduled another hearing in the matter with Judge Gambrell. Although she never formally withdrew from the case, respondent refused to attend the hearing, and she undertook no action in furtherance of the representation of her client following the issuance of the mandate.

During the course of the proceedings following the issuance of the mandate, respondent sent emails making disparaging remarks about Chancellor Gambrell. She also threatened to file, and ultimately did file, a complaint against Chancellor Gambrell with the Mississippi Commission on Judicial Performance, all in an effort to have Chancellor Gambrell recuse herself from the case. Due to the statements made concerning her by respondent, Chancellor Gambrell recused herself from the case.

In 2022, Mr. Lowery filed a disciplinary complaint against respondent. Respondent refused to cooperate with the Mississippi Bar in the investigation of the complaint.

On December 28, 2022, the Supreme Court of Mississippi ordered that respondent be suspended from the practice of law in Mississippi for one year for the following violations of the Mississippi Rules of Professional Conduct: Rules 3.5(a) (a lawyer shall not seek to influence a judge, juror, prospective juror or other official by means prohibited by law), 3.5(d) (a lawyer shall not engage in conduct intended to disrupt a tribunal), 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority), 8.2(a) (a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicating officer or public legal officer, or of a candidate for election or appointment to judicial or legal office), 8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct), and 8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

After receiving notice of the Mississippi order of discipline, the ODC filed a motion to initiate reciprocal discipline proceedings with the Louisiana Supreme Court, pursuant to Supreme Court Rule XIX, § 21. A certified copy of the decision issued by the Supreme Court of Mississippi was attached to the motion. On February 13, 2023, the Court rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline in this state would be unwarranted. Respondent failed to file any response with the Court.

The Court:

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

> Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline … unless disciplinary counsel or the lawyer demonstrates, or

> this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
> (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
> (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
> (4) The misconduct established warrants substantially different discipline in this state; …
> If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In the instant case, respondent has made no showing of infirmities in the Mississippi proceeding, nor do we discern any from our review of the record. Furthermore, we feel there is no reason to deviate from the sanction imposed in Mississippi, as only under extraordinary circumstances should there be a significant variance from the sanction imposed by the other jurisdiction. *In re: Aulston*, 05-1546 (La. 1/13/06), 918 So.2d 461. See also *In re Zdravkovich*, 831 A.2d 964, 968-69 (D.C. 2003) ("there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority").

Under these circumstances, it is appropriate to defer to the Mississippi judgment imposing discipline upon respondent. Accordingly, the Court imposed reciprocal discipline in the form of a one-year suspension from the practice of law.

ADJUDGED GUILTY OF ADDITIONAL MISCONDUCT

In re: Joseph Harold Turner, Jr., 2022-B-01402 (La. 1/11/23)

Respondent has prior reciprocal discipline. On April 5, 2021, the Supreme Court of Georgia disbarred respondent for violating the Georgia Rules of Professional Conduct. The misconduct at issue included failure to disburse settlement funds to a client, failure to respond to a client's requests for information, mishandling of a client trust account, and failure to respond to notice of a disciplinary investigation. After receiving notice of the Georgia order of discipline, the ODC filed a motion to initiate reciprocal discipline proceedings with the Louisiana Supreme Court based upon the discipline imposed in Georgia. In October 2021, the Court imposed reciprocal discipline and disbarred respondent. *In re: Turner*, 21-0786 (La. 10/1/21), 324 So.3d 1038 ("*Turner I*").

On June 1, 2017, respondent was declared ineligible to practice law for failing to comply with mandatory continuing legal education requirements. On September 11, 2017, he was declared ineligible to practice for failing to pay bar dues and the disciplinary assessment. Respondent has never rectified his ineligibility.

Notwithstanding his ineligibility, respondent agreed to represent R.A. and M.A. following their arrest on narcotics-related charges. On July 8, 2019, he accepted $2,500 to provide them with legal advice and representation in the criminal matter, which was pending in Jefferson and

Plaquemines Parishes. Respondent was also hired to represent their interests in the signing of contracts wherein R.A. and M.A. agreed to work as confidential informants for the Jefferson Parish District Attorney's Office and the Jefferson Parish Sheriff's Office.

Pursuant to the representation, respondent engaged in communications on behalf of R.A. and M.A. In August 2019, he contacted and interacted with Assistant District Attorney Edward McGowan of the Plaquemines Parish District Attorney's Office and Assistant District Attorney Joan Benge of the Jefferson Parish District Attorney's Office. Also in August 2019, he interacted, both by telephone and in person, with a narcotics detective from the Jefferson Parish Sheriff's Office.

Notices of the associated disciplinary complaint were sent to respondent at two separate addresses, but the notices were left unclaimed and returned to the ODC. Notice was then sent to respondent at his registered email address. The email was not returned as undeliverable, but respondent did not reply to the complaint.

In January 2020, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.1(b)(c) (failure to comply with annual professional obligations), 1.5(f) (failure to refund an unearned fee), 5.5(a) (engaging in the unauthorized practice of law), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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.

The Court:

The evidence in the record of this deemed admitted matter supports a finding that respondent failed to comply with his professional obligations, engaged in negotiations with counsel and accepted a fee while he was ineligible to practice law, falsely stated to counsel that he was eligible to practice law, failed to return an unearned fee, and failed to cooperate with the ODC in its investigation. Based on these facts, respondent has violated the Rules of Professional Conduct as charged.

Respondent violated duties owed to his clients, the public, the legal system, and the legal profession. His conduct was knowing, if not intentional, and caused both potential and actual harm. The applicable baseline sanction is suspension.

The aggravating factors found by the disciplinary board are supported by the record. The board found that the following aggravating factors are present: multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law. The record supports the mitigating factor of personal or emotional problems.

On April 13, 2021, the Court remanded the instant matter for further review by the disciplinary board. Following remand, respondent was disbarred in *Turner I* pursuant to a reciprocal discipline proceeding. As noted by the board, the timeframe for the misconduct at issue in *Turner I* is unknown, and thus, there is insufficient information to perform a full *Chatelain* analysis. Under these circumstances, the Court found that the instant misconduct should be

considered if and when respondent applies for readmission. The Court adopted the board's recommendation and adjudged respondent guilty of additional rule violations to be considered if and when he seeks readmission to the practice of law. The Court also ordered respondent to pay restitution to his clients in the amount of $2,500.

REINSTATEMENT DENIED

In re: Donald R. Dobbins, 2023-OB-00904 (La. 9/19/23)

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record as well as petitioner's objection to the board's report,

IT IS ORDERED that the petition for reinstatement be denied. Petitioner may not reapply for reinstatement until he has (1) addressed the fee dispute with Byron Norris through the Louisiana State Bar Association's fee dispute resolution program, and (2) been evaluated by the Judges and Lawyers Assistance Program and abided by any recommendation of said evaluation. However, in no event shall petitioner reapply for reinstatement until one year has passed from the date of this order. Supreme Court Rule XIX, Section 24(I).

PERMANENT RETIREMENT FROM THE PRACTICE OF LAW

In re: Willard J. Brown, Sr., 2023-OB-00880 (La. 9/6/23)

Considering the Petition for Permanent Retirement from the Practice of Law filed by petitioner, Willard J. Brown, Sr., and the recommendation of the Office of Disciplinary Counsel that the petition be granted, IT IS ORDERED that the petition of Willard J. Brown, Sr., Louisiana Bar Roll number 23405, for permanent retirement from the practice of law be and is hereby granted, pursuant to Supreme Court Rule XIX, § 20.2. This order shall be effective immediately.

IT IS FURTHER ORDERED that the Office of Disciplinary Counsel may seek the appointment of a trustee(s) to protect the interests of respondent's clients pursuant to the provisions of Supreme Court Rule XIX, § 27, if appropriate.