ORIGINAL

Louisiana Attorney Disciplinary Board
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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: TRENT ANTHONY GARRETT, SR.

NUMBER: 11-DB-091

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

This is a disciplinary proceeding based upon the filing of formal charges against Trent Anthony Garrett, Sr. ("Respondent") by the Office of Disciplinary Counsel ("ODC"). In three enumerated counts of formal charges, filed on September 28, 2011, ODC alleges that Respondent violated numerous Rules of Professional Conduct ("Rule(s)"). Specifically, ODC alleges that Respondent violated Rules 1.1(c), 1.3, 1.15(a), 1.16(c)(d), 3.2, 8.1, and 8.4(a).[1] After reviewing the hearing testimony and the documentary evidence, the hearing committee concluded that Respondent violated the Rules of Professional Conduct as charged. For his misconduct, the committee recommended that Respondent be suspended from the practice of law for a period of three years, with all but one year and one day deferred, followed by a two-year period of supervised probation. The committee also recommended as conditions that Respondent complete a law office management program and that he participate in a mentoring program.

For the reasons set forth below, the Board adopts the Committee's factual findings with respect to the allegations and modifies the Committee's findings in mitigation. Additionally, the Board adopts the Committee's legal conclusions with the exception of the conclusion that Respondent violated Rule 1.15(a). The Board also adopts the Committee's recommendation that Respondent be suspended from the practice of law for a period of three years with all but one year and one day deferred. Finally, the Board recommends that Respondent be assessed with all costs and expenses of these proceedings.

[1] The text of the Rules is contained in the attached Appendix.

PROCEDURAL HISTORY

Formal charges, consisting of three counts, were filed against Respondent by ODC on September 28, 2011. The charges allege that Respondent violated Rule 1.1(c) (failure to timely notify LSBA of changes in address); Rule 1.3 (lack of diligence); Rule 1.15(a) (failure in safekeeping client's property/file); Rule 1.16(c)(d) (failure to comply with obligations upon termination of representation); Rule 3.2 (failure to expedite litigation); Rule 8.1(a) (knowingly make a false statement of material fact in connection with a bar admission application); Rule 8.1(b) (failure to respond to lawful demand for information from ODC); Rule 8.1(c) (failure to cooperate with ODC in an investigation); and Rule 8.4(a) (violate or attempt to violate the Rules of Professional Conduct).[2] The charges were served upon Respondent via certified mail at 58026 Fort Street in Plaquemine, Louisiana on October 11, 2011.[3]

Upon the motion of Respondent, an order was issued on November 4, 2011, granting Respondent an additional 30 days in which to respond to the formal charges. On December 1, 2011, Respondent answered the formal charges. He denied most of the factual allegations but admitted to other, more general facts contained in the formal charges.

On March 2, 2012, ODC filed its Pre-hearing Memorandum recommending that Respondent be suspended from the practice of law for three years, with no less than one year and one day of actual suspension, which should be followed by two years of supervised probation.

After a pre-hearing conference on March 6, 2012, the formal hearing in this matter was held on March 15, 2012 before Hearing Committee #42. Deputy Disciplinary Counsel, Eric R. McClendon, appeared on behalf of ODC. Respondent appeared *pro se*. The Committee heard the testimony of numerous witnesses, including Respondent. ODC submitted various exhibits,

[2] The text of the Rules is contained in the attached Appendix.
[3] Service was also attempted via certified mail at two other known addresses for Respondent, but both were returned to sender as unclaimed and unable to forward.

which were entered into the record as Exhibits ODC-1 through ODC-19. Respondent did not introduce any exhibits.

The Committee issued its report on May 23, 2012, having concluded that Respondent violated the Rules of Professional Conduct as charged. For Respondents misconduct, the Committee recommended a three-year suspension from the practice of law, with all but one year and one day deferred, followed by a two-year period of supervised probation.

On July 16, 2012, ODC filed a Notice of No Objection to Report of the Hearing Committee #42 in which it concurred with the Committee's findings and sanction recommendation.

The matter was set for oral argument on August 16, 2012 before Panel "C" of the Disciplinary Board. On July 26, 2012, Julie B. White enrolled as counsel of record for Respondent. Ms. White requested and was granted additional time within which to file a pre-argument brief. On September 18, 2012, Ms. White filed Respondent's Objection to Hearing Committee Recommendation in which she argued that several of the violations found by the Committee were not supported by clear and convincing evidence and that its sanction recommendation was too harsh. Ms. White suggested that a public reprimand was appropriate, or at most a fully-deferred six-month suspension with conditions, for Respondent's misconduct in this matter.

Oral argument in this matter was ultimately held on September 27, 2012 before Panel "A" of the Disciplinary Board.[4] Mr. McClendon appeared on behalf of ODC. Ms. White appeared on behalf of Respondent who was also present.

[4] As part of the Disciplinary Board's Law School Outreach Program, Oral Argument in this matter was held at Loyola University School of Law. Panel "A" consists of Chairman R. Steven Tew, Jr., Lawyer Member, Carl A. Butler, and Public Member, Linda P. Spain.

FORMAL CHARGES

The formal charges read, in pertinent part, as follows:

COUNT I

Respondent, Trent Anthony Garrett, Sr., is a Louisiana licensed attorney, Bar No. 30247, admitted to practice law in the State of Louisiana on April 13, 2006.

Lori C. Honore, Complainant, hired Respondent in September 2007 to represent her for her injuries sustained in an automobile accident. Respondent failed to provide diligent representation and failed to properly safekeep his client's file. Additionally, Respondent failed to properly maintain and keep updated his address information with the LSBA and failed to cooperate with ODC in this investigation.

1. Lack of diligence and failure to expedite litigation - Ms. Honore was injured in an automobile accident on August 22, 2007. Respondent claims to have fax filed the petition prior to midnight on Friday, August 22, 2008. However, the official records of the court indicate fax filing on Monday, August 25, 2008 and the only copy that Respondent supplied indicates transmission on the 23rd of August at 12:20 a.m. The court granted the defendant's peremptory exception of prescription and Ms. Honore's suit was dismissed with prejudice. Respondent filed a motion for a new trial on Ms. Honore's behalf. Hearing was held July 20, 2009. Respondent did not appear. "The Court, considering that no one appeared in support of said motion and that said motion was not well founded ..." denied the motion.

2. Failure to safekeep client property/file, failure to promptly return client file, and failure to comply with obligations to client upon termination of representation - Respondent admitted that he is unable to provide a complete copy of the client file. Respondent explained that he attempted going paperless and that documents were shredded. Respondent has been unable to provide ODC and his client with the entire file. Emails are unavailable or lost as are documents from early in the representation that were lost through the destruction of an un-backed-up computer. Respondent also admitted to unilaterally discontinuing to represent Ms. Honore upon her filing of the complaint with ODC despite, at that time, not having been discharged by her.

3. Failure to timely notify LSBA of changes in address, failure to cooperate with ODC, and failure to respond to ODC – ODC expended great time and effort attempting to contact Respondent regarding this investigation. ODC initially notified Respondent of the complaint and investigation by certified mail sent to his primary registration address on February 23,

2010. The item was returned unclaimed. Notice was sent a second time to Respondent's office address on April 5, 2010. A written response was received. On April 27, 2010, ODC sent, to Respondent's primary registration address, a written demand that Respondent provide his entire client file. Respondent received the demand on April 28, 2010. Not receiving the client file, a message was left on Respondent's voice mail regarding his response. On May 17, 2010, [ODC was] unable to leave [a] message because [Respondent's] voice mail was full. On May 19, 2010, [ODC] left [a] message with [an] individual and [was] informed that Respondent [was] out of town. [On] May 19, 2010, Respondent contacted ODC and promised to email client file. It was not received. [A] [s]ubpoena duces tecum [was] issued to Respondent to produce [the] file on or before July 19, 2010. [An] ODC investigator attempted to serve [Respondent] at primary registration address. An elderly lady was there. [The] [i]nvestigator gave his card to her requesting that Respondent call [him]. Respondent did not call and [the] [i]nvestigator returned the subpoena unserved. Ultimately, Respondent's employer learned of ODC's attempts to contact Respondent which resulted in Respondent making telephone contact with ODC. Finally, service of a subpoena and subpoena duces tecum were [perfected] upon Respondent on July 13, 2010. [Based upon] the Respondent's request, the date was rescheduled to August 26, 2010 [at which point] Respondent finally gave testimony and provided a copy of his client file.

COUNT II

Respondent, Trent Anthony Garrett, Sr., is a Louisiana licensed attorney, Bar No. 30247, admitted to practice law in the State of Louisiana on April 13, 2006. Andy Fisher on behalf of the Better Business Bureau filed a complaint alleging that Respondent had been retained as an arbitrator for a BBB arbitration hearing on June 9, 2010. Normally, a decision is rendered within two to three weeks. On July 12, 2010, the BBB emailed Respondent requesting his decision in the case. Respondent replied "I should have it to you this week." Complainant, Andy Fisher, phoned Respondent numerous times and spoke with Respondent's secretary who reported that Respondent was not in the office and that she would give him the messages. As of September 23, 2010, Respondent had not responded to the messages nor rendered a decision in the arbitration.

1. Mr. Fisher's complaint was received at ODC on October 6, 2010.

2. Respondent was notified of the complaint by certified mail to his primary registration address. The postal service indicates that the item was delivered on October 14, 2010.

3. Respondent did not respond to ODC.

4. A subpoena was issued requiring the Respondent to appear at ODC on April 6, 2011. The ODC investigator assigned to serve Respondent was unsuccessful in locating and effecting service.

5. Pursuant to Rule XIX Section 13 of the Rules of the Louisiana Supreme Court, service upon Respondent may be made by certified mail to Respondent's primary registration address or other last known address. This count of these formal charges encompasses only Respondent's failure to respond to ODC's request for information and failure to cooperate with ODC and does not pertain to the underlying allegations of the complaint.

COUNT III

Respondent, Trent Anthony Garrett, Sr., is a Louisiana licensed attorney, Bar No. 30247, admitted to practice law in the State of Louisiana on April 13, 2006.

Complainant is an ex-spouse of Respondent. Complainant alleges that Respondent is in arrears on his child support obligations and was in arrears at the time of his application and admittance to the State Bar of Louisiana.

1. ODC sent Respondent written notice of the complaint by certified mail dated February 8, 2011 to Respondent's primary registration address.

2. The item was returned to ODC marked "unclaimed" on February 28, 2011.

3. A second notice was sent to Respondent by certified mail dated March 15, 2011 to his secondary address.

4. This item was returned to ODC marked "attempted not known" on March 24, 2011.

5. Ultimately, the Respondent was located and an ODC investigator personally delivered a copy of the complaint to Respondent who signed accepting delivery on April 12, 2011.

6. ODC received Respondent's written response to the complaint on May 3, 2011.

7. Respondent acknowledged therein his $150 per month child support obligation and that support payments have been seized out of his bank account. Respondent further stated that he is "up-to-date with the exception of the first few months of this year." Respondent did not address, however, his arrearage at the time of his application and admission to the Bar.

8. Respondent has, by his actions, failed to cooperate with ODC in this investigation. Pursuant to Rule XIX Section 13 of the Rules of the Louisiana Supreme Court, service upon Respondent may be made by certified mail to Respondent's primary registration address or other last known address. ODC attempted to serve Respondent with this complaint at his primary and secondary addresses, both of which were returned marked "unclaimed" and "attempted not known" respectively. Due to Respondent's failure to claim his mail and/or his failure to timely notify the LSBA of changes in address, ODC was required expend additional time and resources to locate Respondent and have him served with the complaint by an ODC investigator.

9. Respondent knowingly made a false statement of material fact in connection with his admission to the State Bar of Louisiana. On or about January 29, 2004, Respondent executed a Request for Preparation of a Character Report by the National Conference of Bar Examiners and an Application to the Bar of Louisiana. Question 19 states: "Have you ever been a named party to any civil action? NOTE: Family law matters (including continuing orders for child support) should be included here. If yes, complete FORM 3" Respondent replied "yes." Question 24, in relevant part, states: "A. Have you had any debts of $500 or more (including credit cards, charge accounts, and student loans) which have been more than 90 days past due within the past three years?" Respondent indicated "yes." "If yes to any of the above, complete a FORM 6 for each debt." Respondent's Form 3 in response to Question 19 lists his participation in the civil matter with Complainant as a Petition for Divorce with disposition of Judgment of Divorce and offers further explanation as "continuing obligation." No arrearage to the "continuing obligation" is disclosed. Respondent includes two FORM 6's neither of which concerns Respondent's "continuing obligation." However, Respondent was, in January 2004, in arrearage on his child support obligation in the amount of $8,400.00, being 56 months at $150 per month. Respondent, when admitted to the State Bar of Louisiana on April 13, 2006, was in arrears on his child support obligation in the amount of $12,300.00, or 82 months delinquent. Respondent's arrearage was not disclosed in Respondent's application to the Bar. In fact, the first payment credited to Respondent's account was not until June 5, 2006, after Respondent's admission to the Bar. Respondent was less than truthful when he swore or affirmed before a Notary Public on the 29th day of January 2004: "I have read the foregoing document and have answered all the questions fully and frankly. The answers are complete and true to the best of my knowledge ... "

THE HEARING COMMITTEE'S REPORT

As noted above, the Committee issued its report on May 23, 2012. Based upon the testimony presented at the hearing and the evidentiary record, the Committee made the following findings of fact:

FINDINGS OF FACT

Count I:

The Committee found Ms. Honore to be an honest, credible and forthright witness. She was familiar with Respondent as they had both previously worked for the Louisiana State Police in the same building. She described hiring Respondent and signing a contract with him shortly after she was involved in an automobile accident on August 22, 2007. There is no question Ms. Honore hired Respondent as her attorney and was justified in her belief that he represented her.

Correspondence from Respondent's file establishes he was communicating with the at fault driver's insurer as early as September 13, 2007, and represented himself as having been retained to represent Ms. Honore's interest in that accident (Exhibit ODC2 P258). Although at the Hearing Respondent tried to downplay his obligations by asserting he was merely trying to help Ms. Honore with her claim, the evidence clearly establishes an attorney/client relationship was formed. Respondent therefore owed all the duties, obligations and responsibilities to Ms. Honore as he would to any client.

At some point during Respondent's representation of Ms. Honore, he switched jobs and started working for the District Attorney's Office. He has since made several other work moves and is apparently not working for anyone at the present time. Ms. Honore testified that Respondent was very difficult to reach, avoided her calls, and at times he would only answer his cellphone if she called from a phone number unfamiliar to him. Respondent also testified that after the complaint was filed against him, he avoided calls from Ms. Honore and her husband.

The record evidence also proves Respondent failed to file Ms. Honore's petition for damages timely. The fax confirmation from the Clerk of Court's Office indicates the pleading was filed twenty (20) minutes after midnight, or twenty minutes after the last day to timely file. At the hearing Respondent asserted a number of reasons and/or factors in an effort to explain how this situation arose. Respondent stated he had been in negotiations with the claims adjuster on the file via e-mail and had understood they had reached an agreement to settle this matter.[FN1] From his testimony, Respondent states that the entire week prior to prescription running, the adjuster was on vacation and/or would not respond to his e-mails. When he was unable to absolutely confirm an agreement was in place, he filed suit (prior to midnight on a Friday). Although Respondent stated he started trying to fax the petition to the clerk at 11:30 p.m., the confirmation from the Clerk's office indicates receiving it at 12:20 a.m.

Respondent testified he had a fax confirmation sheet indicating a 12:02 a.m. time stamp on it and also relayed a conversation he had with the clerk's office acknowledging their fax machine had not been calibrated recently and their time stamp may have been off.[FN2]

FN1 There are several settlement offers from the insurer in the Respondent's file, including one dated as late as August 18, 2008 in the amount of $10,000 (ODC2 P325).

FN2 While there are several written settlement offers from the insurer, there is no proof Respondent ever accepted any offer made.

While the Committee has empathy for one who finds themself in a circumstance such as described above, two points remain. First, there was no documentary evidence submitted to support the statements made by Respondent. Respondent did not produce any e-mails between he and the adjuster or any proof of a confirmation of a settlement agreement. Nor did he produce any record of fax attempts made from his machine or a fax confirmation sheet or any other information from the Clerk to help call into question the time or date Ms. Honore's petition may have been filed with the Clerk.[FN3]

FN3 The committee left the record open for two additional weeks after the hearing for Respondent to submit any additional evidence in support of these assertions and no additional documents were introduced.

The second and more troubling point for the Committee was the fact that if proof of any such facts existed, that evidence should have been produced at the hearing on the insurer's motion to dismiss Ms. Honore's claim, or used to try to enforce the settlement agreement. Instead, the trial court granted the exception of prescription (Exhibit ODC5, P350), and Respondent failed to appear at the court hearing on the motion for new trial that he requested to rehear the exception (Exhibit ODC6, P351).

Although respondent ultimately stated he accepts responsibility for prescription running against Ms. Honore, the Committee did not find he truly accepted his responsibility, maintaining it was really not his fault.

Respondent presented testimony at the Hearing of severe personal and financial problems that he was dealing with during the time period spanning his representation of Ms. Honore. He testified a tree damaged his residence in Lafayette, resulting in water and mold damage to the home and to the files he stored at that location. He eventually lost his home. He also testified his car had been broken into several times and his computer was stolen. He described sleeping at his office and living out of his car, as he had no place to go.

It appears from the evidence and testimony presented that during this relevant time period, Respondent used this Lafayette residence as his primary registration address with the Bar Association and/or his former mother-in-law's address located next door, once his home was damaged. According to

Respondent, this was the best, or only, home address he had available. Respondent's continued use of his Lafayette address as his primary registration address with the Bar, when he was unable to live there and did not have the means or a system in place to obtain his mail from that location was obviously not a good decision.

Respondent acknowledged that during the time period concerning Count I, he was employed full time, first at the State Police Offices and then at the District Attorneys Association, both in Baton Rouge. After he left the District Attorneys' Association, he became an ADA and worked for Rickey Babin in Gonzales or Burnside and then in Donaldsonville. It appears from the record that Respondent did update his secondary address with his various work addresses, as his employment and physical office addresses changed. The evidence shows he changed his work addresses at least five times.

The testimony provided by ODC's staff member confirms ODC did have Respondent's work information and Respondent did receive some of the information sent to his work address(es). Although he testified about office staffing problems and problems receiving his mail, those issues cannot completely explain the numerous problems ODC had in serving Respondent at the addresses he provided. That responsibility must ultimately rest with him. Additionally, even when Respondent did receive some of the notices he did not always respond timely and within applicable delays. The ODC therefore did establish Respondent's failure to fully cooperate with ODC in its investigation.

Based on all the information presented to the Committee, the ODC met its burden in proving Respondent violated Rules of Professional Conduct 1.3 - lack of diligence; Rule 1.15(a) - failure to safekeep client's property /file; Rule 1.16(c & d) - failure to comply with obligations upon termination of representation; Rule 3.2 - failure to expedite litigation; Rule 8.1(b) - failure to respond to lawful demand for information from ODC; Rule 8.1(c) - failure to cooperate with ODC in an investigation; and, **Rule 8.4(a) -violate or attempt to violate the RPC.** The committee did not find Respondent violated Rules of Professional Conduct 1.1(c) - failure to timely notify LSBA of changes in address. [Emphasis included.]

Count II

In support of the charges contained in Count II, ODC presented evidence as to the difficulty it had in serving Respondent and his resulting failure to cooperate in the investigation. The committee adopts its findings above in regard to these charges.

Based on the proof presented in support of the charges in Court II, ODC has proven Respondent violated Rules of Professional Conduct 8.1 (b) - failure to respond to lawful demand for information from ODC; Rule 8.1(c) - failure to cooperate with ODC in an investigation; and Rule 8.4(a) - violate or attempt to violate the RPC.

Count III

In regard to the charges alleged in Count III, the ODC submitted documentary evidence, as well as live testimony of its investigator and Respondent's ex-wife in support of the charges. As with the first two counts,

> proof was presented confirming ODC's unsuccessful attempts to contact and serve Respondent at his primary and secondary addresses.
>
> The second aspect of Count III deals with whether or not Respondent was aware he was in arrears on his child support payments at the time he made his bar admission application and thus knowingly made a false statement of material fact.
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> From the testimony offered by both Respondent and his former wife, it is clear they had a tumultuous relationship. Both had very different perspectives of significant events presented to the Committee. However, most of the critical facts impacting the alleged Rule violations are not disputed. Respondent acknowledged that he and his wife were divorced in the late 1990's, prior to his law school years. He also acknowledged that as part of the divorce proceeding he was ordered to and agreed to pay child support of $150 per month.
>
> Testimony was also introduced that his wife hit him with a car and criminal charges were filed against her as a result of that incident. After that she moved to Texas and they were not in contact for a period of time. However, Respondent admitted they reconciled for at least a few months while he was in law school and he traveled back and forth to Texas during that period. Although the testimony conflicts as to whether or not he contributed to his former wife's household expenses during that period of reconciliation, Respondent was not making child support payments as ordered in the 1990's divorce decree. In fact, there was no testimony offered that he voluntarily made any of those payments. When an enforcement proceeding was eventually filed in Texas, the arrears dated back to the 1990's.
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> Respondent's testimony was not credible that [he] was unaware he was in arrears on those payments when he signed his Bar application in 2004. He acknowledged that his wages have been garnished and he does not remember getting a tax refund check due to back support payments. Although he attributes these garnishments actions to a child support order pending against him in Iowa, a garnishment proceeding in and of itself means a debt is owed. Whether it was for his children located in Texas or a child in Iowa, a debt was owed and Respondent failed to acknowledge this on his Bar application. Based on the proof presented in support of the charges in Court III, ODC has proven Respondent violated Rules of Professional Conduct 1.1 (c) - failure to timely notify LSBA of changes in address; Rule 8.1(a) - knowingly make a false statement of material fact in connection with a bar admission application; Rule 8.1(b) - failure to respond to lawful demand for information from ODC; Rule 8.1(c) - failure to cooperate with ODC in an investigation; and, Rule 8.4(a) - violate or attempt to violate the RPC.

Once the Committee determined that Respondent had engaged in professional misconduct, it undertook consideration of certain factors as set forth in Rule XIX, Section 10(C). First, the Committee considered the existence of aggravating and mitigating factors. The

Committee made no findings with respect to aggravating factors. In mitigation, the Committee acknowledged several factors:

> . . . Respondent's continuing effort to keep updated his current work address (at least five change of addresses were noted in five years), the apparent lack of a better home address than the Lafayette address he listed with the Bar, his testimony regarding the tree and water damage to his home, the difficulties with a permanent living situation.

The Committee also noted:

> . . . ODC apparently knew Respondent was working for the 23rd JDC District Attorney no later than July of 2010 (Formal Charges, Count I, page 3). Respondent offered uncontradicted testimony that he was employed in that office until approximately April of 2011. It appears that several of the ODC's early attempts to contact Respondent in connection with Count II might have been more successful had ODC checked its records, including Respondent's place of employment.

Finally, the Committee found that Respondent had no prior violations.

In determining the appropriate sanction, the Committee relied upon Standards 4.42, 6.12, 6.22, and 7.2 of the *ABA Standards for Imposing Lawyer Sanctions* as well as the jurisprudence cited by ODC in its Pre Hearing Memorandum. The Committee recommended that Respondent be suspended from the practice of law for a period of three years, with all but one year and a day deferred, followed by a two-year period of supervised probation subject to certain conditions.

ANALYSIS

I. The Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Rule XIX, §(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges…and prepare and forward to the court its own findings, if any, and

recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/1992).

Here, the Committee's findings of fact are supported by record and do not appear to be manifestly erroneous. *De novo* review indicates that the Committee correctly applied the Rules of Professional Conduct to conclude that Respondent violated Rules 1.3, 1.15(a), 1.16(c)(d), 3.2, 8.1, and 8.4(a) but that he did not also violate Rule 1.1(c) as alleged by ODC. Each of these Rule violations is discussed below:

Rule 1.1(c): Rule 1.1(c) states:

> A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

At the hearing, Respondent attested to having serious personal and financial problems at the time he represented Ms. Honore. He testified that he lost his home after a tree damaged his residence in Lafayette, rendering it uninhabitable. He described living out of his car and finding various places to stay the night, including his place of business at times.

Respondent explained that he continued to use the Lafayette residence as his primary address with the Bar Association, as well as the address of his former mother-in-law's adjacent residence, because these were the best, or only, home addresses he had available at that time.

As the Committee aptly noted, "Respondent's continued use of his Lafayette address as his primary registration address with the Bar, when he was unable to live there and did not have the means or a system in place to obtain his mail from that location was obviously not a good

decision." Nevertheless, the record demonstrates that Respondent updated his secondary address at least five times over the last several years as he changed jobs. In 2007, when he undertook the representation of Ms. Honore, Respondent was a full-time employee of the State Police Offices in Baton Rouge. He then moved to the District Attorneys Association in Baton Rouge before leaving and taking a position as an Assistant District Attorney (ADA) for Rickey Babin in the 23rd Judicial District, working in Gonzales and Donaldsonville. Additionally, the record establishes that ODC had Respondent's work addresses on file and that Respondent received some correspondence from ODC at these addresses. Therefore, the issue appears to be more of a failure to cooperate or promptly check and answer mail than a failure to maintain a current address with the Bar Association. Accordingly, the Committee was not manifestly erroneous in concluding that ODC failed to carry its burden of proof with respect to the alleged Rule 1.1(c) violation.

Rule 1.3: Rule 1.3 indicates that a lawyer shall act with reasonable diligence and promptness in representing a client. With respect to Count I, the record demonstrates that Respondent failed to timely file Ms. Honore's petition for damages, which resulted in her suit being dismissed with prejudice. According to the fax confirmation from the Clerk of Court's Office, Respondent filed the pleading at 12:20 a.m., 20 minutes after the deadline for filing within the prescriptive period. Respondent provided various explanations as to what happened. He stated that he was in settlement negotiations with the claims adjuster via e-mail and believed an agreement had been reached. Respondent further indicated that the week prior to the filing deadline, the claims adjuster was on vacation and could not be reached. Unable to confirm the settlement agreement, Respondent attempted to file the petition. Although Respondent claims he began faxing the petition to the clerk's office at 11:30 p.m., the fax confirmation indicates that it was received at

12:20 a.m. Respondent testified that he had a fax confirmation sheet indicating a 12:02 a.m., but this has not been offered into evidence. Respondent also relayed a conversation he allegedly had with the clerk's office in which it was acknowledged that the clerk's fax machine had not been calibrated recently and, therefore, the time stamp may be inaccurate. However, no evidence has been introduced to prove his claims.

As to Count II, the record shows that Respondent failed to act with reasonable diligence and promptness in handling the arbitration of a matter for the Better Business Bureau. Respondent was retained for an arbitration hearing on June 9, 2010. According to the record, it usually takes about two to three weeks for a decision to be rendered in this type of arbitration. However, in this case, it had been more than three months since the hearing, and Respondent had not rendered his decision. As of September 23, 2010, the matter was still unresolved and Respondent was no longer responding to inquiries regarding its status. Thus, the record clearly establishes that Respondent violated Rule 1.3.

Rule 1.15(a): Rule 1.15(a) provides that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Specifically, Rule 1.15(a) states:

> A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. . . funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association. . . Other property shall be identified as such and appropriately safeguarded. Complete records of such 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.

The record contains insufficient evidence to establish that Respondent violated this Rule. More specifically, there is no evidence regarding the fee agreement between Respondent and Ms. Honore; no evidence that Respondent mishandled the legal fees and expenses received from Ms.

Honore; and no evidence that Respondent failed to keep the funds he received in accordance with Rule 1.15. Furthermore, there is nothing in the record regarding a fee dispute between Respondent and Ms. Honore or any claim of interest by a third party. It is also difficult to establish what portion, if any, of the fee remained unearned, since there is no evidence of any accounting or request for such from Ms. Honore or her new counsel. The only demand made upon Respondent was for the return Ms. Honore's file, and, while it is very clear that Respondent knowingly and/or intentionally failed to return the file, this misconduct is appropriately addressed under Rule 1.16(d). Accordingly, the Board rejects the Committee's conclusion that Respondent violated Rule 1.15 in this matter as alleged by ODC.

Rule 1.16(c)(d): Rules 1.16(c) and (d) provide as follows:

> (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
>
> (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

Here, Respondent admitted that he unilaterally discontinued his representation of Ms. Honore after she filed the disciplinary complaint against him, even though Ms. Honore had not discharged him. Essentially, Respondent abandoned Ms. Honore's legal matter without properly withdrawing as counsel of record. Such conduct constitutes a violation of Rule 1.16(c). Additionally, Respondent failed to give Ms. Honore reasonable notice that he was terminating

his services and failed to promptly release her file, even upon the written request of Ms. Honore's new counsel. Such conduct constitutes a violation of Rule 1.16(d).

Rule 3.2: Rule 3.2 states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Here, the record shows that Safeco Insurance sent a number of letters to Respondent in attempts to settle Ms. Honore's claim, the earliest of which is dated January 1, 2008 with the last letter dated August 18, 2012. Despite Safeco's numerous attempts to settle, the settlement was never perfected. Respondent claims he was in contact with Safeco Insurance and believed they had reached a settlement agreement, but he has not produced any evidence to support his efforts in this vein or a confirmation of the settlement. Moreover, Respondent precluded any chance of settling Ms. Honore's claim in the future because he did not preserve her interests by timely filing her claim for damages. Accordingly, the Committee was correct in concluding that Respondent violated Rule 3.2.

Rule 8.1: According to Rule 8.1, an applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

> (a) Knowingly make a false statement of material fact;
>
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or
>
> (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

The record in this matter reflects that when Respondent executed a Request for Preparation of a Character Report by the National Conference of Bar Examiners and an Application to the Bar of Louisiana on January 29, 2004, he was in $8,400.00 in arrears on his

child support obligation. The record further reflects that Respondent owed $12,300.00 in child support payments when he was admitted to the Louisiana Bar on April 13, 2006. Despite the mounting obligation, Respondent failed to disclose the debt on his application to the Bar. Thus, he was less than truthful when he signed and attested to the accuracy of his answers on the application, which constitutes a violation of Rule 8.1(a).

The record demonstrates that Respondent further violated Rule 8.1 with respect to Mr. Fisher's complaint on behalf of the Better Business Bureau, which forms the basis of Count II. ODC presented ample evidence of the difficulty in serving Respondent as well as his resulting failure to respond to the lawful demand for information or otherwise cooperate in the investigation. Thus, the Committee correctly concluded that Respondent violated Rules 8.1(b) and (c).

Rule 8.4(a): Rule 8.4 indicates that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another. By violating Rules 1.3, 1.15(a), 1.16(c)(d), 3.2, and 8.1, Respondent also violated Rule 8.4(a).

II. THE APPROPRIATE SANCTION

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

Louisiana Supreme Court Rule XIX, §10(C) states that in imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to his clients, the legal system, and the profession. His actions were part negligent and part knowing and resulted in actual injury to his clients. Respondent failed to abide by the legal rules of substance and procedure which affect the administration of justice and failed to uphold the high standards of conduct expected of members of the bar.

The following mitigating factors are found to be present: (1) absence of a prior disciplinary record; and (2) personal or emotional problems. The record does not support the finding of any aggravating factors.

B. The ABA Standards and Case Law

Standards 4.42, 6.12, 6.22 and 7.2 of the *ABA Standards for Imposing Lawyer Sanctions* are relied upon in determining the appropriate sanction in this matter. Each of these standards is provided below:

> Standard 4.42: Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or b. a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
>
> Standard 6.12: Standard Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> Standard 6.22: Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.
>
> Standard 7.2: Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

The ABA Standards clearly indicate that suspension is the baseline sanction for the misconduct at issue here. Relying upon the cases cited in ODC's Pre Hearing Memorandum, the Committee recommended a three-year suspension with all but one year and one day deferred. A review of additional case law indicates that it is an appropriate sanction.

In the matter of *In re: Lewis*, 2008-2293 (La. 1/21/2009), 1 So. 3d 444, the Court imposed a two-year suspension for the respondent's conduct in connection with three separate legal matters in which he engaged in neglect, failed to communicate with his clients, failed to account for funds received from clients or on their behalf, failed to properly withdraw from cases, and failed to cooperate with ODC in its investigation. In determining that a two-year suspension was the appropriate sanction in this case, the Court relied on *In re: Trichel*, 00–1304 (La.8/31/2000), 767 So.2d 694, and noted:

> In [*Trichel]*, we recognized that the baseline sanction for neglect of a client matter, failure to communicate, and failure to properly terminate the representation of one client was a one-year suspension from the practice of law. However, we found the aggravating factors in the case, particularly the respondent's prior discipline for similar misconduct, justified raising the sanction to an eighteen-month suspension. The instant matter involves multiple counts of neglect of legal matters and failure to communicate involving several clients, as well as charges of failure to refund unearned fees, failure to cooperate, and the failure of respondent to properly terminate the representation of his clients. Consequently, the baseline sanction in this case is greater than the one-year suspension identified in *Trichel.* Moreover, there are no mitigating factors present here which justify a downward deviation from the baseline. To the contrary, the numerous and serious aggravating factors convince us that a lengthy suspension is warranted Accordingly, we will suspend respondent from the practice of law for two years.

In re: Lewis, supra at 453.

Another case in which the Court imposed a two-year suspension is *In re: Arbour*, 2005-1189 (La. 11/29/2005), 915 So. 2d 345. This case involved the respondent's mishandling of an estate succession and his subsequent failure to cooperate in the disciplinary proceedings.

Although multiple client matters were not at issue in this case, the Court found numerous and serious aggravating factors which warranted a lengthier suspension. These factors included: bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; refusal to acknowledge the wrongful nature of the conduct; vulnerability of the victim; and indifference to making restitution.

Here, Respondent engaged in a pattern of misconduct involving multiple Rule violations, which resulted in actual harm to his clients. However, in light of the compelling mitigating factors present, and the Court's rationale in *In re: Trichel* and *In re: Lewis*, the Committee's recommendation which equates to an *actual* suspension of one year and one day is appropriate. While the Committee also recommended a two-year period of probation with conditions, the Court has typically declined to impose probationary periods or conditions in cases in which the sanction will require application for and reinstatement to the practice of law. Accordingly, the Board does not adopt the Committee's recommendation of probation with conditions.

CONCLUSION

Based on the forgoing, the Board adopts the Committee's factual findings with respect to the allegations and modifies the Committee's findings in mitigation as discussed above. Additionally, the Board adopts the Committee's legal conclusions with the exception of the conclusion that Respondent violated Rule 1.15(a). The Board also adopts the Committee's recommendation that Respondent be suspended from the practice of law for a period of three years with all but one year and one day deferred. Finally, the Board recommends that Respondent be assessed with all costs and expenses of these proceedings.

RECOMMENDATION

The Board recommends that Respondent, Trent Anthony Garrett, Sr. be suspended from the practice of law for a period of three years with all but one year and one day deferred. The Board further recommends that Mr. Garrett be assessed with the costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

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R. Steven Tew

BY: _____
Carl A. Butler
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

RULE 1.1. COMPETENCE *(in pertinent part)*

(c) A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

RULE 1.3. DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.15. SAFEKEEPING PROPERTY *(in pertinent part)*

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. . . funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association. . . Other property shall be identified as such and appropriately safeguarded. Complete records of such 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.

RULE 1.16. DECLINING OR TERMINATING REPRESENTATION *(in pertinent part)*

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

RULE 3.2. EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

RULE 8.1. BAR ADMISSION AND DISCIPLINARY MATTERS

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

(a) Knowingly make a false statement of material fact;

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or

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

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.