ORIGINAL

Louisiana Attorney Disciplinary Board
FILED by: Donna P. Burgess
Docket# 10-DB-089
Filed-On 4/24/2013

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: BYRLYNE JUNE VAN DYKE

DOCKET NO. 10-DB-089

REPORT OF HEARING COMMITTEE NO. 44

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of a total of ten (10) counts filed by the Office of Disciplinary Counsel ("ODC") against Byrlyne June Van Dyke ("Respondent").[1] ODC alleges that Respondent is guilty of violating several of the Rules of Professional Conduct ("Rule(s)"), as follows: 1.2(a) (failure to abide by scope of representation); 1.3 (lack of diligence); 1.4 (failure to maintain adequate communication); 1.5(c) (failure to obtain written contingency fee); 1.5(f)(5) (failure to return unearned fees); 1.8(a) (engaging in prohibited business transactions with a client); 1.15(d) (failure to notify a client and/or third-party upon receipt of funds); 1.16(d) (failure to fulfill obligations upon termination of representation); 3.1 (filing frivolous pleadings); 3.2 (failure to expedite litigation); 5.3 (failure to supervise non-lawyer employees); 5.5(a) (assisting another in the unauthorized practice of law); 8.4(a) (violate or attempt to violate the Rules of Professional Conduct); 8.4(b) (committing a criminal act); 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).[2]

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[1]Effective December 8, 2004, Respondent was transferred to disability inactive status and all pending disciplinary matters were stayed. *In re Van Dyke,* 2004-2874 (La. 12/08/04). On June 16, 2010, Respondent was reinstated to active status pursuant to Rule XIX, § 22(G), and simultaneously suspended from the practice of law on an interim basis pursuant to Rule XIX, §19. *In re Van Dyke,* 2010-1188 and 2010-1190 (La. 06/16/10).

[2] The text of the rules is contained in the attached Appendix.

PROCEDURAL HISTORY

The formal charges were filed on December 16, 2010, and mailed to Respondent by certified mail addressed to her place of incarceration.[3] Initially, Respondent failed to respond to the formal charges, which resulted in the charges being declaring deemed admitted and proven by clear and convincing evidence pursuant to Louisiana Supreme Court Rule XIX, Section 11(E)(3).[4] A hearing committee report was rendered on the deemed admitted charges. This matter was scheduled for oral argument before the Board on September 22, 2011. However, pursuant to a motion by the Respondent, a continuance of oral argument was granted until May 24, 2012. On May 22, 2012, Respondent filed a motion to recall the deemed admitted order. After hearing oral argument on the motion, the Board recalled the deemed order by order dated June 11, 2012.

Respondent answered the charges on July 16, 2012. The matter proceeded to hearing on October 12 and December 11, 2012. Deputy Disciplinary Counsel Bernadine Johnson appeared on behalf of ODC. Ms. Van Dyke appeared along with her attorney, Ms. Julie Brown White.

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[3] #56535-179, CCM Houston Community Corrections Office, 727 East Durango Blvd., Ste. B-138, San Antonio, TX 78206.

[4] That rule provides, in pertinent part:

> The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13(b). Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

For the following reasons, with regard to the following Counts, the hearing committee finds, except as noted, that ODC proved by clear and convincing evidence that Respondent knowingly violated the following Rules of Professional Conduct:

Count 1: 8.4(a)(b)(c)
Count 2: 1.3, 1.4, 1.5(f)(5) and 1.16(d)
Count 3: 1.5(f)(5), 3.2 and violations included in Count 1
Count 4: 8.4(b)(c) violations included in Count 1
Count 5: 1.4, 1.3, 1.5 and 8.4(a)(c)
Count 6: No violations
Count 7: 1.5, 8.4(a)(c)
Count 8: No violations
Count 9: No violations ;and
Count 10: 1.2(a),1.3, 1.4, and 1.5(f)(5)

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT 1

On November 6, 2008, you entered a plea of guilty to one count of aggravated identity theft in the matter entitled *United States of America v. Byrlyne Van Dyke,* criminal docket number 07-20011-01, in the United States District Court for the Western District of Louisiana, Lake Charles Division. Your conviction followed your plea agreement with the United States Attorney. You admitted that you knowingly and without lawful authority, transferred or used a means of identification of another person with intent to commit an enumerated federal felony, in violation of 18 U.S.C. § 1028A (a) (1). You were sentenced to twenty-four months incarceration, followed by one year of supervised release. You were also ordered to pay restitution in the amount of $43,194.94 to your victims.

You admitted that you obtained detailed financial information from eleven clients or former employees and used that information without authority to obtain credit and/or money, and that you formed this scheme to defraud, and made or caused to be made numerous wire communications or mailings in furtherance of that scheme. You admitted that you fraudulently obtained credit cards using the identity of your deceased client, Robert Louvat, to facilitate a wire transfer through Western Union Financial Service.

You were convicted of a serious crime that reflects adversely on your honesty, trustworthiness, and moral fitness to practice law, a violation of Rule 8.4(a) (b) (c) of the Rules of Professional Conduct.

COUNT 2

On or about March 31, 2003, you were hired to represent Kinnon Dignam in a criminal matter. You charged and collected a fee of $3,500 from Mr. Dignam's parents, Richard and Brenda Dignam. Thereafter, you did not return numerous telephone calls from Mr. and Mrs. Dignam, and you did not respond to numerous requests for information. You undertook little or no effort on behalf of your client, and you did not keep him informed concerning the status of his case. Your services were terminated by letter dated November 4, 2003. You did not respond to requests for an accounting nor did you refund any portion of the unearned fee. Thereafter, Mr. and Mrs. Dignam retained other counsel who appeared in court with the defendant on December 12, 2003.

You neglected a legal matter and failed to communicate with your client, in violation of Rules 1.3 and 1.4. You failed to refund the unearned fee in violation of Rules 1.5(f)(5) and 1.16(d).

On August 10, 2010, Richard and Brenda Dignam filed an application for relief with the Client Assistance Fund of the Louisiana State Bar Association in the amount of $3,500 in claim number 2010-CAF-1237.

COUNT 3

In late 2003 you were consulted by Burl Dick Young concerning his last will and testament and related documents. On October 3, 2003, Mr. Young executed a power of attorney naming Kathleen Wielgos as his agent, and a will naming Ms. Wielgos as executrix and legatee of one-third of his estate. On December 23, 2003, you requested and collected $5,000 from Ms. Wielgos as an advance deposit on fees for the succession. Mr. Young died on December 31, 2003, and Ms. Wielgos directed you to initiate succession proceedings. You filed *Petition for Possession by Legatees* on August 24, 2004. You listed 36 shares of stock in Prudential Financial as assets of the estate, but did not follow Ms. Wielgos' instructions to have them liquidated and disbursed to the legatees. You listed two checks in refund of premiums as assets of the estate, but did not follow Ms. Wielgos' instructions to disburse the proceeds to the legatees. You listed your attorney fees at $2,000, but did not refund the unearned portion of the deposit to Ms. Wielgos.

You knew that Mr. Young had made arrangements for his caregiver, Beryl Lee, to purchase his house from the succession, but you did not promptly handle the matter and the closing was delayed until December 2004. The succession remains open in the 14th Judicial District Court.

On January 17, 2004, you issued to yourself and cashed check #1312 in the amount of $640 drawn on Mr. Young's bank account. On January 20, 2004, you borrowed $5,000 from Ms. Wielgos without her informed consent. In September 2004, you electronically withdrew funds from Ms. Wielgos' personal bank account without her knowledge or permission. You also obtained credit cards in the names of Burl Young and Kathleen Wielgos without consent or permission.

You did not respond to numerous telephone calls from Ms. Wielgos. During 2004, you were frequently absent from your office and allowed your daughter, Belle Anne Dowers, and your paralegal to operate your law practice when you were not present. In October 11, 2004, Ms. Dowers requested and received a loan of $800 from Ms. Wielgos. The loan has not been repaid.

You failed to abide by Ms. Wielgos' decisions concerning disbursing the succession assets, in violation of Rules 1.2(a), 1.3, 1.4, 3.2. You failed to refund the unearned portion of the attorney's fee, in violation of Rule 1.5(f)(5). You and your non-lawyer assistant borrowed money from Ms. Wielgos without full disclosure and informed consent, in violation of Rules 1.8(a) and 5.3. You facilitated the unauthorized practice of law by leaving your non-lawyer assistants unsupervised during your periods of absence from your office, in violation of Rules 5.3 and 5.5(a). You abandoned Ms. Wielgos without completing your responsibilities as attorney for the succession, in violation of Rules 1.16(d) and 3.2.

COUNT 4

You, or someone using your law firm electronic mail account, electronically accessed the Southwest Louisiana Credit Union account of your former employee, without her knowledge or consent, as follows:

- November 9, 2004— withdrew $100 payable to Palace of Chance Casino
- December 3, 2004— withdrew a total of $321.62 payable to Central Coin
- December 4, 2004 — attempt to withdraw $100 payable to Navaho Networks
- December 6, 2004 — withdrew $300 payable to Citadel Commerce

You, or someone using your law firm electronic mail account, electronically accessed the Southwest Louisiana Credit Union account of your former client, without his knowledge or consent, as follows:

- October 14, 2004— withdrew a total of $18.65 payable to Citadel Commerce

• October 18, 2004— attempt to withdraw a total of $350 payable to Citadel Commerce

• November 12, 2004 — attempt to withdraw $200 payable to Citadel Commerce

You engaged in criminal acts and conduct involving dishonesty, fraud and deceit, in violation of Rule: 8.4(b) (c). In the alternative, you failed to supervise your employees, in violation of Rule 5.3 and 8.4(a).

COUNT 5

On or about December 17, 2003, you were hired by J. Michael DeClouet on behalf of his mother, Nelma White, in a divorce case. Mr. DeClouet paid you a total of $2,500. You did not perform the services for which you were retained. In November 2004, Mr. DeClouet demanded that you refund the unearned fee. You did not do so.

You failed to keep your client reasonably informed concerning her case, in violation of Rule 1.4. You neglected the legal matter for which you were retained, in violation of Rule 1.3. You failed to refund an unearned fee, in violation of Rule 1.5. By failing to render services and refusal to refund the unearned fee, you engaged in conduct involving dishonesty and fraud, in violation of Rule 8.4(a) (c).

COUNT 6

In August 2000, you were hired by Doris A. Fontenot to handle her personal injury case. You did not execute a written fee agreement with Ms. Fontenot. In April 2003, you informed Ms. Fontenot that she had been awarded $8,500. Ms. Fontenot asked you to appeal the decision, but you declined to do so. Ms. Fontenot requested her file, but you did not release the file to her. Thereafter, your office was closed without notice to your clients, and Ms. Fontenot was unable to locate you.

You failed to respond to your client's requests and failed to provide her with information concerning the status of her case, in violation of Rules 1.3 and 1.4. You failed to have a clear fee agreement with your client and failed to release the funds to which she was entitled, in violation of Rules 1.5(c), 1.15(d), and 1.16(d). By failing to render services and refusal to release the client's file and wrongfully retaining the client's funds, you engaged in conduct involving dishonesty, fraud, and deceit, in violation of Rule 8.4(a) (b) (c).

COUNT 7

On or about July 2, 2003, you were hired by Mary Roddy to represent her grandson, Ryan Roddy, in a criminal case in the 14th Judicial District Court,

docket number 2886-04. Your fee agreement provided that if the case was dismissed at arraignment, your fee would be $1,200, and if the case went to trial, your fee would be an additional $2,800. Ms. Roddy paid you a total of $4,000. You did not appear for arraignment with Mr. Roddy on March 8, 2004. You did not appear in court with Mr. Roddy on April 16, 2004, in response to a bench warrant and motion for bond forfeiture. You did not appear in court with Mr. Roddy on April 25, 2004, when he tendered a plea to an amended bill and was sentenced. You did not appear in court with Mr. Roddy on May 3, 2004, on your requests to waive formal arraignment, enter a plea of not guilty, and for trial by jury. You failed to respond to numerous requests for information concerning the status of the case, you failed to consult with your client, and you failed to appear for at least three court dates with your client. Your last contact with your client was November 2, 2004.

You failed to communicate with your client and you failed to act with diligence in the representation, in violation of Rules 1.3 and 1.4. You failed to refund the unearned portion of the fee paid by Mr. Roddy, in violation of Rules 1.5 and 8.4(a) (c). You failed to properly assist your client with his defense to criminal charges, in violation of Rules 1.2, 1.3, and 8.4(d).

COUNT 8

You were hired by Larry Lebert to handle a claim of discrimination in employment. On or about June 18, 2001, the EEOC issued a 'right to sue letter' to Mr. Lebert. On or about August 3, 2001, you filed suit entitled *Larry P. Lebert, individually and Debora C. Lebert vs. Petrocon Engineering of Louisiana, Inc. and Progix, Inc.,* docket number 2001-3967 in the 14th Judicial District Court, Calcasieu Parish. Both defendants filed exceptions of prescription, and the court ruled that the state claims were prescribed because suit was filed 22 months after the last act of alleged discrimination, beyond the statutory prescriptive period for an employment discrimination suit. The suit was dismissed without prejudice in open court on April 10, 2002. You did not respond to opposing counsel's requests to approve the proposed written judgment as to form, and asked the court *ex pane* to forgo signing the judgment until you could review the transcript of the hearing. On May 8, 2002, you filed a supplemental and amending complaint reasserting the original causes of action and an added cause of action under the Americans with Disabilities Act, without notice to or service on opposing counsel of record. On that same date, you filed *Motion and Order of Partial Dismissal,* reserving your clients' right to proceed on the claims first mention in the supplemental and amended complaint. You did not confer with or provide notice to opposing counsel prior to filing the request for partial dismissal.

On or about June 13, 2002, Progix had the matter removed to the United States District Court for the Western District of Louisiana. Thereafter, the defendants moved for dismissal pursuant to FRCP 12(b) (6). On August 19, 2002, the court issued a Memorandum Ruling finding that Mr. Lebert's state law

and federal law claims had prescribed. The court dismissed Mr. Lebert's claims with prejudice.

During the course of the representation, you did not return numerous calls from Mr. Lebert for information as to the status of his case. You did not inform Mr. Lebert that his case had been dismissed.

Thereafter, Mr. Lebert filed suit against you for legal malpractice. On March 7, 2006, Mr. Lebert obtained a judgment against you in the amount of $40,000 plus legal interest until paid. You have made no payments whatsoever to Mr. Lebert.

You allowed your clients' claim to prescribe and you failed to keep your client reasonably informed as to the status of his case, in violation of Rules 1.3 and 1.4. You failed to cooperate with opposing counsel in submitting a proposed judgment to the court, in violation of Rules 3.2 and 8.4(d). You filed a supplemental and amending petition containing allegations that had previously been dismissed by the court, in violation of Rule 3.1. You abandoned your client and have made no effort to pay the judgment rendered against you, in violation of Rule 8.4(a) (c).

COUNT 9

In June 2004, you were hired by Patricia and James Rhodes to obtain a bond reduction for their son, Jelmar Allen Rhodes. You charged and accepted a fee of $500. You did not appear for a hearing on June 23, 2004. On June 25, 2004, you informed Mr. and Mrs. Rhodes that the request for bond reduction had been denied, but did not provide them with the requested documentation of same. At that point you withdrew from the representation. Mr. and Mrs. Rhodes later learned from the district attorney that you had filed no request for bond reduction. You refused to accept calls from Jelmar Rhodes while he was incarcerated and after he was released. You did not return telephone calls from Mr. and Mrs. Rhodes, and you did not refund any portion of the fee. Jelmar Rhodes was released from jail in August 2004 after his court-appointed attorney, Michelle Breaux, obtained a bond reduction.

You failed to promptly address your client's needs and failed to keep him reasonably informed concerning the status of the matter for which you were retained, in violation of Rules 1.3 and 1.4. You retained an unearned fee in violation of Rule 1.5(f). You abandoned your client and misrepresented your efforts on his behalf, in violation of Rule 8.4(a) (c).

COUNT 10

On February 21, 2004, you were hired by Lacey Turner, a resident of Mississippi, who had been recently arrested on drug charges. On that date Ms.

Turner paid $2,500 against your fee of $5,000 to begin the representation, and paid the balance of your fee on March 8, 2004. You had Ms. Turner execute a pleading entitled *Plea of Not Guilty to Charge Triable by Jury,* and advised her that she need not appear for arraignment set for June 7, 2004. You did not accept or return Ms. Turner's calls concerning the status of her case, but your assistant, Bella Anna Dowers, assured her that everything was fine. In June 2004, Ms. Turner informed Ms. Dowers that due to pregnancy and related health issues, she would be unable to travel to Lake Charles for the trial set for December 6, 2004. Ms. Turner was assured that you would obtain a continuance of the trial date. Thereafter, on numerous occasions, Ms. Turner could not contact your office by telephone because no one answered and the voicemail box was full. On November 29, 2004, Ms. Dowers assured Ms. Turner that the continuance would be obtained. Thereafter, Ms. Turner could not contact your office by telephone because no one answered and the voicemail box was full.

On January 21, 2005, Ms. Turner was arrested on a bench warrant for failure to appear for trial on December 6, 2004. Ms. Turner then learned through the Calcasieu Parish District Attorney of your transfer to disability inactive status, and that a judgment of bond forfeiture had been granted on December 8, 2004. Eugene Bouquet was appointed by the court to represent Ms. Turner and to complete the representation for which you had been paid in full.

You failed to comply with Ms. Turner's desire to seek a continuance of the trial, in violation of Rule 1.2(a). You were frequently inaccessible to your client and did not act with diligence in the representation, in violation of Rules 1.3 and 1.4. You failed or refused to refund the unearned fee, in violation of Rule 1.5. You and/or your staff gave Ms. Turner false assurances that her criminal case was being handled properly, in violation of Rule 8.4(a) (c) (d).

On January 2010, the Client Assistance Fund made a payment to Ms. Turner in the amount of $3,750 as a result of your wrongful retention of the unearned fee.

EVIDENCE

ODC introduced the following exhibits: 1, 2, 3, 4, 5, 5A, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 26A, 26B, 27, 28, 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38.

Respondent introduced the following exhibits: 1(Under Seal), 2A, 2B, 3A, 3C, 3B, 13, 4A, 4B, 4C, 7, 5, 6, 11, 8, 10, 12 and 9.

The committee heard the testimony from the following witnesses: Respondent, Mr. Norwood, Ms. Breaux, Ms. Manuel, Ms. Thompson, Ms. Terro, Ms. Bonin, Dr. Levinson, Judge Ronald Ware, Mr. Cliff Newman, and Dr. Villabona.

FINDINGS OF FACT
AND RULES VIOLATED

Background:

Respondent was admitted to practice in Louisiana in 1995 and began working in Lake Charles in 1996 as a solo practitioner. In 1998 she tried her first jury trial and won a large verdict of just over a million dollars in an age discrimination case against Cameron State Bank in Cameron Parish. The verdict was appealed to the third circuit and confirmed. The case went up to the Supreme Court and was dismissed. Respondent was devastated by the result.

In April of 2004, Respondent's mother, who had apparently been healthy, was suddenly hospitalized, diagnosed with pancreatic cancer and died one month later in May of 2004. The second oldest of four children, Respondent was the designated decision maker of her family and decided, based upon the advice of her mother's doctors, to forgo any further treatment for her mother and put her in hospice. Respondent's mother died the day after Respondent met with hospice. As a result of this decision, her siblings accused her of "murdering" their mother.

Respondent and her father were very close. He became very ill and died two months later in July of 2004. Because Respondent's siblings felt she had "murdered" her mother, they had intentionally not informed her of her father's condition. After his death, Respondent found out from her siblings that her father had re-written his will and had disinherited her. Two months later, Respondent's mother-in-law, with whom she was also very close, passed away in September of 2004. After all these events, Respondent began drinking excessively, gambling excessively, using cocaine (provide to her by a friend) as a supposed solution to her inability to get out of bed and be productive. From July of 2004 and through December of 2004, Respondent's excessive gambling resulted in her ignoring the responsibilities of her office. She could not explain why she had done these things because she had never behaved like this before. She readily admitted that she wanted to die and that she knew her behavior was wrong, however continued to make bad decisions. It was during this period that Respondent committed the criminal acts charged in Count 1. It was also during this period (not long after her father died), that a complaint had been filed, with ODC and Respondent went to the Office of Disciplinary Counsel ("ODC") seeking help. She was told by ODC that it could only offer her "disability inactive status". Respondent accepted the offer and gave a statement to ODC and felt it would shortly be filed. However a petition for disability was not filed until December of 2004 when she was transferred to disability status. Respondent stayed on disability status until she was transferred to interim suspension in 2010 .

The committee found the following facts as they relate to the following counts:

COUNT 1: Criminal Matter

Respondent admitted that on November 6, 2008, she entered a plea of guilty to one count of aggravated identity theft in the matter entitled *United States of America v. Byrlyne Van Dyke,* criminal docket number 07-20011-01, in the United States District Court for the Western District of Louisiana, Lake Charles Division. The conviction followed a plea agreement with the United States Attorney. Respondent admitted that she knowingly and without lawful authority, transferred or used a means of identification of another person with intent to commit a federal felony, in violation of 18 U.S.C. § 1028A (a) (1).

With regard to this criminal matter, Respondent was sentenced to twenty-four months incarceration, followed by one year of supervised release and ordered to pay restitution in the amount of $43,194.94 to the victims. All of the victims, with the exception of Mr. Louvat were very close friends of Respondent. Mr. Louvat was a client for which Respondent did legal work and after he died, Respondent used one of his credit cards as a method of securing credit with an online gaming establishment. There was much discussion regarding the amount of restitution in this federal criminal matter. Restitution was fixed at $43,194.94 by the court. Respondent testified that at some point in time investigators asked how much she had lost to the casinos and the answer was about $30,000.00. When asked about how much she had stolen from her friends and client cards, her answer was approximately $9,000.00. Somehow in the process the $43,194.94 was used by the court as the restitution figure with no accounting as to who was owed what. Respondent testified that with regard to the Count 1 charge, she had completed requirements for participation in substance abuse counseling and treatment, participated in a mental health program and or gambling program. With regard to restitution Respondent testified that she has complied with orders for monthly payments until her supervised release ended and her restitution was transferred to the Federal Litigation unit where she made one payment and has not heard back from them. Her understanding was that once her sentence was concluded and supervised release was completed, it became a civil responsibility to the government to make complete restitution. She is trying to get a statement regarding what is owed and making an effort to pay the amounts ordered as restitution in the criminal matter.

The committee found there was a clear violation of Rule 8.4(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; Rule 8.4 (b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; Rule 8.4 (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

COUNT 2: Dignam Matter

Respondent was hired on or about March 31, 2003 by Kinnon Dignam in a criminal matter. Respondent charged and collected a fee of $3,500 from Mr. Dignam's parents, Richard and Brenda Dignam. Respondent did do considerable work on the file. Respondent's services were terminated by the Dignams in November 2003 and they hired another attorney to complete the representation. Respondent admitted that she may not have returned some of their calls at times when she was very busy. Respondent admitted that there is an accounting owed to them and there is some refund due them since she was terminated prior to completing the representation and she has not done so since she has not been in a position to make restitution with all other restitution matters she is required to do..

With regard to Count 2 of the charges, the committee found that Respondent neglected a legal matter and failed to communicate with her client, in violation of Rules 1.3 and 1.4. Additionally, Respondent failed to refund the unearned fee in violation of Rules 1.5(f)(5) and 1.16(d).

COUNT 3: Wielgos Matter

In late 2003 Respondent was retained by a Ms. Wielgos to do a testament, power of attorney and other related legal matters regarding for Mr. Burl Dick Young. Ms Wielgos had been named as his agent and requested legal work to be done for Mr. Young. Respondent took a fee of $5,000 for this work. Mr. Young executed a will naming Ms. Wielgos as executrix and legatee of one-third of his estate. After Mr. Young died, Respondent was retained to do his succession. Respondent probated the Will and filed some documents but did not finish the succession. The charges in this Count alleged that Respondent borrowed approximately $5,000.00 from Ms. Wielgos account. The evidence indicated that the $5,000.00 being reference as "borrowed" was the payment of the remaining portion of Respondents fee for all the matters related to the succession for a total fee of $10,000.00. The succession was a very difficult one and Ms. Wielgos called almost every day. After Respondent was retained to do the succession, Ms. Wielgos demanded that every item contained in the house be placed on the inventory, which was done a considerable time and expense. Respondent admitted that it got to the point where there were calls she refused to take because the client was being totally unreasonable. There was discussion that Respondent failed to transfer certain shares of stock to the legatees. The stock was ultimately transferred to legatees in the judgment of possession. There were allegations that Respondent lost certain checks and papers belonging to Mr. Young. The evidence showed that all of Respondent's files were removed from her office pursuant to the investigation in the criminal matters involved in Count 1 and were not lost by Respondent, but seized by law enforcement. Ultimately the succession was completed by another attorney. Respondent admitted that regarding the succession she failed to complete all the matters that were necessary to finalized the work she was retained to do and that there was a refund due Ms. Wielgos.

Respondent admitted that in 2004, she electronically used Ms. Wielgos' checking account number to get credit with an internet gambling site and withdrew funds from Ms. Wielgos' personal bank account without her knowledge or permission. It also appeared from the testimony that this act by Respondent's was included in the criminal Count 1.

As a result, the committee finds that Respondent failed to refund the unearned portion of the attorney's fee, in violation of Rule 1.5(f)(5), and further abandoned Ms. Wielgos without completing your responsibilities as attorney for the succession, in violation of Rules 1.16(d) and 3.2.

COUNT 4: Seneca Matter / Southwest Louisiana Credit Union Matter

The facts revealed and Respondent admitted that she electronically accessed the Southwest Louisiana Credit Union account of a former employee, without her knowledge or consent on the following dates and for the following reasons:

- November 9, 2004— withdrew $100 payable to Palace of Chance Casino
- December 3, 2004— withdrew a total of $321.62 payable to Central Coin
- December 4, 2004 — attempt to withdraw $100 payable to Navaho Networks
- December 6, 2004 — withdrew $300 payable to Citadel Commerce

The facts further revealed and Respondent admitted that she electronically accessed the Southwest Louisiana Credit Union account of a former client without his knowledge or consent, on the following dates and for the following reasons:

- October 14, 2004— withdrew a total of $18.65 payable to Citadel Commerce
- October 18, 2004— attempt to withdraw a total of $350 payable to Citadel Commerce
- November 12, 2004 — attempt to withdraw $200 payable to Citadel Commerce

The testimony of Respondent indicated that these actions were also included in the criminal matter Count 1 above.

The committee finds that Respondent engaged in criminal acts and conduct involving dishonesty, fraud and deceit, in violation of Rule: 8.4(b)(c).

COUNT 5: White Matter

On or about December 17, 2003, Respondent was hired by J. Michael DeClouet on behalf of his mother, Nelma White, in a divorce case. Mr. DeClouet paid Respondent

a total of $2,500. It was an ongoing divorce case for Ms. White and Respondent was her third or fourth attorney. Respondent did do work for Ms. White however, admitted that the work was not completed and owed her a refund, and she has not refunded her any money.

As a result, the committee finds that Respondent neglected the legal matter for which she was retained, in violation of Rule 1.3 and further failed to refund an unearned fee, in violation of Rule 1.5. By failing to render services and not refunding the unearned fee, Respondent engaged in conduct involving dishonesty and fraud, in violation of Rule 8.4(a)(c).

COUNT 6: Fontenot Matter

In August 2000, Respondent was hired by Doris A. Fontenot to handle her personal injury case. The allegation was that Respondent told Ms. Fontenot there was a settlement in the case for $8,500. Respondent testified that she never told Ms. Fontenot that her case was settled or that she would ever get $8,500. Respondent testified that every one of her injury cases had a written contingency fee contract. Respondent testified there was no settlement ever and introduced the suit record showing what actually happened. The record revealed that her case was removed to federal court. In the course of the litigation the client's husband was appointed to represent their children. In the course of the litigation Mr. Fontenot died and Respondent was never notified. The defendants filed a motion for summary judgment and the case was dismissed. Ms. Fontenot also claimed in her complaint that she had asked Respondent to appeal, however there was no evidence introduced to support that allegation. Respondent was not noticed of this complaint until September of 2010, while she was in federal prison in Bryan, Texas and her files having been seized.

As a result, the committee saw no violations of Respondent in connection with this matter.

COUNT 7: Roddy Matter

On or about July of 2003, Respondent was hired by Mary Roddy to represent her grandson, Ryan Roddy, in a criminal matter. The fee agreement provided that if the case was dismissed at arraignment, the fee would be $1,200, and if the case went to trial, the fee would be an additional $2,800. The arraignment of Mr. Roddy was not until March of 2004. Respondent did fail to appear at Mr. Roddy's arraignment, but could not explain why the defendant did not get notice. Mr. Roddy was rescheduled to appear on April 16, 2004 in response to a bench warrant and motion for bond forfeiture. Respondent testified that at that time, she was in the hospital with her mother and did not appear in court with Mr. Roddy on April 16, 2004, and further on May 3, 2004, on her requests to waive formal arraignment, enter a plea of not-guilty and for trial by jury. Respondent did appear for him on November 3, 2004 which was re-fixed for April 25, 2005. By April of

2005 Respondent was on disability status and could not appear in court. Respondent admitted that she owes the client and accounting and a refund of fees because she did not complete the work.

The committee found that Respondent failed to refund the unearned portion of the fee paid by Mr. Roddy, in violation of Rules 1.5 and 8.4(a) (c).

COUNT 8: LeBert Matter

Respondent was hired by Larry Lebert to handle a claim of discrimination in employment. On or about August 3, 2001, Respondent filed suit on the client's behalf in the matter entitled *Larry P. Lebert, individually and Debora C. Lebert vs. Petrocon Engineering of Louisiana, Inc. and Progix, Inc.,* docket number 2001-3967 in the 14th Judicial District Court, Calcasieu Parish. Complainant alleged that Respondent allowed his suit to prescribe.

Both defendants filed exceptions of prescription, and the court ruled on April 10, 2002 that the state claims alleged were prescribed because suit was filed 22 months after the last act of alleged discrimination, beyond the state statutory prescriptive period for an employment discrimination suit. The ruling on April 10, 2002 indicates that the court did dismiss the state suit but clearly indicated that if there was a claim under federal law that was not prescribed that the dismissal in state court would not prejudice the client's right to proceed under other laws. However before the judgment was signed Respondent amended her complaint to include a federal cause of action. On or about June 13, 2002, Progix had the matter removed to the United States District Court for the Western District of Louisiana. Thereafter, the defendants moved for dismissal pursuant to FRCP 12(b)(6). On August 19, 2002, the court issued a Memorandum Ruling finding that Mr. Lebert's state law claim, as well as federal law claims, had prescribed. The federal court dismissed Mr. Lebert's claims with prejudice. The committee found that Respondent did a considerable amount of work in this matter and that Respondent believed that her arguments were valid and consistent with her belief in what the law required her to do. The committee found nothing ethically improper in the way Respondent handled this matter. As a result of the dismissal by the action by the federal court on the grounds of prescription, Mr. Lebert filed a legal malpractice suit against Respondent and a default judgment in the amount of $40,000 was rendered against her on March 7, 2006. Respondent has made no payments on this judgment in the malpractice suit.

It was also alleged that Respondent did not return numerous calls from Mr. Lebert for information as to the status of his case. The committee heard no evidence from the complainant or others regarding these allegations.

As a result of these factual findings the committee found that Respondent's actions did not violate any rule of professional conduct.

COUNT 9: Rhodes Matter

In June 2004, Respondent was hired by Patricia and James Rhodes to for the only purpose of obtaining a bond reduction for their son, Jelmar Allen Rhodes and charged a fee of $500. The docket sheet for this matter showed the motion was filed. The hearing for this matter occurred at the time Respondent's mother became terminally ill. Respondent asked Michelle Breaux, an attorney friend, to cover for her and the bond reduction was granted. The entire fee of $500 was earned and the client was not harmed.

The committee found no Rules of Professional Conduct were violated.

COUNT 10: Turner Matter

On February 21, 2004, Respondent was hired by Lacey Turner, a resident of Mississippi, who had been recently arrested on drug charges. On that date Ms. Turner paid $2,500 against Respondent's fee of $5,000 to begin the representation, and paid the balance of the fee on March 8, 2004. Respondent did execute and file a pleading entitled *Plea of Not Guilty to Charge Triable by Jury,* and advised Ms. Turner that she need not appear for arraignment set for June 7, 2004.

During the course of conduct, Respondent did not accept or return Ms. Turner's calls concerning the status of her case, though Respondent's assistant, Bella Anna Dowers, assured the client hat everything was fine. In June 2004, Ms. Turner informed Ms. Dowers that due to pregnancy and related health issues, she would be unable to travel to Lake Charles for the trial set for December 6, 2004. Ms. Turner was assured that Respondent would obtain a continuance of the trial date. Thereafter, on numerous occasions, Ms. Turner could not contact Respondent's office by telephone because no one answered and the voicemail box was full. On November 29, 2004, Ms. Dowers assured Ms. Turner that the continuance would be obtained. Thereafter, Ms. Turner could not contact Respondent's office by telephone because no one answered and the voicemail box was full.

On January 21, 2005, Ms. Turner was arrested on a bench warrant for failure to appear for trial on December 6, 2004. Ms. Turner then learned through the Calcasieu Parish District Attorney that Respondent was transferred to disability inactive status, and that a judgment of bond forfeiture had been granted against her on December 8, 2004. Eugene Bouquet was appointed by the court to represent Ms. Turner and completed the representation.

Respondent admitted to these facts and that she let her client down. All of these actions again happened during the period of time when her mother and father became seriously ill and died two months apart. Respondent admitted that she owes a refund to the client assistance fund who returned the fee to the client.

As a result of these facts, the committee found that Respondent failed to comply with Ms. Turner's desire to seek a continuance of the trial, in violation of Rule 1.2(a). Because Respondent was frequently inaccessible to her client and did not act with diligence in the representation and neglected a legal matter, Respondent has violated Rules 1.3 and 1.4. Further Respondent failed to an unearned fee and has violated Rule 1.5. (f)(5) and 1.16(d).

WITNESS TESTIMONY

The committee heard from several fact and character witnesses.

MICHELLE BREAUX: Michelle Breaux, an attorney who also did primarily criminal and domestic work, testified that she knew Respondent well and saw her often when Respondent worked at the office of the Public Defender. She testified that Respondent had done an excellent job. Ms. Breaux testified that Respondent had performed legal work for Ms, Breaux's own family. Ms. Breaux testified that Respondent's reputation in the community was that she was well liked and a very good attorney. Ms. Breaux further stated that she was the attorney appointed to take over Respondent's files, when Respondent began having problems. In that activity, she was able to speak with Respondent's clients and received good feed-back and general concern for Respondent. Ms. Breaux further testified that Respondent was the type of attorney that other attorneys sought for advice and that she generally cared for her clients.

TAMMY MANUEL: Ms. Manuel testified she had been an investigator with the Public Defender's Office for nine (9) years and had worked as in that capacity for Respondent for three (3) years. Ms. Manuel's testimony was very credible an sincere. She stated that in her experience as an investigator with the PDO and working with other lawyers, that Respondent was a great lawyer. She indicated that Respondent was timely with her work and that she sincerely cared about her clients, listened to them and fought for them. Even though PDO lawyers had many cases, Respondent always made time for them, even if it was after office hours. Ms. Manuel also stated that Respondent's reputation was such that inmates and Judges were requesting Respondent in murder and rape cases because she was so good at her job. It was Ms. Manuel's opinion that Respondent's reputation in the community was that she was a great lawyer.

GWENDOLYN THOMPSON: Ms. Thompson was a social worker for 31 years and most of that time with Child Protective Services with the Department of Social Services in Lake Charles. She was not retired and acts as a court appointed special advocate for children in foster care. Ms. Thompson testified that Respondent was an attorney with whom she could work and did so to accomplish joint goals of re-uniting children with their parents. She testified that of the many lawyers she had the opportunity to worked with, Respondent stood out in her mind as one who would go above and beyond her duties as a lawyer, as well as being an excellent lawyer. Ms.

Thompson's association with Respondent occurred before she began experiencing problems and at the time of the hearing it had been over six (6) years since she had seen Respondent.

ASHEY TERRO: Ms. Terro testified that she was presently a shift manager at a McDonalds restaurant. Her testimony was very emotional. Her mother had been incarcerated with Respondent in Bryan, Texas. At the time her mother was in prison, she was going through a custody battle for her kids. Her mother indicated that she was friends with Respondent and Ms. Terro friended her on facebook. She told Respondent her story and Respondent offered her prayers. Ms. Terro said she asked Respondent for advice and Respondent told her she could not give her any advice, however, Respondent did express her care about her situation and became a mother role to her. When she heard about Respondent's hearing, she volunteered to testify. Ms. Terro testified that Respondent gave her encouragement and kept her strong and kept her faith in the judicial system and encouraged her to fight for her kids. All this was done via facebook. The first time she met Respondent was the day of the hearing.

DONNA BONIN: Ms. Bonin testified that she had been a legal secretary for over 50 years and had known Respondent since 1987. They became very good friends over that period of time. Ms. Bonin saw Respondent almost on a daily basis prior to 2004, when Respondent's mother died. After Respondent's mother died, their relationship changed. Ms. Bonin knew Respondent's mother, father and siblings well. Ms. Bonin stated that Respondent was a very busy lawyer and empathetic to her clients and would do things almost to her own detriment in representing her clients. She would volunteer to do things for free and always went the extra mile. Ms. Bonin stated that Respondent was very close to her dad and he trusted Respondent with everything. After Respondent's mother and father died, Respondent was no longer herself. Respondent would supposed to be in court and Ms. Bonin would find her still in bed, even though Respondent loved court. Ms. Bonin knew Respondent needed help and was aware that Respondent went to the bar association and asked for help. Shortly thereafter Ms. Bonin lost contact with Respondent. Ms. Bonin also testified that Respondent had accessed her account at the Southwest Louisiana Credit Union and withdrew funds to gamble, without her consent but had forgiven her.

JUDGE RONALD WARE: Judge Ware testified that he was at present a sitting judge in 14th Judicial District Court. He first met Respondent when he became director of the PDO in the year 2000. Judge Ware had hired Respondent as a contract attorney to work for the PDO to represent indigent individuals in criminal matters. Judge Ware supervised Respondent's work as a staff attorney and his opinion of Respondent's work was "very high". Judge Ware indicated that she was considerate and very dedicated to her clients. He was very aware of a large case she had won in Cameron Parish prior to her working with the PDO. He testified that Respondent became very depressed when that case was dismissed by the Supreme Court. His opinion was that prior to 2004 Respondent was a good lawyer and her clients respected her. Judge Ware stated that to his knowledge, Respondent never had a falling out with a client. Judge Ware further testified that Respondent did not take shortcuts and took her job seriously and was well respected among her peers. Judge Ware hired another lawyer to replace her when she left and the PDO had no

problems continuing her cases. Judge Ware stated he would hire Respondent back now, provided she was healthy.

CLIFFORD NEWMAN: Mr. Newman, a long time attorney in Lake Charles, testified that he employed Donna Bonin, who was a good friend of Respondent. He also testified that he rented space in his building to Respondent for two or three years. During that period of time he saw Respondent on a daily basis and actually worked with Respondent on some cases. Mr. Newman stated that Respondent was very active in the courtroom and that his opinion of Respondent's reputation in the community was good. He further testified that while Respondent was in his office, prior to 2004, he saw nothing wrong with Respondent, and had he seen anything, he would have done something about it.

DR. BARBARA SUE LEVINGSTON: Dr. Levinson testified as an expert in psychotherapy. Her credentials were very impressive. Dr. Levinson's background was as an independent contractor with the federal government to do psychosocial and mental assessments on inmates in federal prisons. She possessed a PH.D. in Psychiatric Clinical Nursing Practice and worked many years in psychiatric centers. She testified that her assessments and diagnoses are the same as what a psychiatrist would do, however she cannot write prescriptions. Dr. Levinson assessed and treated Respondent before she entered prison for her criminal conviction. Respondent's probation officer sent Respondent to Dr. Levinson to do the mental assessment. Dr. Levinson sent Respondent first to a Dr. Gritz for a medical evaluation. After reviewing Respondent's medical history Dr. Levinson ruled out drug-induced manic episodes, ADD, gambling addiction and substance abuse disorder. Dr. Levinson's diagnosis was that Respondent suffered from an obsessive-compulsive disorder. Regarding the period of time from July of 2004 through December of 2004, Dr. Levinson's opinion was that due to all the stress factors she endured, namely the loss of her parents and family dynamics, plus the use of cocaine, sent Respondent over the edge and resulted in a mental breakdown and shutdown. Dr. Levinson's opinion was that her mental disorder and chemical dependency caused her criminal behavior. She testified that during her many sessions with Respondent, she saw no traits of criminal behavior and by the time Respondent began serving her incarceration, Dr. Levinson's opinion was that Respondent was well on her way to recovery. Dr. Levinson's opined that Respondent has demonstrated a meaningful and sustained period of successful rehabilitation and that her recovery arrested her criminal behavior and misconduct, and that the recurrence of that misconduct is unlikely. Dr. Levinson also stated that Respondent has admitted her guilt for the crimes for which she was charged and was very remorseful for her actions.

DR. KIMBERLY GALE VILLABONA: Dr. Villabona testified as a clinical psychologist and worked as a psychologist for the Federal Bureau of Prisons in Bryan, Texas and treated Respondent while she was incarcerated. She worked for the Federal Bureau of Prisons for 20 years. Her qualifications were very impressive and was tendered and accepted as an expert in clinical psychology. Dr. Villabona began treating Respondent in the summer of 2009 and saw Respondent at least once a week but more often twice or three times a week. Respondent was at Bryan from June of 2009 until September of 2010. Dr. Villabona reviewed Respondent's pre-

sentence investigation and tested Respondent in a clinical review. Dr. Villabona's opinion was that at the time of Respondent's criminal activity, Respondent suffered from post-traumatic stress disorder (also referred to as acute stress disorder) and depression. Dr. Villabona indicated that this type of condition is the easiest to treat and as it related to Respondent, it was even more responsive because Respondent was a healthy high-functioning individual. Dr. Villabona indicated that Respondent's problems were the result of the specific stressors of the death of her mother and father and her siblings turning on her. These stressors led to a basic breakdown which was Respondent's version of killing herself. It was Dr. Villabona's opinion that these stressors were what led to Respondent's criminal activity. She stated that when a person is in a state of acute stress disorder, they go into a kind of emotional numbing where they just throw out everything they ever worked for. In Respondent's case, Dr. Villabona stated that this period lasted for about 6 months from the death of her parents. Dr. Villabona believed that Respondent began using drugs and gambling as a way to cope with these stressors. It was Dr. Villabona's opinion that Respondent was affected by chemical dependency or metal disability and that this condition caused her misconduct and criminal behavior. Dr. Villabona explained that acute stress disorder is like a psychological shock that occurs for a period of time and further noted that by the time she saw Respondent, she had pulled herself through the condition. Dr. Villabona's opinion was that Respondent was not going to have a relapse of criminal activity because, in her many examinations, Respondent never exhibited any kind of criminal personality traits. It was Dr. Villabona's opinion that Respondent had recovered from her stress disorder. Dr. Villabona stated, though she had never done so in over 25 years in corrections, she placed her opinion in a letter to the former chair of this committee (R-4B). Dr. Villabona indicated that she did not accept any compensation for her work in this matter, simply because it was the right thing to do.

SANCTION AND DISCUSSION

Louisiana Supreme Court Rule XIX, Section 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.

The Louisiana Supreme Court also relies on the *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards") to determine the baseline sanction. Upon application of the above factors, the ABA Standards indicate that disbarment is the baseline sanction in this matter.

Standard 4.11 - disbarment is appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

Standard 4.41 - disbarment is appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect with regard to client matters and causes serious or potentially serious injury to a client.

Standard 4.61 - disbarment is appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client.

Standard 5.11 - disbarment is appropriate when a lawyer engages in serious criminal conduct a necessary element of which includes fraud, misappropriation, or theft; or any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 7.1 - disbarment is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

When the disciplinary proceedings involve an attorney who has been convicted of a crime, the discipline to be imposed depends on the seriousness of the offense and the extent of the aggravating and mitigating circumstances. LSBA v. Perez 550 So.2d 188 (La. 1989). Moreover, in assessing discipline in the case of an attorney who has been convicted of a crime, the Court has looked beyond the title of the offense to the facts of the conviction to determine the appropriate sanction. See, In re: Huckaby 96-2643 (La, 5,20/97)

The Office of Disciplinary Counsel has clearly stated that disbarment is the appropriate baseline sanction. ODC also indicated that the evidence reflected that Respondent lacked the fundamental character and fitness to ever re-gain the privilege to practice law and recommended

permanent disbarment. The committee agrees that the appropriate baseline sanction in this matter is disbarment however disagrees that the evidence reflected that Respondent lacked the character and fitness to ever re-gain the privilege to practice law.

The severity of the charges against Respondent center around a period of time from July 2004 through December of 2004 in which she committed criminal activity and for which she pled guilty in federal court. These criminal matters are included in Count 1 and involve Respondent using the identity of her friends and one client to secure credit with online gaming sites on the internet. The Count 1 criminal matter includes the criminal activity charges found in Count 3 as well as Count 4 as well. Respondent admitted that she committed these acts both in her plea in federal court and in her testimony, however could not explain why she had done so. Respondent testified that she just did not know why she had done the things she did, since she had never gambled like she had, used drugs or missed court dates. The committee heard from very impressive medical experts that clearly indicated that Respondent's criminal actions were the direct result of specific stressors that had occurred in her life just prior to the period of time that Respondent committed these acts. The stressors specifically indicated were the loss of her mother and father within two months of each other, when they had been basically healthy and the resultant attacks by her siblings that she had "killed" their mother by not continuing treatment for pancreatic cancer that medical advice deemed fruitless. There was further evidence that Respondent's mental condition was compromised even earlier than the period from July 2004 through December of 2004 in which these criminal acts occurred when she lost a case in the Supreme Court that shook her belief in the legal system, and caused Respondent to suffer from depression.

Regarding Counts 2, 5, and 7, Respondent did do work in these matters and admitted that she owed an accounting to the clients and a refund, because she did not complete the representation. The committee found no rule violations in Counts 6, 8 and 9. Count 10 occurred during the period of Respondent's disability and the matter was completed by another attorney. Respondent clearly accepted the responsibility for her actions and showed significant remorse for actions. Respondent wanted to and was making efforts to make restitution but had not made much progress because of her long period of inactive status, her criminal conviction and the confusion over the amounts owed and to whom they were owed.

There was much testimony regarding mitigation. Witnesses testified that Respondent, prior to her criminal activity, was an intelligent, well respected attorney in the community who worked very hard for her clients and particularly for those who could not afford legal services. Respondent worked predominately in the domestic and criminal areas. Very credible and impressive witnesses testified that prior to Respondent's medical issues, she always went over and beyond her duties and responsibilities as an attorney. All witnesses, one of whom had been a victim of Respondent's use of her identity, testified very favorably on behalf of Respondent. The committee found that the weight of medical evidence clearly proved that Respondent's mental disability was the cause of her criminal activity and as of the date of the hearing, Respondent had recovered from her mental disability as demonstrated by a meaningful and sustained period of successful rehabilitation.

Other mitigating factors included full and free disclosure to the disciplinary board and cooperative attitude, character and reputation, the delay in disciplinary proceedings and remoteness of prior offenses.

Aggravating factors included an admonition issued June 3, 1998 in docket number 98-ADB-009, multiple offenses and illegal conduct.

There is no question that the totality of the acts of Respondent in the criminal matters, as well as the other listed violations, should result in Respondent's disbarment. However, since the overwhelming violations by Respondent, particularly those involving criminal activity, occurred as a result of her mental disability, the committee feels that permanent disbarment would not be appropriate.

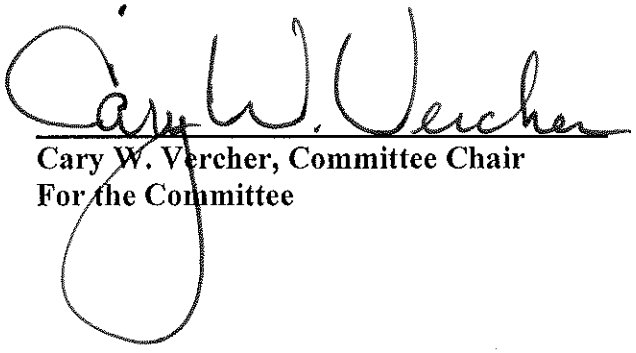
CONCLUSION

Therefore, it is the recommendation of this committee that Respondent be disbarred.

Lake Charles, Louisiana, this 22nd day of April, 2013.

Louisiana Attorney Disciplinary Board
Hearing Committee #44

Cary W. Vercher, Committee Chair
Keith A. Stutes, Lawyer Member
Darryl G. Drewett, Public Member



By: Cary W. Vercher, Committee Chair
For the Committee

APPENDIX

RULE 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RULE 1.3. DILIGENCE

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

RULE 1.4. COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

RULE 1.5. FEES

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(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. 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.

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(f) Payment of fees in advance of services shall be subject to the following rules:

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(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

RULE 1.8. CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(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:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

RULE 1.15. SAFEKEEPING PROPERTY

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(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, 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 by the client or third person, shall promptly render a full accounting regarding such property.

RULE 1.16. DECLINING OR TERMINATING REPRESENTATION

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(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 3.1. MERITORIOUS CLAIMS AND CONTENTIONS

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, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.2. EXPEDITING LITIGATION

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

RULE 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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;

(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice.