FILED
DISCIPLINARY BOARD
Date Oct. 15, 2013
Clerk: R. Armand

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: SEAN DANIEL ALFORTISH

NUMBER: 11-DB-106

RECOMMENDATION OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

INTRODUCTION

This is a discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel ("ODC") against Sean Daniel Alfortish ("Respondent"), Louisiana Bar Roll Number 22227. The formal charges, which consist of one count, allege violations of Rules of Professional Conduct ("Rule(s)") 8.4(b) (criminal conduct) and 8.4(c) (dishonest conduct).[1] The charges are based upon Respondent's plea of guilty to one count of conspiracy to commit mail, wire, identity document, and health care fraud, a felony in violation of 18 USC 371; 18 USC 1341; 18 USC 1343; 18 USC 1028(a)(7), (c)(3)(B), and (b)(2)(B); and 18 USC 1347.[2] The Hearing Committee assigned to this matter concluded that Respondent violated the Rules as charged and recommended that he be permanently disbarred. For the following reasons, the Board adopts the findings, conclusions, and recommendation of the Committee.

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[1] Rule 8.4 states, in pertinent part:

> It is professional misconduct for a lawyer to:
> ***
> (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; ...

[2] See the attached Appendix for the text of these statutes.

PROCEDURAL HISTORY

ODC filed the formal charges on November 10, 2011, which state, in pertinent part:

> On August 31, 2011, in *United States v. Sean Daniel Alfortish, Criminal Action No. 10-328,* on the docket of the United States District Court, Eastern District of Louisiana, following a plea agreement and guilty plea, Sean Daniel Alfortish was convicted of one count of conspiracy to commit mail, wire, identity document, and health care fraud, a felony, in violation of 18 USC 371; 18 USC 1341; 18 USC 1343; 18 USC 1028(a)(7)(C)(3)(B) and (b)(2)(B); and 18 USC 1837. Sentencing was set for December 15, 2011. Mr. Alfortish has been convicted of a felony criminal offense, which constitutes serious criminal conduct in violation of Rules 8.4(b)(c) of the Rules of Professional Conduct, and which adversely reflects upon his fitness to practice law under La.S.Ct. Rule XIX, Sect. 19 B.

Pursuant to his guilty plea, Respondent executed and agreed to the following factual basis:

> The defendant was first elected as the president of the Louisiana Horsemen's Benevolent and Protective Association 1993, Inc. ("HBPA" or "Association") in 2005, and served in that capacity at least until the return of the Indictment on November 18, 2010. He also was a licensed Louisiana attorney who operated a private legal practice and served as a magistrate judge.
>
> The HPBA is a Louisiana non-profit corporation which was recognized by Louisiana law as the representative of horsemen racing at licensed races held in the State of Louisiana. A horseman was a race horse owner or trainer and was eligible for membership in the HBPA once his race horse started in one qualifying race in Louisiana.
>
> HBPA members were entitled to vote for officers and directors of the HBPA. The bylaws of the HBPA required that in order for a ballot to be counted as valid, it had to be enclosed in a ballot enclosure envelope bearing the Social Security number of an HBPA member and the ballot had to be received by the HBPA's certified public accountants via the U.S. Postal Service.
>
> Defendant was re-elected to a second term as president of the HBPA after an election in which ballots were counted on March 31, 2008 ("the March 2008 election").
>
> During **ALFORTISH'S** first term of office from April 2005 until March 2008, certain members of the board of directors of the HBPA challenged defendant's management of the finances of the organization. In early 2008, one member of the board of directors sued the Association and Alfortish to require that information about the organization's finances be produced.
>
> Defendant and other co-conspirators entered into a conspiracy to rig the outcome of the March 2008 election. The object of the conspiracy was to re-elect defendant along with favored candidates for directors. The methods the

conspiracy was accomplishing included the following: mailing falsified election ballots through the U.S. Postal Service from states other than Louisiana so they would bear postmarks appropriate to the residences of the supposed "voters," using interstate wires to make airline reservations for the co-conspirators' travel and electronic transfers of funds from a bank account to pay for the co-conspirators airline tickets; and knowingly transferring, possessing and using, without lawful authority, a means of identification of another person, that is, a Social Security number, with the intent to commit, and in connection with, unlawful activity that constitutes a violation of Federal law, namely, mail fraud in violation of Title 18, United States Code, Section 1341, and to cause the Social Security number to be transported in the mail in the course of the use prohibited by law, in violation of Title 18, United States Code, Section 1028(a)(7); Section 1028 (c)(3)(B), and Section 1028(b)(2)(B).

The defendant directed Mona Romero and another individual to identify persons who were eligible to vote in the election but who were not expected to vote because they had started a horse in only one race during the period considered in determining eligibility to vote. Many such persons identified as likely non-voters lived outside the State of Louisiana.

Defendant then instructed Mona Romero and another individual to travel to Lake Charles, Louisiana, and stay at a casino resort and spa while falsifying election ballots. The costs of such travel were charged to HBPA credit card accounts and the credit card bill was paid out of the Medical Benefit Trust Administrative Account. Mona Romero and another individual falsified election ballots by marking them for defendant as president and the favored candidates as members of the board of directors. They then marked on the ballot enclosure envelopes the Social Security numbers of likely non-voters, without the knowledge and permission of those likely non-voters. Finally, they inserted the falsified election ballots and ballot enclosure envelopes into an outer business reply envelope addressed to the certified public accountants who would open and tally the votes. They completed numerous falsified documents at the same time with one or more ballots and ballot enclosure envelopes on top of each other, assembly-line fashion. While the ballots were being falsified, defendant was in frequent telephone contact with Mona Romero, Cindy Romero and two other individuals and discussed the progress of the ballot falsification process.

On or about March 19, 2008, with the defendant's knowledge and approval, Mona Romero gave Cindy Romero her personal bank card to withdraw funds from a personal bank account. Those funds were used to make airline reservations for three persons to fly to various cities where the likely non-voters lived. When the co-conspirators reached their destination, they dropped falsified election ballots and ballot enclosure envelopes into various mail boxes for delivery to certified public accountants who would open and count the ballots for the March 2008 election. Defendant later reimbursed Mona Romero whose bank card had been used for the cost of the airline tickets.

On March 21, 2008, Cindy Romero flew from New Orleans, Louisiana to Cincinnati, Ohio; Louisville, Kentucky; Atlanta, Georgia and then back to New Orleans, all on the same day. During that trip, Cindy Romero mailed falsified

ballots and falsified ballot enclosure envelopes, which bore the Social Security numbers of individuals placed on the ballot enclosure envelopes without lawful authority of the persons to whom the Social Security numbers had been issued in Cincinnati, Ohio and Louisville, Kentucky. Cindy Romero also caused falsified ballots to be mailed from Lexington, Kentucky.

On March 21, 2008, another co-conspirator, at the express direction of defendant, flew from New Orleans, Louisiana to Houston, Texas, and then back to New Orleans, all on the same day. During that trip, the co-conspirator mailed falsified ballots and falsified ballot enclosure envelopes which bore the Social Security numbers of individuals placed on the ballot enclosure envelopes without lawful authority of the persons to whom the Social Security numbers had been issued.

On March 21, 2008, a co-conspirator flew from New Orleans, Louisiana to Tampa, Florida, and then back to New Orleans, all on the same day. During that trip, the co-conspirator mailed falsified ballots and falsified ballot enclosure envelopes which bore the Social Security numbers of individuals placed on the ballot enclosure envelopes without lawful authority of the persons to whom the Social Security numbers had been issued.

On March 22, 2008, Mona Romero flew from New Orleans, Louisiana to Dallas, Texas, and back to New Orleans, Louisiana, all on the same day. During that trip, the co-conspirator mailed falsified ballots and falsified ballot enclosure envelopes which bore the Social Security numbers of individuals placed on the ballot enclosure envelopes without lawful authority of the persons to whom the Social Security numbers had been issued.

The evidence would show that the vast majority of ballots received and counted in the 2008 HBPA election which bore postmarks from Cincinnati, Ohio; Louisville and Lexington, Kentucky; Houston, Texas; Tampa, Florida; and Dallas, Texas, were postmarked on the dates the co-conspirators mailed falsified ballots or caused falsified ballots to be mailed from those cities and areas, or on the next mailing day.

During March 21 and 22, 2008, the period when falsified ballots were being mailed, evidence would be introduced to show the defendant frequently spoke with Mona Romero, Cindy Romero and other co-conspirators to discuss the progress of the ballot mailing efforts. At trial, HBPA members living near Cincinnati, Ohio; Louisville and Lexington, Kentucky; Dallas and Houston, Texas; and Tampa, Florida, whose Social Security numbers appeared on ballot enclosure envelopes containing ballots counted in the March 2008 election would testify that he or she did not vote in the March 2008 HBPA election, that he or she did not authorize anyone else to vote for him or her, and that he or she has examined the ballot enclosure envelope bearing his or her Social Security number and that the handwriting on the ballot enclosure envelope is not his or hers.

Certified public accountants would testify that on March 31, 2008, they opened the election ballots and declared the winners of the election to be defendant as president and, as members of the board of directors, all candidates for the board who were selected by defendant and encouraged by him to run for positions on the board of directors. In contrast, all former members of the board of

directors who stood for re-election and who had challenged defendant's management of the Association's finances during defendant's first term of office were not reelected as board members.

Evidence in the form of emails, correspondence, lawsuits and hearings would be introduced to illustrate the efforts of the defendant to silence his detractors who believed his reelection was achieved through fraud. At board meetings where interested board members questioned **ALFORTISH'S** spending of funds, **ALFORTISH** falsely defended himself and sharply and, often publicly, criticized his detractors. The defendant presided over a hearing concerning a challenge to the election filed pursuant to the HBPA bylaws, knowing that he had participated and directed others to mail falsified ballots.

Prior to and subsequent to the date the defendant participated in the events outlined above, the defendant was employed by the HBPA as the director of workman's compensation and director of simulcasting and earned a salary of $100,000 per year for both positions. He also received a fringe benefit consisting of HBPA-paid health insurance for himself and his child. Such fully paid health insurance coverage was made available only to a limited number of executive-level employees of the HBPA. Records would show that the HBPA and the medical benefit trust significantly funded **ALFORTISH's** automobile gas, meals, and travel. This included international travel, personal gifts, and largess to HBPA employees.

Evidence would establish that in February 2007, the HBPA, **ALFORTISH** and Mona Romero were threatened with a lawsuit which involved an employee grievance. On March 13, 2007, the defendant settled that threatened litigation by paying $25,000 of his personal funds to settle the matter. On April 27, 2007, the defendant was awarded with $25,000.04 in "back pay" for job positions other individuals were performing.

Louisiana law would be judicially noticed that called for the creation and funding of a medical benefit trust on behalf of trainers and/or owners of horses in Louisiana. Witnesses familiar with Louisiana law and the operation of the HBPA would testify about how the legislatively mandated percentage, 4%, of wagering fees was supposed to flow to the HBPA for the exclusive use and benefit of horsemen, their employees, and others as medical and hospital benefits and that an amount not to exceed 30% of those funds could be used for administrative expenses and other costs necessary to provide the benefits. A medical trust agreement dated December 30, 1993, would be introduced into evidence which set forth that the trust was funded exclusively from statutorily dedicated funds and that under no circumstances should the trust provide benefits to any employee of the HBPA in their capacity as such. The Louisiana law and the medical benefit trust would establish that the HBPA Medical Benefit Trust was a health care benefit plan as defined by Title 18, United States Code, Section 24(b).

Forensic examinations of the manner in which HBPA and medical benefit trust funds were spent would demonstrate that in 2005, when the defendant was first elected, until 2009, the expenses paid by the medical benefit trust on behalf of its operation and the affiliated operations of the HBPA more than doubled. Monthly expense allocation reports would demonstrate that the expenses of the

HBPA and its affiliates were classified with accounting codes and, once totaled, were allocated to the HBPA and its affiliates. The affiliates were the medical benefit trust, a pension trust, a worker's compensation plan and a political action committee. The allocation assessments would show that a disproportionate share of the expenses were allocated to the medical benefit trust when, in truth and in fact, most of the expenses had nothing to do with the payment of claims of the administrative expenses incurred to pay those claims. In fact, the allocations to the medical benefit trust were a method of disguising the systematic diversion of the legislatively dedicated funds to the benefit of the defendant and his co-defendants.

Forensic examination and summary testimony would show that in 2005, expenses for flowers, gifts and awards, for instance, were $1,452; by 2009 those expenses rose to $8,274. Around 40% of that amount was allocated to the medical benefit trust when no amount of that sum had anything to do with the administering of medical claims. The same evidence would be introduced with respect to travel, meals and entertainment and gas. Further, credit card bills introduced into evidence would demonstrate that never did the defendant account for his spending. At board meetings where he and Mona Romero were questioned about their spending, Romero explained that she would account for her spending and never addressed the fact that **ALFORTISH** used the credit cards without limitation or accountability and his fraudulently installed board members did not question his authority.

In January 2008, the HBPA put on a national convention for the HBPAs throughout the country. Over $83,000 was spent to put on the convention and paid for by the medical benefit trust. The convention contained one hour of materials arguably dedicated to health care benefits. Under the defendant's leadership, roughly half of the expense of presenting the convention was allocated to the medical benefit trust.

Finally, evidence would establish that, because the defendant continually used medical benefit trust funds for personal and HBPA purposes, instead of depositing the legislatively mandated funds in an account to pay medical claims, the medical benefit plan reduced its coverage and made eligibility into the plan more rigorous.

In summary, the evidence introduced by the Government at trial would prove, and the defendant concedes, that **SEAN DANIEL ALFORTISH** conspired to commit mail fraud, wire fraud and fraud in connection with identification documents, to wit, Social Security numbers, written on ballot envelopes containing falsified ballots to be cast in the March 2008 election of the Louisiana Horsemen's Benevolent and Protective Association, as well as health care fraud.

Exhibit ODC 6 (Factual Basis, 8/31/11).

On January 25, 2012, Respondent filed an answer to the charges through his counsel, Elizabeth A. Alston.[3] In the answer, Respondent admitted to pleading guilty to the statutes listed in the formal charges with the exception of 18 USC 1837.[4] Respondent also requested that the matter be stayed until he was sentenced and his appeals rights were extinguished. Accordingly, the Board stayed the matter by order signed February 9, 2012. On May 17, 2012, ODC filed a motion alleging that Respondent's appeal rights were extinguished and requested that this matter be set for hearing. Accordingly, the Board set the matter for hearing.

After several continuances, this matter was heard by Hearing Committee Number 33 ("the Committee")[5] on March 26, 2013. Deputy Disciplinary Counsel G. Fred Ours appeared on behalf of ODC. Respondent appeared via telephone. Once evidence of Respondent's conviction was admitted into evidence, ODC rested its case.[6] Respondent called and examined the following witnesses: Christine D. Early (Board member of the Louisiana Horsemen's Benevolent & Protective Association); Colin Sherman (Respondent's lawyer in the civil proceedings related to his conviction); Sturges Ducoing (a horse trainer and friend of Respondent); Paula Collums (wife of one of Respondent's former clients); and himself.

The Committee issued its report on June 11, 2013. The Committee found that Respondent violated the Rules as charged and recommended that he be permanently disbarred.

Leslie J. Schiff enrolled as counsel for Respondent on July 25, 2013.

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[3] Ms. Alston withdrew as counsel on October 19, 2012.

[4] Respondent is correct in this assertion. The Factual Basis that accompanied Respondent's conviction lists 18 USC 1347 as violated, but does not list 18 USC 1837. Thus, this appears to be a typographical error in the formal charges.

[5] The Committee was composed of Keith M. Pyburn, Jr. (Chairman), Matthew M. Friedman (Lawyer Member), and Shaughnesena J. Seals (Public Member).

[6] The Committee admitted into evidence Exhibit ODC 1 – ODC 11, and allowed ODC to proffer Exhibit ODC 12. The Committee also admitted Respondent's Exhibits 6 and 7, and allowed Respondent to proffered Exhibits 1 – 5.

Oral argument of this matter was scheduled for August 29, 2013, before Board Panel "C".[7] ODC filed its brief on July 26, 2013, in which it concurred with the findings and recommendation of the Committee. Respondent filed his brief, through counsel, on August 13, 2013, in which he argued that a three-year suspension was appropriate.

Oral argument was held as scheduled. Deputy Disciplinary Counsel G. Fred Ours appeared on behalf of ODC. Leslie J. Schiff appeared on behalf of Respondent. Respondent also appeared and participated via telephone.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

Furthermore, when the subject of the formal charges is a criminal conviction and the conviction is final, the fact finding process is limited by Rule XIX, §19(E), which reads, in pertinent part:

[7] Board Panel "C" was composed of Edwin G. Preis, Jr. (Chairman), Tara L. Mason (Lawyer Member), and Linda P. Spain (Public Member).

> At the hearing before a hearing committee, the certificate of the conviction of the respondent shall be conclusive evidence of his/her guilt of the crime for which he/she has been convicted. The sole issue to be determined at the hearing shall be whether the crime warrants discipline and, if so, the extent thereof. At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he/she was convicted as determined by the statute defining the crime.

A. The Committee did not err in not admitting the Supplemental Exhibits 1-5

In brief and at oral argument, Respondent argued that the Committee erred by not admitting Respondent's Supplemental Exhibits 1-5 in to evidence at the hearing. The Committee allowed Respondent to proffer the exhibits. The Committee's decision was proper.

At the hearing, Respondent attempted to introduce the following exhibits into the record:

- Supplemental Exhibit 1: Audit reports of Richard Traina ordered by the HBPA in response to allegations by HBPA member Stanley Seelig.
- Supplemental Exhibit 2: Resolution of the HBPA authorizing the hiring of legal counsel to investigate and respond to the allegations of Stanely Seelig (2/3/2010).
- Supplemental Exhibit 3: Resolution of the HBPA adopting certain recommendations made by Richard Traina (5/5/2010).
- Supplemental Exhibit 4: Minutes of the 1/25/2007 HBPA Board meeting where, among other actions, the HBPA Board hired Respondent as the Director of the HBPA Workers' Compensation Program.
- Supplemental Exhibit 5: Minutes of the 4/29/2007 HBPA Finance Committee meeting where, among other actions, Respondent's hiring as the Director of the HBPA Workers' Compensation Program and as the Director of Simulcasting was confirmed and his salary set.

ODC objected to the admission of Supplemental Exhibits 1-3 stating that the admission of the exhibits and testimony regarding the exhibits would undermine or contradict the facts to which Respondent pled guilty. Hearing Transcript, pp. 24-27. Respondent argued that the exhibits served as mitigating evidence to show he did not have a dishonest or selfish motive and he did not engage in "insurance fraud" as contemplated by Guideline 6 of the guidelines for permanent disbarment. Hearing Transcript, pp. 28-29. *See* Louisiana Supreme Court Rule XIX, Appendix E (guidelines for permanent disbarment). The Committee Chairman did not allow the evidence

into the record but allowed Respondent to make a proffer. Hearing Transcript, pp. 33-36. Additionally, in response to Supplement Exhibits 1-3, ODC proffered Exhibit ODC 12, which is the Louisiana State Legislative Auditor's report on the HBPA. This report allegedly reaches conclusions that are inconsistent with the conclusions in the Traina reports.

With regard to Supplemental Exhibits 4-5, Respondent introduced the exhibits to demonstrate the circumstances surrounding his hiring as the Director of the HBPA Workers' Compensation Program and as the Director of Simulcasting. ODC objected to the relevance of the exhibits. The Committee Chairman sustained the objection. Respondent was allowed to proffer the exhibits. Hearing Transcript, pp. 134.

In lawyer discipline matters, when a final criminal conviction is the subject of formal charges, the respondent "may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he/she was convicted as determined by the statute defining the crime." Rule XIX, §19(E). Here, with regard to Supplemental Exhibits 1-3, the Committee was presented with an audit report that, in its opinion, tended to undermine the facts to which Respondent pled guilty. This is evidenced by the fact that ODC presented a competing audit report. When presented with such a situation, the Committee reached the correct conclusion by not allowing either report into evidence and focusing on the facts of Respondent's conviction (*i.e.* the Factual Basis quoted above) as directed by Rule XIX, §19(E). Furthermore, whether or not the proffered evidence demonstrates that Respondent did not technically engage in "insurance fraud," the sanction recommendation in this matter does not solely depend on such a determination, as is discussed in detail below. Finally, the Committee gave Respondent ample opportunity to present mitigating evidence, which is evidenced by the testimony of character witnesses and numerous character letters that were admitted into

evidence. *See* Supplement Exhibit 7. Accordingly, the Board concludes that the Committee did not err in denying the admission of Supplement Exhibits 1-3.

With regard Supplement Exhibits 4-5, the Board does not see how this evidence was relevant to the proceeding. Thus, the Committee did not err in denying the admission of those exhibits.

B. The Manifest Error Inquiry

The factual findings of the Committee are supported by the record and are consistent with the factual basis underlying Respondent's conviction.

C. *De Novo* Review

The Committee correctly applied the Rules to the facts of this case. Rule 8.4(b) states that it is professional misconduct for a lawyer to commit a criminal act, "especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Respondent stands convicted of conspiracy to commit mail, wire, identity document, and health care fraud, which is a felony. Based on this conviction, Respondent violated Rule 8.4(b). Rule 8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The scheme by which Respondent rigged the March 2008 election of the Louisiana HBPA Board necessarily involved fraudulent and deceptive conduct, constituting a violation of Rule 8.4(c).

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

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

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

Here, Respondent knowingly and intentionally violated duties owed to the public. His misconduct caused significant financial harm to the Louisiana HBPA, resulting in an order of restitution in the amount of $105,140.94.[8] *See* Exhibit ODC 8. Also, as found by the Committee, Respondent's actions harmed the reputation of the profession.

The Board adopts the following aggravating factors recognized by the Committee: prior disciplinary offenses,[9] dishonest and selfish motive, substantial experience in the practice of law,[10] and refusal to acknowledge the wrongful nature of his conduct. With regard to the last aggravating factor, at the hearing, Respondent presented testimony and argument in an attempt to minimize the impact of the health care fraud portion of his conviction. *See e.g.* Transcript, pp. 20-23. Respondent essentially ignored the fraudulent election scheme. The Board also finds the aggravating factor of illegal conduct.

The Board adopts the following mitigating factors recognized by the Committee: full and free disclosure to disciplinary board or cooperative attitude toward proceedings and good reputation in the legal community.[11] The Board also finds the following mitigating factor: imposition of other penalties and sanctions (*i.e.* Respondent's conviction and incarceration). Finally, the Board adopts the Committee's conclusion that the payment of restitution by the HBPA's insurance provider does not serve as mitigating evidence in favor of Respondent.

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[8] This amount was paid to the HBPA by its insurer. *See* Respondent Exhibit 6.

[9] Respondent received an Admonition on March 23, 2010, for improperly sharing fees and for trust account violations. *See* Exhibit ODC 11.

[10] Respondent was admitted to the practice of law in Louisiana on October 8, 1993.

[11] With regard to Respondent's character and reputation, the Committee specifically found: "Mr. Alfortish also offered evidence that he had represented clients zealously and effectively in his law practice and that he represented numerous clients without receiving [payment]. ... [The Committee considers this] to be evidence of [a] mitigating [factor]." Hearing Committee Report, p. 6. *See also* Respondent Exhibit 7 (character letters).

B. The ABA Standards and Case Law

The *ABA Standards for Imposing Lawyer Sanctions* suggests that disbarment is the baseline sanction in this matter.

> Standard 5.11:
> Disbarment is generally appropriate when:
> (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
> (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Misrepresentation and fraud are necessary elements of the crimes for which Respondent stands convicted. The lengths to which Respondent went to fraudulently secure his reelection as president of the Louisiana HBPA Board seriously adversely reflects on his fitness to practice law. Accordingly, disbarment is the baseline sanction.

The only remaining issue is to determine whether Respondent's conduct is so egregious as to warrant the imposition of permanent disbarment. The most relevant guideline is Guideline 6, which states that permanent disbarment may be warranted for "[i]nsurance fraud, including but not limited to staged accidents or widespread runner-based solicitation." Louisiana Supreme Court Rule XIX, Appendix E. The underlying conduct of Respondent's conviction does not fall squarely within the scope of this guideline, as Respondent argued at the hearing and in brief. However, this does not prevent the Board from recommending permanent disbarment. First, the preamble in Rule XIX, Appendix E, states in pertinent part, "These guidelines are not intended to bind the Supreme Court of Louisiana in its decision making. It is hoped that these guidelines provide useful information to the public and to lawyers concerning the types of conduct the

Court might consider to be worthy of permanent disbarment." Furthermore, the Court has rejected the argument that the failure of particular misconduct to fall within the guidelines in Appendix E obligates the Court to reject permanent disbarment as a sanction. *See In re Edwards*, 2004-0290 (La. 7/2/04), 879 So.2d 718. Thus, even though Respondent is correct in arguing that his misconduct does not fall squarely with Guideline 6, this fact does not prevent the Board from recommending permanent disbarment as a sanction.

The Court has imposed permanent disbarment in a situation where an attorney engaged in a fraudulent scheme that is generally similar to the one in which Respondent engaged. In *In re Bradley*, the Court permanently disbarred Mr. Bradley based on his felony conviction for conspiracy to bribe a state official. 2011-0254 (La. 4/25/11), 62 So.3d 52. Mr. Bradley's conviction was based upon his role as the middle-man in a scheme to bribe the director of the Louisiana Film Commission in order to obtain approximately $1,350,000 in tax credits for a co-conspirator's film company. For his role, Mr. Bradley received $67,500. The Court did not rely on any of the guidelines for permanent disbarment.

> In Appendix E to Supreme Court Rule XIX, we set forth guidelines illustrating the types of conduct that might warrant permanent disbarment. However, we also made it clear that these guidelines are not intended to bind our decision-making process. While [Mr. Bradley's] misconduct may not definitively fit any of the specific permanent disbarment guidelines, his conviction of conspiracy to commit bribery nevertheless demonstrates a clear lack of moral fitness.

In re Bradley, 62 So.3d at 54-55.

Here, Respondent engaged in an extensive scheme to fraudulently secure his reelection as the president of the Louisiana HBPA. This conduct strikes to the heart of Respondent's character and fitness to practice law. As an officer of the HBPA, he violated the trust of the organization and caused it significant harm. Of significant note is that fact that, at the time of the fraudulent election, Respondent was facing allegations of financial wrongdoing by a member of

the HBPA. The results of the fraudulent election removed opposition to Respondent on the Board of the HBPA. Furthermore, before and after the 2008 election Respondent was employed by the HBPA, in addition to serving as president, for which he received an annual salary of $100,000. More likely than not, Respondent's employment would have been compromised had he not been reelected as president of the HBPA. Thus, while Respondent's conduct may not fall squarely within the guidelines for permanent disbarment, the Board finds that Respondent's misconduct is the type of misconduct the Court envisioned when it created the sanction of permanent disbarment. Accordingly, as the Court did in *Bradley*, the Board recommends permanent disbarment without reliance on a particular guideline found in the guidelines for permanent disbarment.

CONCLUSION

The Board adopts the Committee's findings and conclusions. Likewise, the Board adopts the Committee's recommendation of permanent disbarment. The Board also recommends that Respondent be assessed with the costs and expenses of this matter.

RECOMMENDATION

The Board recommends that Respondent, Sean Daniel Alfortish, be permanently disbarred. The Board also recommends that Respondent be assessed with the costs and expenses of this matter.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Carl A. Butler
Stephen F. Chiccarelli
George L. Crain, Jr.
Jamie E. Fontenot
Edwin G. Preis, Jr.
R. Lewis Smith, Jr.
Linda P. Spain
R. Steven Tew

BY: _____
Tara L. Mason
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

18 U.S.C. §371 – Conspiracy to commit offense or to defraud United States

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. ...

18 U.S.C. §1341 – Frauds and Swindles

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. 1343- Fraud by Wire, Radio, or Television

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. 1028 (a)(7) & (C)(3)(B) – Fraud and related activity in connection with identification documents, authentication features, and information

(a) Whoever, in a circumstance described in subsection (c) of this section ... (7) knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law ...
(c) The circumstance referred to in subsection (a) of this section is that ... (3) either ... (B) the means of identification, identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, possession, or use prohibited by this section.

18 U.S.C. 1028 (b)(2)(B) – Fraud and related activity in connection with indentification documents, authentication features, and information

(b) The punishment for an offense under subsection (a) of this section is ... (2) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 5 years, or both, if the offense is ... (B) an offense under paragraph (3) or (7) of such subsection.

18 U.S.C. 1347 – Health case fraud

(a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice-- (1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both.
(b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.