

ORIGINAL

Louisiana Attorney Disciplinary Board

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Docket#

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12-DB-042

3/27/2014

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: RANDY J. FUERST**

**NUMBER: 12-DB-042**

**RECOMMENDATION TO THE LOUISIANA SUPREME COURT**

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This attorney discipline matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Randy J. Fuerst (Respondent), Louisiana Bar Roll Number 05767. The formal charges, which contain one count, allege a violation of Rule 1.7(a)(2) (conflict of interest with current clients), Rule 1.8(b) (conflict of interest with current clients: a lawyer shall not use information relating to the representation of a client to the disadvantage of the client), Rule 1.10 (imputation of conflicts of interest), Rule 2.1 (lawyer as advisor), and Rule 8.4(d) (conduct prejudicial to the administration of justice) of the Rules of Professional Conduct (Rules).<sup>1</sup> The Hearing Committee<sup>2</sup> ("Committee") assigned to this matter found clear and convincing evidence that Respondent violated Rule 1.7(a)(2) (conflict of interest with current clients) and Rule 8.4(d) (conduct prejudicial to the administration of justice) regarding Michelle Watson but found no other violations. The Committee recommended that Respondent be suspended from the practice of law for a period of thirty (30) days, fully deferred, with one year of unsupervised probation.

The Board adopts the Committee's findings that Respondent violated 1.7(a)(2) and 8.4(d) with regards to his conduct with Ms. Watson. The Board additionally finds that Respondent violated Rule 2.1 with regard to Ms. Watson. The Board also adopts the Committee's

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<sup>1</sup> The text of these rules are attached in the appendix.

<sup>2</sup> Hearing Committee No. 41 was composed of Cary W. Vercher (Chairman), Charlotte A. Guilbeaux (Lawyer Member) and John C. Hixson, Jr. (Public Member).

recommended sanction of a thirty day fully deferred suspension with one year of unsupervised probation.

### **PROCEDURAL HISTORY**

Formal Charges were filed in this case on June 18, 2012 and were served on June 21, 2012. On June 25, 2012 Glen D. Vamvoras enrolled as counsel of record for Respondent. On July 11, 2012 William Ross enrolled as counsel of record and filed a motion for an Extension of Time to File an Answer. On July 17, 2012 Respondent moved to substitute Mr. Ross as counsel of record with Mr. Vamvoras and Mr. Shane Hinch. On August 8, 2012, James Boren enrolled as counsel of record. The Committee originally set the hearing for November 19, 2012. The hearing was reset on January 22, 2013. In response to multiple discovery motions filed by the parties, the Committee issued an order on January 10, 2013 declaring the motions moot as the parties stipulated to Respondent's medical records in a joint motion for protective order. ODC's pre-hearing memorandum was filed on January 4, 2013, and Respondent's memorandum was filed on January 10, 2013.

A formal hearing was held before Hearing Committee No. 41 from January 22-25, 2013. At the hearing, ODC was represented by Deputy Disciplinary Counsel G. Fred Ours. Respondent appeared with his attorneys Mr. Boren and Mr. Hinch. ODC filed a post-hearing memorandum on February 13, 2013. Respondent filed a post hearing memorandum on February 27, 2013. The Committee issued its report on June 3, 2013. The Committee found clear and convincing evidence that Respondent violated Rule 1.7(a)(2) (conflict of interest with current clients) and Rule 8.4 (conduct prejudicial to the administration of justice) regarding Michelle Watson, but found no other Rule violations. The Committee recommended a thirty day

suspension, fully deferred, with one year of unsupervised probation. ODC filed an objection to the Committee's report on June 7, 2013, objecting to their legal conclusions.

Respondent filed a Motion for Permission to file an out of time objection to cost statement on July 3, 2013. ODC filed its objection to Respondent's motion on the same day. On July 8, 2013, the Board granted Respondent's motion for permission to file out of time objection to cost statement. On the same day, Respondent filed his objection to the first itemized cost statement issued by the Board. ODC filed its response on July 29, 2013. As per Rule XIX, Appendix A, Rule 7, the Board referred the cost statement and the objection to the chair of the Committee which conducted the hearing for a ruling on the objection. On August 12, 2013, Hearing Committee No. 41 issued a ruling regarding Respondent's objection to costs. In pertinent part, the Committee stated:

It is this committee's opinion that it does not have the authority nor the resources to make such a determination regarding the waiver of cost and expenses incurred in this matter. However, it is the opinion of this Committee that Respondent should receive an adjustment to the assessment of the cost in this matter in light of the numerous charges of violations for which this committee found no clear and convincing evidence of violations of the Rules of Professional Conduct.

Oral argument of this matter was scheduled for August 29, 2013, before Board Panel "C".<sup>3</sup> ODC filed its brief on August 2, 2013, in which it argued that a two year suspension from the practice of law was the minimum baseline sanction. On August 19, 2013 Respondent filed a brief in support of the hearing committee's recommendation.

Oral argument was held as scheduled. Deputy Disciplinary Counsel G. Fred Ours appeared on behalf of ODC. Mr. Fuerst appeared with counsel Mr. Boren and Mr. Hinch.

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<sup>3</sup> Board Panel "C" was composed of Edwin G. Preis, Jr. (Chairman), Tara L. Mason (Lawyer Member), and Linda P. Spain (Public Member).

## OBJECTION TO COSTS

The assessment of costs and expenses against a respondent is governed by Rule XIX,

§10.1, which reads, in pertinent part:

**A. Assessment.** Upon order of the court or the board, or upon stipulation, in any case in which a sanction is imposed upon a lawyer or a lawyer is transferred to disability inactive status, costs and expenses as herein defined may be assessed against the lawyer. Legal interest shall also be assessed on unpaid costs and expenses.

**B. Costs.** The term “costs” for the purposes of this rule shall include all obligations in money reasonably and necessarily incurred by the attorney disciplinary board in the performance of its duties under these rules, whether incurred before or after the filing of formal charges. Costs shall include, by way of illustration and not of limitation:

- (1) investigatory costs;
- (2) charges for service of process;
- (3) witness fees;
- (4) the services of a court reporter;
- (5) copying costs; and
- (6) telephone charges.

**C. Expenses.** “Expenses” for the purposes of this rule shall mean a reasonable charge for attorney fees and administrative and staff expenses incurred by the attorney disciplinary board. The following amounts shall conclusively be presumed to be reasonable expenses:

- (1) For an admonition, \$250;
- (2) For a matter which results in a final order of discipline by consent which is concluded prior to the commencement of a hearing before a hearing committee, \$1,000;
- (3) For a matter which results in a public reprimand, \$1,000;
- (4) For a matter which results in any public sanction other than a reprimand, an order of discipline by consent which is concluded prior to a hearing before a hearing committee, or disbarment, \$1,500;
- (5) For a matter which results in a disbarment or permanent disbarment, \$2,000;
- (6) For a matter which results in permanent resignation from the practice of law in lieu of discipline, \$1,000.

Rule 7 adds clarification to the costs listed in §10.1(B):

...Recoverable costs shall include the following:

- a) Investigative costs including costs incurred in serving investigatory subpoenas, direct charges for copies, photocopies and certification of documents and records,

- direct costs of travel for investigation (at board standard rates), and fees for transcripts of statements;
- b) A fee of \$10 for each service of notice issued for the imposition of probation pursuant to Section 11(C), the imposition of an admonition pursuant to Section 11(D) (including any notice to the complainant or other interested party), and the issuance of formal charges pursuant to Section 11(E) plus the direct costs incurred if served by the sheriff or other process server;
  - c) Deposition costs;
  - d) Witness fees, travel, and lodging necessary for the witnesses' appearance at the hearing;
  - e) Fees for the hearing transcript;
  - f) Fees for expert witnesses, if determined by the hearing committee chair to be appropriate and necessary for the matter after affording the respondent an opportunity to be heard.
  - g) Fees assessed by the Clerk of the Supreme Court;
  - h) Direct costs incurred (at board standard rates) in transmitting and publishing notices pursuant to Section 17;
  - i) Computerized legal research costs associated with legal research performed by the administrator's and disciplinary counsel's staff.

### **RESPONDENT'S OBJECTIONS**

As noted above, Respondent's objection to costs was filed on July 8, 2013. The objection to costs was based on the fact that the Committee found that ODC did not carry its burden of proof regarding "four (4) of the five (5) charged violations" of the Rules.<sup>4</sup> Therefore, Respondent argues, he is only responsible to pay the litigation costs associated with the single matter in which a violation was found. Respondent submits that the balance of the First Itemized Statement of Costs prepared in this matter is \$17,900.59. More than a third of the total balance is related to the depositions of doctors at Pine Grove Behavioral Health and Addiction Service. These depositions were requested by ODC in order to prove the allegations that Respondent

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<sup>4</sup> Paragraph two of Respondent's Objection to Cost Statement states:

"On June 3, 2013, Hearing Committee #41 issued a Report and Recommendation finding no clear and convincing evidence that Randy Fuerst violated four (4) of the five (5) charged violations. The Committee found Fuerst negligently in violation of Rule 1.7(a)(2) and Rule 8.4(d) as to MRW."

However, the record reflects that of the five total charged Rule violations, the Committee found a total of two Rule violations [Rule 1.7(a)(2) and 8.4(d)] as to MRW.

engaged in a long standing pattern and practice of entering into sexual relationships with his clients while he was representing them in divorce proceedings.

### **RESPONSE OF ODC**

ODC filed a response to Respondent's objection on July 29, 2013. ODC asserts that Respondent's objection to costs should be denied. ODC requests that Respondent be held responsible for the full cost of the proceedings because ODC maintains that Respondent is guilty of all of the charged violations including the violation of engaging in a long standing practice and pattern of entering into inappropriate sexual relationships with his clients. Additionally, ODC submits that Respondent should be held responsible for the cost of the depositions taken of the Pine Grove physicians. ODC states that the depositions were taken as trial testimony in lieu of incurring the costs of the doctors attending the hearing in Lake Charles. ODC notes that it was Respondent who selected Pine Grove to conduct an independent psychological and psychiatric behavioral examination and evaluation. ODC notes that the facility is highly regarded and that the testimony provided by their physicians was relevant, probative and informative.

### **ANALYSIS**

The cost statement consists of investigation costs and litigation costs. Typically, the investigation costs are identified by an ODC file number, which pertains to a specific count of alleged misconduct. Therefore, investigative costs relating to a particular unproven count can be individually removed. With respect to litigation costs, which would be incurred in litigating all counts of alleged misconduct, it would be appropriate to reduce them by the amount of unproven misconduct. Here, ODC has only proven misconduct in one of eight instances of alleged

misconduct.<sup>5</sup> Thus, it would be equitable for Respondent to pay one-eighth of the total litigation expenses in addition to the investigative costs which pertain to Michelle Reed Watson.

### **CONCLUSION**

Based on the forgoing, the Board recommends that the costs and expenses assessed against Respondent be reduced by the amount of unproven misconduct. Specifically, Respondent should be required to pay only the investigative costs pertaining to Michelle Reed Watson in addition to one-eighth of the total litigation expenses.

### **THE FORMAL CHARGES**

The formal charges provide in pertinent part:

Beginning about February 1998, and continuing until about June 2009, Mr. Fuerst engaged in a series of inappropriate relationships with women who either retained his services or consulted with him as an attorney at law in their divorce cases. Some of the women were leaving abusive marriages, and some were taking antidepressant medication. Some of the inappropriate relationships included adulterous sexual activity with Mr. Fuerst, occurring while the women were still married. Some of the relationships involved inappropriate conduct or conversation short of sexual activity. The inappropriate relationships are further described and detailed as follows:

About February 1998 CCL was in the process of leaving her husband. There were children and community property involved in her domestic situation. A friend of CCL was married to a colleague of Mr. Fuerst. That friend referred CCL to Mr. Fuerst as a divorce lawyer. Mr. Fuerst met with CCL and her friend at his law office after regular business hours. Mr. Fuerst received information from CCL about her domestic situation, and CCL asked Mr. Fuerst for advice. Mr. Fuerst provided CCL with legal advice. Within about two or three weeks after consulting with CCL about her divorce in February 1998, Mr. Fuerst had initiated a social relationship with CCL by telephone, which became a dating relationship. CCL's husband told her that he would make the divorce litigation very difficult if Mr. Fuerst represented her. For that reason CCL decided not to continue with Mr. Fuerst as her lawyer and retained other counsel who filed CCL's divorce petition on March 11, 1998. By about April 1998 Mr. Fuerst was engaged in an adulterous sexual relationship with CCL. CCL's husband found out about her adulterous sexual relationship with Mr. Fuerst. CCL has described the ensuing domestic litigation as "nasty". CCL was not divorced from her husband until October 20,

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<sup>5</sup> The formal charges alleged misconduct with the following eight clients: CCL, VADL, MRW, KGH, MLDG, BDW, SKS and BMP.

1998. The sexual relationship between Mr. Fuerst and CCL continued until about April 1999.

In January 2001 VADL was being sued for divorce by her husband. There were children and community property involved in her domestic situation. VADL, accompanied by a friend, consulted with Mr. Fuerst as a divorce lawyer at his law office. During the consultation Mr. Fuerst gave VADL his cell phone number so that she could contact him at any time. On February 8, 2001, Mr. Fuerst filed an answer for VADL in her divorce case. Mr. Fuerst represented VADL in the February 21, 2001 child support judgment, and the August 17, 2001 judgment of divorce. The community property settlement was filed on January 2, 2002. In February 2002 VADL initiated a social relationship with Mr. Fuerst, which also became a sexual relationship in February 2002. That sexual relationship continued until about February 2003. While that sexual relationship was ongoing Mr. Fuerst signed an act of correction for VADL's community property settlement, which was filed on July 12, 2002.

About December 2001, MRW engaged the services of Mr. Fuerst as a divorce attorney. MRW and her husband had reached agreement about the terms of the divorce. There were children and community property involved in MRW's domestic situation. On December 21, 2001 Mr. Fuerst filed a petition for divorce for MRW. Also on December 21, 2001 a joint stipulation and consent judgment was executed on the issues of child custody, child support, and interim spousal support. Between December 2001 and July 2002, Mr. Fuerst initiated a social relationship with MRW which became an adulterous sexual relationship. This adulterous sexual relationship lasted for about four months and occurred while Mr. Fuerst was representing MRW in the divorce case. MRW's judgment of divorce was signed on July 12, 2002.

About August 2002 KGH engaged the services of Mr. Fuerst as a divorce attorney with the understanding that her husband was going to file for divorce. There was a child and a matrimonial regime agreement involved in KGH's domestic situation. During the initial consultation at his office, Mr. Fuerst gave KGH his cell phone number so that she could contact him at any time. He attempted to give her a book, which she declined. A subsequent meeting at Mr. Fuerst's office, believed to be their second meeting, occurred between five and six o'clock in the afternoon. During that meeting Mr. Fuerst asked KGH to have dinner with him. She agreed, and met him at the restaurant. The dinner was a social occasion and KGH's divorce case was not discussed. Following dinner Mr. Fuerst walked KGH to the parking lot where he hugged her and attempted to kiss her. KGH did not physically meet with Mr. Fuerst again until the divorce papers were signed. A stipulation, agreed to judgment of divorce, and an agreed to joint custody plan signed by KGH and Mr. Fuerst was filed on June 3, 2003.

On May 12, 2004 MLDG retained Mr. Fuerst to represent her in a divorce from a September 20, 2003 marriage. MLDG paid an advanced partial fee to the law firm with which Mr. Fuerst was of counsel to secure Mr. Fuerst's legal services. There was some community property involved in MLDG's domestic situation. During the May 12, 2004 consultation at his office, Mr. Fuerst gave MLDG a book and his cell phone number so that she could contact him at any



time. Also on May 12, 2004 MLDG signed a verification affidavit for the divorce petition. MLDG physically separated from her husband on May 17, 2004, and Mr. Fuerst filed her petition for divorce on May 18 or 19, 2004. Shortly after the divorce petition was filed, MLDG informed Mr. Fuerst that she was attracted to him and wished to pursue a dating relationship. Mr. Fuerst also wished to pursue a dating relationship with MLDG, and arranged for a partner in the law firm with which Mr. Fuerst was of counsel to enroll as counsel of record for MLDG. The motion to substitute counsel was signed on June 4, 2004 and stamped by the court clerk on June 7, 2004. The order was signed and filed on June 14, 2004. A community property settlement was filed on June 17, 2004. Mr. Fuerst and MLDG immediately entered into a dating relationship, which became an adulterous sexual relationship because MLDG was still married. MLDG's husband became aware of the adulterous sexual relationship between MLDG and Mr. Fuerst, which further complicated the difficult divorce case. On March 28, 2005 MLDG's divorce was ordered, her then ex-husband was held in contempt of court for violating the temporary restraining order, and a permanent injunction was issued restraining the ex-husband from bothering, contacting or harassing either MLDG or, specifically, Mr. Fuerst.

On September 8, 2006 Mr. Fuerst filed a divorce petition for BDW against her husband. There was a child and community property involved in BDW's domestic situation. BDW and her husband reconciled, and Mr. Fuerst moved to dismiss the petition and filed a motion to withdraw in October 2006. BDW and her husband separated again October 2007. In November 2007 BDW consulted with Mr. Fuerst as a divorce lawyer to look over legal pleadings which her husband proposed to file. Mr. Fuerst suggested a change to the proposed pleadings, which was subsequently made. Mr. Fuerst did not enroll as counsel of record for BDW, but he gave her his cell phone number so that she could contact him at any time with any questions she might have about her divorce case. BDW did not retain legal counsel at that time. BDW contacted Mr. Fuerst in December 2007, using his cell phone number, to obtain his legal advice concerning her husband coming into her house without permission. BDW's husband filed the divorce pleadings on December 21, 2007. Beginning in November or December 2007, Mr. Fuerst sent text messages and made telephone calls to BDW. Mr. Fuerst's texts and telephone conversations with BDW turned from legal advice about her divorce case to social. In early January 2008 Mr. Fuerst asked BDW out to dinner. By late January 2008 BDW and Mr. Fuerst were involved in an adulterous sexual relationship which lasted until the end of February 2008. BDW's husband found out about the adulterous sexual relationship between BDW and Mr. Fuerst, which complicated the divorce case. When BDW determined that she needed to retain legal counsel of record for her divorce case, she did not believe that it would be a good idea to retain Mr. Fuerst as counsel of record because of the prior adulterous sexual relationship, so she retained other counsel. BDW's divorce was not granted until May 4, 2009.

During the spring/summer 2007 SKS was referred to Mr. Fuerst as a divorce lawyer by a friend of hers. SKS's husband had suggested a divorce, which SKS did not want. There were children and community property involved in

SKS's domestic situation. SKS informed Mr. Fuerst of her situation and that she wanted legal information and advice concerning a possible divorce. During part, but not all, of Mr. Fuerst's meeting with SKS at his office a younger female attorney was present. During Mr. Fuerst's consultation with SKS she felt pressured to file for divorce. During the consultation Mr. Fuerst's demeanor shifted back and forth from nice and cordial to angry. During the consultation Mr. Fuerst made inappropriate sexually related comments including: suggesting that SKS should get a divorce and a dildo; suggesting that SKS should go on a dinner date with him; and discussing SKS's breast feeding of her youngest child. Near the end of the consultation Mr. Fuerst gave SKS a book. SKS did not retain Mr. Fuerst to represent her.

About April 28, 2008 BMP met with Mr. Fuerst at his law office to retain him to file for divorce from her husband. There were children and community property involved in BMP's domestic situation. During the meeting Mr. Fuerst gave BMP his cell phone number so that she could contact him at any time. Mr. Fuerst filed BMP's divorce petition on May 6, 2008. BMP went on a family vacation with her parents the week of June 1 – 7, 2008. During that vacation BMP spoke with Mr. Fuerst on the telephone frequently. These telephone conversations were mostly social. On June 10, 2008, between 10:00 PM and 11:00 PM, BMP went to Mr. Fuerst's home where they embraced and spoke about her attraction to him. That conversation was interrupted when BMP's husband appeared at Mr. Fuerst's home. On June 11, 2008 Mr. Fuerst and his law partner met with BMP and her parents at Mr. Fuerst's law office. At this meeting BMP's attraction to Mr. Fuerst was discussed. It was determined that Mr. Fuerst's law partner would assume the representation of BMP and that BMP and Mr. Fuerst would commence a dating relationship. On June 16, 2008 counsel unassociated with Mr. Fuerst in the practice of law enrolled as counsel for BMP. On or about either June 13, 2008, or June 20, 2008, Mr. Fuerst and BMP went to Houston, Texas for the weekend and began an adulterous sexual relationship, which created additional complications in the already difficult divorce case. On August 14, 2008 BMP's husband filed a first amended reconventional demand for divorce based upon BMP's adultery with Mr. Fuerst. On October 15, 2008 BMP's husband filed a lawsuit against Mr. Fuerst based upon BMP's adultery with Mr. Fuerst. BMP's divorce was not granted until May 15, 2009.

By entering into an adulterous sexual relationship with a current client (MRW) Mr. Fuerst violated Rules 1.7(a)(2); 1.8(b); 2.1; and 8.4(d). By entering into adulterous sexual relationships with clients whom he was representing until he withdrew in order to pursue these adulterous sexual relationships, and having another lawyer with whom he was associated in a firm assume those representations (MLDG and BMP); Mr. Fuerst violated Rules 1.7(a)(2); 1.8(b); 1.10; 2.1 and 8.4(d). By entering into adulterous sexual relationships with individuals who had consulted with him concerning their divorce cases, and/or continued to consult with him in their divorce cases (CCL and BDW) Mr. Fuerst violated Rules 1.7(a)(2); 1.8(b); 2.1; and 8.4(d). By engaging in a longstanding (February 1998 to June 2009) pattern and practice of entering into sexual relationships, adulterous or not, with women who consulted with and/or retained

him to represent them in their divorce cases Mr. Fuerst has engaged in a course of conduct inherently and blatantly inconsistent with his professional and fiduciary obligations under Rules 1.7(a)(2); 1.8(b); 2.1; and 8.4(d).

## **THE HEARING COMMITTEE REPORT**

As noted above, the hearing of this matter was held on January 22-25, 2013 in Lake Charles. During the course of the four-day hearing, the Committee heard testimony from thirty witnesses and allowed the introduction of numerous exhibits into the record.

The committee heard testimony from the following witnesses: Ryan Price, John Green, Jr., J. E. Buddy Stockwell, Ellen Mere, Brandy Price, Cher Walker Lemoine, Michelle Reed Watson, Michael Walker, Bethany Walker, Chastity Griffith, Kathryn Gorham Hebert, Michael McHale, Dr. Marilyn Deville, Scott Brame, Vicki DeRouen LeBleu, Evelyn Oubre, Sally Scroggs, Lynsay Fontenot, Susan Arnold, Katina Soliz, Dr. Warren Lowe, Rabbi Barry Weinstein, Honorable Lilynn Cutrer, Jim Ortego and Respondent.

The Committee provided the following findings, analysis and conclusions:

### **FINDINGS OF FACT**

#### **Cheryl Lemoine**

The committee found Ms. Lemoine's testimony very credible. Ms. Lemoine consulted with Respondent about a divorce but did not hire Respondent and chose to hire another attorney. About a month after the consultation, she began a dating relationship with Respondent which lasted a year or so and the breakup was friendly and positive.

The committee found no clear and convincing evidence of any violation of the Rules of Professional Conduct in connection with this matter.

#### **Michelle Watson**

The committee found that Respondent represented Ms. Watson in a divorce action. The only matter left to complete in the divorce action was to toll the six months waiting period to confirm the divorce. During this period of waiting Ms. Watson called Respondent to come have a drink at her house. Respondent did go to her house and had a sexual encounter.

The committee found clear and convincing evidence that Respondent violated Rule 1.7(a)(2) (conflict of interest) and Rule 8.4 (conduct prejudicial to the administration of justice).

#### **Vicki DeRouen LeBleu**

The committee found that Respondent represented Ms. LeBleu in a divorce action and six months after the divorce was granted, Ms. LeBleu and

Respondent entered into a sexual relationship. Ms. LeBleu did not remember that there had been any community property involved in the divorce. The evidence revealed that Respondent signed off on an act of correction, during the period of time that Ms. LeBleu and Respondent were seeing each other, to correct a wrong vehicle identification number on a car that had been part of a property settlement signed earlier by the parties. Ms. LeBleu believed that after the divorce was final, that Respondent was no longer her attorney. The committee found that Ms. LeBleu did not consider Respondent to be her lawyer at the time they were involved in a relationship. The committee discussed whether the signing of the act of correction was an act of representing Ms. Lebleu and it was the committee's opinion that it was not an act in furtherance of the divorce proceeding, for which Respondent had been hired, but simply a ministerial act requested by opposing counsel to correct a document that had already been executed prior to any relationship between Ms. Lebleu and Respondent.

The committee found no clear and convincing evidence of any violation of the Rules of Professional Conduct in connection with this matter.

#### **Marilyn Deville**

The committee found that Respondent filed a divorce for Ms. Deville on the same day as her consultation with Respondent on May 19, 2004. Later, Ms. Deville expressed an interest in dating Respondent and was told by Respondent that he could not date a client and her response was that she would get another lawyer. Respondent referred Ms. Deville to another lawyer, Mr. Boyer, in the same firm, with which Respondent was "of counsel" and filed a motion to withdraw. Ms. Deville's testimony was very credible and powerful. Ms. Deville did not enter a social or sexual relationship with Respondent between the time of the filing of her divorce proceeding and the time Respondent withdrew as her attorney. Ms. Deville's relationship with Respondent was positive and beneficial to her. Ms. Deville's husband's behavior was no different after she began seeing Respondent than it was before. The committee found that although Respondent was "of counsel" with the same firm in which the referral was made, any personal interest of the Respondent did not present a significant risk of materially limiting the representation of Mr. Boyer in the same firm with Respondent. Ms. Deville's testimony clearly indicated that her husband's behavior was no different after she began seeing Respondent than it was before.

The committee found no clear and convincing evidence of any violation of the Rules of Professional Conduct in connection with this matter.

#### **Bethany Walker**

The committee found that in August of 2006 Ms. Walker retained Respondent to file a divorce action which was filed. Shortly thereafter, she called Respondent and requested that it be dismissed and Respondent did so, before the petition was served, and Respondent filed a motion to withdraw as counsel in October of 2006. In November of 2007 she saw Respondent to look over divorce papers that were going to be filed by another attorney on behalf of her and her husband's lawyer. She and her husband had agreed to most issues. Ms. Walker

told Respondent she did not need a lawyer and left his office without retaining him. Ms. Walker felt that after Respondent's review of her documents, any professional relationship with Respondent was over. Ms. Walker's husband filed for divorce in December of 2007. After the divorce was filed, Ms. Walker and Respondent went to a social event and two weeks later began a sexual relationship which lasted about a month. Ms. Walker did not feel taken advantage of and she and her husband got along well after the divorce.

The committee found no clear and convincing evidence of any violation of the Rules of Professional Conduct in connection with this matter.

### **Brandy Price**

The committee found that Ms. Price retained Respondent on April 28, 2008 to file a divorce and the divorce was filed May 6, 2008. On June 10, 2008 Ms. Price came uninvited to Respondent's house complaining that someone was following her. She knew that someone had been following her and was concerned. Respondent said she could come into his house for a minute. During the course of conversation, Ms. Price began talking in an affectionate way, and Respondent told her that he needed to be her lawyer. During the conversation, Respondent and Ms. Price saw flashes through the stained glass windows of his home. The flashes were the acts of Ms. Price's husband taking pictures of her car in the front of Respondent's home. Deciding not to call the police, Respondent told her that he would deal with the matter the next day with her husband's lawyer. A meeting was held the next day with Respondent, an associate, Ms. Price, her mother and father about all the issues that had transpired. The entire domestic relationship between Ms. Price and her husband had been extremely acrimonious and one of the things that caused extreme problems with the divorce was the fact that her husband did not want her to use Respondent as her lawyer. Ms. Price's husband had actually provided a list of attorneys that she could use. Additionally, the incident of the night before of Ms. Price being at Respondent's house made the representation even more problematic, as well as, Respondent witnessing Mr. Price's violation of the stay order in the case. There was much debate whether Respondent should withdraw from the case and ultimately it was decided that it would be best to do so. Respondent gave Ms. Price and the family a list of lawyers he would recommend and they chose Evelyn Oubre. Ms. Oubre met with Ms. Price on June 16, 2008 and agreed to represent her and was retained the next day. Respondent filed a motion to withdraw as counsel and Ms. Oubre enrolled as counsel for Ms. Price on June 16, 2008. On June 21, 2008 Respondent and Ms. Price went on a trip to Houston and an intimate relationship began which lasted for two and a half years. Ms. Price's testimony was very credible. She did not appear to have been vulnerable or that she had been taken advantage of by Respondent and considered the relationship a good one. The committee found no clear and convincing evidence of any violation of the Rules of Professional Conduct in connection with this matter.

### **Finding of facts in regard to other matters**

ODC called three other witnesses, Chastity Griffith, Kathryn Hebert and Sally Scroggs, that saw Respondent for legal matters. With regard to Ms. Griffith, the committee felt that Respondent's testimony was more credible than Ms. Griffith's regarding a comment Respondent made [about] her breast[s]. Ms. Griffith used conflicting terms in her testimony causing the committee to conclude that it did not happen the way she described. Kathryn Hebert testified that Respondent hugged her after departing from a dinner meeting early on in her case and attempted to kiss her. Ms. Hebert continued with Respondent's representation for about two years and the committee accepted Respondent's explanation that he did hug her as he does with most people, but that he did not attempt to kiss her. Sally Scroggs never retained Respondent but testified that Respondent made certain inappropriate comments to her in the initial consultation. The committee's finding was that Respondent's testimony was more credible than the remarks were not made.

As a result, the committee found no evidence of any violation of the Rules of Professional Conduct in connection with these three individuals.

Once the committee found that Respondent committed misconduct it undertook the consideration of the factors set forth in Rule XIX, Section 10(C). First the Committee found that Respondent's actions violated a duty owed to his client and the profession. The Committee found that Respondent acted negligently and that his actions potentially could have caused harm, but did not cause actual harm. The Committee found the Respondent's substantial experience in the practice of law to be an aggravating factor. The mitigating factors found include: no prior disciplinary record, Respondent's character and reputation in the community, the absence of a dishonest or selfish motive, full and free disclosure to disciplinary counsel, delay in the disciplinary hearings, and extreme remorse.

## **ANALYSIS OF THE RECORD BEFORE THE BOARD**

### **I. The Standard of Review**

The powers and duties of the Disciplinary Board are defined in §2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Rule XIX, §(G)(2)(a) states that the Board is “to perform appellate review functions, consisting of review of the findings of fact,

conclusions of law, and recommendations of hearing committees with respect to formal charges...and prepare and forward to the court its own findings, if any, and recommendations.” Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of “manifest error.” *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee’s application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/1992).

**A. Manifest Error Inquiry**

Here, the Committee’s findings of fact are supported by the record and are not manifestly erroneous.

**B. De Novo**

A *de novo* review of the record supports the Board’s adoption of the Committee’s conclusion that Respondent did not violate the Rules of Professional Conduct with regard to Ms. Lemoine, Ms. LeBleu, Ms. Deville, Ms. Walker and Ms. Price. Additionally, the Board adopts the Committee’s opinion that Respondent’s testimony was more credible than that of witnesses Chastity Griffith, Kathryn Hebert and Sally Scroggs. As a result, the Board adopts the Committee’s finding that there is no evidence of any violation of the Rules of Professional Conduct in connection with these three individuals.

Finally, the Board adopts the Committee’s finding that Respondent violated Rules 1.7(a)(2) and 8.4(d) with regard to Ms. Watson. Additionally, the Board finds that Respondent violated Rule 2.1 with regard to Ms. Watson.



**A. Cheryl Lemoine**

The Board adopts the Committee's conclusion that Respondent's conduct with regard to Ms. Lemoine did not violate the Rules of Professional Conduct. Ms. Lemoine consulted with Respondent but did not hire him as her attorney. The attorney-client relationship was concluded at the end of the initial consult, which was well before the beginning of Respondent's social relationship with Ms. Lemoine. *See* Hearing Transcript pp 249-253. During April 1998, Ms. Lemoine consulted with Respondent concerning divorce proceedings. Ms. Lemoine did not hire Respondent. She instead hired attorney W. Mitchell Redd, who was at all times counsel of record for Ms. Lemoine, and filed her divorce petition. There was only one professional consultation between Respondent and Ms. Lemoine. They began seeing each other about a month after the initial consultation and dated for over a year. Ms. Lemoine testified that when she left Respondent's office, he was not her lawyer. Ms. Lemoine further testified that her year-long relationship with Respondent was a positive relationship and she did not feel harmed, injured, taken advantage of, or victimized in any way by Respondent. *See* Hearing Transcript pp 259-60. Therefore, the Board adopts the Committee's recommendation that Respondent did not violate the Rules of Professional Conduct with regard to Ms. Lemoine.

**B. Michelle Watson**

The Board finds, as the Committee did, that there was a violation of the rules based on Respondent's conduct with regards to Michelle Watson. Respondent acknowledged his misconduct as it relates to Ms. Watson in his answer to the complaint and in his testimony. Hearing Transcript p. 877, 988. In addition to the 1.7(a) (2) and 8.4(d) violations found by the Committee, the Board additionally finds that Respondent also violated Rule 2.1 because Respondent admitted that he did not exercise independent professional judgment with regards to

Ms. Watson when he started a sexual relationship with her while she was still his client. Hearing Transcript, p. 989.

**C. Vicki DeRouen LeBleu:**

The Committee declined to find any Rule violations with regard to Respondent's relationship with Ms. LeBleu. Ms. LeBleu recalled hiring Respondent to represent her in her divorce in January 2001. Hearing Transcript, p. 470. Ms. LeBleu tried to initiate a social relationship with Respondent while he was actively representing her, but he rebuffed her advances. Hearing Transcript, p. 472. Ms. LeBleu's divorce was granted on August 17, 2001. See Joint Exhibit 8, p. 69. The community property was settled on December 31, 2001. See Joint Exhibit 8, p. 75. Ms. Bleu initiated a social relationship with Respondent in either January or February of 2002. Hearing Transcript, p. 482. Ms. LeBleu testified that in her opinion Respondent's legal representation of her as a client ended when her divorce was finalized. Hearing Transcript, p. 480. Respondent's office sent Ms. LeBleu a final bill and closed her file in March 2002. On June 19, 2002, opposing counsel W. Thomas Barrett, III issued a letter to Respondent requesting that he sign an enclosed Act of Correction which corrected a typographical error in the vehicle identification number of Ms. Lebleu's automobile. See Exhibit R-VAD-5. On July 9, 2002, Respondent signed the Act of Correction on behalf of Ms. LeBleu. *Id.* In signing the Act of Correction, Respondent and opposing counsel Mr. Barrett swore that "they are counsel for the parties in the above entitled and number action." See Joint Exhibit 8, p. 80. Respondent testified that he did not contact Ms. Lebleu regarding the act of correction because the act of correction was a minor detail not requiring her input and additionally, he did not consider her to be his client at the time. Hearing Transcript, p. 998. Although the record

does not identify a specific date, at some point Ms. Lebleu hired alternative counsel to assist her in custody and child support issues. Hearing Transcript, p. 480; Joint Exhibit 8.

The Committee determined that signing the act of correction “was not an act in furtherance of the divorce proceeding, for which Respondent had been hired, but simply a ministerial act requested by opposing counsel to correct a document that had already been executed prior to” the development of a social relationship between Ms. Lebleu and Respondent. Hearing Committee Report, pp. 25-26. The Board adopts the Committee’s position that Respondent’s signature on the Act of Correction was not an act in furtherance of her divorce proceedings, but was a ministerial act. Therefore, the Board adopts the Committee’s recommendation that Respondent did not violate the Rules of Professional Conduct with regard to Ms. LeBleu.

**D. Marilyn Deville**

The Board adopts the Committee’s conclusion that Respondent’s conduct with regard to Ms. Deville did not violate the Rules of Professional Conduct. The Board declines to find any Rule violations as there is no clear and convincing evidence that the attorney-client relationship was not concluded before the beginning of Respondent’s social relationship with Ms. Deville. In May 2004, Ms. Deville had one consultation with Respondent. Following the consultation, Respondent filed a petition for divorce on Ms. Deville’s behalf on May 19, 2004. Shortly after the filing of the petition, Ms. Deville told Mr. Fuerst that she was attracted to him and would like to see him socially. Respondent told her that he could not become involved with her while acting as her attorney. Ms. Deville then hired Lee Boyer as her attorney and Respondent withdrew on June 14, 2004. Following Respondent’s withdrawal, Mr. Boyer handled all matters related to Ms. Deville’s divorce. Ms. Deville testified that Respondent was her lawyer for

approximately two weeks and that she did not enter into a social relationship with him until after he had withdrawn as her attorney. Hearing Transcript, p. 434. Therefore, the record does not support a violation of the Rules of Professional Conduct with regard to Respondent's representation and subsequent social relationship with Ms. Deville.

**E. Bethany Walker**

The Board adopts the Committee's conclusion that Respondent's conduct with regard to Ms. Walker did not violate the Rules of Professional Conduct. The Board declines to find any Rule violations as there is no clear and convincing evidence that the attorney-client relationship was not concluded before the beginning of Respondent's social relationship with Ms. Walker. Further, the Board finds, as the Committee did, that there was no evidence that Ms. Walker or her interests were harmed due to the conduct of Respondent. *See* Hearing Transcript pp. 325-330. Ms. Walker retained Respondent in September 2006 to represent her in a divorce action that her husband initiated. Hearing Transcript, p. 331. Ms. Walker reconciled with her husband and the divorce action was dismissed on October 23, 2006. *See* Joint Exhibit 5. On the same day, Respondent withdrew as Ms. Walker's counsel of record. *Id.* Respondent did not take any legal action on Ms. Walker's behalf after October 23, 2006. After divorce discussions between Ms. Walker and her husband resurfaced a year later in November 2007, Ms. Walker again went to Respondent for a brief consultation to review her paperwork but did not hire him. Hearing Transcript, pp. 335-36. Ms. Walker testified that following her brief consultation with Respondent, she did not believe she had an attorney-client relationship with Respondent. Hearing Transcript, p. 339. Ms. Walker's husband filed divorce proceedings on December 21, 2007. Mr. Walker was represented by Todd H. Melton and Ms. Walker proceeded in proper person. On January 8, 2008 Ms. Walker and Respondent began a social relationship that lasted

about a month. Hearing Transcript, p. 339-41. Therefore, the record does not support a violation of the Rules of Professional Conduct with regard to Respondent's representation and subsequent social relationship with Ms. Walker.

**F. Brandi Price**

The Board adopts the Committee's conclusion that Respondent's conduct with regard to Ms. Price did not violate the Rules of Professional Conduct. The Board declines to find any Rule violations as there is no clear and convincing evidence that the attorney-client relationship was not concluded before the beginning of Respondent's social relationship with Ms. Price. Ms. Price consulted with Respondent and retained him to represent her in divorce proceedings in April 2008. *See* Hearing Transcript p. 197. Ms. Price's divorce petition was filed by Respondent on May 6, 2008. *See* Joint Exhibit 7. On or near June 10, 2008, Ms. Price told Respondent she had developed feelings for him. *See* Hearing Transcript p. 203. Respondent formally withdrew from her representation on June 16, 2008 and Ms. Price hired attorney Evelyn Oubre. *See* Hearing Transcript p. 495. Respondent and Ms. Price began a serious, intimate relationship after Respondent withdrew as counsel of record that lasted two and a half years. *See* Hearing Transcript pp. 230, 243-44. Therefore, the record does not support a violation of the Rules of Professional Conduct with regard to Respondent's representation and subsequent social relationship with Ms. Price.

**II. THE APPROPRIATE SANCTION**

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

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.

Here Respondent owed a duty to the client, which he negligently violated. Respondent's misconduct did not cause actual injury, however the risk for injury was great. The aggravating factors in this case were the potential for injury and Respondent's substantial experience in the practice of law. The mitigating factors include no prior disciplinary record, excellent character and reputation in the community, the absence of a dishonest motive, full and free disclosure to disciplinary counsel, no apparent injury or harm to his clients, and extreme remorse.

#### **B. The ABA Standards and the Case Law**

The ABA's *Standards for Imposing Lawyer Sanction* suggest that suspension is the baseline sanction for the misconduct in this matter. Standard 7.2 provides a baseline sanction of suspension if the conduct violates a duty owed as a professional and is both knowing and causes injury or potential injury. Standard 7.2 also suggests that a suspension is appropriate when the conduct does not involve dishonesty and the client is not in a vulnerable state.

As with all conflicts of interest, the purpose of regulating attorney-client sexual relations is to safeguard the interests of the client from those of the attorney and to ensure that the attorney does not put his/her personal interests ahead of his/her professional responsibilities owed to the client. Sexual relations may result in any number of conflicts of interest, as they potentially entail harm to the client's emotional well-being, damage to the client's legal case, and loss of the attorney-client privilege. In the matter of *In re Austin*, 06-0630 (La.11/29/06), 943 So.2d 341, 347, the Louisiana Supreme Court employed the following test to determine when an attorney-client relationship arises:

A relationship of client and lawyer arises when:

1. A person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either

- (a) The lawyer manifests to the person consent to do so; or
- (b) The lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services....

Additionally, the Court has stated that the existence of an attorney-client relationship "turns largely on the client's subjective belief that it exists." *Louisiana State Bar Ass'n v. Bosworth*, 84-1816 (La. 1/13/86), 481 So.2d 567.

The Committee noted, and the Board agrees, that with the exception of Michelle Watson "the women who had sexual contact with Respondent were no longer clients at the time the sexual contact occurred based upon their belief and understanding that Respondent was no longer their lawyer or that Respondent manifested to them that he had withdrawn as their lawyer."<sup>6</sup> Based upon the many days of testimony provided by Respondent and his former clients, the Board concurs with this finding of the Committee.

ODC cites multiple cases in which attorneys were disciplined for coercing their clients into sexual relations in exchange for legal services, reduced cost legal services, or some other tangible benefit. *In re Ashy*, 98-0662 (La. 12/1/98), 721 So.2d 859; *In re Touchet*, 99-3125 (La. 2/4/00), 753 So.2d 820; *In re Defrancesch*, 04-0289 (La. 7/2/04), 877 So.2d 71; *In re Hammond*, 10-0419 (La. 1/19/11), 56 So.3d 199. However, these cases are not applicable to the matter at hand. All of the women in the matter at hand entered into consensual social relationships with Respondent. It is not alleged that the relationships were established in exchange for legal services. The testimony of the women who chose to enter relationships with Respondent did not reveal that they were harmed in any way.

The most relevant case to the matter at hand is *In re Ryland*, 08-0273 (La. 6/6/08), 985 So.2d 71. In *Ryland*, a lawyer represented a woman, Ms. Gremillion, during a divorce

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<sup>6</sup> Hearing Committee Report, p. 30.

proceeding. After the divorce judgment was signed, but prior to the settlement of the community property, they began a consensual sexual relationship. After the affair ended, respondent withdrew from representation and self-reported his conduct to the ODC. Two weeks later, Ms. Gremillion filed a disciplinary complaint against respondent based upon the same allegations. The Court held that Mr. Ryland violated Rule 1.7 and Rule 8.4 because he failed to advise his client of the potential conflict of interest. However, since no harm resulted from this omission, the Supreme Court determined that a 90 day fully deferred suspension was appropriate.

The matter of *In re Gore*, 99-3213 (La. 1/28/00); 752 So.2d 853, involved a consent discipline for a consensual sexual relationship and for making a misrepresentation to a court of law. Mr. Gore was suspended for six months with two years of supervised probation for engaging in a consensual sexual relationship during his representation of his client in a divorce proceeding and for failing to advise his client of the potential conflict of interest. The relationship began prior to the client's filing for divorce and could have been considered a separate basis for the divorce. Additionally, Mr. Gore submitted pleadings to the court asserting that the client and husband had been living separate and apart for six months when he had personal knowledge otherwise.

Similar to *In re Ryland* and *In re Gore*, Respondent's relationship with Ms. Watson had the potential to create a conflict of interest, especially in light of the fact that Respondent was representing Ms. Watson in connection with a divorce proceeding. Although Ms. Watson was not harmed by the social relationship she entered while being represented by Respondent, the potential for harm was great as it is in any family law matter. A short, fully deferred suspension, as recommended in *Ryland*, is the appropriate sanction in the matter at hand.

## CONCLUSION



The Board adopts the factual findings and legal conclusions of the Committee in that Respondent violated 1.7(a)(2) and 8.4(d) with regards to his conduct with Ms. Watson. Additionally, the Board finds that Respondent violated Rule 2.1 with regard to his conduct with Ms. Watson. Consequently, the Board recommends that Respondent be suspended for thirty days, fully deferred, with one year of unsupervised probation. Based on the forgoing, the Board recommends that the costs and expenses assessed against Respondent be proportionally reduced by the amount of unproven misconduct. Specifically, as noted above, Respondent should be required to pay only the investigative costs pertaining to Michelle Reed Watson in addition to one-eighth of the total litigation expenses.<sup>7</sup>

#### **RECOMMENDATION**

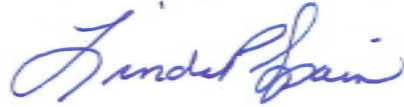
The Board recommends that Respondent, Randy J. Fuerst, be suspended from the practice of law for thirty days, fully deferred, with one year of unsupervised probation. The Board recommends that the costs and expenses assessed against Respondent be proportionally reduced by the amount of unproven misconduct. Specifically, Respondent should be required to pay only the investigative costs pertaining to Michelle Reed Watson in addition to one-eighth of the total litigation expenses.

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<sup>7</sup> See pp. 4-6.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**Carl A. Butler  
John T. Cox, Jr.  
George L. Crain, Jr.  
Tara L. Mason  
Edwin G. Preis, Jr.  
R. Lewis Smith, Jr.**



**BY: \_\_\_\_\_  
Linda P. Spain  
FOR THE ADJUDICATIVE COMMITTEE**

**R. Steven Tew - Concurs in part; Dissents in part.  
Carrie L. Jones - Concurs in part; Dissents in part.**

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: RANDY J. FUERST**

**DOCKET NO. 12-DB-042**

**CONCUR IN PART; DISSENT IN PART**

I concur with the deferred suspension. I dissent on the cost allocation. Respondent's conduct, in the in the instances which the hearing committee found did not meet the required burden of proof, brought on the investigation and prosecution. ODC had a reasonable basis to pursue those potential rule violations and respondent should bear the total costs in this proceeding.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**



**BY:** \_\_\_\_\_

**R. STEVEN TEW  
ADJUDICATIVE COMMITTEE MEMBER**

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: RANDY J. FUERST**

**DOCKET NO.: 12-DB-042**

**CONCUR IN PART; DISSENT IN PART**

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I concur with the deferred suspension; however, I dissent on the cost allocation. I agree with Mr. Tew, even though the hearing committee found that Respondent did not violate the rules in each of the instances, ODC had a reasonable basis to pursue the potential rule violations. Respondent should bear all costs.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

BY:   
**CARRIE LEBLANC JONES**  
**ADJUDICATIVE COMMITTEE MEMBER**

## **APPENDIX**

### **RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS**

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

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

- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

### **RULE 1.10 IMPUTATIONS OF CONFLICTS OF INTEREST: GENERAL RULE**

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
  - (1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
  - (2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
- (d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

## **RULE 2.1 ADVISOR**

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

## **RULE 8.4. MISCONDUCT**

It is professional misconduct for a lawyer to:

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