INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel ("ODC") against Charles R. Joiner ("Mr. Joiner" or "Respondent"), bar roll number 16989. ODC alleges that Respondent is guilty of violating the Rules of Professional Conduct ("Rule(s)"), as follows: Rule 1.15 (conversion and commingling); Rule 5.3 (a) and (b) (failure to supervise a non-lawyer employee); and Rule 8.4 (a) (violating or attempting to violate the Rules of Professional Conduct).

PROCEDURAL HISTORY

The formal charges were filed on November 7, 2013. On December 6, 2013, Mr. Joiner filed an answer to the formal charges through counsel, Richard L. Fewell, Jr.

After one continuance, this matter proceeded to hearing on June 11, 2014. Deputy Disciplinary Counsel, Robert S. Kennedy, Jr., appeared on behalf of ODC. Mr. Joiner appeared along with his attorney, Mr. Fewell.

For the following reasons, the hearing committee finds that ODC proved by clear and convincing evidence that Respondent, Charles R. Joiner, violated Rules of Professional Conduct 1.15, 5.3(a) and (b), and 8.4(a). The cause of the violation was Respondent’s neglect rather than an intentional violation because Respondent did not know, nor should he have known, of his secretary’s theft from his trust account and operating account.

FORMAL CHARGES

The formal charges read, in pertinent part:

1 The text of the rules is contained in the attached Appendix.
The respondent, Charles Joiner, previously employed a secretary named Lisa McBride in 2003, to whom he granted signatory authority over his client trust account. During this same period and thereafter, the respondent routinely retained substantial sums of client and/or third party funds in his trust account, representing potential reimbursements due to Medicare or Medicaid for third party payments made on behalf of his personal injury clients. During the relevant time periods, these previously withheld sums totaled in excess of $40,000.

Beginning in approximately 2003 and continuing through 2008, without the respondent’s awareness, knowledge or consent, Ms. McBride began to write substantial checks to herself in various amounts drawn on the firm’s client trust and operating accounts and signing her name to the signature line as respondent had authorized her to do. Although the balance of the trust account never fell below zero during this interval, the funds representing reimbursements due third parties and/or clients was almost entirely depleted.

During this period, the respondent failed to personally exercise even the most basic controls and supervision over the funds entrusted to his care, such as reviewing monthly bank statements for general accuracy or performing routine and periodic reconciliations of the account in question. Because of these lapses, his employee’s embezzlement went undetected for several years before the respondent eventually learned of the defalcations in 2008.

Upon being alerted to these events, the respondent immediately fired the employee and reported her crimes to law enforcement authorities. Facing criminal prosecution, Ms. McBride refunded some $19,612.35 to the respondent who expressly advised ODC that this sum represented full restitution for the losses suffered to both his client and operating accounts. He advised ODC that he used a portion of the funds to replace personal losses he had suffered in his operating account. Initially, the respondent repaid only $2,7108.61 [sic] to the trust account based on a purported audit done by his accountant who found that initially $22,330.96 had been converted. After ODC questioned whether the accountant’s findings represented the full extent of the embezzlement, ODC’s forensic accountant examined respondent’s banking records and settlement disbursements sheets, and determined that, minimally, some $33,457.13 in client/third party funds were missing from the trust account at the time the former secretary tendered her payment of restitution. ODC’s auditor met with the respondent and his attorney and discussed these findings with both him and his attorney.

In an effort to account for the differences in the asserted trust account shortfall, ODC requested that respondent provide ODC with documentary proof of any direct payments to medical providers, Medicaid, or to clients, from whose settlements the original funds had been retained in the trust account. The respondent was either unwilling or unable to provide ODC with identifiable documentary proof to account for the shortfall in deposited funds. He did begin to make some partial repayments of sequestered provider funds to clients in early 2011. Nonetheless, to
ODC's knowledge, full restitution of these sums to either client or third party providers has not been made.

By his acts and omissions, the respondent has knowingly and negligently violated RPC 1.15 (conversion and commingling); 5.3(a) and (b) (failure to supervise a non-lawyer employee), and 8.4(a) (facilitate or assist another in violating the rules of professional conduct).

EVIDENCE

I. Office of Disciplinary Counsel

A. ODC called Mrs. Jeri Lynn Carroll who testified that she and her husband, Larry C. Carroll, had hired Respondent to make an insurance claim as a consequence of an automobile crash. The case was settled; however, the Carrolls continued to receive statements from the medical providers indicating that the medical providers had not been paid. When Mrs. Carroll contacted Respondent’s office, she could not get a satisfactory answer from Respondent’s secretary, Mrs. Lisa McBride, nor did she ever receive a direct telephone call from Respondent himself, and the complaint to the ODC was submitted.

B. Mrs. Lisa McBride, Respondent’s secretary, testified that she had worked for Respondent from 2003 through 2008, but that she had worked for Respondent’s father for many years prior to that. She stated that she had authority to sign Respondent’s trust account checks and that she was responsible for depositing Respondent’s checks into both his trust account and his operating account. Respondent did not reconcile the trust account, and Mrs. Lisa McBride would prepare disbursement sheets and prepare the disbursements to the clients. She admitted that fees due Mr. Joiner were taken and deposited to her personal account and that she had misappropriated/stolen from Respondent’s trust account. She further testified that Respondent did not oversee her work.
When Respondent learned that money had been stolen from his accounts, he confronted Lisa McBride and she testified that she reimbursed to Respondent all sums which he demanded as follows:

1. $19,000.00 to Respondent’s trust account
2. $9,000.00 into his operating account
3. $10,000.00 into his personal account

Mrs. McBride testified that she did not know how much money she had converted from Mr. Joiner, but that she reimbursed the Respondent the amount that he demanded, by three (3) separate checks all at the same time.

C. ODC called Mr. Jeffrey N. Aucoin, CPA, as an expert in forensic accounting, and he was accepted as an expert in forensic accounting. Mr. Aucoin testified that he reviewed the Respondent’s trust account bank statements from 2003 through 2008 and selected accounts of Respondent’s operating account for 2007 and 2008 as well as the reports that were submitted by Respondent’s CPA, Mr. George Griggs, for 2008 and 2010. Mr. Aucoin submitted a report which was ODC Exhibit #14, and the report was placed into evidence. Mr. Aucoin testified as per his report of June 2, 2014, that the balance in Respondent’s trust account on February 22, 2008, should have been at least $34,217.09 which would have included amounts for the Reeves, Thomas, Evans, and Griggs cases. but the balance in the trust account on February 22, 2008, was $188.61.

In 2008 there were subsequent amounts deposited totaling $22,330.96 from the following:

1. $19,612.35 was deposited on May 19, 2008, from Lisa McBride as repayment of funds; and
2. $2,718.61 was deposited on July 18, 2008, based on an amount calculated by Mr. George W. Griggs in an attempt to increase the trust account balance to the appropriate amount.
Mr. Aucoin testified that Mrs. McBride would have made sufficient restitution to cover the shortfall in Respondent's trust account if all of the reimbursed money had been deposited to Respondent's trust account.

D. The ODC offered Exhibits 1 through 15 which were admitted into evidence.

II. Respondent, Charles R. Joiner

A. Charles R. Joiner, Respondent, testified on his own behalf and stated that he had permitted Mrs. Lisa McBride to deposit funds into both his trust account and operating account, to prepare disbursal sheets, and to reconcile the accounts because she had been a trusted employee of many years for his father and for him as well.

Respondent testified that upon learning that funds had been stolen from his account, he took immediate steps to obtain reimbursement from Lisa McBride, and, when he learned which clients were owed money, he paid them back. Respondent admitted that some of the money that had been reimbursed was not deposited in his trust account, but rather in his operating account and his personal account, but that the funds that were deposited into his operating account and his personal account were believed to be owed to him, not to another party.

Respondent testified that he had not attempted to enrich himself at a client's expense and that all money owed to clients had been paid back.

B. Mr. George Griggs, CPA, was offered as an expert in the field of public accounting and was accepted as an expert in public accounting. Mr. Griggs testified that on July 18, 2008, that the Respondent's shortfall in his trust account was $22,330.96. Mr. Griggs did not review Respondent's operating account.

C. Respondent offered Exhibits 1 through 17 which were accepted into evidence and made part of the record.
FINDINGS OF FACT FOLLOWING THE HEARING OF JUNE 11, 2014

1. Former clients of Charles R. Joiner, Larry and Jeri Carroll, filed a complaint against Respondent on February 22, 2008, alleging that Mr. Joiner was retained to file an insurance claim for Larry Carroll as a consequence of a crash in 2006. A settlement statement was signed by Larry C. Carroll. The complaint alleged that two to three months following the execution of the settlement statement, the Carrolls were still receiving collection notices from medical providers that Respondent had withheld funds from the gross settlement for payment to the medical provider.

2. Following Respondent’s receipt of the notice from ODC of the complaint, Mr. Joiner discovered that his secretary, Mrs. Lisa McBride, had been embezzling money from the Respondent between 2003 and 2008. Mrs. Lisa McBride admitted at the hearing that she had misappropriated/stolen/converted Joiner’s money.

3. When Respondent confronted Mrs. Lisa McBride with her acts of defalcation, Mrs. McBride obtained a bank loan and made restitution to Mr. Joiner as Respondent demanded in the form of three checks. Those checks were:

(1) A check made payable to Respondent in the sum of $19,612.35 which was deposited into Respondent’s trust account (ODC Exhibit #5, p. 109, lines 20-21)

(2) A check made payable to Respondent for $9,700.00 which was deposited into Joiner’s operating account or regular account (ODC Exhibit #5, p. 108, lines 17-19)

(3) A check made payable to Charles R. Joiner, personally, in the sum of $10,000.00 which was deposited into Respondent’s personal account as Joiner gave the check to his wife (ODC Exhibit #5, p. 110, line 25 and p. 111, lines 1-7)

The total amount reimbursed to Mr. Joiner by Mrs. Lisa McBride was $39,312.35 (ODC Exhibit #5, p. 113, line 1). Thus, Mrs. Lisa McBride paid back what Respondent demanded in restitution in the sum of $39,312.35.
4. Respondent’s testimony of 6/11/14 corroborated his sworn statement given to the Office of Disciplinary Counsel. (See ODC Exhibit #5 beginning at p. 100)

5. The Office of Disciplinary Counsel retained the services of Mr. Jeffrey N. Aucoin, CPA/CFF, CFE, CIA to audit and evaluate the banking records of Mr. Charles Joiner. Mr. Aucoin was accepted as an expert in the field of forensic accounting and testified that he reviewed Respondent’s trust account bank statements for the years 2003 through 2008. In addition, Mr. Aucoin testified that he audited Respondent’s operating account for the years 2007 and 2008. Mr. Aucoin testified as per his report to the Office of Disciplinary Counsel and the summary of his findings were that the balance in the Respondent’s trust account on February 22, 2008, should have been at least $34,217.09 which would have included the following amounts:

(1) Reeves - $13,276.35  
(2) Thomas - $9,133.75  
(3) Evans - $9,870.14  
(4) Griggs - $1,936.85

and that the balance in the trust account on February 22, 2008, was $188.61.

6. Respondent retained Mr. George Griggs, Certified Public Accountant, to audit his trust account. Mr. Griggs was accepted as an expert in the field of public accounting. Mr. Griggs testified substantially similar to his letter report dated July 18, 2008, addressed to Respondent’s attorney, Mr. Richard L. Fewell, Jr., stating that he had reviewed Joiner’s trust account information for the “past five years” which included all bank statements, cancelled checks, deposit information, and client disbursement sheets which “Mr. Joiner provided to me.” Mr. Griggs concluded that there were only three cases which had not been fully disbursed as of that date and that the total amount to be held in trust was $22,330.96. The total amount in the trust account per his review was $19,612.35, leaving a shortfall of $2,718.61. Respondent’s CPA testified as per his letter report that he had not reviewed Mr. Joiner’s business accounts. The Committee concluded that
ODC’s forensic CPA, Mr. Aucoin, did a more thorough job in reviewing Respondent’s trust account and business account than the audit done by Respondent’s CPA, Mr. Griggs, and that Mr. Aucoin’s testimony carried more weight than Respondent’s CPA, Mr. Griggs.

7. At the hearing on June 11, 2014, Joiner proved that Respondent had made his former clients, Reeves, Thomas, Evans, and Griggs whole and that it was not shown by clear and convincing evidence that the medical providers for Respondent’s former clients, Larry Carroll, who had made the original complaint against Respondent had not been paid.

8. The Committee concluded that Respondent did not make Mrs. Sybil Evans whole until January 11, 2011 (Respondent’s Exhibit #6), January 26, 2011 (Respondent’s Exhibit #7), May 17, 2012 (Respondent’s Exhibit #8), and June 12, 2012 (Respondent’s Exhibit #9). Respondent did not make Beatrice Reeves whole until January 26, 2011 (Respondent’s Exhibit #10), November 4, 2011 (Respondent’s Exhibit #11), and June 12, 2012 (Respondent’s Exhibit #12). The Thomases were not made whole until December 12, 2011 (Respondent’s Exhibit #13). Respondent’s client, Griggs, was not made whole until January 6, 2011.

9. The Hearing Committee concluded that the ODC proved by clear and convincing evidence that Respondent did not make his clients whole from the money he received in restitution from Mrs. Lisa McBride for a period of three to four years, from February 22, 2008 through 2011 and 2012. The Respondent testified on June 11, 2014, that he never personally reconciled his trust account from 2003 through 2008, nor did he personally review his trust account statements on a monthly basis or otherwise and left all accounting of his trust account to his secretary, Mrs. Lisa McBride. The Hearing Committee concluded that Respondent was negligent in not personally overseeing the reconciliation of his trust account bank statements and negligent in not supervising his employee, Mrs. Lisa McBride, in her bookkeeping and disbursement of funds due clients and
third parties. The Respondent's neglect in not supervising Mrs. Lisa McBride and personally reviewing trust account bank statements on a periodic basis facilitated Mrs. McBride's ability to embezzle funds. The Committee finds that the ODC proved that Respondent had violated Rule 5.3(a) and (b).

10. Respondent deposited the check made payable to Respondent by Mrs. Lisa McBride dated May 19, 2008, in the sum of $9,700.00, into his operating account/regular account rather than into his trust account which was a violation of Rule 1.15(a). Respondent did not keep separate money due to a client from the lawyer's own property; however, the Committee concluded and is of the opinion that Joiner did not believe that either a client or third party had not been paid at that time. Respondent’s violation of Rule 1.15(a) was neither knowing nor at the time should he have known that Rule 1.15(a) was violated.

11. Respondent deposited the check made payable to Joiner by Mrs. Lisa McBride dated May 19, 2008, in the sum of $10,000.00 in restitution to his personal account rather than into his trust account which was a violation of Rule 1.15(a) in that Respondent did not keep separate money due to a client from the lawyer's own property. Moreover, failure to make his clients whole in 2008, waiting until 2011 and 2012 to make his clients whole, was a conversion of money by Respondent which violated Rule 1.15. The reimbursement to the clients should have been done promptly, rather than three to four years later. The lack of urgency by the Respondent caused harm to the clients because the clients were deprived of their money between three to four years. However, the Committee was unanimous in concluding that Joiner did not believe that either a client or third party had not been paid at that time.
12. The Committee concluded that ODC proved by clear and convincing evidence that Respondent's negligence in failing to supervise a non-lawyer employee was a violation of Rule 8.4(a) in that it facilitated Mrs. Lisa McBride in violating the Rules of Professional Conduct.

RULES VIOLATED

ODC proved by clear and convincing evidence that Respondent negligently violated Rules of Professional Conduct 5.3(a) and (b), 1.15(a), and 8.4(a).

SANCTION

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

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

The Louisiana Supreme Court also relies on the *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards") to determine the baseline sanction.

The ABA standards for imposing lawyer sanctions and the Supreme Court's prior jurisprudence leads the Committee to conclude that the baseline sanction is suspension.

With respect to aggravating factors, the Committee was unanimous in the following:

a. Respondent was negligent in delegating the duty of overseeing his trust account to his secretary, Mrs. Lisa McBride.

b. Respondent was negligent in not requiring that his trust account statements be reconciled between 2003 and 2008.

c. Respondent was negligent in permitting the employee to have unsupervised access to his trust account (ABA standard 4.12).

d. Substantial experience in the practice of law.

With respect to mitigating factors, the Committee was unanimous in the following:

a. An absence of prior disciplinary record.
b. Full and free disclosure to the Disciplinary Board or a cooperative attitude toward the proceedings.

c. Making his clients whole (ABA standard 9.32).

d. No intent to enrich himself at the expense of a client or third party.

CONCLUSION

The Committee was of the opinion that Office of Disciplinary Counsel proved by clear and convincing evidence that Respondent had violated Rule 5.3(a) and (b), Rule 1.15, and Rule 8.4(a). The baseline sanctions according to ABA standards and the Louisiana Supreme Court where a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client is suspension. On the other hand, when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client, the ABA standard 4.13 is a reprimand.

The Respondent, Charles R. Joiner, was negligent in not overseeing his trust account and totally depending on his trusted secretary, Mrs. Lisa McBride. The Respondent did not act in a timely manner to make his clients whole; however, the Hearing Committee is of the opinion that the reason Respondent did not act promptly in making his clients whole was due to a lack of knowledge that his clients had not been made whole, rather than intentionally converting and commingling client funds with his own funds. Mr. Joiner did not act out of a motive of greed or desire to enrich himself even temporarily, at the expense of his clients or third parties. He simply did not know that his clients had not been made whole, and when he was convinced that money was owed to his clients, he paid the money to them timely. In short, the Respondent was the victim of a dishonest employee in whom he had complete, unswerving, and total trust; yet, she stole his
money. The Committee is well aware that the jurisprudence of this State in the case of In Re: John T. Bennett, 2009-2622 (La. 4/9/10), 32 So.3d 793; and In Re: Roland Charles, 2005-1971 (La. 12/9/05), 916 So.2d 117, resulted in sanctions to the respondent lawyers which were fully deferred. However, the Committee is of the opinion that the dissenting opinion of Justice Knoll in the In Re: Bennett, supra. case should be the penalty imposed upon Mr. Charles R. Joiner, because, despite Mr. Joiner’s negligence, he has not caused great harm to the legal profession or the public. Mr. Joiner is the victim of the theft. The actual harm was caused by the criminal conduct of Mrs. Lisa McBride, Mr. Joiner’s secretary, and, but for her criminal conduct of stealing Respondent’s funds, the Respondent would not have been deemed to be negligent and in violation of RPC Rules 5.3(a) and (b), 1.15, and 8.4(a). Hearing Committee #35 believes that Mr. Joiner is honest, ethical, and professional. Mr. Joiner genuinely thought that Mrs. McBride was a person in whom he could place his complete trust for the safekeeping of his clients’ funds and a sanction as imposed in the Bennett and Charles cases should be reserved for a dishonest lawyer, not the lawyer who was the innocent victim of a trusted employee’s theft as per Justice Knoll’s dissenting opinion in Bennett, supra.

In conclusion, Hearing Committee #35 is of the unanimous opinion that despite the Louisiana Supreme Court decisions cited herein ordering that sanctions be imposed, it is the recommendation of Hearing Committee #35 that Respondent receive a reprimand and two years’ probation requiring that he not only supervise future employees in reconciliation of his trust account statements, but that he personally review the statements and reconcile them with his checkbook balances on a monthly basis and report that he has done so to the Office of Disciplinary Counsel or a member of the Louisiana Attorney Disciplinary Board monthly for a period of two years also as per Justice Knoll’s dissenting opinion in In Re: Bennett, supra. In the event,
however, Hearing Committee #35’s recommended penalty be disregarded, then it is respectfully recommended that the sanction imposed be deferred in its entirety and the two (2) year probation be implemented.

Ruston, Louisiana, this 2nd day of October, 2014.

Louisiana Attorney Disciplinary Board

Hearing Committee #35

Richard Ray Storms, Committee Chair
Pamela Anne Stewart, Lawyer Member
Dennis Albert Rudolph III, Public Member

BY: Richard Ray Storms, Committee Chair, Hearing Committee #35

Albert Rudolph Dennis, III, Public Member

PAMELA ANNE STEWART, Lawyer Member
APPENDIX I

RULE 1.15. SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).

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

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer
shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to “Cash” are prohibited. …

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

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

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

(b) a lawyer having direct supervisory authority over the non lawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer …

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another…
Justice Knoll’s dissenting opinion in the case of *In Re: John T. Bennett*, 2009-2622 (La. 4/9/10), 32 So.3d 793:

"With all due respect, I disagree with the sanctions imposed on respondent. I find the sanctions too harsh for his act of negligence that did not cause great harm to the legal profession or the public. The actual harm was caused by the criminal act of Theresa Desselle Adducci, the paralegal in respondent’s office; but for her criminal conduct of embezzling funds, respondent would not have been found to be negligent. Indeed, respondent was a victim of Ms. Adducci’s criminal conduct. Respondent’s honesty, integrity, and professionalism are not questioned in these proceedings; the Board found respondent genuinely believed he had systems in place for the safekeeping of his clients’ property. In my view, the sanction imposed here is inappropriate and should be reserved for the more egregious cases."