Louisiana Attorney Disciplinary Board
FILED by: Kenneth Amato
Docket# 14-DB-043
Filed-On 8/18/2015

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: WALTER C. DUMAS

NUMBER: 14-DB-043

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

INTRODUCTION

This is an attorney discipline matter arising out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Walter C. Dumas ("Respondent"), bar roll number 05163. The charges, which consist of two counts, allege violations of Rules of Professional Conduct ("Rule(s)") 1.15(a) and 1.15(g)(1)(B) (safekeeping client property) and 1.15(f) (writing checks to "Cash" from a trust account).[1] Respondent has admitted violating the Rules as alleged in the formal charges. The Hearing Committee assigned to this matter concluded that Respondent violated the Rules in the formal charges and recommended that he be suspended from the practice of law for one year with six months deferred subject to a two-year period of supervised probation.

For the following reasons, the Board adopts the Committee's factual findings, legal conclusions, and sanction recommendation. Accordingly, the Board recommends that Respondent be suspended from the practice of law for one year with all but six months deferred subject to a two-year period of supervised probation with the conditions discussed below.

PROCEDURAL HISTORY

The formal charges filed on September 5, 2014, read, in pertinent part:

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

Count I

(Complaint #28968): In connection with the representation of the heirs of the estate of Eddie Cordell Durr, in 2009 you received client funds belonging to the estate totaling $18,509.78 deposited into an identified client trust account (xx1071) at American Gateway Bank. Following the completion of the succession, you agreed to disburse the funds to the two heirs, Haver and Tamara Durr, with Mr. Durr to receive $11,107.85 and Ms. Durr to receive $7,403.91. Although you issued a check to Mr. Durr in the agreed-upon amount following the conclusion of the succession matter on January 5, 2011, the check was drawn on an account at Regions Bank (xxx xx 2049) different from that in which the funds had been deposited originally. Moreover, no check was contemporaneously issued to Ms. Durr for her share of the proceeds. You did not pay over the sums due Ms. Durr her until May 24, 2012, following the filing of a disciplinary complaint.

Prior to the January 2011 disbursement of funds to Mr. Durr, the balance in the American Gateway Account fell below the minimum necessary to satisfy your professional fiduciary obligations to the clients, resulting in a conversion of the clients' funds in violation of Rule 1.15(a).

In connection with the management of your law office, during the relevant periods you failed to maintain a single client trust account, instead choosing to maintain five separate client trust (IOLTA) accounts, none of which were denominated or associated with a specific legal matter which independently required the maintenance of client funds, in violation of the Rules 1.15(g)(1)(B).

It is also alleged that you also failed to keep and maintain "complete records of such account funds" as required by the Rules of Professional Conduct 1.15(a).

By your acts and omissions, you have knowingly and intentionally violated the Rules of Professional Conduct in the above described manner.

Count II

(Complaint No. 28553): On May 16, 2011 ODC received a" Return Check Notice" on two checks drawn on your IOLTA account at Regions (xxx-xxx-2049) totaling $1126.13. Although you deposited personal funds in the account in an amount sufficient to cover the overdraft the following day, a review of your trust account records revealed that your habitual banking practices violated the Rules of Professional Conduct in several respects:

You routinely deposited and maintained large undifferentiated sums of both personal and client funds in the trust account for extended periods of time. On at least one occasion (May 11, 2011) you made a cash deposit to trust without identifying the source of the funds in question.

You frequently and routinely withdrew large sums from the trust account paid to yourself either by trust account check or alternatively by presenting

> "counter checks" drawn on the account and payable to cash, none of which describe or identify the reason or purpose of the payment-a practice specifically prohibited by RPC 1.15(f).
>
> You frequently and routinely paid office expenses and other law office operating charges from the trust account.
>
> You neglected and failed to perform routine and regular inspections and/ or reconciliations of the trust account to ensure the integrity of client funds. By your acts and omissions you have knowingly and intentionally violated the Rules of Professional Conduct.

On October 13, 2014, Mr. Dumas filed an answer to the formal charges. In his answer, Respondent admitted to the allegations and Rule violations in the formal charges. However, Respondent stated that his conduct was negligent, as opposed to knowing or intentional.

The hearing of this matter was held on February 3, 2015, before Hearing Committee #14.[2] Deputy Disciplinary Counsel Robert S. Kennedy, Jr., appeared on behalf of ODC. James E. Boren appeared as counsel for Respondent. The Committee heard the testimony of Respondent, Fred J. Smith (character witness), Emile Rolfs (character witness), Ed Walters (character witness), and Traci Fontenot (ODC Forensic Account). The Committee also accepted into evidence without object ODC Exhibits 1-10.

After the hearing, ODC and Respondent filed post-hearing memoranda on the issue of sanctions. ODC argues that the minimum sanction in this matter is a one year suspension with no more than six months deferred. However, ODC goes on to state that a lengthier suspension would be justified under the facts of this matter. Respondent argues and would accept a two-year period of probation as a sanction.

The Committee issued its report on April 29, 2015. The Committee made the following findings of fact (footnotes omitted):

> Respondent, who has been engaged in the practice of law since 1972, is the principal in Dumas & Associates, LLC and is solely responsible for his client

[2] The Committee was composed of Jane Robert Goldsmith (Chairwoman), Virginia Gerace Benoist (Lawyer Member), and Stephen W. Thompson (Public Member).

trust account. The record is clear and convincing that Respondent violated Rules of Professional Conduct ("Rule(s)"), as follows: Rules 1.15(a) and 1.15(g)(l)(B) (safekeeping property), and Rule 1.15(f) (writing checks to "Cash" from trust account).

1. Respondent's Conduct Violated Rules 1.15(a) and 1.15(f)

A. Disbursement to Tamara Durr

In 2009, Dumas & Associates, LLC was retained to represent the heirs of the estate of Eddie Cordell Durr. The firm received a fee of five hundred dollars, with legal services rendered by Respondent's associate. In connection with that representation, Respondent received client funds belonging to the estate totaling $18,509.78 deposited into an identified client trust account (xx1071) at American Gateway Bank. Following the completion of the succession, the two heirs, Haver and Tamara Durr ("Haver" and "Tamara" respectively), were owed client funds with Haver to receive $11,107.85 and Tamara to receive $7,403.91. Although Respondent issued a check to Haver in the agreed-upon amount following the conclusion of the succession matter on January 5, 2011, the check was drawn on an account at Regions Bank (xxx xx 2049) different from that in which the funds had been deposited originally. No check was contemporaneously issued to Tamara for her share of the proceeds; however, Respondent did pay over the sums due Tamara on May 24, 2012, following the filing of a disciplinary complaint.

Respondent argued that when the succession was concluded, his associate ordered two checks, which Respondent executed in blank, with the understanding that the purpose was to disburse monies to Haver and to Tamara. Respondent testified that only later, in June 2011, when Tamara contacted him, did he learn that Tamara had not received monies due her. Upon his own investigation of the file, he discovered that his associate made one of the checks payable to Haver and the second check made payable to Haver's attorneys. Respondent argued that there was "no doubt [Respondent] owed money" to Tamara but that by the time the matter came to his attention, he also discovered he had miscalculated his accounts and had insufficient funds in the client trust account to pay Tamara, and he could not use other client monies to pay her. Respondent testified that he "would pay no matter how long it would take." Respondent described that he began gathering funds to pay what he owed. After explaining to Tamara that he did not have the money but was trying to get the money together, not denying he owed the money to her, and before he could rectify the situation, Tamara filed the complaint against him. Thereafter, he hesitated to contact her until he sought counsel to assist him in the procedure. Respondent thereafter "turned it over to (his] lawyer to pay her." Ultimately, Respondent called Tamara and paid her the monies due, through his attorney, with letter dated May 24, 2012. Respondent took full responsibility for the matter, blaming no one (i.e., his associate) but himself for the situation. Respondent presented as genuinely remorseful and sympathetic to the client. Respondent described that he regretted the situation and should have recognized the problem. Respondent was very apologetic and

admitted that he has "sloppy bookkeeping" and was "glad for the client, that the client was able to get their money."

The Committee finds that even though Respondent believed Tamara had been paid through the efforts of his associate, using the second check, and even though Respondent ultimately paid Tamara, she suffered actual harm, although not lasting, and Respondent violated Rules 1.15(a) and (f) by not safeguarding client funds, failing to reconcile his accounts, and failing to disburse monies contemporaneously to Haver and Tamara.

B. Condition of Trust Account

The condition of Respondent's trust account is described as follows:

First, prior to the January 2011 disbursement of funds to Haver, the balance in the American Gateway Account fell below the minimum necessary to satisfy Respondent's professional fiduciary obligations to the clients.

Second, Respondent failed to keep and maintain complete records of trust account funds. Third, on May 16, 2011 ODC received a "Return Check Notice" on two checks drawn on Respondent's IOLTA account at Regions (xxx-xxx-2049) totaling $1126.13.

Fourth, Respondent routinely deposited and maintained large undifferentiated sums of both personal and client funds in the trust account for extended periods of time. On at least one occasion (May 11, 2011) Respondent made a cash deposit to trust without identifying the source of the funds in question.

Fifth, Respondent frequently and routinely withdrew large sums from the trust account paid to himself either by trust account check or alternatively by presenting "counter checks" drawn on the account and payable to cash none of which describe or identify the reason or purpose of the payment or nature for which those checks were issued or reference to the case or after first determining whether the funds in the account belonged to his client or to him.

Sixth, Respondent frequently and routinely paid office expenses and other law office operating charges from the trust account.

Seventh, Respondent neglected and failed to perform routine and regular inspections and/or reconciliations of the trust account to ensure the integrity of client funds.

Ms. Teri Fontenot, hired by the ODC as a forensic accountant, described her findings from her review of Respondent's accounts at American Gateway for the period June 2009 through August 2010 and at Regions Bank for the period July 2010 through June 2011. Ms. Fontenot also reviewed Respondent's two sworn statements, the probate records for the estate in question and the agreement on the split of the succession. She reviewed debit memos for Respondent's accounts as well, finding that Respondent used a debit memo as opposed to a trust account check 162 times on the American Gateway account and 36 times on the Regions account. Ms. Fontenot testified that Respondent paid himself $14,550.00 from the client trust account for the period of June 1-30, 2011. She also testified that from her review of the banking records that there would not have been any

way for anyone to know on a given day whether money in the trust account belonged to Respondent or to Respondent's clients and she had no confidence that Respondent would have been able to make a determination either. Respondent did not dispute Ms. Fontenot's findings and conclusions; thus, the committee accepts those findings and conclusions as fact.

Respondent admitted that his poor accounting practices led to his negligent failure to safe keep his client's property and that he violated Rules 1.15(a) and (f). Respondent admitted that based on what he knows now, he did not properly manage his client trust account, that did not completely and accurately reconcile or balance his trust accounts on a regular or periodic basis, and that he failed to keep and maintain complete records of his account funds. He described his bookkeeping as "sloppy" and that there are instances whereby he could not identify certain clients with certain banking transactions. Respondent, in recognizing his failures, enrolled in the LSBA Trust Accounting School, attending on December 15, 2011, consulted with a CPA in 2012, and thereafter engaged the services of Meredith Eicher & Associates. He testified that his practice generates enough revenues to hire a bookkeeper.

Notwithstanding, Respondent argued that at the time of the misconduct, he believed that he had a system in place whereby he was able to determine on any given day what money was on deposit in his trust account, who it belonged to, whether it belonged to him or his clients during the period 2009 through 2011 because he had notes in files on the payouts. Respondent also testified that he kept those notes at the time and used those notes for reference with clients but that he no longer has the notes. Respondent also testified that although he kept disbursement sheets, he does not have the disbursement sheets from that period of time. Respondent testified that he "just can't find them ... in boxes ... we've been looking at and going through" in his storage facility where he keeps documents on site at his office and admitted that the rules require him to keep more than notes and that he failed to keep and preserve his records for five years after the time the case is closed.

Respondent also admitted that he neglected and failed to perform routine and regular inspections and/or reconciliations of the trust account to ensure the integrity of client funds. To confirm his balances, Respondent testified that he called his bank, wrote down those balances, and relied on that information to issue checks.

Respondent admitted to the overdrafts but pointed out that he deposited personal funds in the account in the amount sufficient to cover the overdraft the following day.

Respondent admitted that he frequently and routinely withdrew large sums from his trust account; however, Respondent asserted that the funds were attorney fees due to him but which remained in the client trust account. He testified that when a case was settled, he did not always draw down his attorney fees from the client trust account when he disbursed settlement monies to the clients. He testified that he occasionally pulled from those attorney fees remaining in the trust account monies to pay his office expenses and other law office operating charges by issuing trust account checks in blank for members of his staff to complete and

counter checks drawing on client trust account payable to himself. He and his secretary also used the debit memo process to transfer funds from the client trust account to his operating account and to pay his secretary so that utility or other bills could be paid. Further, Respondent explained that he wrote checks for cash as advances of living expenses to his clients, but that those advances were not out of the trust account. Respondent also stated that there were occasions when a case was settled, his secretary cashed a check and disbursed cash monies to clients who did not have checking accounts. He also testified that he issued checks drawn on his trust account, payable to his secretary, and that his secretary made checks out, payable to herself and signed same but those checks were to pay "utility bills and some other bills and phone bill." Respondent testified that once he became aware that the rules prohibited non-lawyers from signing trust account checks, he discontinued allowing his secretary to sign checks. He testified that when he became aware of certain rule changes he made changes at his office. He explained that even though the debit memo does not record for whom certain cashier's checks were made payable, the cashier's checks were usually made out to the client and issued out of his trust account for out-of-town clients. Respondent admitted that he could not determine to which client ce1tain activities related, from looking at his banking records.

The Committee finds that even though Respondent believed, at the time, that his system of account fund recordkeeping, which included keeping notes in the manner he described, was sufficient, in fact, Respondent was negligent in failing to safeguard the property of his clients from his own, to properly identify and appropriately safeguard the properties of his clients and for himself, a violation of Rule 1.15(a). The Committee also finds that even if Respondent has records of account funds and other property in his storage area, Respondent is negligent by not preserving those records in an accessible format for inspection by Respondent or anyone else for the requisite period of five years after termination of the representation, and therefore is in violation of Rule 1.15(f).

The Committee finds that Respondent had an obligation to safe keep and hold property of clients and that when the balance in Respondent's trust account fell below the minimum necessary to satisfy Respondent's professional fiduciary obligations to the clients, this was a negligent conversion of client funds, a violation of Rule 1.15(a).

The Committee finds that even though Respondent immediately deposited monies in the overdrawn account in an amount sufficient to cover the overdraft the following day, Respondent violated Rules 1.15(a) and (f) by not safekeeping client funds and reconciling accounts to ensure the integrity of client balances.

The Committee finds that Respondent violated Rule 1.15(a) when he deposited and maintained large undifferentiated sums of both personal and client funds in the trust account for extended periods of time. In doing so, Respondent failed to safeguard the property of his clients from his own, to properly identify and appropriately safeguard the properties of his clients and for himself. Respondent should have been able to differentiate each client's monies in the client trust account and any attorney fees earned by him. Further, Respondent should have routinely and regularly inspected and/or reconciled accounts over

those extended periods of time and withdrawn attorney fees when earned; however, in not doing so, Respondent violated Rule 1.15(f). Further, on at least one occasion (May 11, 2011), when Respondent made a cash deposit to trust without identifying the source of the funds in question, Respondent violated Rule 1.15(a).

The Committee finds that even if Respondent is correct that monies withdrawn from the client trust account were attorney fees due to him, Respondent's practices of frequently and routinely withdrawing large sums from the trust account paid to himself either by trust account check or alternatively by presenting "counter checks" drawn on the account and payable to cash, none of which describe or identify the reason or purpose of the payment, and using debit memos, are specifically prohibited by Rule 1.15(f).

The Committee finds that Respondent violated Rule 1.15(a) and Rule 1.15(f) by frequently and routinely paying office expenses and other law office operating charges from earned attorney fees remaining in the trust account with checks drawn on his trust account.

Rule 1.15(a) requires that client property shall be held separately from the lawyer's own property, and Rule 1.15(f) requires that Respondent reconcile his trust account records.

The Committee also finds that Respondent failed to perform routine and regular inspections and/or reconciliations of his trust account to ensure the integrity of client funds, in violation of Rule 1.15(f).

2. Respondent's Conduct Violated Rule 1.15(g)(1)(B)

In connection with the management of Respondent's law office, during the relevant periods Respondent maintained multiple client trust accounts none of which were denominated or associated with specific legal matters.

Respondent admitted that his poor accounting practices led to his negligent failure to safe keep his client's property, in violation of Rule 1.15(g)(1)(B). Respondent testified, however, that he opened an account on American Gateway Bank, ceased using that account in 2010, and began using a second IOLTA account at Regions Bank. Respondent also informed the Committee that he has since closed all but one trust account.

The Committee finds that even though Respondent ceased using that or any other additional client trust account, and ultimately closed all accounts but one, that in maintaining multiple client trust accounts where those accounts were not denominated or associated with specific legal matters and in the manner Respondent described, was a violation of Rule 1.15(g)(1)(B).

3. Additional Findings

The record is clear and convincing that Respondent violated the rules described herein; however, the Committee finds that Respondent had no dishonest or selfish motive but that the misconduct was rooted in negligence.

Hearing Committee Report, pp. 4-14.

When discussing the appropriate sanction, the Committee considered the following aggravating factors: prior disciplinary offenses, multiple offenses, and substantial experience in the practice of law. The Committee also considered several mitigating factors: absence of a dishonest or selfish motive, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, remorse, and Respondent's good character and reputation in the community. Based on the foregoing, the Committee recommended the following:

> 1. One year period of suspension with 6 months deferred, suspension subject to a two year supervised probation or until Respondent retires, whichever occurs first.
> 2. Respondent must hire and retain the services of a qualified accountant knowledgeable of the attorney billing and trust accounting process to oversee Respondent's accounts.
> 3. Assignment of a probation monitor, pursuant to Rule XIX to review Respondent's files, accounts and to ensure compliance with the Rules of Professional Conduct.

Hearing Committee Report, p. 27.

ODC filed an objection to the Committee's report on May 22, 2015. ODC specifically objected to the Committee's finding that Respondent's conduct was merely negligent. ODC expanded upon this argument in its brief filed on June 23, 2015, in which it also argued for a harsher sanction than recommended by the Committee.

Oral argument was heard on July 2, 2015, before Board Panel "B".[3] Deputy Disciplinary Counsel Robert S. Kennedy, Jr., appeared on behalf of ODC. James E. Boren appeared on behalf of Respondent. Respondent was also present.

[3] Board Panel "B" was composed of Edwin G. Preis, Jr. (Chairman), Walter D. White (Lawyer Member), and George L. Crain, Jr. (Public Member).

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).

A. The Manifest Error Inquiry

The factual findings of the Committee do not appear to be manifestly erroneous. ODC takes issue with the Committee's finding that Respondent's actions were the result of negligence. ODC argues that Respondent's misconduct was at least grossly negligent, if not knowing. The Louisiana Supreme Court has consistently held that it will defer to the findings and credibility determinations of a hearing committee if the findings do not appear to be clearly wrong. *In re Bolton*, 2002-0257 (La. 6/21/02), 820 So.2d 548. *See also In re Holliday*, 2009-0116 (La. 6/26/09), 15 So.3d 82; *In re Sledge*, 2003-1148 (La. 10/21/03), 859 So.2d 671. In a very thorough and detailed report, the Committee concluded that Respondent's misconduct was "rooted in negligence." Hearing Committee Report, p. 14. There is no evidence in the record that suggests this finding is clearly wrong. However, the Board finds that Respondent's

negligence was of a considerable (*i.e.* gross) degree based upon his prior discipline for similar misconduct.

In 2002, the Louisiana Supreme Court suspended Respondent for one year with six months deferred based upon his mismanagement of client funds. *In re Dumas*, 2002-0149 (La. 6/7/02), 819 So.2d 313 (in the record as ODC Exhibit 10). Respondent settled a personal injury matter for a client. The client needed the settlement funds to purchase a new car.[4] At the time of settlement, Respondent gave the client a $500 cash advance until the settlement check cleared the bank, which Respondent stated would take ten days. The client immediately went to the car dealership and purchased a car by turning over the $500 cash and writing a check for $3,000. The client told the dealership not to deposit the check for ten days. Meanwhile, Respondent cashed the settlement check instead of depositing it in his trust account because his trust account had been seized by the IRS for tax issues. Five days after the settlement, Respondent gave the client another cash advance of $100. Respondent failed to provide the settlement funds to the client after ten days. The car dealership cashed the client's check, which bounced. The client also discovered, later, that Respondent did not pay the third-party medical providers in connection with the personal injury matter.[5] The Court found that Respondent's misconduct conduct was knowing. As aggravating factors, the Court considered the following: prior disciplinary record, substantial experience in the practice of law, and the vulnerability of the victim. However, the Court considered the following in mitigation: "[R]espondent sincerely believed he was acting in the best interest of his client. Additionally, the commingling of funds only lasted for a short length of the time. While restitution was not fully paid prior to the disciplinary complaint being filed, it was effectuated shortly thereafter." *Id*. at 319. Also of note

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[4] Respondent reduced his fee in the matter in order for the client to have the funds necessary to purchase a car.
[5] Respondent had written the checks to the providers but failed to send them.

in the discipline matter was the testimony of Respondent's tax attorney, who stated that Respondent's financial records were "sloppy" and that there was no segregation of client funds from those of Respondent. *Id.* at 317.

In the present matter, Respondent has again mismanaged his trust account and client funds, to the detriment of a client. Apparently, Respondent failed to amend his accounting practices after his 2002 discipline matter. In fact, in his answer to the charges in this matter, Respondent blames his misconduct on "poor accounting practices." Thus, while there is no evidence to overturn the Committee's finding of negligence, the Board finds that Respondent's negligence was of a high, or gross, degree.

There is one other fact that should be clarified because it is not clearly stated in the Committee's report. Respondent did not handle the Durr succession. It was handled by his associate. However, Respondent was the sole manager of the trust account in his office and gave two blank checks to his associate for the succession disbursement – one for Haver Durr and one for Tamara Durr. For reasons that are unclear, Tamara Durr did not receive her funds. Respondent never followed up to make sure that the disbursement was done correctly and proceeded to spend funds in his trust account that were the property of Tamara Durr.

B. *De Novo* Review

The Committee correctly applied the Rules of Professional Conduct. Respondent failed protect the funds owed to Tamara Durr, which resulted in the negligent conversion of the funds, in violation of Rule 1.15(a). Respondent maintained multiple trust accounts without associating the accounts with specific client matters or otherwise managing the accounts in an appropriate manner, in violation of Rule 1.15(g)(1)(B). Respondent routinely commingled his funds with client funds in his trust account and paid office expenses with funds in the trust account in

violation of Rule 1.15(a). Respondent would routinely issue checks to his secretary drawn on his trust account for the purpose of cashing those checks to pay clients and office expenses in violation of Rule 1.15(f). *See* Transcript pp. 37-39.

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 negligently violated duties owed to his clients. His conduct caused actual harm to Tamara Durr. She did not receive her funds until fifteen months after the succession matter was concluded and after she filed a complaint with ODC.

The Board adopts the aggravating factors considered by the Committee: prior disciplinary offenses,[6] multiple offenses, and substantial experience in the practice of law.[7] The record also supports several mitigating factors: absence of a dishonest or selfish motive, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, good character and reputation, remorse, and remoteness of prior disciplinary offenses.

B. The ABA Standards and Case Law

[6] In addition to Respondent's prior suspension discussed above, the Board's records indicate that Respondent received formal public reprimands in 1986 and 1987. The facts behind the reprimands are not known.

[7] Respondent was admitted to the practice of law in Louisiana on April 17, 1972.

The *ABA Standards for Imposing Lawyers Sanctions* suggests that suspension is the baseline sanction in this matter. Standard 4.12 states: "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." Standard 4.13 states: "Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client." While Respondent's misconduct in this matter was grossly negligent, as opposed to knowing or intentional, he should have known he was dealing improperly with client property based upon his prior discipline. His misconduct caused actual harm to Tamara Durr by delaying the disbursement of her funds for over one year. Additionally, his misconduct had the potential to cause harm to an unknown number of clients. Respondent had no way of knowing with accuracy what client funds were in his trust account at any given time.

The guidelines set forth in *La. State Bar Ass'n v. Hinrichs*, the Court's seminal case on the conversion of client and/or third-party funds, suggest that a baseline suspension of at least one year is appropriate. 486 So.2d 116 (La. 3/31/86). In *Hinrichs*, the Court discussed certain factors that influence the severity of the sanction in a conversion matter.

> In a typical case of disbarment for violation of DR 9-102 [the precursor to Rule 1.15], one or more of the following elements are usually present: the lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings. [Citations omitted.]
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> A three year suspension from practice typically results in cases involving similar but less aggravated factors. In such cases the lawyer is guilty of at least a high degree of negligence in causing his client's funds to be withdrawn or retained in violation of the disciplinary rule. He usually does not commit other fraudulent acts in connection therewith. The attorney usually benefits from the infraction but, in contrast with disbarment cases, the client may not be greatly harmed or exposed to great risk of harm. The attorney fully reimburses or pays his client the

> funds due without the necessity of extensive disciplinary or legal proceedings. [Citations omitted.]
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> A suspension from practice of eighteen months or two years will typically result where the facts are appropriate for a three-year suspension, except that there are significant mitigating circumstances; or where the facts are appropriate for a one-year suspension, except that there are significant aggravating circumstances. [Citation omitted.]
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> A suspension from practice of one year or less will typically result where the negligence in withdrawing or retaining client funds is not gross or of a high degree. No other fraudulent acts are committed in connection with the violation of the disciplinary rule. There is no serious harm or threat of harm to the client. Full restitution is made promptly, usually before any legal proceeding or disciplinary complaint is made. [Citation omitted.]
>
> A reprimand may be appropriate in a case where there is a minor violation of DR 9-102, but there is no conversion or harm to the client. [Citation omitted.]

Here, Respondent's conduct falls in between the eighteen to twenty-four month category and the one year or less category. Respondent's conduct was the result of gross negligence and resulted in Ms. Durr being deprived of her funds for a significant period of time. However, Respondent did not commit fraudulent acts in connection with his conduct and did not benefit from his misconduct. Additionally, several mitigating factors are present.

Two relatively recent lawyer discipline cases from the Court also provide guidance on the sanction issue. In *In re Spears*, the Court suspended Mr. Spears for one year and one day, all deferred, for trust account mismanagement. 2011-135 (La. 9/2/11), 72 So.3d 819. Over an extended period of time, Mr. Spears commingled his funds with those of his clients by leaving his attorney's fees in his trust account and by transferring funds to his trust account from his operating and personal accounts. Mr. Spears also converted client and/or third party funds when he overdrew his trust account and he failed to maintain adequate records regarding his trust account. The Court concluded that his actions were negligent. There was no evidence of actual harm to his clients or third parties, but there was the potential for significant harm. The Court

recognized the following aggravating factors: prior disciplinary offenses (for misconduct unrelated to the type of misconduct is this matter), substantial experience in the practice of law, and multiple offenses. The Court, however, also recognized several mitigating factors: absence of a dishonest or selfish motive, timely good faith effort to make restitution or to rectify the consequences of the misconduct, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, character or reputation, remorse, and remoteness of prior offenses.

In *In re Roberson*, the Court suspended Mr. Roberson for one year and one day, with all but three months deferred, for converting settlement funds owed to a third-party medical provider. 2009-1741 (La. 1/8/10), 26 So.3d 124. The owner of a medical clinic filed a complaint alleging that Mr. Roberson owed the clinic approximately $25,000 for services rendered to several of Mr. Roberson's clients. Mr. Roberson converted at least a portion of these funds by using his trust account to pay office expenses. Mr. Roberson made full restitution shortly after the complaint was filed. The Court concluded that Mr. Roberson negligently failed to remit the settlement funds to the third-party, but knowingly converted third-party funds by using his trust account to pay office expenses. The Court recognized the following mitigating factors: absence of a prior disciplinary record, absence of a dishonest or selfish motive, timely good faith effort to make restitution, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and delay in the disciplinary proceedings. The Court also noted that Mr. Roberson's misconduct was "largely caused by poor law office management rather than a dishonest or selfish motive." *Id*. at 128. The only aggravating factor present was Mr. Roberson's substantial experience in the practice of law. However, the Court held that a fully deferred suspension was too lenient given the nature of the conversion, stating

"[n]evertheless, considering the circumstances of respondent's misconduct, in particular his knowing conversion of client and third-party funds to pay his office expenses, we find that a fully deferred suspension is too lenient." *Id*. at 128.

Here, like in *Spears* and *Roberson*, Respondent engaged in a pattern of negligent mismanagement of his trust account. However, unlike the facts of *Spears* and *Roberson*, Respondent's negligence was of a high degree and he has a disciplinary history involving misconduct similar to the facts of this matter. Accordingly, the six month ***actual*** suspension recommended by the Committee appears to be appropriate.

CONCLUSION

The Board adopts the factual findings and legal conclusions of the Committee. However, the Board finds that Respondent's negligence was of a high or gross degree. As a sanction, the Board recommends that Respondent be suspended from the practice of law for one year with six months deferred subject to a two-year period of supervised probation with the following conditions:

(1) Respondent must hire and continue to employ a CPA to manage the finances of his office;
(2) Respondent shall comply with all directives of his probation monitor, who shall monitor Respondent's trust account practices and file a quarterly report with ODC regarding such;
(3) Respondent shall attend the LSBA's Ethics School and Trust Accounting School during the period of probation.

Furthermore, the Board recommends that Ed Walters be appointed as Respondent's probation monitor.[8] Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

[8] Ed Walters testified at the hearing of this matter. He expressed willingness to review and monitor Respondent's trust account practices. Transcript, pp. 137-140.

RECOMMENDATION

The Board recommends that Respondent be suspended from the practice of law for one year with six months deferred. After the active portion of the suspension, the Board recommends that Respondent serve a two-year period of supervised probation subject to the following conditions:

(1) Respondent must hire and continue to employ a CPA to manage the finances of his office;
(2) Respondent shall comply with all directives of his probation monitor, who shall monitor Respondent's trust account practices and file a quarterly report with ODC regarding such;
(3) Respondent shall attend the LSBA's Ethics School and Trust Accounting School during the period of probation.

The probationary period should commence from the date Respondent and ODC execute a formal probation plan. Any failure of Respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. The Board also recommends that Ed Walters be appointed to serve as Respondent's probation monitor. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Carl A. Butler
Carrie L. Jones
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Dominick Scandurro,
Jr. R. Lewis Smith, Jr.
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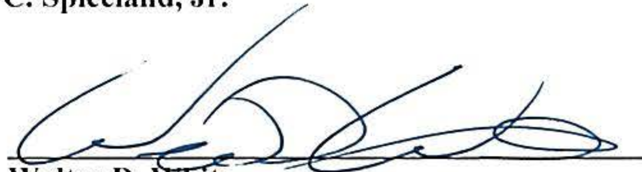
BY: 
Walter D. White
FOR THE ADJUDICATIVE COMMITTEE

George L. Crain, Jr. - Dissents in part; Concurs in part.
Anderson O. Dotson, III - Recused.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

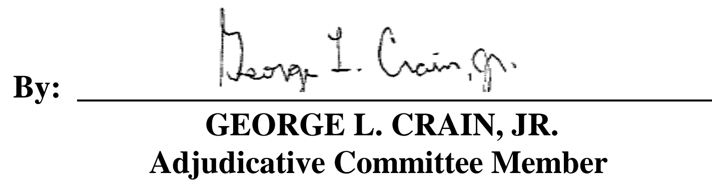
IN RE: WALTER C. DUMAS

DOCKET NO. 14-DB-043

DISSENT IN PART

I recommend 1 year and 1 day suspension with no deferral.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: 

GEORGE L. CRAIN, JR.
Adjudicative Committee Member

APPENDIX

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) …

(c) …

(d) …

(e) …

(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. A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

(g) A lawyer shall create and maintain an "IOLTA Account," which is a pooled interest bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(1) IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A) …
(B) Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income. …