

ORIGINAL

Louisiana Attorney Disciplinary Board

FILED by: *Lyndy Amato*
Docket# Filed-On

14-DB-001

8/27/2015

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: RANDALL J. CASHIO

NUMBER: 14-DB-001

RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel ("ODC") against Randall J. Cashio ("Mr. Cashio" or "Respondent"), bar roll number 03976.¹ ODC alleges that Respondent is guilty of violating the Rules of Professional Conduct ("Rule(s)"), as follows: 3.1 (bringing non-meritorious claims and/or filing frivolous motions), 8.4(a) & (d) (violated or attempted to violate the Rules of Professional Conduct and engaged in conduct that is prejudicial to the administration of justice).² The Hearing Committee assigned to this matter concluded that Respondent violated the Rules as alleged in the formal charges and recommended that he be suspended from the practice of law for one year, fully deferred, subject to a six month period of unsupervised probation.

For the following reasons, the Board adopts the Committee's factual findings and legal conclusions. However the Board disagrees with the Committee's recommended sanction of a one year fully deferred suspension. Based on an analysis of the applicable case law, the Board

¹The formal charges also named James L. Hilburn as a co-respondent when originally filed. However, Mr. Hilburn was dismissed from the formal charges upon motion of ODC. *See* Order of the Board (signed 5/24/14). ODC and Mr. Hilburn submitted consent discipline pleadings for action by the Louisiana Supreme Court. Consent discipline (public reprimand) was ordered by the Louisiana Supreme Court in the matter of *In re Hilburn*, Docket No. 14-B-0763, on May 16, 2014. On May 24, 2014, Mr. Hilburn was dismissed from the proceedings, leaving Mr. Cashio the sole Respondent.

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

orders that Respondent be publically reprimanded, rather than placed on a fully deferred one year suspension, subject to a six month period of unsupervised probation.

PROCEDURAL HISTORY

The formal charges were filed on January 9, 2014. On March 17, 2014, Respondent filed an answer to the formal charges. On August 12, 2014, ODC filed amended formal charges. On August 28, 2014, Respondent filed an answer to the amended formal charges. Respondent and Deputy Disciplinary Counsel James W. Standley, IV, participated in a telephone conference on September 10, 2014 to address a discovery request submitted by Respondent. Respondent requested that ODC be ordered to state with specificity the testimony that its witnesses will provide. During the telephone conference, there was a ruling that ODC did not have to comply with Respondent's discovery request, but Respondent had to disclose any exhibits he intended to use to impeach the testimony of ODC's witnesses. Respondent filed an Application for Supervisory Writs with the Louisiana Supreme Court on October 9, 2014. The Application for Supervisory Writs was granted on October 24, 2014 for the sole purpose of striking the portion of the order of the hearing committee chair which required Respondent to disclose any exhibits which he intended to use as impeachment evidence. In all other respects, the application was denied.

This matter was scheduled to proceed to a hearing on November 17, 2014. However, Respondent filed for a continuance of the date the pre-hearing memorandum was due and for the hearing date. These dates were continued, and the hearing was rescheduled for January 29, 2015. ODC filed a pre-hearing memorandum on January 8, 2015. Respondent filed a pre-hearing memorandum on January 14, 2015. Deputy Disciplinary Counsel Standley appeared on behalf of ODC at the January 29, 2015 hearing. Mr. Cashio appeared *pro se*. The hearing

committee issued its report on April 21, 2015. ODC filed a notice of no objection to the report on May 4, 2015. Respondent filed his objection to the report on May 21, 2015.

In anticipation of oral argument before the Board on July 2, 2015, ODC filed a pre-argument memorandum on June 10, 2015. Respondent did not file a pre-argument memorandum. Oral argument was heard as scheduled on July 2, 2015, before Board Panel "B".³ Deputy Disciplinary Counsel Standley appeared on behalf of ODC. Respondent appeared *pro se*.

FORMAL CHARGES

The amended formal charges read, in pertinent part:

On November 4, 2011, through his attorney, James L. Hilburn, Respondent Randall J. Cashio, filed a Petition for Damages for Defamation in the matter of *Randall J Cashio v. Troy B. Searles, et al*, No. 606,592, Section 25, 19th Judicial District Court, Parish of East Baton Rouge.

Among the claims for relief set forth therein is the allegation that Troy B. Searles, the defendant in the action, had filed "a false complaint against plaintiff [Cashio] with the Louisiana Attorney Disciplinary Board, Office of the Disciplinary Counsel, which complaint accused plaintiff of the crime of extortion, among other false accusations, all of which is defamatory *per se*."

The petition, further alleges that "[o]n November 23, 2010, Mr. Cashio was first made aware of Searles' false accusation regarding the crime of extortion, when, on that date, plaintiff received written notice from the Louisiana Attorney Disciplinary Board, Office of the Disciplinary Counsel, of Searles' false complaint, along with a copy of said false complaint."

The claim for defamation based on the complaint filed by Troy B. Searles with the Louisiana Attorney Disciplinary Board, Office of the Disciplinary Counsel was dismissed with prejudice, by Judge Wilson Fields' order of May 31, 2012, following a hearing on exceptions conducted on April 30, 2012.

Louisiana Supreme Court Rule XIX, §12(A), which pertains to immunity from civil suits, provides:

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

Communications to the board, hearing committees, or disciplinary counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the board, members of the hearing committees, disciplinary counsel, staff, probation monitors and monitoring lawyers appointed pursuant to this rule or its appendices, inventorying lawyers appointed pursuant to Section 27, members of the Ethics Advisory Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on November 2, 1991 and members of the Lawyer Advertising Advisory Service Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on June 9, 1995, shall be immune from suit for any conduct in the course of their official duties or reasonably related to their official duties.

Respondent's initiation of legal action relating to those claims arising from any statements or representations made by Searles in his complaint filed with the Office of the Disciplinary Counsel against Cashio would fall under the provisions of this Rule.

Respondent Randall J. Cashio has engaged in virtually the same conduct as that from which *In re: Raspanti*, 8 So.3d 526 (La. 03/17/2009) arises. As such, Mr. Cashio has violated the spirit of Rule XIX, §12(A). Such conduct constitutes a violation of Rules 3.1, 8.4(a) and 8.4(d).

THE HEARING COMMITTEE REPORT

As noted above, oral argument took place on January 29, 2015 in front of Committee No. 39.⁴ Present were James W. Standley, IV, Deputy Disciplinary Counsel, and Respondent. After considering the testimony of several witnesses and the exhibits submitted by both parties, the Committee determined that Respondent violated the Rules as charged in the formal charges. The Committee specifically stated:

⁴ Hearing Committee No. 39 is composed of Shanda J. McClain (Chairman), Paulette Porter-LaBostrie (Lawyer Member) and Samuel "Benji" B. Link (Public Member).

Based on the evidence and testimony submitted, the Committee found that as to Rule 3.1, the Respondent violated the spirit of the Rule by joining the two defendants, LASERS and Troy Searles in one lawsuit. Mr. Searles, as Complainant, was not a proper party.

As to the violation of Rules 8.4(a) and 8.4(d), Troy Searles had absolute immunity from any litigation regarding his complaint to ODC. He did not have immunity from any actions or false claims made outside the framework of the disciplinary proceedings. Because Mr. Cashio added Mr. Searles as a defendant in the LASERS lawsuit, the Committee finds he violated the spirit of Rule XIX, §12(A).

The Committee found a single aggravating factor: substantial experience in the practice of law. In mitigation the Committee recognized, “the absence of a prior disciplinary record, Respondent was represented by legal counsel, character or reputation and the fact that the Respondent no longer actively engages in the practice of law as an ongoing business concern.”

The Committee made the following findings:

Cashio testified before the panel and did not dispute that he knew about the prohibition of initiation of legal action relating to those claims arising from any statements or representations made by a complainant to the ODC. He explained, however, that, he and his legal counsel were attempting to follow the limited exception in *Trentecosta*, which would put him squarely with[in] that safe harbor without violating the Rules.

Cashio presented exhibits that documented he suffered from a series of personal attacks including the slanderous assertions of the complainant and the need to protect his daughter from an unfortunate domestic situation. This may have grossly impaired his judgment at the time the charged misconduct occurred.

In addition to recognizing Cashio's inappropriate reaction [to] his personal drama, the Committee also found that the Respondent was not well served by his attorney. The friendship between the men may have prevented Mr. Hilburn, another experienced attorney, from recognizing the folly of adding the Complainant as a defendant in the LASERS lawsuit.

The legal profession is sometimes the only avenue to advocate for social and economic justice to protect and defend the rights of individuals, families and communities in need. To accomplish this, attorneys exploit, find, fix and close loopholes. It is our training that makes us think that way. If they find one thing that does not fit, they automatically try to advance their theory based on that exception.

An experienced attorney can thoroughly research a statute and master it. He will know its legislative history, be familiar with the many court decisions involved in the litigation of that statute. Lawyers are trained to seek and find the ambiguity in the law ("gray areas"). Ambiguity in hands of a good lawyer can be used as a "sword" to attack a position and also as a "shield" to protect the rights of citizens. This is not to say that Mr. Hilburn and Mr. Cashio are not good lawyers, quite the contrary. However, the Committee feels that they may have been too close to the situation to assess it correctly.

The Committee also recognizes and understands the need for Mr. Cashio to try to protect his family and to use his legal training to do so. The most important attribute of a good attorney is to be creative with the law.

Trentecosta v. Beck, 96-2388, p. 10 (La.10/21/97), 703 So.2d 552, 559, was a defamation action brought by Gordon Trentecosta and his business corporation for allegedly defamatory statements made by Louisiana State Police officers to the press. Defendants' defense was that they were entitled to a qualified privilege as law enforcement officers reporting information regarding criminal investigations and resulting arrests. The court held that a qualified or conditional privilege exists in Louisiana to report the fact that a person was arrested and the charges for which the person is being held, provided that the report does not assume the guilt of the accused person and is not otherwise defamatory. However, the court found one statement actionable.

We conclude that the statement by Officer Smith to the newspaper reporter exceeded the limits of any qualified privilege for fair reporting of investigations or arrests. While that qualified privilege arguably was available to the troopers in their role as law enforcement officers, reporting the facts of an investigation and a resulting arrest to the press and, in turn, to the public, the unfounded statements regarding Trentecosta's operation's bilking of charitable organizations exceeded the permissible scope of that privilege and constituted an abuse of that privilege.

Trentecosta at 564.

Since *Trentecosta* was based on the solidary liability of the Department of Public Safety for the actions of its employees, the Committee finds that the Respondent believed that he was exploiting a loop hole similar to the one found in *Trentecosta*. Unfortunately, he was mistaken.

Without referencing specific ABA Standards or case law, the Committee recommended that Respondent be suspended from the practice of law for one year, fully deferred, subject to a six month period of unsupervised probation.

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).

Here, the Committee’s findings of fact are not manifestly erroneous. Further, the Committee correctly found that Respondent violated Rules of Professional Conduct 3.1 and 8.4(a) and (d). The Committee also properly determined that the Respondent violated the “spirit” of Rule XIX, §12(A)⁵ when he filed a petition for damages for defamation against Mr.

⁵ Louisiana Supreme Court Rule XIX, Section 12(A), which pertains to immunity from civil suits, provides:

Communications to the board, hearing committees, or disciplinary counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the board, members of the hearing committees, disciplinary counsel, staff, probation monitors and monitoring lawyers appointed pursuant to this rule or its appendices, inventorying lawyers appointed pursuant to Section 27, members of the Ethics Advisory Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana

Searles and his employer, Louisiana State Employees' Retirement System (“LASERS”), citing therein the disciplinary complaint filed by Mr. Searles against Mr. Cashio.⁶ Each rule violation is addressed below:

Rule 8.4(d): Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. By filing a defamation claim in the 19th JDC against Mr. Searles and his employer which was based upon communications relating to the disciplinary complaint Mr. Searles filed with ODC, the Respondent engaged in conduct that was in direct violation of Rule XIX §12(A), which is also prejudicial to the administration of justice.

Respondent argued that Rule XIX §12(A) does not apply in this circumstance because it was his intent to only sue the complainant’s employer, LASERS, for ratifying complainant’s defamatory remarks that were communicated to ODC.⁷ He further argued that:

The defamatory words contained in Searles’ complaint to the ODC was the basis for the defamatory action against and only against LASERS, who was the employer of Searles. Louisiana requires fact pleading and Respondent’s Petition for Defamation, particularly [paragraphs] 3-10, contained the necessary factual allegations to state a cause of action against LASERS and LASERS alone. The factual allegations in [paragraphs] 3-10 were necessary to state a cause of action against LASERS for defamation by ratification in accordance with *Trentecosta v. Beck*, 703 So.2d 552, 558 (La. 10/21/1997).⁸ Louisiana Supreme Court Rule XIX

State Bar Association on November 2, 1991 and members of the Lawyer Advertising Advisory Service Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on June 9, 1995, shall be immune from suit for any conduct in the course of their official duties or reasonably related to their official duties.

⁶ See *Randall J. Cashio v. Troy B. Searles, et al*, No. 606,592, Section 15, 19th Judicial District Court, Parish of East Baton Rouge.

⁷ Thus, as the Board understands Mr. Cashio's argument, he contends his petition adequately alleges that LASERS is solidarily liable with its employee, Mr. Searles, either because Mr. Searles acted in the course and scope of his employment when he communicated with the ODC about Mr. Cashio, or because LASERS ratified Mr. Searles' defamatory communications to the ODC, or both.

⁸ *Trentecosta v. Beck* presented a defamation claim by the owner of a bingo hall against three police officers and the Louisiana Department of Public Safety and Corrections seeking damages arising from statements made by one officer to the press that plaintiff was operating an illegal bingo hall which had bilked charities out of thousands of

§12(A) is inapplicable to LASERS as LASERS was neither a complainant nor witness.

See Respondent's Objections to Hearing Committee Report, p. 5.

Respondent further argued that although he named Mr. Searles and LASERS as defendants in the same defamation suit, they were each being sued for two different events: Mr. Searles for filing a defamatory answer to a Baton Rouge City Court lawsuit⁹ and LASERS for ratifying Searles' defamatory communication to ODC. *Id.* at 5-6.

Despite Respondent's attempt to justify his defamation action against Mr. Searles, the Board adopts the Committee's finding that Mr. Searles had absolute immunity from any and all litigation based upon the complaint he filed against Respondent with the ODC. Respondent suggests that using Mr. Searles' disciplinary complaint as the basis for a lawsuit directed at LASERS carves out an exception to Rule XIX §12(A). However, there is no avoiding the fact that Respondent's defamation suit was filed against both Mr. Searles and LASERS and that the petition plainly alleges that Mr. Searles filed "a false complaint against plaintiff [Cashio] with the Louisiana Attorney Disciplinary Board, Office of the Disciplinary Counsel, which complaint accused plaintiff of the crime of extortion, among other false accusations, all of which is defamatory *per se*." The petition further alleges that, "[o]n November 23, 2010, Mr. Cashio was first made aware of Searles' false accusation regarding the crime of extortion, when, on that date,

dollars. *Id.* at 554. The *Trentecosta* Court noted that defamation is an individual tort which, as a general rule, does not give rise to solidary liability. *Id.* at 558. An exception to that rule is when the defamatory statements are made by an employee in the course and scope of his or her employment, "at least when the defamation was authorized or ratified by the employer." *Id.* The Court concluded that the police officers' statements were made within the course of the two officers' employment duties and thus were attributable under vicarious liability principles to the Department of Public Safety and Corrections. *Id.* at 559.

⁹ Mr. Searles filed an answer in an unrelated Baton Rouge City Court lawsuit in which he allegedly made defamatory comments about Mr. Cashio. That answer was stricken from that court record but not until after its publication. Mr. Searles is being sued for the defamatory comments in the stricken answer that is still on file in that suit record. *See* Exhibit R1B.

plaintiff received written notice from the Louisiana Attorney Disciplinary Board, Office of the Disciplinary Counsel, of Searles' false complaint, along with a copy of said false complaint.” As such, the four corners of Respondent’s defamation petition supports the finding that he engaged in conduct that was in direct violation of Rule XIX §12(A), which is also prejudicial to the administration of justice in violation of Rule 8.4(d).

Rule 3.1: Rule 3.1 provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. Here, the Respondent’s defamation claim brought against Mr. Searles and his employer can be classified as non-meritorious as it was strictly prohibited under Rule XIX §12(A). As explained above, §12(A) provides, in pertinent part, that: “communications to the Board, hearing committees, or disciplinary counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness.” This rule *specifically* prohibits the filing of lawsuits against a complainant or a witness based upon communications to the board, hearing committees or disciplinary counsel relating to lawyer misconduct or testimony given in the proceedings. Respondent’s defamation claim was exactly the sort of claim prohibited by this rule. The committee correctly found that a Rule 3.1 violation was present, and the Board adopts this finding.

Rule 8.4(a): Rule 8.4(a) provides in part that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct. By violating Rules 8.4(d) and 3.1, the Respondent also violated this rule. The Board adopts the committee’s finding that an 8.4(a) rule violation is present.

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, the Respondent has violated his duty owed to the legal system. The Respondent's conduct was knowing. Mr. Cashio's intentional pursuit of this cause of action, which arose in part from the complaint Mr. Searles filed against him with ODC, caused injury to Mr. Searles in that he was forced to defend the action before the court. Moreover, the potential harm of a "chilling effect" could result if respondents, or their attorneys, were allowed to initiate legal action against complainants as a result of their communications with the Board, hearing committees or disciplinary counsel relating to lawyer misconduct. The aggravating factors present include: a refusal to acknowledge the wrongful nature of the conduct and substantial experience in the practice of law. The mitigating factor of no prior disciplinary record is also present.

B. The ABA Standards and Case Law

ABA Standards for Imposing Lawyer Sanctions provides the guidelines for determining the baseline sanction in disciplinary matters. Standard 6.23 provides that a "reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential

interference with a legal proceeding.” Standard 6.22 provides that a “suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.”

A review of the pertinent case law indicates there are two cases on point. In *In re Roy A. Raspanti*, 08–0954 (La. 3/17/09), 8 So.3d 526, the Court addressed for the first time the interpretation and application of Supreme Court Rule XIX, § 12 A, which provides, in part, that communications to the disciplinary board, the hearing committee, and the ODC “shall be absolutely privileged” and that “no lawsuit predicated thereon may be instituted against any complainant or witness.” After reviewing in depth the history of the provision, the Court concluded that “violation of Rule XIX § 12(A) can subject an attorney to discipline and a finding of professional misconduct, which in turn supports the imposition of sanctions.” *Id. at 536*. For Mr. Raspanti’s misconduct in forcing his former client to defend a defamation claim filed against her and in taking retaliatory action that threatened to undermine the disciplinary system, Mr. Raspanti was publicly reprimanded. The Court noted that although Mr. Raspanti's conduct was knowing, there were several factors in mitigation of his violation, which warranted the public reprimand. First, no lawyer had ever been sanctioned for a violation of Rule XIX, §12 A, and there were conflicting statements in the jurisprudence regarding the proper interpretation of the rule. Second, Mr. Raspanti had a principled belief that he was not engaging in inappropriate behavior. Third, he had no prior disciplinary record since being admitted to the bar in 1975. Next, the Court noted that Mr. Raspanti was represented by counsel in his lawsuit. Finally, the Court noted that Mr. Raspanti's client was his sister, whom he had represented only because his parents urged him to do so, and respondent’s suit against her appeared to be an attempt to put an end to her pattern of filing baseless disciplinary complaints against him with the ODC.

In *In re Craig J. Mordock*, 08-1389 (La. 6/19/09), 11 So.3d 484, Mr. Mordock was found to have violated the Louisiana Rules of Professional Conduct by filing a reconventional demand on behalf of an attorney-client, Mr. Fonseca, urging causes of action for libel and defamation against a complainant who had filed a disciplinary complaint against Mr. Fonseca. The Court adopted the hearing committee's finding that respondent had violated Louisiana Supreme Court Rule XIX, §12(A), and in so doing, the Rules of Professional Conduct 8.4 (a) and (d). Although the hearing committee recommend a public reprimand, the Board recommended that respondent be suspended from the practice of law for six months, with all but one month deferred, subject to a period of unsupervised probation. However, the Court rejected the Board's recommendation of an actual period of suspension and instead publically reprimanded respondent based on their prior holding in *Raspanti*. The Court recognized two mitigating factors: no prior disciplinary record and respondent lacked experience in the practice of law at the time of the misconduct. No aggravating factors were found to be supported by the record.

Like respondents Mr. Raspanti and Mr. Mordock, Mr. Cashio, through his counsel of record, Mr. Hilburn, urged a cause of action strictly prohibited by the Louisiana Supreme Court Rule prohibiting a lawsuit against a complainant predicated on a complaint filed with the Office of Disciplinary Counsel. As such, Mr. Cashio has similarly violated the spirit of Rule XIX, §12(A). Such conduct constitutes a violation of Rules 3.1, 8.4(a) and (d). Like Mr. Raspanti, Mr. Cashio's conduct was knowing. However, the Court in *Raspanti* concluded that a public reprimand was appropriate due to the existence of several mitigating factors, several of which apply to Mr. Cashio: both respondents held a strong belief that they were not engaging in inappropriate behavior, and both were experienced attorneys with no disciplinary history. Considering the similar circumstances between the matter at hand and the *Raspanti* and *Mordock*

cases, the Board finds that Mr. Cashio should be publically reprimanded, rather than placed on a fully deferred one year suspension, subject to a six month period of unsupervised probation.¹⁰

CONCLUSION

The Board adopts the findings of fact and the conclusions of the hearing committee that Respondent violated Rules 3.1 and 8.4 (a) and (d). However, the Board declines to adopt the fully deferred one year suspension, subject to a six month period of unsupervised probation recommended by the Committee. Instead, considering the direction given by the Supreme Court in the *Mordock* and *Raspanti* cases, the Board orders that Respondent be publically reprimanded. Finally, the Board orders that Respondent be assessed with the costs and expenses of this matter.

¹⁰ In its report, Hearing Committee No. 39 did not refer to the ABA Standards or to case law in support of its sanction recommendation of a one year fully deferred suspension.

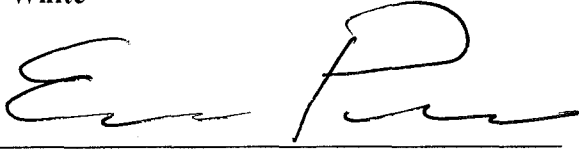
RULING

Considering the foregoing, the Board orders that Respondent, Randall J. Cashio, be publicly reprimanded for engaging in professional misconduct. Additionally, the Board orders that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, § 10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**Carl A. Butler
Anderson O. Dotson, III
Carrie L. Jones
George L. Crain, Jr.
R. Lewis Smith, Jr.
Evans C. Spiceland, Jr.
Walter D. White**

BY:



**Edwin G. Preis, Jr.
FOR THE ADJUDICATIVE COMMITTEE**

Dominick Scandurro, Jr. - Concurs in part; Dissents in part with reason.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: RANDALL J. CASHIO

DOCKET NO. 14-DB-001

CONCURS IN PART; DISSENTS IN PART

I am not in agreement with the inclusion of a violation of 8.4(a) in most decisions. The rule should be reconsidered. It makes respondents look like serial transgressors and is unfair.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: 

DOMINICK SCANDURRO, JR.
Adjudicative Committee Member

APPENDIX

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 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; or
- (b) ...
- (c) ...
- (d) Engage in conduct that is prejudicial to the administration of justice; ...