

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE ASHTON R. O'DWYER, JR.

NUMBER 10-DB-006

REPORT OF HEARING COMMITTEE # 23



INTRODUCTION AND PROCEDURAL HISTORY

On February 5, 2010, Disciplinary Counsel Ad Hoc Mark Dumaine (“Mr. Dumaine” or “DCAH”)¹ filed “Formal Charges Pursuant to Supreme Court Rule XIX, Section 11” against Ashton R. O’Dwyer, Jr. (“Mr. O’Dwyer” or “Respondent”)². In the charges, DCAH alleges that Respondent has violated his Lawyer’s Oath, the Code of Professionalism of the Louisiana Supreme Court, and the following Rules of Professional Conduct (“Rule(s)”): Rule 1.4(a)(3) (a lawyer shall keep a client reasonably informed about the status of the matter); Rule 3.1 (lawyer shall not bring or defend a frivolous proceeding or assert a frivolous issue in a proceeding); Rule 3.3(a)(1) (lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer); Rule 3.3(a)(3) (lawyer shall not offer evidence that the lawyer knows to be false); Rule 3.4(c) (lawyer shall not engage in conduct intended to disrupt a tribunal); Rule 3.5(d) (lawyer shall not engage in conduct intended to disrupt a tribunal); Rule 4.4(a) (in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a

¹ Mr. Dumaine was appointed Disciplinary Counsel Ad Hoc by the Louisiana Supreme Court in this matter on December 8, 2008. DCAH Exhibit 6. This order was issued in response to the letter of November 12, 2008 sent by Chief Disciplinary Counsel, Charles B. Plattsmier, to then Chief Justice Pascal F. Calogero, Jr. In this letter, Mr. Plattsmier raised the issue of recusal of himself and his office from this matter due to previous lawsuits filed by Respondent in federal court against Mr. Plattsmier, both personally and as Chief Disciplinary Counsel, and against a deputy disciplinary counsel in his office. DCAH 5.

² Respondent was interimly suspended from the practice of law on March 30, 2009 and remains on interim suspension. *In re Ashton R. O’Dwyer, Jr.*, 2009-B-0670 (La. 3/30/09).

third person, or use methods of obtaining evidence that violate the legal rights of such a person); Rule 5.5(a) (lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction); Rule 8.2(a) (lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning qualifications or the integrity of a judge, adjudicatory officer or public legal officer); Rule 8.4(a) (professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct or knowingly assist or induce another to do so, or do so through the acts of another; Rule 8.4(b) (professional misconduct for a lawyer to commit a criminal act); Rule 8.4(c) (professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); Rule 8.4(d) professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice); 8.4(g) (professional misconduct for a lawyer to threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter); and Rule 8.5(a) (lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction).³ The charges were personally served on the Respondent on February 5, 2010.

On February 23, 2010, the Respondent filed a request for the stay of disciplinary proceedings pending the resolution of his then-pending federal criminal matter. On March 1, 2010, DCAH filed a “Motion to Deem Formal Charges Admitted and Proven”. On March 11, 2010, the Respondent’s request for the stay was granted by Chair of Hearing Committee No. 23, Kathleen E. Simon, until such time as the psychiatric and psychological examination of competency of the Respondent to stand trial was completed in the federal proceedings and the report of the examiner was received and reviewed by the hearing committee.

On November 8, 2011, DCAH filed a “Motion to Lift Stay and Set Time Delay for Answer or Deem Formal Charges Admitted and Proven.” On November 10, 2011, Ms. Simon

³ The pertinent text of these Rules is found in the formal charges of this matter, pp. 16-17.

granted DCAH's "Motion to Lift Stay" and ordered that Respondent file by December 12, 2011 an answer to the formal charges by December 12, 2011.⁴ On November 10, 2011, DCAH filed a "Motion to Find Respondent in Constructive Contempt of Lawful Disciplinary Process." On November 16, 2011, Ms. Simon ordered that DCAH's "Motion to find Respondent in Constructive Contempt of Lawful Disciplinary Process" be referred to the hearing on the merits in this matter. On November 22, 2011, the Respondent filed a document captioned "For The Immediate Attention of Hearing Committee #23," in which he requested various information from Donna L. Roberts, Board Administrator of the Disciplinary Board. Ms. Roberts responded to this document on December 13, 2011.

On December 12, 2011, Respondent filed a document entitled "Answer and Defenses of Respondent O'Dwyer and Incorporated Motion for Reinstatement." On December 16, 2011, Respondent also filed his "Notice of Pro Se Representation" in the matter. A scheduling telephone conference call was then set for January 23, 2012 by the Board Administrator's office.

On December 27, 2011, DCAH filed a "Motion to Set Hearing Date Within 90 Days of Answer." Respondent filed an objection to this motion on January 17, 2012, but did not serve the matter on DCAH. Therefore, Respondent then filed another objection to DCAH's motion on January 23, 2012, which was served on DCAH.

On February 13, 2012, Respondent filed a "Motion for Disqualification and/or Recusal of the Entire Louisiana Attorney Disciplinary System in these Proceedings, and for Alternative Relief" ("Motion for Disqualification"). On February 28, 2012, DCAH filed his "Answer to

⁴ The hearing committee chair states in her order that in reviewing DCAH's requests, she reviewed exhibits attached to DCAH's motion, including the transcript of the detention hearing and Government's motion for a psychiatric evaluation heard on March 4, 2010 by U.S. Magistrate Judge Karen L. Hayes in the matter entitled "*United States of America v. Ashton O'Dwyer*," bearing criminal action number 10-034 (E.D. La). The hearing committee chair also reviewed the record in "*United States of America v. Ashton O'Dwyer*," bearing criminal action number. 10-034 (E.D. La.), as well as the opinion of the United States Court of Appeals for the Fifth Circuit dated September 27, 2011, bearing docket number 10-30701. The hearing committee chair also noted that the Respondent had not filed an objection to the request to the lift the stay in this matter.

Respondent's Motion to Recuse the Entire Louisiana Disciplinary System." On March 5, 2012, Respondent filed a request for an extension of time until March 9, 2012 to file his response to DCAH's answer. On March 8, 2012, DCAH filed his response to Respondent's request for additional time to file his response to DCAH's answer in a pleading entitled "Disciplinary Counsel Ad Hoc's Answer to Respondent's 'Supplemental Letter' For Additional Motions to Recuse the Entire Louisiana Disciplinary System." On March 9, 2012, the Respondent filed his "Reply to [Mr.] Dumaine's Answer(s) to O'Dwyer's Motion to Disqualify and/or Recuse." Respondent's "Motion for Disqualification" was then set for hearing on June 5, 2012. On May 24, 2012, Respondent filed his "Second Supplemental Memorandum in Support of His Motion to Disqualify and/or Recuse the Entire Louisiana Attorney Disciplinary System in these Proceedings, and Incorporated Separate Motion Addressing Substituted Hearing Committee Member Matthew Friedman." The hearing on Respondent's "Motion for Disqualification" was held as scheduled on June 5, 2012.

On June 18, 2012, Ms. Simon issued an order concerning email correspondence that had been sent to her directly by Respondent. In the order, Ms. Simon directed that all such email correspondence be filed in the record of this matter, with copies being sent to the Respondent, DCAH, and the other members of the hearing committee. Ms. Simon also ordered that Respondent be given notice that any further direct emails to the chair and/or the other hearing committee members may result in a recommendation to the Louisiana Supreme Court for sanctions based upon inappropriate *ex parte* communication. Also on June 18, 2012, Ms. Simon issued an order concerning corrections to the transcript of the June 5, 2012 hearing. She also issued an order on this date directing the parties to file pleadings in accordance with the

provisions of Rule XIX and as outlined in the telephone status conference of January 23, 2012 in this matter.

On June 25, 2012, Respondent filed his Post-Hearing Motions for Relief concerning his “Motion for Disqualification.” DCAH filed his “Answer to Respondent’s Post-Hearing Motions for Relief” on June 28, 2012.

On July 23, 2012, the hearing committee issued an order denying Respondent’s “Motion for Disqualification.” In its order, the hearing committee also ordered that Respondent file an answer to formal charges in this matter by August 13, 2012, and cautioned that his failure to do so would result in the formal charges being deemed admitted and proven. The hearing committee also ordered that the hearing on the formal charges in this matter be set as soon as practical. DCAH then filed a “Motion to Set Hearing Date within 90 Days of Answer” on July 30, 2012.

On August 17, 2012, the Respondent filed a notice of appeal requesting permission to appeal the hearing committee’s order denying his “Motion for Disqualification,” with a motion to stay the proceedings pending his appeal process of this motion. On August 24, 2012, DCAH filed a pleading entitled “Answer to Respondent’s Motion to Appeal and Stay Order Denying Respondent’s Motion to Recuse the Entire Louisiana Disciplinary System.” On September 10, 2012, the then Board Chair, John T. Cox, Jr., issued an order granting Respondent’s request to appeal the hearing committee’s order of July 23, 2012, directing the Board Administrator to set Respondent’s appeal for hearing at the earliest date available and to give the parties written notification thereof, and granting the Respondent’s request that this matter be stayed pending completion of the appeal process concerning his “Motion for Disqualification.”

On August 13, 2012, the Respondent filed a pleading entitled “O’Dwyer’s ‘Second’ Answer and Defenses, to Comply with the Order of the ‘Hearing Committee’ of July 23, 2012, Ordering that an Answer to the Formal Charges Be Filed by August 13, 2012.” On August 20, 2012, DCAH filed a “Motion for Default Judgment.”

On September 7, 2012, Ms. Simon issued an order directing that various corrections be made to the transcript of the hearing of June 5, 2012 concerning Respondent’s “Motion for Disqualification.” On September 24, 2012, notice was issued by the Board Administrator’s office that Respondent’s appeal in this matter concerning his “Motion for Disqualification” was scheduled for November 9, 2012. Upon the unopposed motion of Respondent, this date was later continued until December 6, 2012 by order of John T. Cox, Jr., Chair of Panel “C.” On November 2, 2012, the Respondent filed his “Original Appellate Brief.” On November 13, Respondent filed a letter indicating a correction to be made to his appellate brief. On November 19, 2012, DCAH filed his “Answer to Respondent’s Appeal Brief.” Oral argument concerning Respondent’s “Motion for Disqualification” was held before Panel “C” of the Disciplinary Board on December 6, 2012.

On December 12, 2012, following the oral argument on his “Motion for Disqualification,” the Respondent submitted a document concerning the oral argument for consideration of the Disciplinary Board. On December 13, 2012, the Respondent filed an additional document concerning the December 6, 2012 oral argument, which was addressed to Ms. Jamie E. Fontenot, Chair of Panel “C” and captioned “Re: A Eureka Moment.” On December 19, 2012, Respondent filed his post-hearing brief, and later filed his unopposed “Motion for Leave to File Post-Hearing Brief” on January 11, 2013. Ms. Fontenot granted Respondent’s “Motion for Leave to File his Post-Hearing Brief” on January 16, 2013. On

February 27, 2013, the Board issued its Order with Reasons in which it affirmed the decision of the Hearing Committee #23 to deny Respondent's "Motion for Disqualification." Additionally in its order, the Board lifted the stay of the proceedings, allowing the matter to proceed to a full hearing on the merits. On February 27, 2013, Respondent filed a "Motion for Leave to File [a] Second Supplemental Post-Hearing Brief." This motion for leave was denied by Ms. Fontenot on March 7, 2013.

On April 1, 2013, Respondent filed his "Petition for Leave to Appeal to the Louisiana Supreme Court the Adverse 'Order with Reasons' of the Louisiana Disciplinary Board of February 27, 2013, and the Adverse 'Written Reasons for Order' of the Hearing Committee of July 23, 2012." In his petition, Respondent also requested a stay of all further disciplinary proceedings against him pending disposition of this appeal. DCAH filed his "Answer to Respondent's Appeal Brief to the Louisiana Supreme Court" on April 12, 2013. On May 3, 2013, the Louisiana Supreme Court denied Respondent's application for appeal of the decision of the Disciplinary Board in 10-DB-006. *See In re Ashton R. O'Dwyer*, 2013-OB-0696.

On May 7, 2013, the Respondent filed correspondence dated May 6, 2013 with the Disciplinary Board in which he renewed his prior request(s) for a prehearing conference pursuant to Rule XIX, Section 18(E), and for discovery. On June 21, 2013 Ms. Simon, issued an order denying DCAH's "Motion for Default Judgment" filed on August 20, 2012, finding DCAH's "Motion to Set Hearing Date within 90 days of Answer" filed on July 25, 2012 to be moot, and directing the docket clerk for the Disciplinary Board to schedule a pre-hearing conference to address discovery issues and requests, deadlines and cut-off dates, and the selection of a hearing date. The pre-hearing conference was then scheduled for and held on July 22, 2013.

Following the July 22, 2013 pre-hearing conference, through a series of email correspondence beginning on August 11, 2013, the Respondent submitted the names of individuals he wished to subpoena for depositions and his requests for production and/or subpoena *duces tecum*. On August 12, 2013, DCAH submitted a memorandum of law addressing questions presented by Ms. Simon at the pre-hearing conference. On September 9, 2013, DCAH filed his “Request for Subpoenas.” Also filed on September 9, 2013 were DCAH’s “Answer to Respondent’s Request for Subpoenas and Motion to Quash Irrelevant Subpoenas” and DCAH’s “Answer to Respondent’s Request for Subpoenas *Duces Tecum* and Motion to Quash Irrelevant Subpoenas *Duces Tecum*.” On September 20, 2013, Respondent filed his “Memorandum in Opposition to [DCAH’s] Submissions Filed on September 9, 2013, Seeking to Exclude O’Dwyer’s Proposed Testimony and Evidence.”

On January 22, 2014, then-Board Chair Edwin G. Preis, Jr. signed an order appointing the Honorable Elaine W. DiMiceli (ret.) as *ad hoc* chair of Hearing Committee Number 23, solely to preside over any depositions held in this matter and to rule upon any objections raised during the depositions. On April 23, 2014, Ms. Simon issued an order addressing the parties’ requests for the issuance of subpoenas and subpoenas *duces tecum*, delineating the procedure for scheduling and conducting the depositions, and setting a telephone conference in this matter for April 25, 2014. This conference was held as scheduled on April 25, 2014. On June 6, 2014, the Board Administrator set the hearing in this matter for November 5, 2014.

On June 19, 2014, DCAH filed his “Answer to Respondent’s Requests for Depositions.” On July 7, 2014, a telephone status conference was held in this matter. Following the conference, a scheduling order was issued on the same date. On July 16, 2014, Respondent filed a statement from attorney Stephen R. Remsberg dated July 15, 2014. Beginning on July 17,

2014, in a series of email correspondence, the Respondent submitted his exhibit and witness lists. On July 18, 2014, DCAH filed his “Preliminary Witness List” and his “Preliminary Exhibit List.”

On July 25, 2014, Respondent filed a pleading entitled “Respondent’s Motion to Strike, Motion in Limine, and Motion to Disqualify and Recuse (and Incorporated Memorandum in Support).” DCAH filed his “Answer to Respondent’s Motions of July 25, 2014” on August 4, 2014. On August 4, 2014, DCAH also filed a “Request to Continue [the] Deadline of August 29, 2014.”⁵ This motion was granted by the hearing committee chair, Ms. Simon, on August 8, 2014.

On August 15, 2014, Respondent filed a pleading entitled “Motion to Dismiss All ‘Formal Charges’ on Grounds of Criminal Sociopathic Behavior, Abuse of Power, Prosecutorial Misconduct, Obstruction of Justice, and Other Misconduct by Catherine D. Kimball, Charles B. Plattsmier, Jr., and Other Corrupt Members of the Louisiana Attorney Disciplinary System.” On August 19, 2014, Respondent filed his requests for his subpoenas *duces tecum* to be issued to various individuals. On September 2, 2014, DCAH filed his “Answer to Respondent’s August 14, 2014 Motion to Dismiss.” Respondent replied to this Answer in email correspondence dated September 4, 2014.

By email correspondence dated September 9, 2014, Respondent moved for the continuance of the hearing date and the discovery cutoff date and for the setting of a status conference to establish new dates. By email correspondence dated September 16, 2014, DCAH stated that he did not object to the Respondent’s request that the discovery date be continued; however, he argued that a continuance of the hearing date was premature. On September 17, 2014, Ms. Simon issued an order denying Respondent’s request to continue the hearing date, but

⁵ This deadline was for the filing of any opposition to motions filed by the opposing party.

extending the discovery cutoff date and the date for filing pre-hearing order submissions. Given this action, Respondent's request for a status conference to select new dates was denied.

Also on September 9, 2014, the Honorable Sarah S. Vance, Chief Judge of the United States District Court, Eastern District of Louisiana, and the Honorable Helen G. Berrigan, Judge, United States District Court, Eastern District of Louisiana, through their attorney Herschel E. Richard, Jr., filed in the record of this matter a "Notice of Filing of Notice of Removal in *In Re Subpoena to Testify in the Louisiana Attorney Disciplinary Board Hearing of Ashton R. O'Dwyer, Jr.*, Civil Action No. 2:14-cv-246, United States District Court, Eastern District of Louisiana," along with the pleadings filed in the referenced matter which included "Notice of Removal," "Certificate of Service" and "Ex Parte Motion for Relief from Compliance with 28 U.S.C. Section 1447(b)." On September 10, 2014, Judge Vance and Judge Berrigan filed their "Motion to Quash Subpoenas and Dismiss Case for Lack of Subject Matter Jurisdiction" in federal court. DCAH responded by filing a "Motion to Remand" and then by filing an opposition to the judges' motion. On September 26, 2014, the Honorable Brian A. Jackson, United States District Judge for the Middle District of Louisiana, issued his Ruling and Order granting the judges' "Ex Parte Motion for Relief from Compliance with 28 U.S.C. Section 1447 (b)"; denying DCAH's "Motion to Remand"; and granting the judges' "Motion to Quash Subpoenas and Dismiss Case for Lack of Subject Matter Jurisdiction."

On September 29, 2014, DCAH filed a "Motion to Quash Respondent's Subpoena *Duces Tecum* (Exhibit 1) Attached to Mr. Plattsmier's Subpoena for Deposition." Also on this date, Respondent filed via email a "Motion for Disclosure" requesting *Brady* information. On October 7, 2014, Ms. Simon issued an order denying Respondent's "Motion to Strike, Motion in Limine and Motion to Disqualify and Recuse" filed on July 25, 2014; denying in part and deferring to

the merits in part Respondent's "Motion to Dismiss" filed on August 15, 2014; denying Respondent's request that certain documents be scanned, furnished to him, and posted on the LADB website; denying Respondent's request to have the record in this matter accessible to him electronically via the Board's "Share Point" program; granting DCAH's "Motion to Quash Respondent's Subpoena Duces Tecum (Exhibit 1) Attached to Mr. Plattsmier's Subpoena for Deposition" filed on September 29, 2014; directing that the deposition of Mr. Plattsmier remain set for Friday, October 10, 2014 as previously scheduled; directing that DCAH file any response he deemed appropriate to Respondent's "Motion for Disclosure" filed on September 29, 2014 within five days of the receipt of the order; directing that all communication with Judge DiMiceli be conducted through the docket clerk at the Board Administrator's Office; and that all attempts to directly communicate with Judge DiMiceli cease.

On October 8, 2014, Respondent filed his pre-trial submissions. On October 9, 2014, the Respondent submitted an email request asking that the discovery deadline be continued until after the hearing so that he could take the telephone deposition of a witness who resided in Western Europe. On October 14, 2014, DCAH filed his "Answer to Respondent's Request for *Brady* Information." Also on this date, DCAH filed a "Notice and Motion for Public Federal Records to be Admitted in Lieu of Unavailable Witnesses" and his "Answer to Respondent's Request to Extend the Time for Depositions." DCAH also filed his pre-hearing memorandum on this date.

On October 22, 2014, Ms. Simon issued an order which, among other things, denied the Respondent's request to take the telephonic deposition of K. Florian Butchler, but allowed the testimony of Mr. Buchler via telephone during the hearing set for this matter for November 5, 2014 provided there were no objections to same by DCAH. On October 23, 2014, Ms. Simon

issued an Amended Order, clarifying that Mr. Buchler had been listed as a witness in a September 3, 2014 email sent to the Disciplinary Board, Ms. Simon and DCAH, along with the nature of his proposed testimony, although it remained unclear as to whether Mr. Buchler was listed as a deposition or hearing witness. Ms. Simon's rulings of her previous order remained the same.

On October 28, 2014, Ms. Simon issued another Order granting "DCAH's Motion for Public Records to be Admitted in Lieu of Unavailable Witnesses" and granting the Respondent's "Motion for Disclosure" and directing DCAH to disclose to Respondent all evidence in his possession that was favorable to the Respondent per the guidelines of *Brady*. On October 28, 2014, DCAH filed his "Second Answer to Respondent's Request for *Brady* Information."

On November 5, 2014, the hearing was held as scheduled in this matter. The hearing was held open to receive Respondent's exhibit list, which was due on November 14, 2014 and DCAH's response to the exhibit list, which was due on November 21, 2014. Respondent's "List of Exhibits Which Have Been or Are Being Introduced in Evidence in Respondent's Defense" was filed on November 13, 2014. DCAH filed his "Answer to Respondent's Request for Post-Hearing Admission of Exhibits" on November 15, 2014. Via email correspondence submitted on November 24, 2014, DCAH withdrew his objection as to various exhibits and maintained his objection as to Exhibit 51.

On December 1, 2014, Respondent sought to introduce into the record, via email to Ms. Simon, Mr. Dumaine and a Disciplinary Board docket clerk, "Exhibit 11(A)" and "Exhibit 11(B)." Both are letters sent to the Respondent by Ernest L. Edwards, Jr., the then Chairman of Lemle & Kelleher, dated September 15, 2005 and September 23, 2005, respectively.

On June 23, 2015, Respondent submitted for filing in this matter a document labeled as “Exhibit 6,” which is a letter dated August 15, 2007 and addressed to Respondent from Charles H. Braud, Jr., Assistant Attorney General, Department of Justice, State of Louisiana. Attached to the letter is a completed Form 95, which the Department of Justice purportedly submitted to the U.S. Army Corp of Engineers.

FORMAL CHARGES

The formal charges in this matter read, in pertinent part, as follows:

FILING OF FORMAL CHARGES PURSUANT TO SUPREME COURT RULE XIX § 11⁶

Now, through the undersigned Disciplinary Counsel Ad Hoc, comes the Office of Disciplinary Counsel, (hereafter "ODC") who petitions this Honorable Board with the filing of formal charges against Ashton R. O' Dwyer, Jr., (hereafter "Respondent") so that he may be PERMANENTLY DISBARRED from the practice of law for the reasons that he has committed the following violations and poses a substantial threat of serious irreparable harm to the public.

On March 30, 2009, the Supreme Court of Louisiana ordered Respondent’s Interim Suspension for Threat of Harm. (DCAH 52) Since this order, to the best of undersigned's knowledge, Respondent has failed to answer the charges of his Interim Suspension, failed to comply with the Court's order of Interim Suspension, failed to comply with Section 26 requirements for the suspension of his law practice, (DCAH 58), has continued to practice law without a license (DCAH 54), has been arrested for sending threatening emails to the United States Bankruptcy Court for the Eastern District of Louisiana (DCAH 59), and has continued

⁶ A list of the exhibits referred to in the formal charges is found at Appendix A to this report. In all other sections of this report, the exhibit numbers used are the numbers assigned at the November 5, 2014 hearing held in this matter.

his unprofessional conduct toward the courts of the United States, the Supreme Court of this State, and other counsel (DCAH 56).

The Court's order of Interim Suspension on March 30, 2009, issued after the Court considered an order of disbarment issued on March 4, 2009, by the *en banc* court of the United States District Court for the Eastern District of Louisiana. (DCAH 1) This action, coming so closely on the heels of the same court's *en banc* order of November 7, 2008, Miscellaneous Filing No. 08MC1492, Record Doc. 31 (DCAH 2) based upon the respondent's self-styled "intentionally contemptuous" response to the court's previous order of suspension, Miscellaneous Filing No. 08MC1492, Record Doc. 32 (DCAH 7), warranted immediate action by this Honorable Court to issue an Order of Immediate Interim Suspension for Threat of Harm pursuant to Louisiana Supreme Court Rule XIX § 19.2.

Since March 30, 2009, Disciplinary Counsel Ad Hoc has observed no improvement in Respondent's conduct toward the courts and counsel of this State and the United States. Having been provided with no legal answer to the prior petition for Interim Suspension but having continued to observe additional unprofessional conduct following the order of Interim Suspension, Disciplinary Counsel Ad Hoc now, upon the eve of Respondent's first year of suspension, petitions this court and its hearing committees with the filing of formal charges, under the provisions of Louisiana Supreme Court Rule XIX § 11, so that the disciplinary sanction of PERMANENT DISBARMENT can be imposed upon Respondent.

FORMAL CHARGES

The undersigned Disciplinary Counsel Ad Hoc hereby charges that Respondent Ashton R. O'Dwyer has violated his Lawyer's Oath, the Code of Professionalism of the Court, and the Rules of Professional Conduct governing the practice of law performed by lawyers

admitted to the bar of the courts of the State of Louisiana.

Lawyer's Oath Violations:

"I will maintain the respect due to the courts of justice and judicial officers;"

"I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, not any defense except such as I believe to be honestly debatable under the law of the land;"

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;" and

"I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the case with which I am charged."

Code of Professionalism Violations

"I will conduct myself with dignity, civility, courtesy, and a sense of fair play;"

"I will not abuse, or misuse the law, its procedures or the participants in the judicial process;"

"I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party;" .

"I will not engage in personal attack on other counsel or the court;" and "I will not use the threat of sanctions as a litigation tactic."

Rules of Professional Conduct Violations

Rule 1.4 (a)(3): (a) A lawyer shall: (3) keep the client reasonably informed about the status of the matter; and **Rule 3.5 (d):** A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal.

Rule 3.1: 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.

Rule 3.3 (a)(1) and 3.3 (a)(3): (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; [nor] (3) offer evidence that the lawyer knows to be false.

Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

Rule 3.5 (d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal.

Rule 4.4 (a): In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 5.5 (a): A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction.

Rule 8.2 (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning qualifications or the integrity of a judge, adjudicatory officer or public legal officer.

Rule 8.4 (a), (b), (c), (d) and (g): 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, (b) Commit a criminal act, (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation, (d) Engage in conduct that is prejudicial to the administration of justice, and (g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

Rule 8.5 (a): A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction.

I.

The current matter pertains to Respondent, a licensed attorney admitted to the Bar of the Supreme Court of Louisiana who is subject to the disciplinary jurisdiction of this Court pursuant to Supreme Court Rule XIX § 6(A). Respondent has committed violations of the Rules of Professional Conduct and possesses and has demonstrated potential to cause substantial and serious harm to the public and to the public's belief in the integrity of the judicial system and the integrity of the Louisiana bar.

ODC records indicate that Respondent was born on October 23, 1947, and was

admitted to the Louisiana State Bar on September 9, 1971. Respondent's primary bar registration address is 821 Baronne Street, New Orleans, LA 70113. His secondary registration is listed as 6034 St. Charles Avenue, New Orleans, LA 70118. Respondent had no prior discipline history prior to November of 2008. (DCAH 3)

II.

This complaint arises from the following history. On or about September 19, 2005, Respondent initiated in the United States District Court for the Eastern District of Louisiana a civil action, number 05-4181, on behalf of victims of Hurricane Katrina. This action was assigned to Judge Stanwood Duval, Jr. Miscellaneous Filing No. 08MC1492, Record Doc. 28 at 49. (DCAH 44) A related matter, under docket number 05-4182, became the "lead" case for all cases involving victims of Katrina. Miscellaneous Filing No. 08MC1492, Record Doc. 28 at 49. (DCAH 44) Judge Duval then organized the Katrina cases into broad categories and assigned plaintiff liaison counsel to coordinate litigation with all other plaintiff counsel, including Respondent. Miscellaneous Filing No. 08MC1492, Record Doc. 28 at p. 51-52 (DCAH 44) During these Katrina-related proceedings, Respondent's communications with the court and with other counsel led to complaints of violations of the Louisiana Rules of Professional Conduct, formally documented by then Chief Judge Helen G. Berrigan on April 2, 2008. Miscellaneous Filing No. 08MC 1492, Record Doc. I and Doc. 1-2 (DCAH 8)

III.

On November 13, 2008, the ODC opened file 24572 on Respondent as a result of notification by the United States District Court of the Eastern District of Louisiana that disciplinary action had been taken against respondent. (DCAH 3 and DCAH 4) As a result of

this notification, Chief Disciplinary Counsel for the ODC sought to recuse himself and members of his staff from this matter due to previous lawsuits filed by Respondent personally against various employees of the ODC. (DCAH 5) On December 8, 2008, this Honorable Court appointed the undersigned as Disciplinary Counsel Ad Hoc. (DCAH 6)

IV.

On April 2, 2008, then Chief Judge of the United States District Court for the Eastern District of Louisiana, Helen G. Berrigan, issued a complaint asserting breach of the Louisiana Rules of Professional Conduct by Respondent and lawyer Ashton R. O'Dwyer, Jr. Miscellaneous Filing No. 08MC1492, Record Doc. 1-2. (DCAH 8) This complaint was served on Respondent. Id.

In this complaint, Judge Berrigan identified the following violations:

Rule 3.1: 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. In an Order and Reasons issued July 19, 2006, Judge Stanwood Duval stated that Respondent provided "blatantly unsupported allegations" in a suit filed under a litany of federal statutes. Civil Action No. 05CV4182, Record Doc. 788 at 12. (DCAH 9)

B. In an Order and Reasons issued on April 3, 2007, Judge Duval stated that two cases brought by Respondent, cases number 06-4386 and 06-6099, presented legal theories unsupported by facts. Civil Action No. 05CV4182, Record Doc. 3666 at 7-8. (DCAH 10)

Rule 3.3 (a)(1) and 3.3 (a)(3): (a) A lawyer shall not knowingly: (1) make a false statement of

fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; [nor] (3) offer evidence that the lawyer knows to be false.

- C. Respondent made false statements of fact to the tribunal in his motion for disqualification or recusal of Judge Duval. See Civil Action No. 05CV4182, Record Doc. 10910 at 7-8. (DCAH 20) Respondent alleged that Judge Duval had not disclosed his relationship with Mr. Calvin Fayard. Civil Action No. 05CV4182, Record Doc. 10910 at 2-3. (DCAH 20) Contrary to Respondent's allegation, the Court disclosed Judge Duval's relationship with Mr. Fayard on March 26, 2006, with no objection from Respondent. Civil Action No. 05CV4182, Record Doc. 57. (DCAH 12)

Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists and

Rule 1.4 (a)(3): (a) A lawyer shall: (3) keep the client reasonably informed about the status of the matter; and Rule 3.5 (d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal.

- A. Respondent violated Rule 3.4 (c) because he refused to comply with an order of the court. On February 22, 2008, Judge Duval issued an order denying Respondent's motion to disqualify Judge Duval, and further ordered copies of the ruling be provided to Respondent's named client. Civil Action No. 05CV4182, Record Doc. 11357 at 7. (DCAH 13) Respondent filed a "declaration" stating that the court "does not have the authority to require him to comply with such an order, which constitutes an unwarranted intrusion into the relationship between

him and his clients, which is none of the Court's business." Civil Action No. 05CV4182, Record Doc. 11699 at 2. (DCAH 14) Respondent's failure to provide copies of the judge's order to the named plaintiffs that he represented also violated Rule 1.4 (a)(3). By suggesting that an issue is "none of the court's business," Respondent also violated Rule 3.5 (d) because he used unprofessional language that challenged the competence of the court.

- B. On July 11, 2006, Judge Duval admonished Respondent that filing suit under a litany of federal jurisdictional statutes without providing any factual support for those causes of action constituting sanctionable conduct. Civil Action No. 05CV4182, Record Doc. 788 at 12. (DCAH 9) On April 3, 2007, Judge Duval noted that Respondent had employed the same "buckshot" approach to jurisdiction when he filed case number 06-4389. Civil Action No. 05CV4182, Record Doc. 3666 at 7. (DCAH 10) On September 11, 2007, Judge Duval again warned Respondent that the "wholesale listing of jurisdictional bases" without factual support would not be tolerated. Respondent continued the practice in contravention of the court's previous warnings. See Civil Action No. 05CV4182, Record Doc. 7538. (DCAH 15) Respondent's repeated refusal to obey warnings issued by Judge Duval violated Rule 3.4 (c).

Rule 3.5(d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal and Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

- A. Respondent's use of abusive language towards the Court violated Rule 3.5 (d). In February of 2008, Judge Duval dismissed Respondent's motion to disqualify

the judge. See Civil Action No. 05CV4182, Record Doc. 11357 at 6-7. (DCAH 13) In his order, Judge Duval struck a "supplemental affidavit of personal bias and prejudice of a federal judge" that "he considered duplicative and frivolous from the record, Id. at 6, striking Civil Action No. 05CV4182, Record Doc. 10969. (DCAH 16). Respondent responded by filing an amended complaint in which he stated that "striking the document was done for an illicit purpose." Civil Action No. 08CV1127, Record Doc. 3 at 3. (DCAH 17). Respondent violated Rule 3.5 (d) because he used insulting language directed at the Court, and questioned the integrity of the Court. Considering that Respondent had already been sanctioned for use of unprofessional language by the Judge Berrigan, his insistence on using inappropriate language also violated Rule 3.4 (c) because he knew that such behavior would not be tolerated. See Civil Action No. 06CV7280, Record Doc. 317 at 24-25. (DCAH 18)

- B. Respondent violated Rule 3.5(d) because he filed a motion on January 1, 2008, that used inappropriate, unprofessional language. Civil Action No. 05CV4182, Record Doc. 10646-5. (DCAH 19) In his motion for leave to file a supplemental motion for disqualification, Respondent declared that the plaintiff's liaison committee was 'anointed' by an impliedly corrupt District Court. Id. at 3 n. 2. (DCAH 19) Regarding two members of the liaison committee, Respondent alleged that "these very same lawyers, who are 'supposed' to be representing the interests of 'the Class', including me and my clients, HAVE BEEN SLEEPING WITH THE DEVIL, namely the State of Louisiana and its Department of 'Injustice', all behind my back." Id. at 9. (DCAH 19) Respondent went on to declare that the Attorney General of Louisiana was corrupt, and that Judge

Duval's opinion was prejudiced due to a conflict of interest. Id. at 13-14. Respondent violated Rule 3.5 (d) due to the unsupported allegations and unprofessional commentary he submitted in pleadings. He also violated Rule 3.4 (c) because he has previously-been warned that such conduct would not be tolerated.

- C. Respondent challenged the veracity of Judge Duval's order, contending that Judge Duval's conclusions were "disingenuous." Civil Action No. 05CV4182, Record Doc. 10910-2 at 13. (DCAH 20) In the same document, Respondent alleged that Judge Duval failed to do the "right" thing and, in fact, "did the absolutely wrong thing" because the judge concluded that Respondent's motion was untimely and legally insufficient. Id. at 17. (DCAH 20) Respondent's comment that Judge Duval's order was "disingenuous" violated Rule 3.5 (d) because Respondent openly questioned the veracity of a federal judge.

Rule 4.4 (a): In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

- A. Respondent's retaliatory attempt to sanction other attorneys violated Rule 4.4 (a). Respondent's motion for sanctions against attorney Michael Riess was likely retaliatory in nature and based on unfounded assertions. Respondent accused his counterpart of destroying evidence, in addition to implying that Mr. Riess is morally depraved. Civil Action No. 05CV4182, Record Doc. 875-2 at 3. (DCAH 21) Additionally, Respondent's retaliatory motion for sanctions against the Louisiana Department of Justice violated Rule 4.4 because he appeared to have no

substantial purpose beyond harassing and embarrassing the state. Respondent provided no support for the contentions that the Louisiana Department of Justice would suborn perjury and commit obstruction of justice if permitted to remain in the case. Civil Action No. 05CV4182, Record Doc. 2382 at 2. (DCAH 22) Similarly, Respondent filed a retaliatory motion for sanctions against Washington Group International, accusing the firm's counsel of lying and misrepresenting facts at a hearing. Civil Action No. 05CV4182, Record Doc. 9464 at 1-2. (DCAH 23) To the extent that Respondent's motions for sanctions were retaliatory, he violated Rule 4.4 (a) because the effect of the filing frivolous motions is to embarrass, delay, and burden opposing counsel. Indeed, Respondent declared that "no one fires a shot across my bow without getting a broadside back," indicating that Respondent's motions for sanctions were motivated by retaliatory intent. Civil Action No. 05CV4182, Record Doc. 10431-2 at 3. (DCAH 24)

Rule 8.4 (a). (c). (d) and (g): 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, (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation, (d) Engage in conduct that is pre judicial to the administration of justice, and (g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter; Rule 3.1: 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; Rule 3.5 (d): A lawyer shall not: (d) engage in

conduct intended to disrupt a tribunal; and Rule 4.4 (a): In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

- A. Respondent violated the above sections of Rule 8.4 when he threatened disciplinary sanctions against opposing counsel without supporting his allegations with any facts. Respondent filed a motion for sanctions on August 22, 2006, Civil Action No. 05CV4182, Record Doc. 1006. (DCAH 11), in response to a motion for sanctions filed by opposing counsel Michael Riess. Civil Action No. 05CV4182, Record Doc. 875-2. (DCAH 21) Mr. Riess requested that the Court impose sanctions because Respondent had accused Mr. Riess of destroying evidence. Respondent also used inappropriate, unprofessional language in his communication with Mr. Riess: "Glad to know that you condone 12-year-old girls giving birth to illegitimate children, and that you sanction killing, looting, drug use and possession of illegal firearms, as well as disrespect towards women." *Id.* at 3. In response to Respondent's conduct, Judge Duval issued an order on September 6, 2006, warning Respondent that further unprofessional conduct would result in sanctions. Civil Action No. 05CV4182, Record Doc. 1079 at 2. (DCAH 25)
- B. In response to a motion for sanctions against him, Respondent filed a motion to disqualify the Louisiana Department of Justice as counsel, alleging that "lawyers with the LDOJ will commit obstruction of justice, subornation of perjury and threaten further harm to and/or continue to intimidate plaintiff's

counsel (which has already occurred)." Civil Action No. 05CV4182, Record Doc. 2382 at 2. (DCAH 22) Judge Duval recognized the pleading as meritless in his Order and Reasons for April 3, 2007. Civil Action No. 05CV4182, Record Doc. 3666 at 8. (DCAH 10) Under Rule 8.4 (c), Respondent's conduct involved dishonesty or misrepresentation because he made unsupported allegations in his pleadings. Additionally, Respondent's conduct violated Rule 3.1 and Rule 3.5 (d) because he knowingly made a false statement of fact in those pleadings.

- C. Similar to his behavior concerning the Louisiana Department of Justice, Respondent responded to a request for sanctions against him by Washington Group International with his own motion for sanctions. He contended that their counsel had lied and misrepresented facts at a hearing. Civil Action No. 05CV4182, Record Doc. 9464 at 1-2. (DCAH 23) By filing retaliatory motions for sanctions against Washington Group International, Respondent violated Rules 8.4(c), 3.1, 3.5(d) and 4.4(a).
- D. Citing additional violations of 28 U.S.C.A. § 1927 (fn1), Judge Berrigan noted in her complaint that Judge Duval had also addressed whether filings by Respondent multiplied the proceedings in a way that was unreasonable and vexatious. Civil Action No. 05CV4182, Record Doc. 3666 at 4-8. (DCAH 10) Such actions would also be violations of Rule 3.5 (d) and Rule 4.4 (a). On pages five through seven of his opinion, Judge Duval provided a detailed chronology of the duplicative pleading filed by Respondent. Civil Action No. 05CV4182, Record Doc. 3666 at 5-7. (DCAH 10) Judge Berrigan noted (in footnote 3 on page 11 of her complaint) that Respondent filed a cause of action,

under case number 06-4389, that attempted to circumvent a specific finding of the Court regarding maritime jurisdiction. Civil Action No. 06CV4389, Record Doc. 1. (DCAH 26) Respondent reargued the same contentions he had previously argued in a suit concerning the State of Louisiana's waiver of immunity. He also filed case number 06-6099 which reargued the same points as a previous pleading that was dismissed. Civil Action No. 06CV6099, Record Doc. 1. (DCAH 27). Judge Duval sanctioned Respondent for filing repetitive cases and disregarding the Court's admonitions. In addition to likely violating 28 U.S.C.A. § 1927 because he filed repetitive motions and lawsuits rearguing points that the Court had already dismissed, the same conduct merited a sanction by Judge Duval as violating Rule 4.4 (a) because filing frivolous, repetitive lawsuits has no purpose other than to delay proceedings, and to embarrass and harass opposing counsel.

Footnote No. 1: 28 U.S. C.A. § 1927: Any attorney or other person admitted to conduct cases in any Court of the United States or any Territory thereof who multiplies the proceedings in any case unreasonably and vexatiously may be required by the Court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

- E. After the Court both placed Respondent on notice that further unprofessional conduct would result in sanctions and sanctioned him for filing duplicative suits, Respondent continued to file pleadings with "gratuitous unprofessional vitriol." Civil Action No. 05CV4182, Record Doc. 11357 at 4-5. (DCAH 13) Respondent was given notice that any motion for disqualification or recusal was to be filed by April 4, 2006. Id. at 2. Therefore, Judge Duval entered Order and Reasons finding Respondent's affidavit of personal bias and prejudice untimely

and insufficient on January 17, 2008. Civil Action No. 05CV4182, Record Doc. 10615 at 3-5. (DCAH 28) Undeterred by the Court's two previous rulings on the matter, Respondent filed a motion for disqualification and an affidavit of personal bias of a federal judge on January 28 (Civil Action No. 05CV4182, Record Doc. 0910 at 7-8. (DCAH 20)) and January 30, 2008 (Civil Action No. 05CV4182, Record Doc. 10969. (DCAH 16)). These affidavits were stricken from the record because 28 U.S.C. § 144 only permits the filing of one affidavit, and Respondent had already availed himself of that opportunity. (Civil Action No. 05CV4182, Record Doc. 11357 at 3. (DCAH 13)) Judge Duval denied Respondent's motion for recusal because the motion was "stale," "vituperative," "duplicative," "vexatious," and "vitriolic;" almost two years had passed since the Court had resolved the conflict of interest issue. Id. at 5. Judge Duval warned Respondent that any further duplicative pleadings would result in sanctions under 28 U.S.C. § 1927. In addition to potentially violating § 1927, Respondent violated Rule 3.1 to the extent that rearguing a motion that has already been denied is frivolous. Further, Respondent's conduct violated Rule 3.5(d) because, as Judge Duval noted, "all of these issued [*sic*] have taken substantial time and resources of the Court." Id. at 6.

V.

Judge Berrigan's complaint was randomly allotted to Judge Ivan L. R. Lemelle of the United States District Court for the Eastern District of Louisiana. Miscellaneous Filing No. 08MC1492, Record Doc. 2 at 1. (DCAH 29) Judge Lemelle issued an order on April 2, 2008, for the complaint to be served on the Respondent by certified mail and provided that Respondent had thirty days to respond. Miscellaneous Filing No. 08MC1492, Record Doc. 1 at 1. (DCAH 8)

On May 13, 2008, Judge Lemelle determined that Respondent had not filed a timely response to the disciplinary complaint and issued an order deeming that letters sent Judge Berrigan and others as well as separate complaints Respondent had filed against the active-duty judges of the Eastern District of Louisiana would be construed as a general denial of allegations against respondent. Miscellaneous Filing No. 08MC1492, Record Doc. 2 at 1. (DCAH 29) Judge Lemelle then granted Respondent 30 additional days to submit supplemental responses. Id. at 2. On May 13, 2008, Respondent sought, via a Freedom of Information Act request, the information concerning "any complaint of misconduct" by Respondent and "communications" among the members of the court about the complaints. Judge Lemelle denied Respondents Freedom of Information Act request, noting that statutory and case law bars the use of the Act to obtain documents generated by the court. Miscellaneous Filing No. 08MC1492, Record Doc. 3 at 2. (DCAH 30).

On June 11, 2008, and July 11, 2008, Respondent sought extensions beyond this additional thirty-day limit to file his answer. Both requests for extensions were granted by Judge Lemelle." Miscellaneous Filing No. 08MC1492, Record Doc. 4, 5, 6, and 7. (DCAH 31) On July 10, 2008, Respondent filed his Answer. Miscellaneous Filing No. 08MC1492, Record Doc. 8. (DCAH 32)

On August 29, 2008, Judge Lemelle issued an order that a hearing be held on Monday, September 22, 2008, to consider Respondent's answers. Miscellaneous Filing No. 08MC1492, Record Doc. 9. (DCAH 33).

On September 22, 2008, Judge Lemelle held a contradictory hearing at which Respondent was represented by Eileen Comiskey. Miscellaneous Filing No. 08MC1492, Record Doc. 19, 23-2, and 23-3. (DCAH 34). Following this hearing, Judge Lemelle issued an order that Respondent could supplement the record no later than September 26, 2008. Respondent filed for extension of time, which the Court granted. Miscellaneous Filing No. 08MC 1492, Record Doc. 10, 11, 12,

13, and 14 (DCAH 35) Respondent filed his supplement on October 6, 2008. Miscellaneous Filing No. 08MC1492, Record Doc. 15. (DCAH 36) On October 8, 2008, Judge Lemelle held a hearing on Respondent's supplements at which Respondent represented himself. Miscellaneous Filing No. 08MC1492, Record Doc. 20 and 24-2 (DCAH 37) Judge Lemelle issued his Findings and Recommendations concerning the disciplinary complaint on October 8, 2008. Miscellaneous Filing No. 08MC1492, Record Doc. 18 (DCAH 38)

On October 9, 2008, Respondent also filed objections to Judge Lemelle's "professed intention" to furnish other members of the court with the transcript, alleging the court should not "poison the well" without also providing the court with Respondent's "complete answers." Miscellaneous Filing No. 08MC1492, Record Doc. 16 (DCAH 39) On October 14, 2008, Respondent filed a motion to recuse Judge Lemelle on grounds of bias, prejudice and partiality. Miscellaneous Filing No. 08MC1492, Record Doc. 17 (DCAH 40) On October 15, 2008, Judge Lemelle denied Respondent's request for pauper status as to receipt of free transcripts. Judge Lemelle also clarified that all defense, answers, and exhibits would be made available to the *en banc* court. Miscellaneous Filing No. 08MC1492, Record Doc. 21 (DCAH 41) On the same day, October 15, 2008, Judge Lemelle denied Respondent's motion to recuse Judge Lemelle. Miscellaneous Filing No. 08MC1492, Record Doc. 22 (DCAH 42) Respondent on October 20, 2008, then filed a motion to have his disciplinary complaint and recusal motion of Judge Lemelle heard *en banc* to prevent Respondent from being "railroaded." This motion was denied by the Court *en banc*. Miscellaneous Filing No. 08MC1492, Record Doc. 25, and 26 (DCAH 43). In response to this denial, on October 27, 2008, Respondent filed a motion for leave to file objections along with a filing of his objections. This request was granted as timely. Miscellaneous Filing No. 08MC1492, Record Doc. 27, 28 and 29. (DCAH 44).

On November 7, 2008, the United States District Court for the Eastern District of Louisiana entered an *en banc* order concerning the discipline of Respondent, following closely the recommendations of Judge Lemelle. Miscellaneous Filing No. 08MC1492, Record Doc. 31 and 34 (DCAH 45). In response, Respondent issued his "declaration of intentionally contemptuous non-compliance with the Court's order of 11/7/08, which is directed to the Court *en banc*," that the court ordered stricken from the record as non-compliant with the court's orders. Miscellaneous Filing No. 08MC1492, Record Doc. 32 and 33 (DCAH 7).

VI.

In issuing his Findings and Recommendations, Judge Lemelle thoroughly examined the complaints filed by then Chief Judge Berrigan. Judge Lemelle's analysis and the findings of the United States District Court are presented below:

Rule 3.1: 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.

- B. In an Order and Reasons issued July 19, 2006; Judge Stanwood Duval stated that Respondent, Mr. Ashton O'Dwyer provided "blatantly unsupported allegations" in a suit filed under a litany of federal statutes. (citing Civil Action No. 05CV4182, Record Doc. 788 at 12. (DCAH 9)) Judge Duval noted in his opinion that Respondent's conduct verged on sanctionable under Federal Rule of Civil Procedure 11 because Respondent submitted pleadings that did not contain factual support. Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 15. (DCAH 38) Judge Duval noted that Respondent filed a fifty-six-page practically illegible handwritten complaint full of "irrelevant rhetoric." (citing

Civil Action No. 05CV4182, Record Doc. 788 at 2 n. 2 and at 5, n. 7 (DCAH 9)) In pleadings referred to by Judge Duvall, Respondent filed suit under seven federal environmental statutes and several state environmental statutes without providing any factual basis for his allegations. Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 16 (DCAH 38). In the Order and Reason [sic] issued on April 3, 2007, Judge Duval stated that two cases brought by Respondent, Civil Action 06-4386 and Civil Action 06- 6099, presented legal theories unsupported by facts. (citing Civil Action No. 05CV4182, Record Doc. 3666 at 7-8. (DCAH 10) Judge Duval noted that Respondent refused to heed the court's previous warning to not employ a "buckshot" approach to jurisdiction. Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 16 (DCAH 38).

- C. Judge Lemelle found clear and convincing evidence from the record for a violation of Rule 3.1. Miscellaneous Filing No. 08MC1492, Record Doc. 18-3 at 28 (DCAH 38).
- D. The United States District Court for the Eastern District of Louisiana, *en banc*, found by clear and convincing evidence violations of Rule of Professional Conduct by bringing frivolous pleading and asserting frivolous issues despite repeated warnings from the court to avoid such conduct. Miscellaneous Filing No. 08MC1492, Record Doc. 31 at 15 (DCAH 45).

Rule 3.3 (a)(1) and 3.3 (a)(3): (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact

or law previously made to the tribunal by the lawyer; [nor] (3) offer evidence that the lawyer knows to be false.

A. The complaint alleges that Respondent made false statements of fact to the tribunal in his motion for disqualification or recusal of Judge Duval. (citing Civil Action No. 05CV4182, Record Doc. 10910 at 7-8. (DCAH 20)) In his motion of January 28, 2008, Respondent alleged that Judge Duval had not disclosed his relationship with Mr. Calvin Fayard. (citing Civil Action No. 05CV4182, Record Doc. 10910 at 2-3. (DCAH 20)) Contrary to Respondent's allegation, Judge Berrigan states in the complaint that "the court disclosed Judge Duval's relationship with Mr. Fayard on March 26, 2006, with no objection from Respondent. (citing Civil Action No. 05CV4182, Record Doc. 57. (DCAH 12)) Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 16-17 (DCAH 38).

B. Judge Lemelle did not find that there was clear and convincing evidence to sustain the charge that Respondent violated Rule 3.3 [a] (1) and 3.3[a] 3. Miscellaneous Filing No. 08MC1492, Record Doc. 18-3 at 8 (DCAH 38).

Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists; Rule 1.4 (a)(3): (a) A lawyer shall: (3) keep the client reasonably informed about the status of the matter; and Rule 3.5 (d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal.

- C. Respondent is alleged to have violated [Rule 3.4 (c)] because he refused to comply with an order of the court. On February 22, 2008, Judge Duval issued an order denying Respondent's motion to disqualify Judge Duval, and further ordered that copies of the ruling be provided to Respondent's named client. (citing Civil Action No. 05CV4182, Record Doc. 11357 at 7. (DCAH 13)) In response to Judge Duval's order, Respondent filed a declaration stating that "this Court does not have the authority to require him to comply with such an order, which constitutes an unwarranted intrusion into the relationship between him and his clients, which is none of the Court's business." (citing Civil Action No. 05CV4182, Record Doc. 11699 at 2. (DCAH 14)) Judge Berrigan alleges Respondent's failure to provide copies of Judge Duval's order to named plaintiffs also violated Rule 1.4 (a)(3), which requires that lawyer "keep the client reasonably informed about the status of the matter." It's also alleged in the complaint that by suggesting that an issue is "none of the Court's business," Respondent also violated Rule 3.5 (d) because he used unprofessional language that challenged the competence of the court. Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 17-18 (DCAH 38).
- D. On July 17, 2006, Judge Duval admonished Respondent that filing suit under a litany of federal jurisdictional statutes without providing any factual support for those causes of action constituted sanctionable conduct under Federal Rule of Civil Procedure 11. (citing Civil Action No. 05CV4182, Record Doc. 788 at 12. (DCAH 9)) On April 3, 2007, Judge Duval noted that Respondent had employed the same "buckshot" approach to jurisdiction when he filed Civil Action 06-4389.

(citing Civil Action No. 05CV4182, Record Doc. 3666 at 7. (DCAH 10))

Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 18 (DCAH 38).

- E. On September 11, 2007, Judge Duval again warned Respondent that the "wholesale listing of jurisdictional bases" without factual support would not be tolerated. It is alleged that Respondent continued the practice in contravention of the Court's previous warnings. (citing Civil Action No. 05CV4182, Record Doc. 7538. (DCAH 15)) Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 18 (DCAH 38).
- F. Judge Lemelle found the language chosen by respondent: "This court does not have the authority to require him to comply with such an order, which constitutes an unwarranted intrusion into the relationships between him and his clients, which is none of the court's business" was contemptuous and unprofessional and clearly a violation of Rules 3.4 (c), 1.4(3), and 3.5 (d), as cited in the complaint. Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 43 (DCAH 38).
- G. The United States District Court for the Eastern District of Louisiana, *en banc*, found by clear and convincing evidence violations of Rule of Professional Conduct 3.4 (c) by knowingly disobeying an obligation under rules of a tribunal, without valid cause. Miscellaneous Filing No. 08MC1492, Record Doc. 31 at 15 (DCAH 45).
- H. The United States District Court for the Eastern District of Louisiana, *en banc*, found by clear and convincing evidence violations of Rule of Professional Conduct 1.4 (3) by failing to keep his clients reasonably

informed about the state of their case. Miscellaneous Filing No. 08MC1492, Record Doc. 31 at 15 (DCAH 45).

Rule 3.5(d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal and Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

- I. It is alleged that Respondent's use of abusive language towards the court violated Rule 3.5 (d). In February of 2008, Judge Duval dismissed Respondent's motion to disqualify the judge. (citing Civil Action No. 05CV4182, Record Doc. 11357 at 6-7. (DCAH 13)) In his order, Judge Duval struck a "supplemental affidavit of personal bias and prejudice of a federal judge" that he considered duplicative and frivolous from the record. (citing Id. at 6, striking Civil Action No. 05CV4182, Record Doc. 10969. (DCAH 16)). Respondent responded by filing an amended complaint in which he stated that "striking the document was done for an illicit purpose." (citing Civil Action No. 08CV1127, Record Doc. 3 at 3. (DCAH 17)) It is alleged that Respondent violated Rule 3.5 (d) because he used insulting language directed at the Court, and questioned the integrity of the Court. It is alleged that, "considering that Respondent had already been sanctioned for use of unprofessional language by [Judge Berrigan], his insistence on using inappropriate language also violated Rule 3.4(c) because Respondent knew that such behavior would not be tolerated by this Court." (citing Civil Action No. 06CV7280, Record Doc. 317 at 24-25. (DCAH 18)) Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 19 (DCAH 38).
- J. It is alleged that Respondent violated Rule 3.5 (d) because he filed a motion on

January 21, 2008 that used inappropriate, unprofessional language. (citing Civil Action No. 05CV4182, Record Doc. 10646-5. (DCAH 19)) In his motion for leave to file a supplemental motion for disqualification, Respondent declared that the plaintiff's liaison committee was "anointed" by an impliedly corrupt District Court. (citing Id. at 3 n. 2. (DCAH 19)) Regarding two members of the liaison committee, Respondent alleged that "these very same lawyers, who are 'supposed' to be representing the interests of 'the Class', including me and my clients, HAVE BEEN SLEEPING WITH THE DEVIL, namely the State of Louisiana and its Department of 'Injustice', all behind my back!" (citing Id. at 9. (DCAH 19)) Respondent went on to declare that the Attorney General of Louisiana was corrupt and that Judge Duval's opinion was prejudiced due to a conflict of interest. (citing Id. at 13-14.) It is alleged that he violated Rule 3.4 (c) because he had previously been warned that such conduct would not be tolerated. Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 19 (DCAH 38).

- K. Respondent has challenged the veracity of Judge Duval's order, contending that Judge Duval's conclusions were "disingenuous." (citing Civil Action No. 05CV4182, Record Doc. 10910-2 at 13. (DCAH 20)) In the same document, Respondent alleged that Judge Duval failed to "do the right thing," and in fact "did the absolutely wrong thing" because the judge concluded that Respondent's motion was untimely and legally insufficient. (citing Id. at 17. (DCAH 20)) Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 20 (DCAH 38).
- L. Judge Lemelle found clear and convincing evidence of a violation of Rule 3.5 (d). Miscellaneous Filing No. 08MC1492, Record Doc. 18-3 at 28 (DCAH 38).

M. The United States District Court for the Eastern District of Louisiana, *en banc*, found by clear and convincing evidence violations of Rule of Professional Conduct 3.5 (d) by using unprofessional language that challenged the competence of the court and by engaging in conduct intended to disrupt a tribunal, including disobeying court orders and using abusive language challenging the court's lawful authority. Miscellaneous Filing No. 08MC1492, Record Doc. 31 at 15 (DCAH 45).

Rule 4.4 (a): In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person. or use methods of obtaining evidence that violate the legal rights of such a person.

N. It is alleged that Respondent's retaliatory attempts to sanction other attorneys violated Rule 4.4 (a). Respondent's motion for sanctions against attorney Michael Riess was likely retaliatory in nature, according to the complaint, and based on unfounded assertions. Respondent accused his counterpart of destroying evidence in addition to implying that Mr. Riess is morally depraved. (citing Civil Action No. 05CV4182, Record Doc. 875-2 at 3. (DCAH 21)) Additionally, it is alleged that Respondent's retaliatory motion for sanctions against the Louisiana Department of Justice violated Rule 4.4 (a) because he appeared to have had no substantial purpose beyond harassing and embarrassing the state. It is alleged that Respondent provided no support for the contentions that the Louisiana Department of Justice would suborn perjury and commit obstruction of justice if permitted to remain in the case. (citing Civil Action No. 05CV4182, Record Doc. 2382-1 at 2. (DCAH 22)) Similarly, it is alleged that Respondent filed a retaliatory motion for sanctions against Washington

Group International, accusing the firm's counsel of lying and misrepresenting facts at a hearing. (citing Civil Action No. 05CV4182, Record Doc. 9464 at 1-2. (DCAH 23)) It is alleged that he violated Rule 4.4 (a) because the effect of the filing frivolous motions is to embarrass, delay, and burden opposing counsel. It is alleged that Respondent declared that "no one fires a shot across my bow without getting a broadside back," indicating that Respondent's motions for sanctions were motivated by retaliatory intent. (citing Civil Action No. 05CV4182, Record Doc. 10431-2 at 3. (DCAH 24)) Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 21-22 (DCAH 38).

O. Judge Lemelle found clear and convincing evidence of violation of Rule 4.4(a). Miscellaneous Filing No. 08MCI492, Record Doc. 18-3 at 28 (DCAH 38).

P. The United States District Court for the Eastern District of Louisiana, *en banc*, found by clear and convincing evidence violations of Rule of Professional Conduct 4.4 (a) by engaging in retaliatory attempts to sanction other attorneys and parties with frivolous motions and accusations intended to embarrass, delay, and burden his opponents. Miscellaneous Filing No. 08MC1492, Record Doc. 31 at 16 (DCAH 45).

Rule 8.4 (a), (c), (d) and (g): 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, (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation, (d) Engage in conduct that is prejudicial to the administration of justice, and (g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a

civil matter; Rule 3.1: 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; Rule 3.5 (d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal; and Rule 4.4 (a): In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Q. It is alleged that Respondent violated the above sections of Rule 8.4 when he threatened disciplinary sanctions against opposing counsel without supporting his allegations with any facts. Respondent filed a motion for sanctions on August 22, 2006, (citing Civil Action No. 05CV4182, Record Doc. 1006. (DCAH 11), in response to a motion for sanctions filed by opposing counsel Michael Riess. (citing Civil Action No. 05CV4182, Record Doc. 875-2. (DCAH 21)) Mr. Riess requested that the court impose sanctions because Respondent had accused Mr. Riess of destroying evidence. Respondent also used inappropriate, unprofessional language in his communication with Mr. Riess: "Glad to know that you condone 12-year-old girls giving birth to illegitimate children, and that you sanction killing, looting, drug use and possession of illegal firearms, as well as disrespect towards women." (citing Id at 3.) In response to Respondent's conduct, Judge Duval issued an order on September 6, 2006, warning Respondent that further unprofessional conduct would result in sanctions. (citing Civil Action No. 05CV4182, Record Doc. 1079 at 2. (DCAH 25)). Civil Action No. 08MC1492, Record Doc. 18-2 at 22-23 (DCAH 38).

- R. In response to a motion for sanctions against him, Respondent filed a motion to disqualify the Louisiana Department of Justice as counsel, alleging that "lawyers with the LDOJ will commit obstruction of justice, subornation of perjury and threaten further harm to and/or continue to intimidate plaintiff s counsel (which has already occurred)." (citing Civil Action No. 05CV4182, Record Doc. 2382 at 2. (DCAH 22)) Judge Duval recognized the pleading as meritless in his Order and Reasons on April 3, 2007. (citing Civil Action No. 05CV4182, Record Doc. 3666 at 8. (DCAH 10)) Civil Action No. 08MC1492, Record Doc. 18-2 at 23 (DCAH 38).
- S. It is alleged that there was a violation of 28 U.S.C.A. § 1927, which states, "Any attorney or other person admitted to conduct cases in any court of the United States or any territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct." The complaint alleges that in the Order and Reasons of April 3, 2007, Judge Duval addressed whether filings by Respondent multiplied proceedings in a way that was unreasonable and vexatious. (citing Civil Action No. 05CV4182, Record Doc. 3666 at 4-8. (DCAH 10)) On pages 5-7 of his opinion, Judge Duval provided a detailed chronology of the duplicative pleading filed by Respondent. Respondent filed a cause of action, civil action 06-4389, that attempted to circumvent, according to the complaint, a specific finding of the court regarding maritime jurisdiction. (See Civil Action No. 06CV4389, Record Doc. 1. (DCAH 26)) Respondent reargued the same contentions previously

argued and rejected in a suit concerning the State of Louisiana's waiver of immunity. It is alleged he also filed Civil Action 06-6099 which reargued the same points as a previous pleading that was dismissed. (See Civil Action No. 06CV6099, Record Doc. 1. (DCAH 27)). Judge Duval sanctioned Respondent for filing repetitive cases and disregarding the Court's admonitions. It is alleged that Respondent violated 28 U.S.C.A. § 1927 because he filed repetitive motions and lawsuits rearguing points that the Court had already dismissed, and that the same conduct merited a sanction by Judge Duval as violating Rule 4.4 (a) because filing frivolous, repetitive lawsuits has no purpose other than to delay proceedings, and to embarrass and harass opposing counsel. Miscellaneous Filing No. 08MCI492, Record Doc. 18-2 at 24-25 (DCAH 38).

- T. It is alleged in the complaint further that after the court both placed Respondent on notice that further unprofessional conduct would result in sanctions and sanctioned him for filing duplicative suits, Respondent continued to file pleading with "gratuitous unprofessional vitriol." (citing Civil Action No. 05CV4182, Record Doc. 11357 at 4-5. (DCAH 13)) Respondent was given notice that any motion for disqualification or recusal was to be filed by April 4, 2006. (Citing Id. at 2.) Therefore, Judge Duval entered an Order and Reasons finding Respondent's affidavit of personal bias and prejudice and untimely and insufficient on January 17, 2008. (citing Civil Action No. 05CV4182, Record Doc. 10615 at 3-5. (DCAH 28)) Undeterred by the Court's two previous rulings on the matter, it is alleged that Respondent filed a motion for disqualification and an affidavit of personal bias of a federal judge on January 28 (see Civil Action

No. 05CV4182, Record Doc. 10910 at 7-8. (DCAH 20)) and January 30, 2008 (see Civil Action No. 05CV4182, Record Doc. 10969. (DCAH 16)). Judge Duval ordered that the affidavits be stricken from the record because 28 U.S.C. § 144 only permits the filing of one affidavit. According to the complaint, Respondent had already availed himself of that opportunity. (citing Civil Action No. 05CV4182, Record Doc. 11357 at 3. (DCAH 13)) Judge Duval denied Respondent's motion for recusal because the motion was "stale and vituperative." Almost two years had passed since the court had resolved the conflict-of-interest issue. (citing Civil Action No. 05CV4182, Record Doc. 10615 at 5. (DCAH 28)). The court warned Respondent that any further duplicative pleadings would result in sanctions under 28 U.S.C. § 1927. In addition to potentially violating § 1927, Respondent's conduct violated Rule 3.1, according to the complaint, to the extent that rearguing a motion that has already been denied is frivolous. Further, it is alleged that Respondent's conduct violated Rule 3.5 (d) because, as Judge Duval noted, "all of these issued have taken substantial time and resources of the court." (Citing Id. at 6.)

- U. Judge Lemelle found clear and convincing evidence of violation of Rule 8.4 (a), (c), (d) and (g). Miscellaneous Filing No. O8MC1492, Record Doc. 18-3 at 28 (DCAH 38).
- V. The United States District Court for the Eastern District of Louisiana, *en banc*, found by clear and convincing evidence violations of Rule of Professional Conduct 8.4 (a), (c), (d) and (g) by using unprofessional language with opposing counsel, misrepresenting the conduct of opposing counsel, engaging

in conduct prejudicial to the administration of justice, disregarding court warnings to avoid further unprofessional conduct, and threatening opposing counsel with false allegations of conduct criminal or disciplinary in nature solely to obtain an advantage in the civil action before Section K of the court. Miscellaneous Filing No. 08MC1492, Record Doc. 31 at 16 (DCAH 4).

VII.

In his findings and recommendation of October 8, 2008, Judge Lemelle concluded "that a suspension of five years, with two years active suspension, and with the possibility of reinstatement with probation, [was] necessary and appropriate." Miscellaneous Filing No. 08MC1492, Record Doc. 18-2 at 16 (DCAH 38). Judge Lemelle's recommendations were adopted by the United States District Court for the Eastern District of Louisiana in its *en banc* order of November 17, 2008. The *en banc* court ordered the suspension of Respondent. from the practice of law in the United States District Court for the Eastern District of Louisiana for a period of five years, with the first two years being active suspension, and the remaining years being on probationary status. The court further ordered that at the expiration of the first two years of the suspension and at least at the one-year anniversary thereafter, and up until the five years, Respondent may apply to the court for reinstatement. The application for reinstatement was required to contain: (1) evidence that he has taken significant and meaningful steps to bring his practice and behavior up [to] the standards expected of members of the bar; (2) certification that he has not been accused of any other unethical or unprofessional conduct; (3) certification that no official body, judge, or court has taken action of any type against him for unprofessional conduct; (4) certification that he has paid all outstanding monetary sanctions, and (5) evidence that he has obtained stress and anger management counseling/treatment,

including certification he has successfully completed the course of treatment.

VIII.

On December 18, 2008, the Chief Judge of the United States District Court, Sarah S. Vance, filed a new formal complaint asserting additional grounds for disciplinary action arising since the Court's *en banc* order. Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 (DCAH 46). The Chief Judge alleged that since suspension, Respondent willfully engaged in multiple violations of the *en banc* order and the Louisiana Rules of Professional Conduct. She alleged:

Rule 3.5(d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal and Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

- A. Respondent filed a motion styled "Ashton O'Dwyer's 28 U.S.C. § 1746 Declaration of His Intentionally Contemptuous Non-Compliance with the Court's Order of 11/07/08 Which is Directed to the Court En Banc," Miscellaneous Filing No. 08MC1492, Record Doc. 32 (DCAH 7), without first paying his outstanding monetary sanctions or obtaining permission from a member of this Court. This filing itself violated the *en banc* order's requirement that Respondent satisfy the conditions of the order before filing documents, and required the action of Judge Lemelle to strike the document from the record. By filing this document, Respondent also violated Rule of Professional Conduct 3.4 (c) which prohibits lawyers from knowingly disobeying an obligation under the rule of tribunal. Further, this filing states Respondent's "intentional contempt" for the *en banc* order and declares that "he has no intention of ever complying" with the order's requirements that he pay all outstanding monetary sanctions against him and that

he obtain stress and anger management treatment. Miscellaneous Filing No. 08MC1492, Record Doc. 1-2 at 3 (DCAH 46). The filing also purports to "serve notice on each Member of the Court *en banc* that he will agree to submit to . . . counseling/treatment, only upon the condition that each Member of the Court first counseling/treatment, only upon the condition that each Member of the Court first complete 'charm school.'" Miscellaneous Filing No. 08MC1492, Record Doc. 1-2 at 3 (DCAH 46) Respondent concludes by stating "the Court *en banc* is invited to disbar Respondent, forever." *Id.* Respondent's openly contemptuous statements constitute conduct intended to disrupt a tribunal in violation of the Rule of Professional Conduct 3.5 (d).

Rule 3.5(d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal; Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists; and 8.2 (a): a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

B. Respondent continued to willfully violate the *en banc* order and the Rules of Professional Conduct by sending documents to the Court without satisfying the conditions of the Order. Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 at 4 (DCAH 46):

i. On November 12, 2008, Respondent had his legal secretary hand-deliver three returns of service to the Clerk of Court to be filed in connection with the matter. Miscellaneous Filing No. 08MC51 70, Record Doc. 1-2 at 9-14 (DCAH 46)

- ii. On November 13, 2008, Respondent sent a facsimile to the Clerk of Court requesting that transcripts of his disciplinary proceedings be placed on PACER to make the public aware of the Court's "judicial and professional misconduct." Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 at 15-16 (DCAH 46)
- iii. On November 17, Respondent hand-delivered a document to Judge Vance's chambers in which Respondent requested records reflecting how each member of the *en banc* Court voted in connection with this disciplinary hearing. Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 at 17-18 (DCAH 46) The document further states: "I would really like to know precisely what kind of 'Kool Aid" you and Judge Lemelle have been drinking. Whatever you do, please keep it away from the other Judges, . . ." Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 at 17- 18 (DCAH 46) Respondent sent a copy of this letter to each member of the Court.
- iv. On November 19, 2008, Respondent sent a facsimile of his November 18, 2008, letter to Judge Vance's chambers. Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 at 19 (DCAH 46) The cover page stated "You and the other 'Black Robes' . . . are denying me and my clients due process of law". Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 at 19 (DCAH 46)

v. On November 20, 2008, Respondent hand-delivered to the Clerk of Court a motion styled "Plaintiff's Pro Se Motion for Leave to File Pleadings." Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 at 22-24 (DCAH 46). These documents violated the *en banc* court's order as well as Rules 3.4 (c) and 3.5 (d). In addition, Respondent's submission dated November 13, 19, and 20 contain baseless allegations of criminal or unprofessional misconduct by members of the United States District Court for the Eastern District of Louisiana. These statements also violate Rule 8.2 (a), which prohibits a lawyer from making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the integrity of a judge.

3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

The *en banc* order also required Respondent to notify each of his clients in any case pending in the Eastern District of the *en banc* order, and to certify his compliance with the notification requirement within twenty days. Respondent has violated the *en banc* Order and Rule 3.4 by failing to certify to the Chief Judge in writing that he has complied with the notification requirement within the allotted time. Miscellaneous Filing No. 08MC5170, Record Doc. 1-2 at 5-6 (DCAH 46).

IX.

Respondent answered these new complaints. Miscellaneous Filing No. 08MC5170, Record Doc. 3 (DCAH 47).

Rule 3.5(d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal and Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

C. Respondent admitted he has "willfully engaged in multiple violations of the *en banc* Court's order and the Louisiana Rules of Professional Responsibility." Miscellaneous Filing No. 08MC5170, Record Doc. 3 at 3 (DCAH 47) Respondent also admitted that he filed an intentionally contemptuous response and declared that he had no intention of ever complying with the Court's order. He denied his motivation was to disrupt the tribunal, instead saying that it was intended to cause the Court to look introspectively and not react in a "knee jerk" fashion. Miscellaneous Filing No. 08MC5170, Record Doc. 3 at 4 (DCAH 47)

Rule 3.5(d): A lawyer shall not: (d) engage in conduct intended to disrupt a tribunal; Rule 3.4 (c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists; and 8.2 (a): a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

D. Respondent admitted in part and denied in part his charges of unprofessional conduct by the judges of the Court. He denied he had his secretary deliver three returns, arguing she did such independently. He refused to apologize for his allegations of judicial misconduct. He admitted the "black robes" comment. Miscellaneous Filing No. 08MC5170, Record Doc. 3 at 6-9 (DCAH 47)

34(c): A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

E. Respondent failed to respond to the complaints about failing to notify his clients. But he responded "the fix is in" and that "there is nothing he can say or do which will stop [his being] disbarred." His "message" was "Disbar O'Dwyer if you dare, but be prepared to 'pay the price.'" Miscellaneous Filing No. 08MC5170, Record Doc. 3 at 9 (DCAH 47)

X.

On February 10, 2009, Judge Lemelle issued his report and recommendations concerning the new complaint lodged by Chief Judge Vance. Miscellaneous Filing No. 08MC5170, Record Doc. 4 (DCAH 48). Judge Lemelle found "based upon the foregoing undisputed facts, Respondent's admissions in this record, and all other evidence, there is clear and convincing evidence that Respondent violated the following rules of Professional Conduct:

Rule 3.4 (c) and (d) by knowingly disobeying obligations and court orders under the rule of a tribunal.

Rule 3.5 (d) by engaging in conduct through the making of openly contemptuous statements intended to disrupt a tribunal

Rule 8.2 (a) by making statements that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the integrity of a judge. Miscellaneous Filing No. 08MC5170, Record Doc. 3 at 4 (DCAH 48)

Judge Lemelle then determined that Respondent knowingly and intentionally violated his duties to his clients, the public, the legal system, and as a professional, causing serious harm. Aggravating factors found present by the judge included a pattern of misconduct, multiple

offenses, bad faith, obstruction of previously imposed disciplinary order of suspension, intentional failure to comply with the *en banc* Court Order issued in this action, and substantial experience in the practice of law. There were no mitigating factors found. Judge Lemelle concluded with a recommendation that Respondent be disbarred from the practice of law with the opportunity to file a petition for reinstatement after five years. Miscellaneous Filing No. 08MC5170, Record Doc. 4 at 10-13 (DCAH 48) The United States District Court accepted the judge's recommendations and issued an *en banc* order of disbarment to which Respondent has given his notice of intent to appeal. Miscellaneous Filing No. 08MC5 1 70, Record Doc. 5 and Doc. 8 (DCAH 49)

XI.

Not considered in preceding reviews of Respondent's conduct by the United States District Court for the Eastern District of Louisiana, is a separate complaint lodged with the ODC by attorney Jerry McKernan concerning an email sent on December 10, 2008, following Respondent's intentional [*sic*] suspension from the practice of law. (DCAH 45). This communication to counsel involved in the Katrina Canal Breaches litigation provides yet an additional basis for disciplinary sanctions for violating Rule 8.4 (a) (c) and (d). Rule 8.4 (a), (c), and (d): It is unprofessional 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: (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and (d) Engage in conduct that is prejudicial to the administration of justice.

By sending this email on December 10, 2009, to plaintiff's liaison counsel, Respondent knowingly violated the November 7, 2009 *en banc* Order of the United States District Court and the Rules of Professional [Conduct] by using unprofessional language towards opposing

counsel, demeaning a race of people, and engaging in conduct prejudicial to the administration of justice.

XII.

(ADDITIONAL VIOLATIONS SINCE PETITION FOR INTERIM SUSPENSION FILED)

Subsequent to the filing of the petition for Interim Suspension, Disciplinary Counsel Ad Hoc supplemented that petition with additional violations as follows:

Rule 3.1: 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; Rule 8.4 (a), (c), and (d): It is unprofessional 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: (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and (d) Engage in conduct that is prejudicial to the administration of justice;

By sending an email (DCAH 50) on March 25, 2009, to the undersigned Disciplinary Counsel Ad Hoc in response to the Petition for Transfer to Interim Suspension States, Respondent knowingly violated Rules 3.1 by threatening frivolous Civil Rights and RICO lawsuits and 8.4 (a) (c) and (d) by using unprofessional language towards opposing counsel, demeaning a race of people, and engaging in conduct prejudicial to the administration of justice.

Rule 3.1: 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; Rule 8.4 (a), (c), and (d): It is unprofessional 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; (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and (d) Engage in conduct that is prejudicial to the administration of justice;

On March 27, 2009, Respondent sent an email to Disciplinary Counsel Ad Hoc to which he had attached a copy of a Civil Rights lawsuit filed against Disciplinary Counsel Charles Plattsmier, thereby knowingly threatening similar frivolous lawsuits against the undersigned Disciplinary Counsel Ad Hoc. (DCAH 51) Respondent also chose to convey his threat with racial slurs and other obscenities.

XIII.

(ADDITIONAL VIOLATIONS SINCE ORDER OF INTERIM SUSPENSION)

Rule 3.1: 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; Rule 8.4 (a), (c), and (d): It is unprofessional 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; (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and (d) Engage in conduct that is prejudicial to the administration of justice.

Instead of responding to this Honorable Court's March 30, 2009, Order of Interim Suspension (DCAH52) in a lawful manner by answering charges or requesting a hearing, Respondent chose to continue to send Disciplinary Counsel Ad Hoc obscene and racially derogatory emails (DCAH 53):

On March 30, 2009, Respondent confirmed his receipt by mail of the Court's order of

Interim Suspension by replying to the Court's administrator, and copying the Disciplinary Counsel Ad Hoc, that the Court was a "gutless" "bunch of pigs" and referred to Chief Justice Kimball with a sexual and offensive nickname.

On April 8, 2009, at 1:31 p.m., he sent another email to Disciplinary Counsel Ad Hoc denying the use of racially disparaging terms, yet including many such terms along with other offensive terms, in this email. Later the same day, at 4:34 p.m., he notified Disciplinary Counsel Ad Hoc that he was a "pimp", a "puppet", an "Uncle Tom", and an "OREO."

On April 14, 2009, at 6:34 p.m., Respondent sent an email to Disciplinary Counsel Ad Hoc with only a subject line using the same objectionable terms. Later, at 8:16 p.m., Respondent notified Disciplinary Counsel Ad Hoc by email that "I Just Can't Help Myself" and then launched into a string of racially offensive and obscene terms.

On April 15, 2009, at 3.25 p.m., Respondent advised by email he had developed yet another nickname for Disciplinary Counsel Ad Hoc. This nickname was intended to be equally offensive. Later, at 5:27 p.m., Respondent offered by email to substitute a new offensive nickname for the prior offensive nickname.

On April 26, 2009, Respondent emailed Disciplinary Counsel Ad Hoc to advise him that Respondent was thinking of him and used a string of racially offensive and obscene terms to communicate his message.

On April 27, 2009, Respondent threatened by email a frivolous Civil Rights complaint against Disciplinary Counsel Ad Hoc and suggested Counsel examine similar pleadings Respondent had already filed. He also referred to opposing counsel in these other proceedings as "SCUM" and "VERMIN."

On April 28, 2009, he threatened and advised Disciplinary Counsel Ad Hoc by email of

the frivolous claims Respondent would seek including criminal actions for "misprison of a felony and accessory-after-the-fact." This email was replete with racial and other derogatory terms for Disciplinary Counsel Ad Hoc, Justice Kimball, and Disciplinary Counsel Plattsmier.

On July 29, 2009, Respondent sent an email to Disciplinary Counsel Ad Hoc to advise that he had been thinking about a "new one" for Disciplinary Counsel Ad Hoc and then launched into a racially offensive and crude diatribe.

Rule 3.1: 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;

Rule 5.5 (a): A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction.

Rule 8.4 (a), (c), and (d): It is unprofessional 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; (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and (d) Engage in conduct that is prejudicial to the administration of justice;

On July 15, 2009, Respondent filed under the signature of his cousin Billy Hecker a motion entitled "Defendant's Memorandum in opposition to plaintiff's motion for entry of default judgment," asserting that the Judge Ivan L.R. Lemelle was a "BIG GORILLA" who was attempting to accomplish "INSANITY" and asserted in a footnote that the judge's "moral depravity and corruption" was evidence of the Judge's relationship with attorney Walter Dumas and other members of the plaintiff bar, including "negro members of the Plaintiff s Bar." (DCAH 54) When Disciplinary Counsel Charles Plattsmier made inquiry into this pleading of Attorney Hecker, Respondent acknowledged by mail that he had

written the pleading, took "full responsibility for the content of the language" in the pleading, and had signed the pleading in the name of his cousin, attorney Joseph W. P. Hecker. (DCAH 55) This letter, addressed to Disciplinary Counsel Charles Plattsmier, was replete with foul and obscene language. These acts, which included drafting and signing a legal motion for filing in a court of law, were committed while Respondent was suspended from the practice of law.

Rule 3.4 (c): knowingly disobey an obligation under the rules of a tribunal; Rule 3.5 (d) engage in conduct intended to disrupt a tribunal; and Rule 8.2(a) make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning qualifications' or the integrity of a judge

On July 27, 2009, Respondent filed with the United States Court for the Eastern District of Louisiana a letter in which he used racially demeaning, openly contemptuous, and derogatory terms toward Judge Ivan L. R. Lemelle. (DCAH 56) As a result of this correspondence, the court issued an order barring Respondent's access to the federal courthouse at 500 Poydras Street. (DCAH 56).

Rule 8.5(a): A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction.

Respondent was notified of his March 30, 2009, suspension from the practice of law by email, facsimile transmission, and certified mail. He was also notified of his obligations under Section 26 of Rule 19 for Lawyer Disciplinary Enforcement. (DCAH 57). To date, he has yet to file with the Supreme Court an answer to the petition or order for his interim suspension nor has he filed the required affidavit showing compliance with

his obligations under Rule 19, Section 26 to suspend his law practice. (DCAH 58).

Rule 3.4 (c): knowingly disobey an obligation under the rules of a tribunal; Rule 3.5 {d) engage in conduct intended to disrupt a tribunal; Rule 8.2 (a) make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning qualifications or the integrity of a judge; and Rule 8.4 (b), (c), and (d) commit a criminal act, engage in conduct involving dishonesty, fraud, deceit or misrepresentation, and engage in conduct that is prejudicial to the administration of justice.

On January 29, 2010, Respondent sent an email to the United States Bankruptcy Court for the Eastern District of Louisiana: "Maybe my creditors would benefit from my suicide but suppose I become 'homicidal'? Given the recent 'security breach' at 500 Poydras Street, a number of scoundrels might be at risk if I do become homicidal.'" On January 29, 2010, Respondent was taken into custody by special agents of the Federal Bureau of Investigation, a loaded pistol was recovered from his possession, and he was charged with the crime of interstate communications of a threat to injure another, 18 USC 875. (DCAH 59).

WHEREFORE, considering the severity of the allegations and the potential for irreparable harm to the public, the ODC through the undersigned Disciplinary Counsel Ad Hoc files the above formal charges with the Louisiana Attorney Disciplinary Board and respectfully urges the Board and the Court to expeditiously consider PERMANENT DISBARMENT of Respondent Ashton R. O'Dwyer, Jr. from the practice of law in an effort to reduce his continued threat of harm to the public.

EVIDENCE AND RULINGS CONCERNING OUTSTANDING EVIDENTIARY ISSUES

As indicated above, the hearing in this matter was held on November 5, 2014. DCAH called no witnesses. The Respondent called Karl Florian Buchler as a witness (via telephone) and also testified on his own behalf. DCAH submitted seventy (70) exhibits (one of which was described as witness stipulations and labeled DCAH Exhibit 70), and Respondent submitted ten (10) exhibits at the hearing. DCAH also introduced into evidence the entire record in this matter.

On November 13, 2014, the Respondent filed his “List of Exhibits Which Have Been or Are Being Introduced in Evidence in Respondent’s Defense” in which he listed fifty-six (56) exhibits (some including subparts) that he wished to introduce into the hearing record. DCAH’s answer and response to Respondent’s exhibit list was filed on November 24, 2014. Ultimately, DCAH objected only to the submission of Exhibit 51 submitted by the Respondent in his post-hearing list of exhibits. The Committee finds that DCAH’s objection is sustained as to Exhibit 51; this exhibit concerns matters previously ruled inadmissible during discovery and during the hearing on the merits.⁷

On December 2, 2014, the Respondent submitted exhibits that he labeled as “Exhibit 11(A)” and “Exhibit 11(B)”. Both are letters sent to the Respondent by Ernest L. Edwards, Jr., the then Chairman of Lemle & Kelleher, dated September 15, 2005 and September 23, 2005, respectively. These documents have already been introduced into evidence in this matter. *See* Respondent’s Exhibit 36. Further, the hearing record in this matter was closed following the submission of DCAH’s answer and response to Respondent’s exhibit list on November 24, 2014. Accordingly, Respondent’s December 2, 2014 request is denied.

On June 23, 2015, Respondent submitted for filing in this matter a document labeled as “Exhibit 6,” which is a letter dated August 15, 2007 and addressed to Respondent from Charles

⁷ This exhibit contains documents previously ruled to be protected from public disclosure.

H. Braud, Jr., Assistant Attorney General, Department of Justice, State of Louisiana. Attached to the letter is a copy of a “Form 95” which the Department of Justice purportedly submitted to the U.S. Army Corp of Engineers on or about February 28, 2007. After considering Mr. O’Dwyer’s request that these documents be filed into this record, Respondent’s request is denied. As noted above, the hearing record in this matter was closed following the submission of DCAH’s answer and response to Respondent’s exhibit list on November 24, 2014.

FINDINGS OF FACT

1. Respondent was admitted to the Louisiana State Bar on September 9, 1971.
2. Respondent was interimly suspended from the practice of law on March 30, 2009 and remains on interim suspension. *In re Ashton R. O’Dwyer, Jr.*, 2009-B-0670 (La. 3/30/09).
3. On or about September 19, 2005, Respondent initiated in the United States District Court for the Eastern District of Louisiana a civil action, number 05-4181, on behalf of the victims of Hurricane Katrina. This action was assigned to Judge Stanwood Duval, Jr. A related matter, under docket number 05-4182, became the “lead” case for all cases involving victims of Hurricane Katrina. Judge Duval then organized the Katrina cases into broad categories and assigned plaintiff liaison counsel to coordinate litigation with all other plaintiff counsel, including Respondent. DCAH Exhibit 44. During these Katrina related proceedings, Respondent’s communications with the court and with other counsel led to complaints of violations of the Louisiana Rules of Professional Conduct, which was formally documented by then Chief Judge Helen G. Berrigan on April 2, 2008. DCAH Exhibit 8. In the complaint, Chief Judge Berrigan identified the following violations: Rule 1.4(a)(3), Rule 3.1, Rule 3.3(a)(1), 3.3(a)(3), Rule 3.4(c), Rule 3.5(d), 4.4(a) and 8.4(a)(c)(d) and (g). She also cited additional violations of 28 U.S.C.A. Section 1927. This complaint was served on Respondent. Id.
4. Judge Berrigan’s complaint was randomly allotted to Judge Ivan L. R. Lemelle of the United States District Court for the Eastern District of Louisiana. DCAH Exhibit 29. The matter was assigned docketed as *In the Matter of Ashton R. O’Dwyer, Jr.*, No. 08-1492 (Misc). Following a hearing, Judge Lemelle issued his Findings and Recommendations concerning the disciplinary complaint on October 8, 2008. In his Findings and Recommendations, Judge Lemelle concluded Rules 1.4(a)(3), 3.1, 3.4(c), 3.5(d), 4.4(a) and 8.4(a)(c)(d) and (g) had been violated. He did not find violations of Rules 3.3(1) and 3.3(3) or 28 U.S.C.A. Section 1927. Judge Lemelle recommended that a suspension of five years, with two years active suspension, and with the possibility of reinstatement with probation, be imposed upon the Respondent. DCAH Exhibit 38.
5. On October 9, 2008, the Respondent filed objections to Judge Lemelle’s Findings and

Recommendations. The Respondent filed numerous other motions following Judge Lemelle's ruling, including a motion to recuse Judge Lemelle on grounds of bias, prejudice and partiality which was filed on October 14, 2008. Judge Lemelle denied Respondent's motion to recuse on October 15, 2008, and Respondent then filed a motion to have his disciplinary complaint and recusal motion of Judge Lemelle heard *en banc*. This motion was denied by the court *en banc*. In response to this denial, On October 27, 2008, Respondent filed a motion for leave to file objections along with a filing of his objections. This request was granted as timely. On November 7, 2008, the District Court entered an *en banc* order concerning the discipline of Respondent, following closely the recommendations of Judge Lemelle and finding violations of Rules 1.4(a)(3), 3.1, 3.4(c), 3.5(d), 4.4(a) and 8.4(a)(c)(d) and (g). DCAH Exhibit 2. The *en banc* court ordered the suspension of Respondent from the practice of law in the United States District Court for the Eastern District of Louisiana for a period of five years, with the first two years being active suspension, and the remaining years being on probationary status. The court further ordered that at the expiration of the first two years of the suspension and at least at the one-year anniversary thereafter, and up until the five years had run, Respondent could apply to the court for reinstatement.

The application for reinstatement was required to contain: (1) evidence that Respondent had taken significant and meaningful steps to bring his practice and behavior up to the standards expected of members of the bar; (2) certification that Respondent had not been accused of any other unethical or unprofessional conduct; (3) certification that no official body, judge, or court had taken action of any type against Respondent for unprofessional conduct; (4) certification that Respondent had paid all outstanding monetary sanctions, and (5) evidence that Respondent had obtained stress and anger management counseling/treatment, including certification he had successfully completed the course of treatment. In response, Respondent issued his "Declaration of Intentionally Contemptuous Non-Compliance with the Court's Order of 11/7/08, which is Directed to the Court *en banc*." The court ordered this pleading stricken from the record as non-compliant with its orders. DCAH Exhibit 7.

6. On November 13, 2008, the Office of Disciplinary Counsel ("ODC") opened filed number 24572 as a result of notification by the United States District Court for the Eastern District of Louisiana that disciplinary action had been taken against the Respondent. DCAH Exhibits 3 and 4. As a result of this notification, Chief Disciplinary Counsel Charles B. Plattsmier sought to recuse himself and members of his staff from this matter due to previous lawsuits filed by Respondent personally against various employees of the ODC. DCAH Exhibit 5. On November 8, 2008, the Louisiana Supreme Court appointed Mark Dumaine as Disciplinary Counsel Ad Hoc. DCAH Exhibit 6.
7. On December 18, 2008, the Chief Judge of the United States District Court, Sarah S. Vance, filed a new formal complaint asserting additional grounds for disciplinary action arising since the Court's *en banc* order. DCAH Exhibit 46. The Chief Judge alleged that since suspension, Respondent willingly engaged in multiple violations of the *en banc* order and the Louisiana Rules of Professional Conduct, including Rules 3.4(c), 3.4(d), 3.5(d) and 8.2(a). This matter was docketed as *In the Matter of Ashton R. O'Dwyer, Jr.*, No. 08-5170 (Misc.) and was also allotted to Judge Lemelle. Judge Lemelle determined that the Respondent had

violated Rules 3.4(c), 3.4(d), 3.5(d) and 8.2(a) and concluded with a recommendation that Respondent be disbarred from the practice of law with the opportunity to file a petition for reinstatement after five years. DCAH Exhibit 48. The District Court accepted the judge's recommendation and issued an *en banc* order of disbarment which Respondent appealed to the Fifth Circuit Court of Appeals. DCAH Exhibit 49. This appeal in 08-5170, along with Respondent's appeal in his 08-1492, was later dismissed by the Court of Appeals for want of prosecution on May 24, 2010.

8. After a careful review of the record before it, this Committee adopts the factual findings of the District Court in its *En Banc* Order of November 7, 2008 in *In the Matter of Ashton R. O'Dwyer, Jr.*, No. 08-1492 (E.D. La.) as they pertain to the rule violations at issue in this matter. DCAH Exhibit 2. The Committee also adopts the factual findings of Judge Lemelle in his Findings and Recommendations issued on October 8, 2008 in *In the Matter of Ashton R. O'Dwyer, Jr.*, No. 08-1492 (E.D. La.) as they pertain to the rule violations at issue in this matter. DCAH Exhibit 38.
9. After a careful review of the record before it, this Committee adopts the factual findings of the District Court in its Order of Disbarment of March 4, 2009 in *In the Matter of Ashton R. O'Dwyer, Jr.*, No. 08-5170 (E.D. La.) as they pertain to the rule violations at issue in this matter. DCAH Exhibit 49. The Committee also adopts the factual findings of Judge Lemelle in his Report and Recommendation issued on February 10, 2009 in *In the Matter of Ashton R. O'Dwyer, Jr.*, No. 08-5170 (E.D. La.) as they pertain to the rule violations at issue in this matter. DCAH Exhibit 48.
10. On December 10, 2008, following his initial suspension from practice in the federal district court, Respondent sent an email to plaintiff's liaison counsel in the In Re: Katrina Canal Breaches Consolidated Litigation proceeding pending in the district court. This email contained racially offensive statements. DCAH Exhibit 45.
11. On March 25, 2009, Respondent sent an email to DCAH in response to the "Petition for Transfer to Interim Suspension Status Pursuant to Supreme Court Rule XIX Section 19.2" filed by DCAH. In the email, Respondent threatened to file frivolous civil rights and RICO lawsuits and used unprofessional language towards DCAH which demeaned a race of people. DCAH Exhibit 50.
12. On March 27, 2009, Respondent sent an email to DCAH to which he had attached a copy of a civil rights lawsuit filed against Disciplinary Counsel Charles B. Plattsmier, thereby knowingly threatening similar frivolous lawsuits against DCAH. This email also contained racial slurs and other obscenities. DCAH Exhibit 51.
13. On March 30, 2009, Respondent confirmed his receipt by mail of the Court's order of interim suspension by replying to the Court's Chief Deputy Clerk of Court, and copying DCAH, that the Court was a "bunch of pigs," "gutless dogs" and referred to then Chief Justice Kimball with a sexual and offensive nickname. DCAH Exhibit 53.

14. On April 8, 2009 at 1:31 p.m., Respondent sent another email to DCAH denying the use of racially disparaging terms, yet including such terms along with other offensive terms, in this email. Later the same day, at 4:34 p.m., he notified DCAH that he was a “pimp,” a “puppet,” an “Uncle Tom,” and an “OREO.” DCAH Exhibit 53.
15. On April 14, 2009 at 6:34 p.m., Respondent sent an email to DCAH with only a subject line using the same objectionable terms. Later, at 8:16 p.m., Respondent notified DCAH by email that “I Just Can’t Help Myself” and then launched into a string of racially offensive and obscene terms. DCAH Exhibit 53.
16. On April 15, 2009 at 3:25 p.m., Respondent advised by email sent to DCAH that he had developed yet another nickname for him. This nickname was intended to be equally offensive. Later at 5:27 p.m., Respondent offered by email to substitute a new offensive nickname for the prior offensive nickname. DCAH Exhibit 53.
17. On April 26, 2009, Respondent emailed DCAH and used a string of racially offensive and obscene terms to communicate his message. DCAH Exhibit 53.
18. On April 27, 2009, Respondent threatened by email a frivolous civil rights complaint against DCAH and suggested that counsel examine similar pleadings Respondent had already filed. He also referred to opposing counsel in these other proceedings as “Scum” and “Vermin.” DCAH Exhibit 53.
19. On April 28, 2009, Respondent threatened and advised DCAH via email of the frivolous claims Respondent would seek including criminal actions for “misprison of a felony and accessory-after-the-fact.” This email also contained racial and other derogatory terms for DCAH, Justice Kimball, and Disciplinary Counsel Plattsmier. DCAH Exhibit 53.
20. On July 9, 2009, Respondent sent an email to DCAH to advise that he had been thinking about him and about a “new one” for him. He then continued with a racially offensive and crude message. DCAH Exhibit 53.
21. On July 15, 2009, Respondent filed under the signature of his cousin, Joseph W. P. Hecker, a motion entitled “Defendant’s Memorandum In Opposition To Plaintiff’s Motion For Entry Of Default Judgment” in the matter entitled “In re: Ocean-Oil Expert Witness, Inc. v. O’Dwyer,” C.A. No. 07-3129(B), United States District Court for the Eastern District of Louisiana. This memorandum contained disparaging and racially offensive remarks about Judge Lemelle. DCAH Exhibit 54. When Disciplinary Counsel Plattsmier made inquiry into this pleading of Attorney Hecker, Respondent acknowledged by mail that he took “full responsibility for the content of the language” and noted that the “language was mine” in the pleading. He further claimed that he had signed the pleading in the name of his cousin, Mr. Hecker, with Mr. Hecker’s permission. DCAH Exhibit 55. This letter, addressed to Disciplinary Counsel Plattsmier, was replete with foul and obscene language. DCAH Exhibit 55. These acts, which included the drafting and signing of a legal motion for filing in federal court, were committed while Respondent was intermly suspended from the practice of law.

22. On July 27, 2009, in open contempt of the district court's disbarment order, Respondent caused to be hand delivered to Judge Lemelle a handwritten note, which he attached to a ruling by Judge Lemelle in a proceeding to which he was a party. In the note, he used racially demeaning, openly contemptuous, and derogatory terms towards Judge Lemelle. DCAH Exhibit 56. As a result of the correspondence, the court issued an order barring Respondent's access to the federal courthouse at 500 Poydras Street, New Orleans, Louisiana. DCAH Exhibit 56.
23. Respondent was notified of his March 30, 2009 interim suspension by the Louisiana Supreme Court by email, facsimile transmission, and certified mail. He was also notified of his obligations under Section 26 of Supreme Court Rule 19. DCAH Exhibit 57. The record in this matter shows that the Respondent has not filed the required affidavit showing compliance with his obligations under Rule 19, Section 26. DCAH Exhibit 58; Tr., pp. 316-17.
24. On January 29, 2010, Respondent sent an email to the United States Bankruptcy Court for the Eastern District of Louisiana. The email read: "Maybe my creditors would benefit from my suicide but suppose I become 'homicidal'? Given the recent 'security breach' at 500 Poydras Street, a number of scoundrels might be at risk if I do become homicidal." On January 29, 2010, Respondent was taken into custody by special agents of the Federal Bureau of Investigation. A loaded pistol was recovered from his possession, and he was indicted and charged with the crime of interstate communications of a threat to injury another pursuant to 18 USC Section 875. DCAH Exhibit 59. The indictment brought against the Respondent was later dismissed by the United States District Court and the District Court's ruling was upheld by the United States Fifth Circuit Court of Appeals on September 27, 2011. DCAH Exhibit 66(B).
25. Respondent has complied with none of the conditions surrounding the suspension and subsequent disbarment imposed upon him in federal court. Tr., pp. 176-77, 246.
26. Instead of addressing what forms the basis of these formal charges--Respondent's conduct in federal court during the Katrina litigation and his conduct during the disciplinary proceeding at hand--during these proceedings, the Respondent instead focused primarily on what he believes to be a conspiracy theory surrounding his arrest on September 20, 2005 and the "secret representation of the State" by Calvin Fayard and others in the Katrina litigation for an undetermined period of time prior to August 27, 2007. Tr., pp. 52-59; 64- 65; 96-106.
27. Despite being disbarred from practicing in federal court and subsequently interimly suspended from the practice of law by the Louisiana Supreme Court, the Respondent has failed to change his unprofessional behavior before this disciplinary tribunal. Tr., pp. 289-297; *see also* Respondent's submissions, including pleadings and emails, filed into the record of 10-DB-066.

STIPULATIONS OF THE PARTIES

As noted above, DCAH submitted into evidence DCAH Exhibit 70 which included witnesses stipulations agreed to by the parties. (Tr., pp. 66, 75). These stipulations are as follows:

- “1. Re Chief Judge Sarah Vance: No stipulation agreed by the parties.
2. Re Judge Helen Ginger Berrigan: No stipulation agreed by the parties.
3. If called to testify, Chief Disciplinary Counsel Charles Plattsmier would testify consistent with the transcript of his deposition in this matter taken on 10/10/14, labeled DCAH Exhibit 68.
4. Attorney Michael Riess’s pleadings in federal court records documented in DCAH Exhibits 1-67 are admissible in lieu in his being called by any party at a hearing on the merits without any inference solely as a result of their admission that the substance of his pleadings are true or false.
5. Attorney Ashley Philen, if called to testify, would acknowledge receipt of an email from Respondent to others, specifically including Attorney Jerry McKernan, and would acknowledge the same email was sent to Disciplinary Counsel Charles Plattsmier along with a cover letter by Attorney Jerry McKernan, both email and letter labeled DCAH Exhibit 45.
6. Attorney (retired) Stephen Remsberg, if called to testify, would testify consistent with a letter he signed and provided to Respondent on July 15, 2014.
7. Attorney James Roussel, if called to testify, would testify consistent with an email sent by him to Respondent on September 22, 2011, attached as Exhibit 3 to Respondent’s Motion for Disqualification and/or Recusal, filed February 13, 2012.”

Also noted in this document is the following language:

“The above stipulations are accepted between the parties subject to the following agreed conditions:

- (1) The transcript of the hearing of September 6, 2006 gets in [is admitted], too.
- (2) As well as the Exhibits marked at that hearing.
- (3) Along with my [Respondent’s] pleadings, i.e., my separate Motion for Sanctions (and Supporting Memorandum) against Riess.”

RULES VIOLATED

The committee finds that DCAH has established by clear and convincing evidence that the Respondent violated the following Rules of Professional Conduct as alleged in the formal charges: Rule 1.4(a)(3); Rule 3.1; Rule 3.4(c); Rule 3.5(d); Rule 4.4(a); Rule 5.5(a); Rule 8.2(a); Rule 8.4(a); Rule 8.4(c); Rule 8.4(d); Rule 8.4(g) and 8.5(a). For the reasons given by Judge Lemelle in his Findings and Recommendations of October 8, 2008 in *In the Matter of Ashton R. O'Dwyer, Jr.*, No. 08-1492 (E.D. La.), the committee finds that violations of Rule 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer) and Rule 3.3(a)(3) (lawyer shall not offer evidence that the lawyer knows to be false) were not established by clear and convincing evidence by DCAH. Further, the Committee finds that a violation of Rule 8.4(b) (professional misconduct for a lawyer to commit a criminal act) also was not proven by clear and convincing evidence. The committee agrees with the Fifth Circuit Court of Appeals' reasoning found in its September 27, 2011 ruling in *United States of American v. Ashton O'Dwyer*, No. 10-30701. In this matter, the Court of Appeals upheld the District Court's dismissal of the indictment brought against the Respondent concerning his January 29, 2010 email sent to the United States Bankruptcy Court for the Eastern District of Louisiana.

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.

Here, the Respondent has violated duties owed to his clients, the public, the legal system and to the profession. His conduct was knowing and intentional. The amount of actual injury caused by the Respondent's misconduct is significant. Respondent has misused the federal court's and this agency's limited resources by filing frivolous, harassing, nonmeritorious or otherwise inappropriate submissions. The federal court, the Louisiana Supreme Court and this agency have had to devote their finite resources to the consideration of Respondent's vexatious claims and submissions. Aggravating factors present in this matter include: dishonest or selfish motive; a pattern of misconduct; multiple offenses; refusal to acknowledge the wrongful nature of conduct; substantial experience in the practice of law (admitted in 1971) and indifference to making restitution. Mitigating factors include: absence of a prior disciplinary record and personal or emotional problems.

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

Pursuant to ABA Standards 4.41(c), 5.11(b), 6.11, 6.21, and 7.1⁸, the baseline sanction in this matter is disbarment. *See also In re Wells*, 2009-2343 (La. 5/11/10); 36 So.3d 198 (disbarment

⁸ Standard 4.41 states, in pertinent part, that "Disbarment is generally appropriate when: (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client." Standard 5.11 states, in pertinent part, that "Disbarment is generally appropriate when: (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice." Standard 6.11 states that "Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding." Standard 6.21 states that "Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding." Standard 7.1 states that "Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system."

imposed for, among other things, abusing the legal system to exact retribution against individuals who, in respondent's mind, had wronged him; numerous public officials, including all of the judges from the 21st Judicial District, the district attorney, several assistant district attorneys, and private citizens were burdened by litigation initiated by the respondent, and certain public officials' reputations were tarnished by respondent's false accusations); *In re Jones*, 99-1036 (La. 10/19/99); 747 So.2d 1081 (disbarment imposed for blatant disregard for the authority of the Louisiana Supreme Court and lack of respect for the disciplinary authorities which act under the auspices of the Court); and *In re Lester*, 09-2052 (La. 1/29/10); 26 So.3d 735 (disbarment ordered for many counts of misconduct, including the filing of a harassing lawsuit which caused unnecessary delay and increased the cost of litigation for the defendants; the Court noted that "a lengthy period of suspension is appropriate for an attorney who engages in frivolous and vexatious litigation").

While disbarment is the baseline sanction here, the committee has determined that a deviation upward from the sanction of disbarment is warranted in this matter. Guideline 8 of Appendix E of Rule XIX states that permanent disbarment may be imposed in the following circumstance:

Following notice, engaging in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer is suspended from the practice of law or disbarred.

The record is clear in this matter that the Respondent engaged in the unauthorized practice of law in violation of Rule 5.5(a) following his interim suspension from the practice of law on March 30, 2009 and his notice thereof. On July 15, 2009, Respondent caused to be filed under the signature of his cousin, Joseph W. P. Hecker, a motion entitled "Defendant's Memorandum In Opposition To Plaintiff's Motion For Entry Of Default Judgment" in the matter entitled "*In re:*

Ocean-Oil Expert Witness, Inc. v. O'Dwyer,” bearing docket number 07-3129(B), in the United States District Court for the Eastern District of Louisiana. When Chief Disciplinary Counsel Plattsmier made inquiry into this pleading of Attorney Hecker, Respondent acknowledged by mail that he had written the pleading, that he took “full responsibility for the content of the language” in the pleading, and that he had signed the pleading in the name of his cousin, purportedly with his permission. Such conduct constitutes the unauthorized practice of law⁹ and squarely falls under the parameters of Guideline 8.

Moreover, the Respondent’s conduct throughout the Katrina litigation in federal court during this proceeding alone warrants permanent disbarment. The Committee must note that there has been a decade of attempts by multiple authorities to avoid this day and the ultimate sanction of permanent disbarment. Respondent was given the opportunity for readmission by the federal court if he complied with conditions set out by the *en banc* District Court in its orders of November 7, 2008 and February 10, 2009; Respondent was defiant in his failure to comply. For ten years, Respondent has continued his pattern of flagrant disregard and contempt for the entire process admitting at the hearing to filing “intentionally contemptuous pleadings”.¹⁰

Respondent may be compared to the child who is sorry he got caught but not sorry for the infraction. Respondent has shown that when confronted with his own reckless and irresponsible, offensive and unprofessional words and deeds, he may on occasion apologize. But time and time again he has returned to his old ways with claims of great conspiracies, kangaroo courts, scorched earth pleadings and reckless use of insulting terms and derogatory language.

⁹ See *In re Ellis*, 99-2483 (La. 9/15/99); 742 So.2d 869 (lawyer engaged in two instances of unauthorized practice of law while suspended; one of his acts included acting as a notary and drafting two acts of sale and collecting a fee for this work and the other included failing to remove from his office designations which indicated that he was an attorney in good standing). Like the respondent in *Ellis*, the Respondent drafted a pleading while suspended from the practice of law.

¹⁰ Tr., p. 119-20.

Respondent well knows from his Jesuit High School education that if there is no firm “purpose of amendment” – the apology is empty at best. Reminders, admonitions and rulings by this hearing committee and the courts have had no effect on Respondent’s continued use of name calling, foul language, personal attacks, on all involved.

Though Respondent has testified that he is “going to try to be a changed man”¹¹ and stated “I believe myself to be a changed” man,¹² his actions belie his self-assessment. Respondent fails to acknowledge what the pleadings, orders, testimony and choice of language clearly demonstrate (even to non-medical or mental health professionals) that his anger bordering at times on rage are a serious concern for this hearing committee. For example, the transcript from the hearing held by this Committee on June 5, 2012 concerning Respondent’s Motion for Disqualification reflects that Respondent had to be admonished for brandishing about his shillelagh, his action clearly inappropriate for a disciplinary proceeding.¹³ Anger management has previously recommended but never pursued by the Respondent. The zeal with which he respected clients for more than forty years in his practice has now morphed into an anger that impairs his ability to act rationally and professionally as an attorney representing himself, his clients and the profession.

From the first pleading to his first comments in his opening statement at the hearing, Respondent has been focused on Katrina. **At the beginning of the hearing, the Respondent stated: “The case today is a referendum on the victims of the Katrina Litigation”.**¹⁴ Like so many others, Respondent testified that his life in the years post-Katrina “has been hell for me.” His passion for the Katrina litigants is palpable but so too is his unquenchable desire to find

¹¹ Tr., p. 262.

¹² Tr., p. 263.

¹³ Tr. of June 5, 2012 Hearing, p. 41.

¹⁴ Tr., p. 39.

conspiracy at every turn. Respondent admits to being “emotionally involved”¹⁵. However, the fact that in a three hundred thirty-one (331) page transcript of the daylong hearing the word “Katrina” appears eighty-three (83) times (more than any other substantive word) demonstrates his obsession and inability to focus on the matter that was before the hearing committee. It was not lost on this committee that the only witness called by Respondent to testify was on the issue of the Katrina litigation and how he behaved in that litigation.

In conclusion, this Committee finds that Respondent’s actions show his egregious lack of respect for the authority of the federal courts, the Louisiana Supreme Court, and the disciplinary authorities of this State. His conduct also shows his complete disregard for both the Lawyer’s Oath and the Code of Professionalism of this State. Such conduct will not be tolerated by this Committee. Respondent’s conduct, as well as his act of engaging in the unauthorized practice of law during his interim suspension, mandates this Committee to recommend that he be permanently disbarred from the practice of law.

¹⁵ Tr., p. 130.

CONCLUSION

For the foregoing reasons, Hearing Committee No. 23 recommends that the Respondent, Ashton R. O'Dwyer, Jr., be permanently disbarred from the practice of law.

Covington, Louisiana, this 7th day of January, 2016.

**Louisiana Attorney Disciplinary Board
Hearing Committee #23**

**Kathleen E. Simon, Committee Chair
Matthew M. Friedman, Lawyer Member
Desire Dupre, Public Member**

BY: _____


**Kathleen E. Simon, Committee Chair
FOR THE COMMITTEE**

APPENDIX A

LIST OF ATTACHMENTS TO FORMAL CHARGES

- DCAH 1: March 10, 2009, ODC Letter to Mark Dumaine March 4, 2009, USDC Letter to Fifth Circuit, copied to ODC March 4, 2009, USDC Order of Disbarment
- DCAH 2 November 7, 2008, En Banc Order of suspension, 08MC1492 Doc. 31 and Doc. 34
- DCAH 3 November 13, 2008, ODC File Opening 24572
- DCAH 4 November 7, 2009, Complaint and en banc USDC Order 08MC 1492 Doc. 31
- DCAH 5 November 12, 2009, ODC letter of recusal
- DCAH 6 December 8, 2009, LA SCT Confidential Order of Appointment of Disciplinary Counsel Ad Hoc
- DCAH 7 Respondent's declaration of his intentionally contemptuous non-compliance 08MC 1492 Doc. 32
- DCAH 8 April 2, 2008, Show cause order and disciplinary complaint 08MC1492 Doc. 1 and Doc. 1-2.
- DCAH 9 July 19, 2006, Order and Reasons, Colleen Berthelot, et al. v. Boh Bros Construction Co, 05CV4182 Doc. 788
- DCAH 10 April 3, 2007, Order and Reasons, In re Katrina Canal Breaches, 05CV4182 Doc. 3666
- DCAH 11 August 22, 2006, Respondent's motions for sanctions, 05CV4182 Doc. 1006, Doc. 1006-2, and Doc. 1006-3
- DCAH 12 March 24, 2006, Order, 05CV4182 Doc. 57
- DCAH 13 February 22, 2008, Order and Reasons, 05CV4182 Doc. 11357
- DCAH 14 March 20, 2008, Respondent's declaration, 05CV4182 Doc. 11699
- DCAH 15 September 11, 2007, Order, 05CV4182 Doc. 7538
- DCAH 16 January 30, 2008, Respondent's Nunc Pro Tune supplement,

05CV4182 Doc. 10969

- DCAH 17 February 27, 2008, Respondent's First Supplemental and Amended Complaint, 05CV1127 Doc. 3
- DCAH 18 November 21, 2007, Order and Reasons, Respondent v. State, 06CV7280 Doc. 317
- DCAH 19 January 21, 2008, Respondent's sworn declaration, 05CV4182 Doc. 10646-4 and Doc. 10646-5
- DCAH 20 January 28, 2008, Respondent's Motion for disqualification of Judge Duval, In Re Katrina Canal Breaches, 05CV4182 Doc. 10910, Doc. 10910-2, 10910-3
- DCAH 21 August 4, 2006, Motion to Impose sanctions, In Re Katrina Canal Breaches, 05CV4182 Doc. 875, Doc. 875-2, Doc. 875-3 and Doc. 875-4
- DCAH 22 December 29, 2006, Respondent's motion to disqualify the Louisiana Department of Justice, 05CV4182 Doc. 2382, Doc. 2382-2, Doc. 2383-3, Doc. 2383-4, Doc 2382-5, Doc. 2382-6
- DCAH 23 December 12, 2007, Respondent's motion for sanctions, 05CV4182 Doc. 9464, Doc. 9464-2, Doc 9464-3, Doc. 9464-4, Doc. 9464-5, and Doc. 9464-6
- DCAH 24 January 15, 2008, Respondent's affidavit of personal bias and prejudice of a judge, 05CV4182 Doc. 10431, Doc. 10431-2, and Doc. 10431-3
- DCAH 25 September 6, 2006, Order, In Re Katrina Canal Breaches, 05CV4182 Doc. 1079
- DCAH 26 August 18, 2006, Respondent's complaint for compensatory and exemplary damages, 06CV4389 Doc. 1 and Doc. 1-2
- DCAH 27 September 19, 2006, Respondent's protective refiled complaint, 06CV6099 Doc. 1, Doc 1-2, and Doc. 3-3
- DCAH 28 January 17, 2008, Order and Reasons, In Re Katrina Canal Breaches, 05CV4182 Doc. 10615
- DCAH 29 May 13, 2008, Order and Reasons, In the Matter of Ashton R. O'Dwyer, Jr., 08MC1492 Doc. 2 and Doc. 2-2

- DCAH 30 May 19, 2008, Order and Reasons, In the Matter of Ashton R. O'Dwyer, Jr., 08MC1492 Doc. 3 and Doc. 3-2
- DCAH 31 June 11, 2006, Respondent's motion for extension of time, In the Matter of Ashton R. O'Dwyer, Jr., 08MC1492 Doc. 4, Doc. 5, Doc. 6 and Doc. 7.
- DCAH 32 July 10, 2008, Respondent's answers, In the Matter of Ashton R. O'Dwyer, Jr., 08MC1492 Doc. 8
- DCAH 33 August 29; 2008, Order, In the Matter of Ashton R. O' Dwyer, Jr., 08MC1492 Doc. 9
- DCAH 34 September 22, 2008, Disciplinary proceedings before the Honorable Ivan L. R. Lemelle, 08MC1492 Doc. 19, Doc. 23-2, and Doc. 23-3.
- DCAH 35 September 24, 2008, Order granting additional time to file, 08MC1492 Doc. 10, Doc. 11, Doc. 12, Doc. 13, and Doc. 14
- DCAH 36 October 6, 2008, Respondent's supplemental answers, 08MC1492 Doc. 15, Doc. 15-2, Doc. 15-3, Doc. 15-4, Doc. 15-5, Doc. 15-6, Doc. 15-7, Doc. 15-8, Doc. 15-9 and Doc. 15-10
- DCAH 37 October 8, 2008, Disciplinary proceedings before the Honorable Ivan L. R. Lemelle, 08MC1492 Doc. 20 and Doc. 24-2.
- DCAH 38 October 8, 2008, Findings and recommendations by the Honorable Ivan L. R. Lemelle, 08MC1492 Doc. 18-2 and Doc. 18-3
- DCAH 39 October 9, 2008, Respondent's objection, 08MC1492 Doc. 16
- DCAH 40 October 14, 2008, Respondent's motion for recusal of Judge Lemelle, 08MC1492 Doc. 17
- DCAH 41 October 15, 2008, Order and Reasons concerning free transcript request, 08MC1492 Doc. 21
- DCAH 42 October 15, 2008, Order and Reasons concerning motion to recuse judge, 08MC1492 Doc. 22
- DCAH 43 October 20, 2008, Respondent's motions for en banc consideration, 08MC1492 Doc. 25 and Doc. 26
- DCAH 44 October 27, 2008, Respondent's ex parte motion for out of time filing, 08MC1492 Doc. 27, Doc. 28, and Doc. 29

- DCAH 45 December 11, 2008, Complaint by Attorney Jerry McKernan
- DCAH 46 December 12, 2008, Complaint by Chief Judge Sarah S. Vance, 08MC5170 Doc. 1, Doc. 1-2, and Doc. 1-3
- DCAH 47 December 19, 2008, Order to show cause and Respondent's Answer, 08MC5170 Doc. 2, Doc. 3, Doc. 3-2, and Doc. 3-3
- DCAH 48 February 10, 2009, Report and recommendations by Judge Lemelle, 08MC5170 Doc. 4
- DCAH 49 March 4, 2008, Order of disbarment and notice of appeal, 08MC5170 Doc. 5 and Doc. 8
- DCAH 50 March 25, 2009, Supplement to Supreme Court Petition for Interim Suspension, including the email received from Respondent acknowledging receipt of petition, threatening civil suit, and criminal RICO complaint, and describing Disciplinary Counsel Ad Hoc as a black man who is a "puppet" of State actors.
- DCAH 51 March 27, 2009, email from Respondent making racially offensive comments and attaching a copy of a post-hearing memorandum by attorney Joseph W. P. Hecker in response to his own disciplinary action that included Respondent's civil rights complaint for damages.
- DCAH 52 March 30, 2009, Supreme Court Order of Interim Suspension.
- DCAH 53 Emails:
 March 30, 2009, from the Clerk of the Supreme Court to Respondent notifying Respondent of his immediate suspension;
 March 30, 2009, response by Respondent to Clerk describing the Supreme Court as "pigs" and "dogs" and using a sexually offensive term for Justice Catherine D. "Kitty" Kimball;
 April 8, 2009, to Disciplinary Counsel Ad Hoc, using racially offensive terms and other obscenities for Justice Kimball, Disciplinary Counsel, and Disciplinary Counsel Ad Hoc;
 April 8, 2009, to Disciplinary Counsel Ad Hoc using racially offensive terms and other obscenities for Justice Kimball, Disciplinary Counsel, and Disciplinary Counsel Ad Hoc;
 April 14, 2009, to Disciplinary Counsel Ad Hoc with only a subject line containing racially offensive terms;
 April 14, 2009, email with the subject header "I just can't help myself" with racially offensive and obscene language;
 April 15, 2009, email with racially offensive and obscene language; April 15, 2009, email with obscenities;
 April 26, 2009, email with racially offensive, sexually offensive and other obscene language;
 April 27, 2009, email advising Disciplinary Counsel Ad Hoc to reference various

Civil Actions to see what type of action Respondent intends to file;
April 28, 2009, email with racially offensive, sexually offensive and other obscene language threatening misprision of a felony and accessory-after-the-fact complaints;
July 9, 2009, email with racially offensive and other obscene language.

- DCAH 54 July 15, 2009, filing in the United States District Court by Respondent under the name of attorney Joseph W.P. Hecker referring to Judge Ivan L.R. Lemelle as a "big gorilla" who is "incompetent, morally depraved, and corrupt, and unfit to sit on the Federal Bench." Respondent also noted that Judge Lemelle and engaged in relationships with members of the plaintiff bar including "Negro members."
- DCAH 55 September 22, 2009, handwritten letter by Respondent to Disciplinary Counsel Charles Plattsmier using obscene language and taking "full responsibility for the contents of language" in the July 15, 2009 (DCAH 54) and noting he had full authority from his cousin, attorney Joseph W. P. Hecker, "to affix his signature." He also threatens Disciplinary Counsel stating "You're going to have to kill me now, because Ashton O'Dwyer is now a liability issue for you."
- DCAH 56 September 4, 2009, United States District Court Order barring Respondent's access to the federal courthouse at 500 Poydras · Street and containing Respondent's handwritten note to Judge L.R. Lemelle containing racially offensive and obscene language and inviting retribution: "you know where live."
- DCAH 57 March 30, 2009, faxed and mailed notice of order of interim suspension from Disciplinary Counsel Ad Hoc to Respondent.
May 4, 2009, certified mail notice to Respondent providing notice of ABA discipline registration, newspaper publication, Rule 19 Section 26 obligations, and Louisiana State Bar discipline registration.
- DCAH 58 February 1, 2010, statement from the Clerk of the Supreme Court that there has been no response from Respondent filed into the record of the petition for his interim suspension.
- DCAH 59 January 30, 2010, FBI Criminal Arrest Affidavit documenting the arrest of Respondent for emailing a threat to the Bankruptcy Court in New Orleans, Louisiana: "Maybe my creditors would benefit from my suicide, but suppose I become homicidal? Given the recent breach of security at 500 Poydras Street, a number of scoundrels might be at risk if I do become homicidal." The affidavit notes the seizure of a loaded pistol from Respondent at the time of his arrest.