

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE THOMAS J. HOGAN, JR.

16-DB-055

RULING OF THE DISCIPLINARY BOARD

<b>Louisiana Attorney Disciplinary Board</b>	
<b>FILED</b> by: <i>Samuel Amato</i>	
<b>Docket#</b>	<b>Filed-On</b>
16-DB-055	5/29/2018



**INTRODUCTION**

This attorney discipline matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Thomas J. Hogan, Jr. (“Respondent”), bar roll number 06908. ODC alleges that Respondent violated the following Rules of Professional Conduct (“Rule(s)”): 3.1, 3.3(a), 3.3(d), 4.1(a), 8.4(a), 8.4(c), and 8.4(d).<sup>1</sup> The hearing committee (“committee”) assigned to this matter concluded that the ODC failed to establish by clear and convincing evidence that Respondent violated any of the Rules as charged and recommended that the matter be dismissed.

For the following reasons, the Board adopts the factual findings of the committee, makes some additional factual findings, and adopts the committee’s legal conclusions. Accordingly, it dismisses the Formal Charges.

**PROCEDURAL HISTORY**

The Formal Charges were filed on June 10, 2016. Respondent was sent, by certified mail, a copy of the charges on June 14, 2016. Respondent filed an answer on July 28, 2016 through counsel Kathleen E. Simon and Marta-Ann Schnabel. The hearing was held on February 20, 2017, and March 30, 2017. On August 7, 2017, Hearing Committee #26 filed its

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<sup>1</sup> See the attached Appendix for the text of the Rules.

recommendations and report with the Board.<sup>2</sup> The committee concluded that the ODC did not establish by clear and convincing evidence that Respondent violated any of the aforementioned Rules of Professional Conduct and recommended that the matter be dismissed.

On October 24, 2017, the ODC filed an objection to the committee's recommendation and on November 6, 2017, filed an initial brief for consideration by the Board. Respondent filed a pre-argument memorandum on November 21, 2017. Oral argument before Panel "C" of the Board was held on December 5, 2017.<sup>3</sup> Deputy Disciplinary Counsel Tammy Pruet Northrup appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared with counsel, Marta-Ann Schnabel.

### **FORMAL CHARGES**

The Formal Charges read, in pertinent part:

#### **COUNT I.**

The Office of Disciplinary Counsel ("ODC") received a complaint from Susan Hogan Schepens on June 23, 2015. Complainant's mother, Mary W. Hogan, is an 88 year old who lives in an assisted living facility in Winnsboro, Louisiana. During 2010, Mrs. Hogan was diagnosed with dementia. Complainant's brother, Jerome Hogan, handles all of Ms. Hogan's affairs pursuant to a 2003 Power of Attorney executed on June 23, 2003, in Stephenville, Texas.

Mrs. Hogan's last surviving sibling, Mrs. Willie Mae Sartor, passed away on November 14, 2014. Mrs. Sartor was buried on November 19, 2014. On November 26, 2014, Respondent sent correspondence on his attorney letterhead to the succession attorney, Wendy Giovingo, requesting a copy of the decedent's will. In said correspondence, Respondent informs Ms. Giovingo that he is the oldest of the decedent's nieces and nephews and makes no mention of Jerome Hogan's valid power of attorney. In a letter from Ms. Giovingo to Respondent dated December 3, 2014, Ms. Giovingo informs Respondent that the Executrix of the estate, C. J. Sartor, has informed her that Mrs. Hogan may not be able to sign documents. Ms. Giovingo specifically

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<sup>2</sup> Hearing Committee #26 was comprised of Charles B. Hansberry III (Chair), Alexis Breedlove (Lawyer Member) and Clarissa A. Preston (Public Member).

<sup>3</sup> Panel "C" was comprised of Walter D. White (Chair), Danna E. Schwab (Lawyer Member) and Sheila E. O'Leary, (Public Member).

asks Respondent whether he or someone else has a power of attorney that will allow for the execution of a Verification Affidavit to accompany the Petition for Possession. On December 5, 2014, Respondent sent correspondence to Ms. Giovingo stating that in his opinion his mother was competent to sign any necessary documents. Respondent does not answer Ms. Giovingo's inquiry about the power of attorney. Respondent further instructs Ms. Giovingo to advise him when the documents are ready and states he will present them to his mother for her signature.

Eventually, Ms. Giovingo learned that Respondent's brother, Jerome Hogan, held his mother's Power of Attorney. She requested a copy of the Power of Attorney and after Jerome Hogan sent her a copy, she determined that because the Power of Attorney did not specifically state Jerome Hogan had the authority to accept a succession, an Interdiction proceeding would be necessary. On December 22, 2014, Respondent filed a Petition for Interdiction alleging his mother was incompetent. Respondent requested that he be appointed curator of his mother. Respondent did not state in the Petition for Interdiction that his brother, Jerome Hogan, held his mother's Power of Attorney. Less than three weeks before this filing, Respondent stated in writing to Ms. Giovingo that his mother was competent to sign documents.

Susan Hogan Schepens, Jerome Hogan and their brother, Philip Hogan, filed an Opposition to the Interdiction on January 21, 2015, arguing that their mother's interests were already being protected by the Power of Attorney and an Interdiction was not necessary. Eventually, the parties entered into a Consent Judgment dated December 23, 2015, calling for Jerome Hogan and Respondent to be appointed co-curators for the limited purpose of accepting the Succession of Willie Mae Sartor. The Consent Judgment also called for both Jerome Hogan and Respondent to consult with a person knowledgeable about Medicaid concerning the legacy from the succession, that Jerome Hogan provide an accounting for business transactions in his capacity as Power of Attorney for his mother from June 1, 2013 forward, and that Jerome Hogan continue to act as Power of Attorney in all other matters, including farm lease, health care, funeral arrangements, and the like.

After signing the Consent Judgment, Respondent hired another attorney, Charles L. Spencer, and on January 22, 2016, Respondent sent an E-mail to Jerome Hogan's attorney, Mathew Hollis, indicating he and Mr. Spencer were in the process of preparing documents for a Special Needs Trust for his mother that would be filed in the succession. Ultimately, it was determined that a Special Needs Trust was not appropriate. Following the signing of this judgment, Ms. Giovingo sent a check representing Mrs. Hogan's share of the estate to Charles L. Spencer. Said check was payable to Respondent and Jerome Hogan. Respondent has refused to endorse the check and return it to Mathew Hollis, as requested, in order for Jerome Hogan to deposit it into the account he manages for his mother. Respondent alleges that as co-curator he has a right to help manage the funds despite the fact that the Consent Judgment provides that he is co-curator for the limited purpose of accepting the succession on his mother's behalf. Respondent's actions have forced Jerome

Hogan to expend more of his mother's resources to file a Motion to Modify Judgment. To date, Respondent's actions have prevented Jerome Hogan, the lawful agent of his mother's affairs, from depositing and using these funds on her behalf to care for her.

Respondent's actions in this matter constitute knowingly making a false statement of material fact or law to a third person, in violation of Rule 4.1(a); bringing or defending a proceeding or asserting or controverting an issue therein without a basis in law and fact that is not frivolous, in violation of Rule 3.1; making a false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law previously made to the tribunal by the lawyer, in violation of Rule 3.3(a)(1); failing to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to his position, in violation of Rule 3.3(a)(2); offering evidence that the lawyer knows to be false, in violation of Rule 3.3(a)(3); failing to disclose to the tribunal all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse, in violation of Rule 3.3(d); engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 8.4(c); violating or attempting to violate the Rules of Professional Conduct, in violation of Rule 8.4(a); and, engaging in conduct that is prejudicial to the administration of justice in, violation of Rule 8.4(d) of the Rules of Professional Conduct.

### **HEARING COMMITTEE REPORT**

According to the committee, the evidence presented a picture of familial discord. Respondent, the oldest of nine children, is the only attorney among his siblings. Respondent's sister, Susan Hogan Schepens, had assumed the role of her mother's medical consultant among the siblings due to her occupation as a nurse.<sup>4</sup> Jerome Hogan served as his mother's agent by way of a Power of Attorney. The testimony provided by Susan Schepens and Jerome Hogan indicated that they regarded the Respondent's involvement or "interjection" into their mother's affairs as a personal slight.

The committee found that Respondent, "in an effort to gain a true understanding of what was taking place with his mother's affairs," took steps that were not well received by his siblings.<sup>5</sup> Respondent filed a Petition for Interdiction which was subsequently withdrawn because the Respondent and Jerome Hogan entered into consent judgments whereby both

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<sup>4</sup> The ODC pointed out that Ms. Schepens is a retired medical technologist, not a nurse.

<sup>5</sup> Hearing Committee Report, p. 4.

would serve as “co-curators of funds that had been bequeathed to their mother.”<sup>6</sup>

According to the committee, complainant Susan Schepens was disturbed by the Petition for Interdiction because she believed it misstated their mother’s level of competency. Jerome Hogan believed Respondent interfered with their mother’s financial affairs, notwithstanding the fact that their mother gave him power of attorney. These siblings felt that the Respondent used his capacity and knowledge as an attorney to invade their respective “self-declared territories as caretakers of their mother’s physical and financial affairs.”<sup>7</sup>

The testimony, according to the committee, established “sibling rivalry at its best” but did not establish any ethical violations.<sup>8</sup> Considering the charged Rule violations, the committee found that the pleadings submitted by the Respondent in regards to his mother’s mental capacity were based upon his own observations and it concluded that the ODC otherwise failed to establish that the Respondent acted in a manner to deceive or misrepresent any facts to a third party or the court. It found no violations of the Rules of Professional Conduct.

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

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is “to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations.” Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of “manifest error.” *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee’s application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Because it determined that the parties had stipulated to the facts, the committee's factual findings are somewhat sparse. Though there were no formal stipulations, it does appear that the facts alleged in the Formal Charges were largely undisputed. Considering the facts as alleged and the evidence presented at the hearing, the committee made some factual findings and concluded that no misconduct had been proved. The Board finds that the factual findings made by the committee are not in error, and it adopts those findings. In addition, the Board finds the evidence establishes the facts as set forth below. Furthermore, the Board agrees with the committee's legal conclusions that no misconduct has been proved.

As the Formal Charges allege and the record shows, Respondent learned of his aunt's death and made an inquiry of Wendy Giovingo, the attorney who had prepared the will for his aunt, Ms. Sartor.<sup>9</sup> The inquiry was made via facsimile transmission dated November 26, 2014.<sup>10</sup> This correspondence indicated that Respondent was the oldest of the decedent's nephews and nieces and he requested a copy of the decedent's will. The correspondence did not indicate that Respondent was acting as counsel for his mother or anyone else. Respondent testified that he was primarily interested in his aunt's will because he was a co-owner of a farm with his aunt and that all of the family had an interest in the property.<sup>11</sup> Ms. Giovingo testified that she did not believe Respondent was representing his mother or anyone else when he contacted her. She testified that she had been contacted by Jerome Hogan, as well, concerning Ms. Sartor's will. She responded to both inquiries.<sup>12</sup>

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<sup>9</sup> Ms. Giovingo testified as a witness at the hearing in this matter on February 20 and March 30, 2017. Subsequently, after the hearing committee report was rendered on August 7, 2017, and Board argument was held December 5, 2017, Ms. Giovingo was appointed to the Board as the L.S.B.A.'s representative to serve on the Board's Administrative Committee beginning on January 5, 2018. In her role on the Administrative Committee, she is involved in administrative matters only and plays no role in the adjudication of matters before the Board, including the adjudication of this matter.

<sup>10</sup> Respondent Exhibit 1.

<sup>11</sup> Transcript, Feb. 20, 2017, pp. 48-51.

<sup>12</sup> Respondent Exhibits 2 and 3.

Ms. Giovingo wrote to Respondent a few days after the facsimile transmission, on December 3, 2014, acknowledging his request and enclosing a copy of the Petition to File and Execute Will and for Appointment of Independent Executrix she had prepared. In the letter, she inquired as to whether Respondent's mother would be able to sign a verification when the Petition for Possession was completed, or if he or someone else had a power of attorney that would allow for execution of that verification. Respondent wrote back to Ms. Giovingo on December 5, 2014, expressing his opinion that his mother was competent to sign the document.<sup>13</sup> Respondent testified that he had been present with his mother at various times at the nursing home and had assisted her in composing correspondence and answering letters from friends and he had observed her signing her own name.<sup>14</sup>

Relative to this exchange, Respondent was charged with a violation of Rule 4.1(a) (knowingly making a false statement of material fact or law to a third person). In the Formal Charges, it was alleged that when Respondent wrote to Ms. Giovingo on December 5, 2015, he did not answer her inquiry about a power of attorney, and thus, he knowingly misled a third party. Respondent testified that he was not attempting to mislead Ms. Giovingo; he was simply informing her that he believed his mother would be able to sign the document. Furthermore, he pointed out that the letter was written in the alternative and since he believed his mother would be able to sign the document, he did not respond to the question about the existence of a power of attorney.<sup>15</sup> The committee declined to find a violation of Rule 4.1(a), finding that Respondent had been acting in his personal capacity, and that he was expressing his opinion as to his mother's condition based upon his own observations. Given the facts as presented, the committee concluded that Respondent did not knowingly make a false statement of material fact

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<sup>13</sup> Respondent Exhibit 4.

<sup>14</sup> Transcript, Feb. 20, 2017, pp. 57-59.

<sup>15</sup> Transcript, Feb. 20, 2017, p. 60.

to Ms. Giovingo. The Board agrees and finds that the evidence fails to clearly and convincingly establish that Respondent knowingly misled Ms. Giovingo.

Relative to the Power of Attorney, it is notable that Ms. Giovingo was aware that the document existed at the time Respondent wrote to her on December 5, 2015. She had been in communication with Jerome Hogan, who had indicated to her that he held such a document. In a letter dated December 4, 2014, the day prior to Respondent's letter, she wrote Jerome Hogan, asking that he provide a copy of the document. After Ms. Giovingo received the Power of Attorney, she determined, in her professional opinion, that the Power of Attorney did not provide express authority for the agent, Jerome Hogan, to accept a bequest.<sup>16</sup> In addition, considering Jerome Hogan's letter to her dated December 17, 2014, wherein he informed that his mother had been diagnosed with progressive debilitating dementia and was not capable of understanding the consequences of her actions, she communicated to both Jerome Hogan, through his attorney, Matthew Hollis, and Respondent, that an interdiction would be necessary for the acceptance of Ms. Sartor's legacy to Respondent's mother.<sup>17</sup>

Thereafter, on December 22, 2014, Respondent filed a Petition for Interdiction in Franklin Parish.<sup>18</sup> In connection with this pleading, Respondent was charged with filing frivolous litigation in violation of Rule 3.1 (bringing or defending a proceeding or asserting or controverting an issue therein without a basis in law and fact that is not frivolous). The ODC argued that the filing was unnecessary, and was, therefore frivolous or designed to harass, because a valid Power of Attorney existed. The evidence shows that at the time Respondent filed the Petition, Ms. Giovingo had made it clear that from her perspective, an interdiction proceeding would be necessary for the delivery of the legacy. Not only did she believe there

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<sup>16</sup> Transcript, Feb. 20, 2017, pp. 152-154.

<sup>17</sup> Respondent Exhibits 5-1, 6.

<sup>18</sup> Respondent Exhibit 7.



were issues relative to the language of the Power of Attorney, she also expressed concern that the document was more than ten years old, and there had been issues raised by others as to whether the Power of Attorney had been properly witnessed at the time it was created.<sup>19</sup> Moreover, Respondent had learned of Jerome's communication to Ms. Giovingo which indicated that their mother had been diagnosed with dementia.<sup>20</sup>

Respondent testified that his motivation in filing the Petition for Interdiction had been to assure that his mother received the benefit of any legacy left to her by his aunt, and that the legacy was not jeopardized in any way. He saw no point in arguing with the succession attorney about the validity of Power of Attorney or whether an interdiction proceeding was necessary.<sup>21</sup> He did not believe his brother would file the interdiction proceeding, so he did so.<sup>22</sup> Under these circumstances, the committee concluded that the filing was not frivolous. The Board agrees.

Concerning the interdiction, Respondent was also charged with, in essence, a lack of candor in failing to disclose to the judge that the Power of Attorney existed, in violation of Rule 3.3(a) and 3.3(d). It was argued that pleading requirements obligated him to set forth the name and address of any legal representative of the interdict, therefore, he should have provided information relative to the Power of Attorney in favor of his brother. Respondent testified that prior to filing the pleading, he reviewed Louisiana Code of Civil Procedure Article 4541 as to pleading requirements. He believed he was a proper party to bring the proceeding ("any person"), and because his understanding of the term "legal representative" was someone appointed by a court, he did not believe his brother was his mother's legal representative.<sup>23</sup> The

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<sup>19</sup> In particular, one of the siblings, Marianne Nsour, had questioned the effectiveness of the document. Transcript, Feb. 20, 2017.

<sup>20</sup> Respondent Exhibit 6.

<sup>21</sup> Transcript, Feb. 20, 2017, pp. 63-64.

<sup>22</sup> Transcript, Feb. 20, 2017, pp. 60-64.

<sup>23</sup> Hearing Transcript, Feb. 20, pp. 72, 87.

committee specifically found that the ODC failed to establish that Respondent acted in a matter to deceive or misrepresent any facts to the court. This finding is not manifestly erroneous and is adopted by the Board.

It was also suggested by the complainant and the ODC that Respondent may not have been candid relative to the competency of his mother in the interdiction proceedings, which violated Rule 3.3(a). In the Petition for Interdiction, Respondent indicated that his mother had been diagnosed with a number of medical conditions which limited her mobility and ability to understand and manage her personal business. In his testimony, Respondent admitted that this characterization was different than the one provided in his earlier letter to Ms. Giovingo, but he explained that his personal opinion as to his mother's capacity was no longer relevant inasmuch as questions had been raised as to her competence. Clearly, her capacity had become a legal issue, which the interdiction proceedings were designed to address. After the Petition was filed, Respondent's siblings, Jerome, Susan and Phillip, represented by attorney Matthew Hollis, filed an Opposition to the Interdiction, on January 21, 2015, asserting that their mother's interests were protected by the Power of Attorney, therefore the interdiction proceeding should be dismissed.<sup>24</sup> No judicial determination as to the Power of Attorney's validity was ever made inasmuch as the matter was eventually concluded by consent judgments.<sup>25</sup> Again, the committee found that the evidence did not establish that Respondent acted in a manner to deceive. The committee's finding is not manifestly erroneous and is adopted by the Board.

In March or April of 2015, the judge presiding over the interdiction proceedings

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<sup>24</sup> Respondent Exhibit 9. *See also*, Respondent Exhibits 5-6. The evidence shows that Jerome Hogan hired attorney Matthew Hollis relative to his mother's affairs in December of 2014.

<sup>25</sup> It is also notable that on March 31, 2015, Jerome Hogan, through his attorney, filed a Petition for Declaratory Judgment in the Succession of Willie Mae Wroten Sartor in Ouachita Parish, seeking a declaration that the Power of Attorney granted him authority to accept the legacy for his mother. Respondent Exhibit 21. No judicial determination was made in this proceeding, as the Petition was dismissed.

scheduled a telephone conference. In short, the judge indicated that the parties should try to work something out. She also suggested mediation.<sup>26</sup> The matter was mediated and a preliminary agreement was reached, however that agreement fell through due to concerns raised by Susan Schepens.<sup>27</sup> Respondent testified that one feature of the agreement had been to engage the services of a lawyer familiar with elder law who could assist with issues related to Medicaid. Respondent's mother had become Medicaid eligible in October of 2014, and there were concerns about the legacy vis-à-vis any Medicaid-related issues.<sup>28</sup>

The siblings eventually agreed to resolve the interdiction on December 23, 2015, as evidenced by two documents, one styled "Consent Judgment of Limited Interdiction" and the other styled "Consent Judgment".<sup>29</sup> Both documents, which were prepared by Respondent, appointed Jerome Hogan and Respondent as "Co-curators of Mary Wroten Hogan for the Limited Purpose of accepting the Succession of Willie Mae Wroten Hogan." The Consent Judgment included the above quoted language and further provided, in pertinent part:

Jerome Kevin Hogan and Thomas Joseph Hogan, Jr. will consult with a person knowledgeable of Medicaid concerning the legacy from the Succession of Willie Mae Wroten Sartor;

Jerome Kevin Hogan will provide an accounting for business transactions in his capacity as power of attorney from Mary Wroten Hogan from June 1, 2013, forward;

Jerome Kevin Hogan will continue to act as power of attorney for Mary Wroten Hogan in all other matters, including farm lease, health care, funeral arrangements, and the like.

The Consent Judgment also provided for reimbursement of various expenses to three of the siblings: Jerome, Thomas and Marianne.

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<sup>26</sup> Transcript, Feb. 20, 2017, pp. 90-91.

<sup>27</sup> Respondent Exhibit 30.

<sup>28</sup> Transcript, Feb. 20, 2017, pp. 92-93.

<sup>29</sup> Respondent Exhibits 13 and 14.

After the consent judgments were signed, in early January of 2016, Respondent hired counsel, Charles L. Spencer, to advise and assist him relative to his obligations as co-curator. Mr. Spencer communicated with Mr. Hollis regarding a possible special needs trust, as well as other matters. At some point thereafter, Jerome Hogan chose to terminate the services of Mr. Hollis.<sup>30</sup> Following that, when it came time to deliver the legacy, Ms. Giovingo sent a check to Mr. Spencer. According to her testimony, she felt it best to send the check to Mr. Spencer, rather than directly to Jerome Hogan, an unrepresented party.<sup>31</sup>

Once the check was received by Mr. Spencer, it became evident that Jerome Hogan and Respondent had differing views of the meaning of the consent judgments. Specifically, Jerome Hogan, through counsel, took the position that Respondent's role as co-curator was simply to accept the legacy, meaning that he was to endorse the check and turn it over to Jerome to manage the funds.<sup>32</sup> Respondent took the position, through counsel, that the language in the consent judgments appointing him co-curator charged him with a fiduciary responsibility. Acceptance of the legacy meant that he was not only to endorse the check, but was also responsible to co-manage the funds.<sup>33</sup> Instead of endorsing the check and turning it over to his brother, Respondent endorsed the check and his attorney caused it to be deposited into the registry of the court.<sup>34</sup>

The ODC argued that Respondent's refusal to endorse the check and turn it over to his brother to manage the funds was another example of frivolous litigation designed to harass, which violated Rule 3.1. The committee disagreed. It specifically found that the Respondent and

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<sup>30</sup> Transcript, Feb. 20, 2017, pp. 106-107.

<sup>31</sup> Transcript, Feb. 20, 2017, p. 188. The check was dated February 16, 2016. *See*, Respondent Exhibit 16-2.

<sup>32</sup> Mr. Hollis was apparently re-engaged by Jerome Hogan, who filed a Motion to Modify Judgment, on March 8, 2016, seeking to modify the consent judgments. Respondent Exhibit 16-2.

<sup>33</sup> Respondent Exhibit 16-1.

<sup>34</sup> On June 21, 2016, the court issued an Order Modifying and Supplementing the Consent Judgment of Limited Interdiction to implement the joint stipulations of the parties. Both Respondent and Jerome Hogan were removed as Co-Curators, Susan Schepens was appointed Limited Curator and an attorney Emily Elrod Shields, was appointed Limited Undercurator. Respondent Exhibit 16. Mary Ethel Wroten Hogan died October 2, 2016.

his brother were appointed as “co-curators of the funds that had been bequeathed to their mother,” and that there was no violation of the Rule.<sup>35</sup> This finding is not manifestly erroneous as there is ample evidence in the record to support the committee’s finding.

While arguments may be made that the language in the consent judgments could have been more specific and clear, the committee apparently found Respondent’s explanation to be credible and that a reasonable interpretation of the consent judgments was that both brothers were to manage the funds. The Board finds no error in this conclusion.

A plain reading of the Consent Judgment indicates that more than a simple endorsement of the legacy check was anticipated. Specifically, the Consent Judgment required both brothers to consult a person knowledgeable about Medicaid, and Jerome was to continue to act as “power of attorney in all *other* matters”. (Emphasis added.) Moreover, the record contains the testimony of Mr. Spencer, the attorney who advised Respondent that the agreements appointed him as co-curator, and as such, he owed a fiduciary obligation to co-manage the funds. In addition, the record contains the testimony of Mr. Thomas M. Hayes III, who enrolled as co-counsel with Mr. Spencer in the interdiction proceedings. Mr. Hayes testified that he agreed that the consent agreements called for co-management and based on his observations as counsel of record, he believed it had been the understanding of the trial judge that the funds were to be co-managed.<sup>36</sup>

Considering the record, there is ample support for the committee’s finding that Respondent did not act frivolously or with an intent to harass when he refused to endorse the legacy check and turn it over to his brother.

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<sup>35</sup> Hearing Committee Report, p. 4.

<sup>36</sup> Mr. Hayes filed a Motion to Enroll on May 6, 2016. Respondent Exhibit 20. He testified as to his observations at a pre-hearing conference with the judge and opposing counsel on May 31, 2016. He testified that the Judge was disinclined to modify the consent judgment, as she understood that the parties had agreed to co-curatorship, and encouraged the parties to resolve the matter. Transcript, March 30, 2017, p. 61. The judge was unavailable to testify. Her affidavit was offered but was excluded as hearsay.

For the same reasons that misconduct was not proved with respect to misleading the court or a third party or filing frivolous or harassing litigation under Rules 3.1, 3.3 and 4.1, it was not proved that Respondent acted dishonestly under Rule 8.4(c), that he engaged in conduct prejudicial to the administration of justice under Rule 8.4(d), or that he engaged or attempted to engage in misconduct under Rule 8.4(a). The Board agrees with the committee's observation that this was a matter of familial discord, and not one involving attorney ethical misconduct. Accordingly, and as the committee recommended, the charges should be dismissed.

### **CONCLUSION**

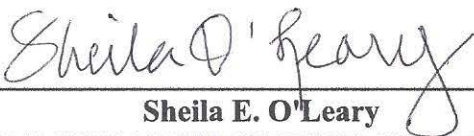
Based upon the record and evidence the Board finds the factual findings of the committee are not manifestly erroneous and they are adopted by the Board. Further, the Board makes additional factual findings, as reflected herein. Based upon these factual findings, the Board adopts the committee's legal conclusions that misconduct was not proved under the charged Rule violations. Accordingly, the Board dismisses the Formal Charges.

**RULING**

The Board orders that the Formal Charges filed against Thomas J. Hogan, Jr., be dismissed. The costs and expenses of this proceeding are to be borne by the Disciplinary Board.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**Linda G. Bizzarro  
Pamela W. Carter  
Danna E. Schwab  
Evans C. Spiceland, Jr.  
Melissa L. Theriot  
Walter D. White  
Charles H. Williamson, Jr.**

By   
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**Sheila E. O'Leary**  
**FOR THE ADJUDICATIVE COMMITTEE**

**Dominick Scandurro, Jr. - Dissents with reason.**

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: THOMAS J. HOGAN, JR.**

**DOCKET NO. 16-DB-055**

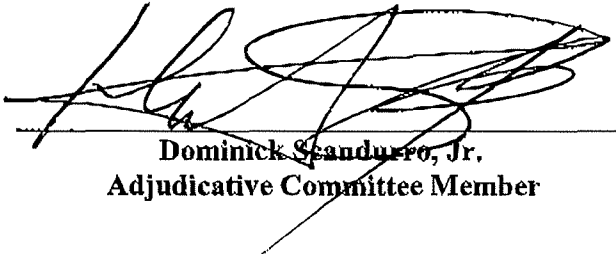
**DISSENT**

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I disagree with the hearing committee and this recommendation to dismiss the charges against the respondent. I agree that this was and I assume still is a nasty sibling fight. I am reluctant to allow the complainants to use the disciplinary apparatus against their lawyer sibling to gain an advantage in a family war or to get even with respondent for opposing their wishes. However, my reading of the record leads me to conclude that the respondent was a willing and active participant in this sad family affair. The respondent gave out as much grief to his siblings as they were giving to him and in doing so crossed the line of acceptable behavior. I would recommend a public reprimand based on a violation of rules 8.4(d) and 3.1.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

By: \_\_\_\_\_



**Dominick Scanduro, Jr.**  
**Adjudicative Committee Member**



## APPENDIX

### **Rule 3.1. Meritorious Claims and Contentions**

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

### **Rule 3.3. Candor Toward the Tribunal**

- (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;
  - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

\* \* \*

- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

### **Rule 4.1. Truthfulness in Statements to Others**

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person . . . .

### **Rule 8.4. Misconduct**

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

\* \* \*

- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;  
(d) Engage in conduct that is prejudicial to the administration of justice . . . .