

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: GEORGE MARTIN GATES IV

NUMBER: 16-DB-036 c/w 16-DB-088

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This is a disciplinary matter based upon the consolidation of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against George Martin Gates IV (“Respondent”), Louisiana Bar Roll Number 26295.¹ The 16-DB-036 charges, which consist of two counts, allege violations of Rules of Professional Conduct: 1.3, 1.5(f), 1.16(d), 8.1(c), and 8.4(d).² The Hearing Committee assigned to 16-DB-036 concluded that Respondent violated the Rules and recommended that he be issued a public reprimand, and that he be ordered to obtain additional continuing legal education credits in the areas of Professionalism, Ethics and/or Law Office Management. Upon review by the Board, the Board concluded that Respondent violated Rule 8.1(c) in Count I and Rules 1.3, 1.5(f), 8.1(c) and 8.4(d) in Count II. In its recommendation to the Court, the Board recommended that Respondent be suspended for six months, fully deferred, subject to a period of probation. However, the Court remanded 16-DB-036 to the Board for consolidation with 16-DB-088 for the issuance of a single recommendation of discipline.

The 16-DB-088 charges, which consist of one count, allege violations of Rules 1.1(c) and 5.5(a).³ The Hearing Committee assigned to 16-DB-088 concluded that Respondent negligently violated the Rules and recommended that he be publicly reprimanded.

¹ Respondent is currently eligible to practice law.
² See the attached Appendix for the text of the Rules.
³ See the attached Appendix for the text of the Rules.

For the following reasons, the Board adopts the Committee's findings and conclusions in 16-DB-088. As a sanction for the misconduct in 16-DB-036 and 16-DB-088, the Board recommends the same sanction it recommended in 16-DB-036: a six-month suspension, fully deferred, subject to probation conditioned on attendance at LSBA's Ethics School, providing full restitution of the fees paid on behalf of Ms. O'Carroll, and payment of the costs and expenses of the disciplinary proceedings.

PROCEDURAL HISTORY

I. 16-DB-036

ODC filed the formal charges in 16-DB-036 on March 24, 2016. The charges state, in pertinent part:

COUNT I

Complainant Glenn Elliot, filed a formal ODC complaint against Respondent on December 30, 2014. Respondent represented complainant in a criminal matter. Complainant indicated in his complaint that he had requested his file from Respondent, but Respondent did not comply with the request. In an effort to compel the Respondent to return his file, Complainant filed a formal complaint with ODC. On February 4, 2015, ODC sent a letter to Respondent advising him of his obligation to return his client's file and requested that he return the file to him immediately. Respondent failed to return the file to Complainant and did not respond to a letter sent to him by ODC.

On March 24, 2015, a formal complaint was opened in this matter. At that time, another letter was sent to Respondent advising him of his obligation to respond to the official ODC investigation, but Respondent failed to respond to that letter, as well. On May 4, 2015, Deputy Counsel requested a subpoena to compel Respondent to appear at the office of ODC to submit to a sworn statement since he had not responded to the complaint or ODC's ongoing investigation. Respondent was personally served with the subpoena on May 11, 2015. Respondent's sworn statement was scheduled for June 3, 2015 at 10:00 a.m. Respondent did not appear for his statement. On June 4, 2015, Respondent provided to ODC a United States Postal Service receipt showing that he mailed a package to Angola, LA. However, this mailing was in excess of five months from the time of the formal complaint. Respondent has given no basis for his tardiness in sending to Complainant his file or his failure to appear for his sworn statement.

By Respondent's failure to timely and promptly release to Complainant the entire file relating to his matter, Mr. Gates has violated Rules of Professional Conduct 1.16(d). By Respondent's failure to appear at the ODC office for his sworn statement, as well as his failure to cooperate with ODC's formal investigation, Respondent has violated Rules of Professional conduct 8.1(c).

COUNT II

Complainant Jennifer N. O'Carroll, filed a complaint against Respondent on September 26, 2013. Complainant hired Respondent in July of 2011 to represent her in a federal Americans with Disabilities Act claim against her former employer Hancock Bank of Louisiana. Complainant indicated that over the course of the representation, it became difficult for her to communicate with the Respondent since he was mostly unresponsive to Complainant's phone calls, emails, and text messages. Eventually, on July 9, 2013, Respondent notified Complainant, via text message, that her case had been dismissed due to a "lack of witnesses". Complainant continued to attempt phone communications with Respondent, but Respondent would not return Complainant's phone calls or messages.

Complainant sent to Respondent a letter via USPS Certified Mail requesting the return of her file so she could retain another attorney to assist her with her claim. Respondent failed to respond to the letter.

Complainant attached to her formal complaint a copy of a pleading, an opposition from opposing counsel to Complainant's Motion for Extension of Time to File Responsive Pleadings to 12(b)(6) Motion for Summary Judgment. Defendant's motion described Respondent's behavior during the litigation, indicating that Respondent refused to answer Defendant's discovery requests, even after having been compelled by the court twice to do so. Respondent was sanctioned by the court in the amount of \$500.00, and again, refused to comply. After having filed a third Motion to Compel Discovery, Defendant moved for a summary judgment pursuant to Rule 12(b)(6). Respondent failed to respond to Defendant's summary judgment motion. Accordingly, Complainant's claim was dismissed.

Respondent was subpoenaed, and appeared, for a sworn statement on March 12, 2014 at the ODC office in Baton Rouge. In his statement, Respondent confirmed that he was ordered to pay sanctions by the Federal Court no later than May 13, 2013, but failed to do so. Respondent eventually paid the sanctions almost a year later, on March 25, 2014. During his statement, Respondent agreed to provide to ODC, within ten days, additional documents related to the litigation. Respondent never provided any additional documentation to ODC. Respondent acknowledged in his statement that he did not take any depositions and he did not collect any doctors' medical reports on behalf of Complainant. Respondent also admitted that he filed no opposition to defendant's motion for summary judgment, which resulted in the dismissal of Complainant's claim. Respondent had agreed, in October 2013, to refund \$2,500.00 to Complainant's sister, who had paid Respondent's legal fee, but Respondent never refunded the unearned fee.

By Respondent's obvious neglect of Complainant's claim, by his refusal to refund the \$2,500 unearned fee, by his failure to cooperate with ODC during a

formal investigation, and for his extreme tardiness in paying his court-ordered sanctions, Mr. Gates has violated Rules of Professional Conduct 1.3, Rule 1.5(f), Rule 8.1(c) and Rule 8.4(d).

Respondent failed to timely respond to the charges so, on May 18, 2016, the ODC filed a Motion to Declare the Factual Allegations Deemed Proven. An order was signed granting the motion on May 31, 2016. On June 17, 2016, Respondent filed a response to the charges, and on July 6, 2016, filed a Motion to Recall Deemed Admitted Order. The order was recalled on July 21, 2016. The hearing in this matter was held on January 12, 2017. Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of the ODC. Respondent appeared with counsel, Ernest L. Jones.

The Committee's report was issued on April 12, 2017.⁴ Relative to Count I, the Committee found the evidence to be inconclusive as to Respondent's proper address, and that he immediately responded when he was notified that his client had requested his file. The Committee also found that Respondent provided competent representation to his client, Mr. Elliott. However, noting that "there seemed to be some question of whether or not he did, in fact, act expeditiously with his commitment of reasonable due diligence and promptness in representing his client," the Committee concluded Respondent violated Rule 1.3.

As to Count II, the Committee found Respondent had timely pursued his client's case. It found he could offer no evidence to oppose the defendant's motion for summary judgment, because he could locate no witness willing to support his client's claims. The Committee found Respondent had done a poor job of continuing to inform his client of the status and circumstances of her case. In addition, they found he was slow in making a determination that there was no evidence to oppose the motion for summary judgment.

⁴ The hearing Committee was comprised of Michael R. D. Adams (Chair), James A. Taylor (Lawyer Member) and Vallan B. Corbett (Public Member)

Relative to fees paid, the Committee found that Respondent spent a significant amount of time working on his client's case and that the \$2,500 flat fee appeared to have been earned. It noted that he had nevertheless expressed a willingness to return the full fee. The Committee concluded that Respondent violated Rules 1.3 (diligence) and 1.4 (communication).

Considering its findings, the Committee recommended that Respondent receive a public reprimand and that he be ordered to attend additional continuing legal education courses in the areas of Professionalism, Ethics and/or Law Office Management. The Committee did not expound on how it had arrived at its recommended sanction.

On May 2, 2017, the ODC filed its Notice of Objection to Hearing Committee Report. Specifically, the ODC objected to the Committee's failure to find violations of Rules 1.16(d), 1.5(f)(5), 8.1(c) and 8.4(d). The ODC further objected to the leniency of the Committee's recommended sanction, arguing that the appropriate sanction is suspension with deferral, rather than public reprimand. The ODC filed its Board Brief on July 10, 2017. Respondent fax-filed a brief on August 17, 2017. In the brief, Respondent urged the Board to adopt the Committee's findings and recommendation arguing that they were not manifestly erroneous. Oral argument in this matter was scheduled for September 21, 2017 before Board Panel "A".⁵ Paul E. Pendley appeared on behalf of the ODC. Ernest L. Jones appeared on behalf of the Respondent.

The Board issued its recommendation to the Court in 16-DB-036 on January 16, 2018. The Board adjusted the Committee's conclusions to find that Respondent violated Rule 8.1(c) in Count I and Rules 1.3, 1.5(f), 8.1(c) and 8.4(d) in Count II. The Board found that Respondent's misconduct was negligent in some instances and knowing in others, causing harm to his client, the

⁵ Board Panel "A" was composed of Anderson O. Dotson III (Chair), Linda G. Bizzarro (Lawyer Member), and Charles H. Williamson, Jr. (Public Member). Oral argument was initially scheduled for August 10, 2017, but was reset as a result of several motions related to scheduling, briefing and oral argument.

legal system, and the profession. The Board recognized the following mitigating factors: absence of a dishonest or selfish motive and personal problems.⁶ The sole aggravating factor recognized by the Board was Respondent's prior disciplinary record.⁷ As a sanction, the Board recommended that Respondent be suspended from the practice of law for six months, fully deferred, subject to probation. Further, the Board recommended that Respondent attend L.S.B.A.'s Ethics School, make full restitution of the fees paid on behalf of Ms. O'Carroll and that he pay all costs and expenses of the disciplinary proceedings in accordance with Rule XIX, Section 10.1 (A).

On February 23, 2018, pursuant to a motion filed by ODC, the Court remanded 16-DB-036 to the Board for consolidation with 16-DB-088. The Court directed the Board to "issue a single recommendation of discipline to this Court encompassing all disciplinary matters involving respondent." On March 5, 2018, the Board consolidated 16-DB-036 and 16-DB-088.

II. 16-DB-088

ODC filed the formal charges in 16-DB-088 on November 17, 2016. The charges state, in pertinent part:

Respondent is Mr. George Martin Gates, IV, Bar Roll #26295. Respondent was born April 4, 1964 and was admitted to practice law in Louisiana on October 15, 1999. Respondent has prior discipline, an admonition in 2014 for violation of Rule 8.4(d).

The Office of the Disciplinary Counsel received the instant complaint from Complainant Bernard E. Anderson on August 20, 2015. Complainant indicated that his father had passed away on June 21, 2015. Complainant paid to Respondent a fee of \$2,500 to represent his interests in the succession matter. Complainant stated that he met with Respondent on July 1, 2015 at an IHOP (International House of Pancakes) restaurant to discuss the case, and Complainant also paid Respondent's fee at that time. Complainant attached a copy of a check made to Respondent in the amount of \$2,500 and dated July 1, 2015.

⁶ Respondent testified that he had suffered some health issues near the time of the events involved in the instant matter (possible diagnosis of lymphoma, leading to throat surgery in Baltimore, and four-month recovery). In addition, it appears his home and business were impacted by Hurricane Isaac in 2012.

⁷ Respondent was admonished on February 3, 2014, for a violation of Rule 8.4(d). Respondent failed to pay a former client \$5,000 as he had agreed to do.

Over the course of the representation, Complainant became displeased with Respondent's work. Complainant said that he had difficulty in communicating with Respondent since Respondent appeared to be in court much of the time. Complainant said he contacted the Bar Association, who advised him that Respondent was currently ineligible to practice law. Complainant said that opposing counsel also had difficulty reaching Respondent. Complainant decided to fire Respondent and request a refund. Complainant filed a formal ODC complaint when he did not receive the refund.

Respondent filed a written response to the complaint. Respondent acknowledged involvement in Complainant's case, including email communications with opposing counsel in the matter. Respondent attached copies of the email communications he had with opposing counsel, which appeared to discuss the succession matter. The dates on the emails are shown as July 2, 2015, July 6, 2015, and July 23, 2015.

During 2015, Respondent was ineligible to practice law during the following dates:

1. April 20 to May 21, 2015 - LADB ineligible
2. June 1 to July 27, 2015 - MCLE ineligible
3. September 9 to September 22, 2015 - Trust Account ineligible
4. September 9 to October 8, 2015 - SC ineligible

In the instant matter, at the time Complainant hired Respondent and Respondent accepted an attorney fee on July 1, 2015, Respondent was ineligible to practice law in Louisiana. Also, during the time when Respondent exchanged email messages with opposing counsel, he was ineligible to practice. Respondent, by engaging in the practice of law while determined to be ineligible, has violated Louisiana Rules of Professional Conduct Rule 1.1(c) and Rule 5.5(a).

On March 2, 2017, Respondent filed an answer to the charges in which he denied violating the Rules. On May 1, 2017, ODC filed its prehearing memorandum, in which it argued a period of suspension, with all or a portion deferred, is the appropriate sanction. Respondent filed his prehearing memorandum on May 10, 2017.

The hearing of this matter was held on October 25, 2017. Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Ernest L. Jones appeared on behalf of Respondent. Respondent appeared via video conference. The Committee heard the testimony of Michelle Larose (Director of Finance and Membership for the LSBA) and Respondent. The Committee also admitted into evidence ODC Exhibits 1-11. In its report issued on January 5, 2018, the Committee made the following findings of fact:

...Respondent violated the rules by engaging in the practice of law on certain days in July 2015 while determined to be MCLE ineligible, even under circumstances where in good faith he may have misunderstood the rules. The evidence supports that Respondent practiced law while MCLE ineligible beginning July 1, 2015 through July 8, 2015. There was no evidence that Respondent practiced law in June 2015. There is no clear evidence that Respondent practiced law during the period of MCLE ineligibility after July 8, 2015 until he was reinstated on July 27, 2015. There is no evidence that Respondent practiced law while ineligible on September 9, 2015 when Respondent received an email from Complainant's brother on September 9, 2015. There is no evidence that Respondent informed Complainant and Complainant's brother's attorney of Respondent's MCLE ineligibility, as Respondent should have, until after Respondent was reinstated on July 27, 2015. It is the recommendation of the Committee that the sanction for this Respondent is a public reprimand.

Respondent was ineligible to practice law from June 1, 2015-July 27, 2015 due to noncompliance with mandatory continuing legal education requirements. Respondent did not complete the required continuing legal education hours for 2014 until January 2015, resulting in a late fee assessed in the amount of \$250.00 payable prior to June 1, 2015 to avoid [being] deemed ineligible to practice law. The Supreme Court staff properly noticed Respondent under the rules.

On July 16, 2016, when Respondent understood that he was MCLE ineligible, Respondent properly noticed the court for continuances due to his ineligibility. Respondent continued to communicate with Complainant during the period of July 16-27, 2015, and although no evidence was admitted that Respondent rendered legal advice, there is also no evidence that Respondent noticed Complainant and Complainant's brother's attorney of Respondent's ineligibility until Respondent was reinstated on July 27, 2015 after paying the reinstatement fee of \$350.00.

At the hearing, Respondent was straight-forward, cooperative, and credible in his responses, offering plausible explanations.

While Respondent was ineligible to practice law from June 1, 2015-July 27, 2015, the evidence at hearing is limited to the period of ineligibility to practice law as follows:

1. Beginning on July 1, 2015 with the relevant period of ineligibility as to Complainant's matter and any other matters during that time limited to July 1, 2015-July 8, 2015, particularly July 1, 2, 6, and 8, 2015.
2. The July 16-24, 2015 text message exchanges do not include legal advice. While the communications are in the nature of reporting case status only (i.e., Respondent advises he is waiting to hear from Complainant's brother's attorney), the communications fail to report that legal services have been discontinued or suspended due to Respondent's ineligibility. There is no evidence that Respondent informed Complainant of his ineligibility. These text message communications are not comparable to counsel communications where counsel has suspended legal services and has immediately advised client of his ineligibility, thereafter followed by a status update, which may include information about when counsel could

resume legal services, or transferring client's case or providing the record to client to move client's case forward-all with client's consent and knowledge. During those days, Respondent texts that he is also conducting background checks, presumably for another client's case, but there is no further information.

Text message exchanges between Respondent and Complainant show that Complainant had an unrealistic expectation that Respondent would have been able to produce a legal result in the succession matter immediately and an apparent lack of recognition that Respondent would have to coordinate with counsel representing Complainant's brother and the courts. There is no evidence to support that Respondent communicated with Complainant to explain the process. There is evidence that shows that Respondent began legal services to move the matter forward by the day after Complainant made payment, and Respondent diligently worked to further Complainant's cause and communicated same to Complainant. Respondent's problem, which became a problem for Complainant, is that Respondent was ineligible to practice law during the time described herein and therefore was ineligible to represent the Complainant before the courts or in any negotiations with Complainant's brother's attorney, who also relied on Respondent's eligibility as a baseline in representing his own client as well.

Hearing Committee Report, pp. 10-12. Based on the foregoing, the Committee concluded that Respondent violated Rules 1.1(c) and 5.5(a). The Committee found that Respondent's misconduct was negligent and created the potential for harm. The Committee noted the following aggravating and mitigating factors:

[Aggravating Factors:]

1. Respondent's prior discipline, an admonishment in 2014.
2. Respondent has been admitted to the practice of law since October 15, 1999 and therefore has substantial experience in the practice of law.
3. Respondent delayed in his response to the complaint served on August 20, 2015 until May 16, 2016.
4. Respondent did not immediately notify his Complainant or Complainant's brother's attorney when Respondent realized he was ineligible.

[Mitigating Factors:]

1. Absence of dishonest or selfish motive.
2. At hearing, Respondent demonstrated full and free disclosure to the Committee.
3. There is no evidence that Respondent has practiced law during any other period of ineligibility.
4. Upon Respondent's understanding that he was ineligible, he notified the court, shut down all practice, and paid the fee.
5. Respondent refunded the legal fees to Complainant.

Hearing Committee Report, p. 15. As a sanction, the Committee recommended that Respondent be publicly reprimanded.

On January 25, 2018, ODC filed an objection to the Committee's report, arguing that suspension was the appropriate sanction. ODC filed its brief on March 5, 2018, reiterating the same argument.⁸ Respondent did not file a brief. Oral argument of this matter was heard on April 5, 2018, before Board Panel "B."⁹ Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Ernest L. Jones appeared on behalf of Respondent.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review – 16-DB-088

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).

⁸ In its brief and at oral argument, ODC did not offer an argument on the appropriate sanction for the consolidated matter (16-DB-036 & 16-DB-088). Rather, ODC simply argued the appropriate sanction for 16-DB-088.

⁹ The Panel was composed of Pamela W. Carter (Chair), Dominick Scandurro, Jr. (Lawyer Member), and Sheila E. O'Leary (Public Member).

A. The Manifest Error Inquiry

The factual findings of the Committee do not appear to be manifestly erroneous and are supported by the record.

B. De Novo Review

The Committee correctly applied the Rules. The record supports the conclusion that Respondent negligently violated Rules 1.1(c) and 5.5(a) by practicing law while ineligible to do so.

II. The Appropriate Sanction – 16-DB-036 & 16-DB-088

A. Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, §10(C) states that when imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

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

In 16-DB-036, Respondent violated obligations to his client, the legal system and as a professional. His conduct appears to have been negligent in some instances, and knowing as to others. His failure to fully cooperate with the ODC in its investigations impaired the efficient operation of the disciplinary process, causing harm to the legal professional as a whole. His failure to diligently act upon the federal court's orders unnecessarily prolonged the case. Conduct such as this does damage to the legal system. His failure to diligently pursue his client's case and adequately communicate developments to Ms. O'Carroll, along with his failure to refund the \$2,500 fee as

promised, damaged his client by delaying her case and depriving her of the funds for an extended period of time.¹⁰

In 16-DB-088, Respondent negligently violated his duty to the profession by practicing law while ineligible. His misconduct had the potential to harm his clients. However, the record does not indicate that any actual harm resulted from Respondent's misconduct.

The following aggravating factors are supported by the consolidated record: prior disciplinary offenses¹¹ and substantial experience in the practice of law.¹² The following mitigating factors are supported by the consolidated record: absence of a dishonest or selfish motive, timely good faith effort to make restitution or to rectify consequences of misconduct,¹³ full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and personal problems.

B. The ABA Standards and Case Law

With regard to the misconduct in 16-DB-088, the *ABA Standards for Imposing Lawyer Sanctions* suggests reprimand is the baseline sanction. Standard 7.3 states: "Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system." Here, as discussed above, Respondent negligently practiced law while ineligible, creating the potential for harm but causing no actual harm.

With regard to the unauthorized practice of law, the Court has held that the baseline sanction for practicing law while certified ineligible is generally a one year and one day

¹⁰ ODC Exhibit 1b. Respondent promised to refund the fee in an e-mail message dated September 9, 2013.

¹¹ Respondent received an admonition in 2014 for violating Rule 8.4(d) (engaging in conduct prejudicial to the administration of justice).

¹² Respondent was admitted to the practice of law in Louisiana on October 15, 1999.

¹³ Upon learning of his ineligibility, Respondent quickly sought to regain eligible status.

suspension. *In re Hardy*, 2003-0443 (La. 5/2/03), 848 So.2d 511, 515. However, the case law of the Board and the Court suggest sanctions ranging from public reprimand to a short suspension, with the possibility of imposing no sanction at all, for minor violations.

In *In re Denny*, the Board dismissed the formal charges alleging that Mr. Denny engaged in the unauthorized practice of law. Ruling of the Disciplinary Board, 07-DB-73 (1/9/09). ODC charged Mr. Denny with practicing law while he was MCLE ineligible. Mr. Denny had acquired the appropriate number of CLE hours in Texas but failed to properly report them to Louisiana's MCLE Committee. Because of an oversight by him and his secretary, Mr. Denny did not realize he was certified ineligible until after he engaged in the unauthorized practice of law. Regardless, the Board declined to impose formal discipline:

Although Respondent's conduct constitutes a minor violation of the rules, it was not intentional conduct and not the result of a dishonest or selfish motive. The record reveals no actual harm caused by Respondent's actions. Upon realizing that he was ineligible to practice law, Respondent immediately corrected his MCLE issues. [Citation omitted.] Further, Respondent has practiced law in Louisiana since 1994 without any disciplinary infractions, and he has expressed sincere remorse for his negligence.

Denny at p. 5. The Board relied on the Court's ruling in *In re Hartley*. 2003-2828 (La. 4/2/04), 869 So.2d 799. In *Hartley*, despite finding a minor violation of the Rules, the Court determined that the violation did not rise to the level of sanctionable misconduct.

In *In re Phillips*, the Board publicly reprimanded Ms. Phillips for practicing law while ineligible and for using a deceptive firm name. Ruling of the Disciplinary Board, 11-DB-073 (10/10/12). Regarding her unauthorized practice of law, Ms. Phillips appeared in several matters on behalf of clients during a three-month period when she was certified as ineligible to practice law. The Board found this misconduct to be "largely negligent" and that it did not result in actual harm. *Id.* at 8. With regard to using a deceptive firm name, the Board found her conduct to be

intentional. The following mitigating factors were present: absence of a prior disciplinary record, absence of a dishonest or selfish motive, and physical disability. The Board did not recognize any aggravating factors.

In *In re Oldenburg*, the Court suspended Mr. Oldenburg for six months, with all but thirty days deferred, for knowingly practicing law while ineligible. 2009-0991 (La. 10/16/09), 19 So.3d 455. Mr. Oldenburg was certified as ineligible for failure to maintain his MCLE hours. He represented a client during the period of ineligibility, which lasted over one year. The certification was because of a payment issue for CLE that he attended, not because he failed to obtain the required hours. The following aggravating factors were present: prior disciplinary record and substantial experience in the practice of law. The mitigating factors were: absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and remorse. Given his extensive history of failing to maintain his professional obligations (payment of dues/assessment and obtaining MCLE), the Court determined that a period of suspension was more appropriate than a public reprimand.

In 16-DB-088, the facts appear most similar to those in *Denny*. Respondent actually obtained the required number of CLE hours. However, because he did not complete those hours until the next calendar year, he was assessed a late penalty. His failure to pay this penalty resulted in his certification as ineligible to practice law. However, like in *Oldenburg*, Respondent does have a disciplinary history and an extensive history of being certified as ineligible. Nonetheless, the actual misconduct is less egregious than that in *Oldenburg*. Thus, the Board finds that a public reprimand is the appropriate sanction for the misconduct in 16-DB-088.

C. Consideration of 16-DB-088 with 16-DB-036

Given the remand of 16-DB-036, the Board must consider the misconduct in 16-DB-088 with that in 16-DB-036 to determine the appropriate sanction. As noted above, in 16-DB-036, the Board recommended a six-month suspension, fully deferred, subject to certain conditions. The recommendation was based upon Respondent's misconduct in two matters. In the first matter, Respondent failed to cooperate with ODC in an investigation, constituting a violation of Rule 8.1(c). In the second matter, Respondent neglected a client's legal matter, failed to refund the unearned fee, failed to pay a sanction as ordered by a court, and failed to cooperate with ODC's investigation. The Board found this misconduct to be negligent in some instances and knowing in others. The misconduct in 16-DB-036 is more egregious than the misconduct in 16-DB-088. Given that the misconduct in 16-DB-088 would warrant, at most, a public reprimand, that misconduct has little influence over the sanction recommended in 16-DB-036. Thus, when considering matters together, the Board finds that the recommendation in 16-DB-036 is sufficient to address the misconduct in 16-DB-088 as well. Accordingly, as the sanction in the consolidated matter, the Board adopts the sanction it recommended in 16-DB-036 with one slight modification that is addressed below.

CONCLUSION

The Board adopts the findings and conclusion of the Committee in 16-DB-088. As a sanction for the consolidated matters, the Board recommends that Respondent be suspended from the practice of law for six months, fully deferred, subject to probation. In its recommendation in 16-DB-036, the Board did not specify a period for the probation. The Board recommends that the probationary period be one year. As conditions of the probation, the Board recommends that

Respondent attend LSBA's Ethics School, make full restitution of the fees paid on behalf of Ms. O'Carroll, and pay all costs and expenses of this proceeding pursuant to Rule XIX, §10.1.

RECOMMENDATION

The Board recommends that Respondent, George Martin Gates IV, be suspended from the practice of law for six months, fully deferred, subject to a one-year period of unsupervised probation with the following conditions: 1) LSBA's Ethics School, 2) make full restitution of the fees paid on behalf of Ms. O'Carroll, 3) and pay all costs and expenses of this proceeding pursuant to Rule XIX, §10.1. The probationary period should commence from the date Respondent and ODC execute a formal probation plan. Any failure of Respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**Linda G. Bizzarro
Brian D. Landry
Sheila E. O'Leary
Dominick Scandurro, Jr.
Danna E. Schwab
Evans C. Spiceland, Jr.
Melissa L. Theriot
Charles H. Williamson, Jr.**



BY:

Pamela W. Carter
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX A

Rule 1.1. Competence

...

(c) A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.5. Fees

...

(f) Payment of fees in advance of services shall be subject to the following rules . . .

- (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Rule 1.16. Declining or Terminating Representation

...

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. . . .

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not . . .

- (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to . . .

- (d) Engage in conduct that is prejudicial to the administration of justice