

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: TIMMY JAMES FONTENOT

NUMBER: 17-DB-019

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This is an attorney discipline matter arising out of the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Timmy James Fontenot (“Respondent”), Louisiana Bar Roll Number 23738.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3 (diligence); 1.4(a)(3) (failure to keep the client reasonably informed about status of matter); 8.1(a) (knowingly make a false statement of material fact); 8.1(c) (failure to cooperate with ODC’s investigation); 8.4(a) (violate or attempt to violate the Rules of Professional Conduct); 8.4(b) (commit a criminal act especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer); 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(d) (conduct prejudicial to the administration of justice).² Respondent allowed the formal charges to become and remain deemed admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).³ The hearing committee (“committee”) assigned to this matter

¹ Respondent is 50 years old and was admitted to the Louisiana Bar on 10/06/95. On November 28, 2017, Respondent was disbarred by the Louisiana Supreme Court. *In re Fontenot*, 2017-1661 (La. 11/28/17), 230 So.3d 185, rehearing denied (La. 12/14/17), 231 So.3d 634. His current primary registration address is 407 6th St., Mamou, LA 70554. His secondary registration address is 1125 Beacon Ln, Mamou, LA 70554.

² See attached Appendix for full text of the Rules.

³ This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming

concluded Respondent violated the Rules as charged and recommended that he be permanently disbarred, that he make full restitution, and that he pay all costs and expenses associated with these proceedings.

For the following reasons, the Board adopts the committee's factual findings and legal conclusions and the committee's recommendations that Respondent be permanently disbarred, that he make full restitution, and that he pay all costs and expenses associated with these proceedings.

PROCEDURAL HISTORY

ODC filed formal charges in the instant matter on April 24, 2017. The charges state, in pertinent part:

COUNT I (ODC File Nos. 0034868 and 0034892)

(ODC File Number 0034868)

On August 5, 2016, the Office of Disciplinary Counsel received correspondence from Wanda Jean Edwards, Esq. Ms. Edwards was sending the correspondence on behalf of her law firm and the firm's individual attorneys pursuant to Rule 8.3[(a)] of the Rules of Professional Conduct to notify the Office of Disciplinary Counsel of a potential ethical violation by Respondent. Ms. Edwards is listed as the Complainant in ODC file number 0034868.

(ODC File Number 0034892)

On August 10, 2015 [sic],⁴ the Office of Disciplinary Counsel received correspondence from Marcus Lee Fontenot, Esq. Mr. Fontenot was sending the correspondence on behalf of his law firm and the firm's individual attorneys pursuant to Rule 8.3[(a)] of the Rules of Professional Conduct to notify the Office of Disciplinary Counsel of a potential ethical violation by Respondent. Mr. Fontenot is listed as the Complainant in ODC file number 0034892.

The complaint states that on January 7, 2013, Respondent and Marcus Fontenot entered into a contract of representation with Evangeline Construction & Trucking, Inc. ("the Client") through its representative, Mr. Boyd Landreaneau, for legal services regarding the BP Oil Spill. On January 9, 2013, the case was then referred to the firm of Fayard & Honeycutt ("the Firm") with the permission and

the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

⁴ The correspondence was actually received by the ODC on August 10, 2016. See Exhibit ODC-2.

knowledge of the Client. The Firm designated Respondent as the lead attorney to communicate and assist with client contract data and information.

With the help of Respondent and Marcus Fontenot, the Firm pursued a claim in the Deepwater Horizon Court Supervised Settlement Program on behalf of the Client. During April 2016, the Firm received an offer of settlement which had been negotiated through the court-appointed Neutrals' opt-out and exclusions confidential settlement program. Respondent presented the offer to the Client, and the Client accepted the offer and signed the formal release on April 19, 2016. BP ratified the settlement offer on May 14, 2016. This entire process is confidential by order of the federal court (MDL-2179, Rec. Doc#15718). The ODC filed a Motion to be Relieved of Restrictions of Protective Order in the BP litigation case (MDL-2179, Rec. Doc#22394). Said motion was granted by Order dated April 4, 2017 (MDL-2179 Rec. Doc#22550).

The settlement funds were wired to the Firm's trust account. The Firm prepared a final disbursement sheet, release and dismissal of the Client's action, and on June 1, 2016, the funds were disbursed according to the Final Distribution Sheet. The Client's portion of the settlement check was made payable directly to Evangeline Construction. The Client's settlement check, the distribution sheet, and the check for attorney's fees were then transmitted to Respondent. The Firm's trust account records indicate that the check(s) cleared the account during the month of June 2016.

On July 27, 2016, Marcus Fontenot phoned Wanda Edwards to inquire about the status of the funding of the confidential settlement agreement with Evangeline Construction. Ms. Edwards informed Mr. Fontenot that her firm had sent \$275,214.02 in settlement funds along with all appropriate disbursement and settlement documentation to Respondent on June 1, 2016. Thereafter, Ms. Edwards phoned the client and learned that Respondent had issued the Client a check for \$200,214.02, and not \$275,214.02. The Firm then learned Respondent had forged the Client's name on the back of the Firm's trust account check and deposited the check made payable to Evangeline Construction into his trust account. The firm also learned that when Respondent issued the \$200,214.02 check to the Client, Respondent had the client sign a handwritten receipt acknowledging he had received the check. On July 28, 2016, Blayne Honeycutt, a partner of the Firm, instructed Respondent to disburse the funds immediately, and Respondent agreed to do so. On Friday, July 29, 2016, Respondent advised Mr. Honeycutt that he had disbursed all funds in accordance with the disbursement document. Further, Respondent sent the Firm and Mr. Fontenot a copy of his trust account check number 1771 in the amount of \$275,214.02, which contained a copy of the Client's signed acknowledgement that he had received the funds. The Firm later learned that Respondent had copied the handwritten acknowledgment of receipt of funds from the \$200,214.02 check and transferred it to the copy of trust account check number 1771 in the amount of \$275,214.02, before sending check 1771 to the Firm and Mr. Fontenot. Respondent's trust account check number 1771 in the amount of \$275,214.02 never cleared the bank as it was only written by Respondent to convince the Firm and Mr. Fontenot that he had paid the client the entire settlement amount when he had in fact not done so. When confronted with the Firm and Mr.

Fontenot's findings, Respondent informed the Firm and/or Mr. Fontenot that he had not paid the Client the entire amount because he simply did not have all the money. Thus, Respondent converted \$75,000.00 of the funds owed to the Client.

Upon learning of Respondent's actions, the Firm and/or Mr. Fontenot contacted the client and asked him not to deposit the \$200,214.02 check given to him by Respondent. On Monday, August 1, 2016, Blayne Honeycutt and Marcus Fontenot deposited \$75,000.00 in Respondent's trust account and then had Respondent direct the bank to issue a cashier's check to the Client in the amount of \$275,214.02. The client has now received all funds owed to him.

Respondent has never explained the whereabouts of the \$75,000. Further, Respondent failed to provide written responses to the above referenced complaints as required by Louisiana Supreme Court Rule XIX. The ODC's records in these matters indicate that Respondent received these two Complaints on August 31, 2016, and his written responses were due to this office on or before September 6, 2016. ODC Senior Investigator Robin Mitchell traveled to Respondent's office with the subpoena and subpoena duces tecum to serve Respondent with same on October 26, 2016. Respondent was not present to be served. Thereafter, Investigator Mitchell contacted Respondent by phoning his cell phone number. Respondent agreed to accept service of said subpoena and subpoena duces tecum via E-mail. Ms. Mitchell E-mailed Respondent the subpoena and subpoena duces tecum on November 3, 2016, at 10:11 a.m. Respondent confirmed receipt of said subpoena and subpoena duces tecum via E-mail to Ms. Mitchell at 1:47 p.m., on November 3, 2016. The ODC heard nothing from Respondent until November 21, 2016, when the ODC received faxed correspondence from Respondent indicating he just realized he had a conflict because of previously scheduled depositions. Thereafter, Respondent faxed a written response to the complaints denying the allegations in the complaints and attaching copies of the cashier's check paid to the Client on August 1, 2016 and the settlement disbursement sheet.

In addition to failing to appear for the sworn statement, Respondent provided no documents in response to the subpoena duces tecum. Said subpoena duces tecum required Respondent to produce the following documents at the ODC on November 22, 2016, at 10:00 a.m.:

- 1) A complete copy of your entire client file regarding your representation of Evangeline Construction & Trucking, Inc. including any and all financial records pertaining to said client; and,
- 2) Your complete client trust account bank statements for the time period of January 1, 2016 through the present date (Jefferson Davis Bank & Trust, Account ***4892)

To date, Respondent has never produced these documents. Correspondence was sent to Respondent by the ODC on November 29, 2016, informing him that his sworn statement needed to be scheduled and that he was required to provide the documents pursuant to the subpoena duces tecum. Respondent never responded to the ODC's November 29, 2016 correspondence or provided the documents pursuant to the subpoena duces [sic] tecum. Thereafter, the ODC reset Respondent's sworn statement and issued another subpoena and subpoena duces tecum for February 23, 2017, at 10:00 a.m., at the ODC offices. Respondent was

personally served with said subpoena and subpoena duces tecum on January 25, 2017. Respondent failed to appear for his sworn statement on February 23, 2017, or produce any documents pursuant to the subpoena duces [sic] tecum. It was necessary for the ODC to issue a subpoena duces tecum to the bank where Respondent's trust account is located to obtain the requested bank records.

Respondent's actions in this matter constitutes [sic] failing to act with reasonable diligence and promptness in representing a client, in violation of Rule 1.3; failing to keep the client reasonably informed about the status of the matter, in violation of Rule 1.4(a)(3); knowingly make a false statement of material fact, in violation of 8.1(a); failure to cooperate with the Office of Disciplinary Counsel in its investigation, in violation of 8.1(c); committing a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c); engaging in conduct that is prejudicial to the administration of justice, in violation of 8.4(d); and, violating or attempting to violate the Rules of Professional Conduct, in violation of Rule 8.4(a) of the Rules of Professional Conduct.

By letters dated April 27, 2017, the formal charges were mailed via USPS certified mail to Respondent's primary and secondary registration addresses. The mailing was delivered to his secondary address on April 29, 2017, and to his primary address on May 3, 2017. Respondent failed to file an answer to the charges. Accordingly, on July 27, 2017, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). By order signed August 8, 2017, the factual allegations contained in the formal charges were deemed admitted. On October 6, 2017, ODC filed its submission on sanction, in which ODC argued Respondent should be disbarred. The ODC filed thirteen exhibits (ODC-1 through ODC-13) with its submission.

Hearing Committee No. 22 issued its report on October 26, 2017.⁵ The committee concluded that Respondent violated the Rules as charged. In recommending a sanction, the committee found that Respondent violated duties owed to his client, the public, the legal system and the profession, that his conduct was intentional, and that he still had not accounted for

⁵ Hearing Committee No. 22 was comprised of Thomas B. Thompson (Committee Chair), Alan K. Breaud (Lawyer Member), and Elaine R. Dill (Public Member).

\$75,000.00 of the \$275,214.20 in settlement funds which he received for his client. The committee recognized the following aggravating factors: prior disciplinary offense; dishonest or selfish motive; a pattern of misconduct; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; substantial experience in the practice of law; and indifference to making restitution. The committee recognized no mitigating factors. In reaching its conclusion that Respondent should be permanently disbarred, the committee considered the *ABA Standards for Imposing Lawyer Sanctions*, specifically citing Standards 4.41, 4.61, 5.11 and 7.1, and the Guidelines For Conduct Which Might Warrant Permanent Disbarment enumerated in Appendix E to Louisiana Supreme Court Rule XIX (“Guidelines For Permanent Disbarment”).⁶ The committee also provided a thorough and reasoned analysis of the jurisprudence in support of its recommendation of permanent disbarment.

On December 6, 2017, the ODC filed a response to the committee’s report stating it has no objection to the committee’s recommendation. ODC filed its brief on December 19, 2017. Respondent has filed nothing for the Board’s consideration.

Oral argument of this matter was held on February 21, 2018, before Board Panel “A.”⁷ Deputy Disciplinary Counsel Tammy Pruet Northrup appeared via videoconference on behalf of ODC. Respondent did not appear.

⁶ See attached Appendix for full text of the Guidelines For Permanent Disbarment.

⁷ Board Panel “A” was composed of Brian D. Landry (Chair), Linda G. Bizzarro (Lawyer Member), and Charles H. Williamson, Jr. (Public Member).

PRIOR DISCIPLINE

In 2011, Respondent entered into consent discipline, resulting in a one-year suspension, fully deferred, subject to a two-year period of probation. *In re Fontenot*, 2011-0989 (La. 6/17/11), 63 So.3d 130 (“*Fontenot I*”). The misconduct at issue in that proceeding involved allegations that Respondent neglected a legal matter, failed to communicate with a client, charged an excessive fee, and made misrepresentations. *In re Fontenot*, 2017-1661 (La. 11/28/17), 230 So.3d 185, 190. *Fontenot I* was considered by the committee in reaching its recommendation of permanent disbarment in this matter.

As previously indicated, the committee issued its report on October 26, 2017. On November 28, 2017, the Louisiana Supreme Court issued its decision in *In re Fontenot*, 2017-1661 (La. 11/28/17), 230 So.3d 185 (“*Fontenot II*”), in which the Court ordered that Respondent be disbarred. In *Fontenot II*, Respondent settled the case of his clients in a personal injury matter without their consent, forged their signatures on the settlement documents, misled them as to the status of the case, failed to disburse the settlement proceeds for five years, failed to reduce the contingent fee agreement to writing, and made cash withdrawals from his client trust account. *Id.* at 192. As *Fontenot II* was not decided until one month after the committee issued its report in this matter, *Fontenot II* was not considered by the committee in making its recommendation.⁸

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is “to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations

⁸ It is noted that the misconduct at issue here occurred after the misconduct at issue in *Fontenot I* and *II*. Accordingly, *LSBA v. Chatelain*, 573 So.2d 470 (La. 1/22/91), does not apply.

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

A. The Manifest Error Inquiry

The factual allegations in the formal charges have been deemed admitted and proven pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). The factual findings of the committee are supported by the factual allegations asserted in the formal charges and by the evidence submitted in support of the allegations. *See In re Donnan*, 2001-3058 (La. 1/10/03), 838 So.2d 715.

B. De Novo Review

The committee correctly applied the Rules of Professional Conduct. The legal conclusions of the committee are supported by the factual allegations asserted in the formal charges and by the evidence in support of the allegations. The record supports the conclusion that Respondent violated Rules 1.3, 1.4(a)(3), 8.1(a), 8.1(c), 8.4(a), 8.4(b),⁹ 8.4(c), and 8.4(d).

⁹ The fact that an attorney has not been convicted of a crime does not preclude the ODC from proving by clear and convincing evidence that the attorney committed a criminal act in violation of Rule 8.4(b). *In re Williams*, 2011-1457 (La. 1/24/12), 85 So.3d 583, 591.

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

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

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

Here, Respondent violated duties to the client, the public and the profession. Respondent acted knowingly and intentionally in forging his client's endorsement of the settlement check he received from co-counsel to deposit the funds in his own account, disbursing to his client an amount significantly less than the amount his client was entitled to receive in the settlement, converting \$75,000.00 of his client's funds to his own use, making continuing misrepresentations to his co-counsel, and failing to cooperate with the ODC. Further, Respondent has yet to account for, much less repay, the \$75,000.00 paid by his co-counsel to effect full payment of the settlement proceeds to the client.

Aggravating factors include: prior disciplinary offense; dishonest or selfish motive; pattern of misconduct; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; substantial experience in the practice of law; indifference to making restitution; and illegal conduct. There are no mitigating factors supported by the record.

B. The ABA Standards and Case Law

The following *ABA Standards for Imposing Lawyer Sanctions* cited by the committee suggest the baseline sanction for Respondent's misconduct is disbarment:

4.41 Disbarment is generally appropriate when: . . .

- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; . . .
- (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.

7.1 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.

The jurisprudence further suggests that disbarment is the baseline sanction for Respondent's misconduct. In *Louisiana State Bar Ass'n v. Hinrichs*, 486 So.2d 116, 122 (La. 1986), the Supreme Court explained that typically imposition of disbarment is appropriate in conversion cases when one or more of the following elements is present: the lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; the lawyer either fails to make full restitution or does so tardily after extended

pressure of disciplinary or legal proceedings. *See also, In re Robinson*, 2013-1924 (La. 11/15/13), 129 So.3d 513; and *In re Jones*, 2006-2702 (La. 3/30/07), 952 So.2d 673, 680-681 (“When respondent’s conversion is combined with his other fraudulent acts, such as falsely endorsing Ms. Lensey’s name to the check, the baseline sanction is disbarment.”). All of these elements supporting disbarment are present here.

The remaining issue to be determined is whether Respondent’s conduct is so egregious that he should be permanently prohibited from reapplying for admission to the practice of law. The committee provided the following detailed and reasoned analysis in support of its recommendation that Respondent should be permanently disbarred despite the fact that, at the time the committee considered the issue, the committee believed that none of the illustrative Guidelines For Permanent Disbarment were technically applicable:

Moreover, Fontenot’s conduct warrants examination in light of the illustrative and non-binding guidelines of Louisiana Supreme Court Rule XIX, Appendix E, exemplifying the types of conduct for which permanent disbarment may be warranted. [footnote omitted] Guideline 1 relates to repeated or multiple instances of intentional conversion of client funds with substantial harm. The evidence in this case clearly establishes that Fontenot intentionally converted a significant amount of his client’s funds. Similar conduct has led to permanent disbarment.

In re Boutwell, 2013-1309, (La. 10/11/13), 127 So.3d 909 (per curiam), involved an 11-count deemed-admitted proceeding. The respondent neglected legal matters and failed to communicate with clients, essentially abandoning her law practice. She also failed to provide accountings of fees paid, failed to refund unearned fees, practiced law and held herself out as an attorney after being placed on interim suspension, and failed to cooperate with ODC in its investigations. Boutwell’s conduct amounted to repeated or multiple instances of intentional conversion of client funds with substantial harm, as required by Guideline 1 and permanent disbarment was imposed.

The license of Gregory Avery was permanently revoked in the matter of In re Avery, 2012-0598 (La. 4/5/13), 110 So.3d 563 (per curiam), another deemed admitted case. The record established that Avery wrote checks for personal expenses drawn on his client trust account and otherwise improperly handled his trust account; neglected legal matters, failed to communicate with his clients, failed to refund the unearned portion of the fees he was paid and failed to cooperate with the ODC in its investigation. The repeated mishandling of his client trust account

and conversion of client funds to his own use resulted in Avery's permanent disbarment under Guideline 1.

In the matter of In re Hawkins, 2012-0211 (La. 5/9/12), 90 So.3d 377 (per curiam), the respondent neglected legal matters, failed to communicate with clients, failed to properly withdraw from representation, failed to refund approximately \$26,000 in unearned fees to at least seven clients, essentially converting those funds to his own use, and failed to cooperate with the ODC investigation. The deemed admitted matter resulted in permanent disbarment under Guideline 1. See also In re Callahan, 2011-0268 (La. 4/29/11), 64 So.3d 766 (per curiam); In re Bates, 2009-2623 (La. 4/16/10), 33 So.3d 162 (per curiam); In re Alleman, 2007-2060 (La. 5/30/08), 982 So.2d 814 (per curiam); In re McKee, 2007-1381 (La. 2/1/08), 976 So.2d 152 (per curiam); In re Straub, 2009-2354 (La. 1/30/09), 999 So.2d 1123 (per curiam); In re Meyer, 2013-2410 (La. 1/17/14), 131 So.3d 43 (per curiam).

Although the illustrative language of Guideline 1 speaks of repeated or multiple instances of conversion of client funds, the fact pattern of each decision ordering permanent disbarment involved multiple violations of the Rules of Professional Conduct of the most egregious nature. Whether the conversion of client funds involves a few thousands of dollars taken from many clients or many thousands taken from one client, permanent disbarment should be imposed when the conversion arises from a scheme, such as Fontenot's, involving an intentional act of forging his client's signature on the client's settlement check for deposit in the attorney's account, failing to act with reasonable promptness in representing and truthfully advising his client as to the status of the matter, submitting false documentation to ECT, Fayard & Honeycutt and Marcus Fontenot to conceal the forgery and conversion, failing to account for or make restitution of the converted funds and failing to cooperate with the ODC. In re Conry, 14-1761 (La. 1/28/15), 158 So.3rd 786; In re Kenner O. Miller, Jr., 14-0538 (La. 5/23/14), 993 [sic].

But for Fontenot's suspension of one year, Guideline 9, which involves instances of serious attorney misconduct preceded by a "suspension of more than one year," would warrant application.

Although neither guideline can be considered applicable, though the illustrative, non-binding nature of the language utilized provides some analytical framework, this does not lead to a conclusion the [sic] Fontenot should not be disbarred with permanent effect. The Louisiana Supreme Court has recognized that, even in the absence of the applicability of the nine guidelines, where the actions of the attorney involved are so egregious and without moral moorings that there arises a need to protect the public and maintain the high standards of the legal profession in this State, permanent disbarment is appropriate. In re Richard, 2014-1684 (La. 10/31/14), 148 So.3rd 923; In re Smith, 2011-2007 (La. 12/2/11), 75 So.3rd 902; In re Bark, 2011-1737 (La. 10/21/11), 72 So.3rd 853.

Committee Report, pp. 18-22.

As previously explained, approximately one month after the committee issued its report, the Louisiana Supreme Court rendered its decision in *Fontenot II* in which the Court ordered that

Respondent be disbarred for prior misconduct including settling his clients' case without their consent, forging their signatures on the settlement documents, misleading them as to the status of the case, failing to disburse the settlement proceeds for five years, failing to reduce the contingent fee agreement to writing, and making cash withdrawals from his client trust account. In addition to the well-reasoned analysis provided by the committee, Respondent's misconduct and disbarment in *Fontenot II* provide further support for permanent disbarment.

Permanent disbarment is appropriate here based on the following relevant Guidelines: Guideline 1 (repeated or multiple instances of intentional conversion of client funds with substantial harm), Guideline 2 (intentional corruption of the judicial process, including but not limited to bribery, perjury, and subornation of perjury), and Guideline 9 (instances of serious attorney misconduct when the misconduct is preceded by suspension or disbarment for prior instances of serious misconduct which is defined as any misconduct which results in a suspension of more than one year). With respect to Guideline 1, while Respondent was not specifically charged in *Fontenot II* with converting the clients' settlement funds to his own use, in *Fontenot II*, Respondent failed to disburse the clients' settlement proceeds for more than five years during a period of time when his clients were experiencing significant financial struggles, lost their home and business, and went bankrupt, and during which period of time Respondent made cash withdrawals from his trust account. Further, here Respondent engaged in intentional corruption of the judicial process (Guideline 2) when he converted \$75,000 in settlement funds owed to his client as a result of the settlement of a claim administered by the federal court and negotiated through a court-appointed neutral. Also relevant to Guideline 2, when Respondent's co-counsel submitted complaints to the ODC, Respondent falsely responded that all of his actions were taken with the knowledge and consent of his client and that the "mistake" he made had been corrected.

See In re Spradling, 2006-1971 (La. 1/26/07), 952 So.2d 642, 652 (“Moreover, it is disturbing to note that respondent lied to the ODC in his response to the complaint filed against him by his former bookkeeper, unequivocally stating that two transfers from the law firm’s trust account were made in error and were merely an oversight. As respondent was later forced to admit, these characterizations were absolutely false.”). With respect to Guideline 9, it is noted that, even considering *Fontenot II*, the circumstances here technically may not fall under Guideline 9 because Respondent had not been ordered disbarred prior to the occurrence of the misconduct here. However, Respondent’s misconduct in *Fontenot II* occurred several years before the misconduct in this matter and formal charges had been filed in *Fontenot II* approximately eight months before Respondent engaged in the misconduct at issue here.

CONCLUSION

The Board adopts the factual findings and legal conclusions of the committee finding that Respondent violated Rules 1.3, 1.4(a)(3), 8.1(a), 8.1(c), 8.4(a), 8.4(b), 8.4(c), and 8.4(d). The Board recommends that Respondent be permanently disbarred and that Respondent be ordered to pay full restitution to Blayne Honeycutt and Marcus Fontenot. Additionally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

RECOMMENDATION

The Board recommends that Timmy James Fontenot be permanently disbarred from the practice of law and that Respondent be ordered to pay full restitution to Blayne Honeycutt and Marcus Fontenot. The Board further recommends that Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**Pamela W. Carter
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:



**Linda G. Bizzarro
FOR THE ADJUDICATIVE COMMITTEE**

APPENDIX

Rule 1.3 Diligence

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

Rule 1.4 Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

. . .

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:

(a) Knowingly make a false statement of material fact;

. . .

(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:

- (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 especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;

. . .

GUIDELINES DEPICTING CONDUCT WHICH MIGHT WARRANT PERMANENT DISBARMENT

The following guidelines illustrate the types of conduct which might warrant permanent disbarment. These guidelines are not intended to bind the Supreme Court of Louisiana in its decisionmaking. It is hoped that these guidelines provide useful information to the public and to lawyers concerning the types of conduct the Court might consider to be worthy of permanent disbarment.

1. Repeated or multiple instances of intentional conversion of client funds with substantial harm.
2. Intentional corruption of the judicial process, including but not limited to bribery, perjury, and subornation of perjury.
3. An intentional homicide conviction.
4. Sexual misconduct which results in a felony criminal conviction, such as rape or child molestation.
5. Conviction of a felony involving physical coercion or substantial damage to person or property, including but not limited to armed robbery, arson, or kidnapping.
6. Insurance fraud, including but not limited to staged accidents or widespread runner-based solicitation.
7. Malfeasance in office which results in a felony conviction, and which involves fraud.
8. 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.
9. Instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime. Serious crime is defined in Rule XIX, Section 19. Serious attorney misconduct is defined for purposes of these guidelines as any misconduct which results in a suspension of more than one year.

La. Supreme Court Rule XIX, Appendix E.