

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: BRADLEY O. HICKS

NUMBER: 17-DB-023

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Bradley O’Neal Hicks (“Respondent”), Louisiana Bar Roll Number 23777.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3 (failure to exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information); 1.5 (failure to return an unearned fee); 1.16(b)(5), 1.16(c), and 1.16(d) (improper withdrawal); 8.1(c) (failure to cooperate with the Office of Disciplinary Counsel); 8.4(a) (violate or attempt to violate the Rules of Professional Conduct); and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).<sup>2</sup> Respondent allowed the formal charges to become and remain deemed admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).<sup>3</sup> The hearing committee (“committee”) assigned to this matter concluded

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<sup>1</sup> Respondent is 48 years old and was admitted to the Louisiana Bar on 10/06/1995. He has been ineligible to practice law in Louisiana since June 3, 2016, for failing to comply with mandatory continuing legal education requirements. He is also ineligible to practice law for failing to pay his Bar dues and disciplinary assessment and for failing to file his trust account disclosure statement. Respondent’s current primary registration address is 609 S 4<sup>th</sup> St, Leesville, LA 71446. His current secondary registration address is 131 Pinehill Mnr, Leesville, LA 71446.

<sup>2</sup> See attached Appendix for full text of the Rules.

<sup>3</sup> 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 the factual allegations contained in the formal charges proven, the respondent may move the hearing

Respondent violated the Rules as charged and recommended that he be suspended from the practice of law for two years and that he be required to make restitution to his clients as follows: \$1,000.00 to Mr. Zachary Irons, \$1,200.00 to Ms. Reda Coleman and her siblings, and \$1,200.00 to Ms. Audriana S. Hughes.

For the following reasons, the Board adopts the committee's factual findings and the committee's legal conclusions as to rule violations with the exception that the Board does not find that Respondent violated Rule 1.16(b)(5). The Board adopts the sanction recommendation of the committee and further recommends that Respondent be ordered to provide Mr. Petree's entire file to Mr. Petree. The Board also recommends that Respondent be assessed with the costs and expenses of this matter.

### **PROCEDURAL HISTORY**

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

#### **Count I (ODC# 33787)**

Complainant in ODC Investigative File No. 0033787, is Timothy Petree, an inmate at Allen Correctional. Respondent was appointed in June of 2011, as a Public Defender for Mr. Petree. Complainant sent correspondence to Respondent on June 23, 2015, requesting a copy of his discovery. Respondent failed to respond to Complainant's request. Further, Respondent failed to meet with Complainant to discuss the status, facts, and strategy of his case, prior to his arraignment, at which he plead guilty.

A copy of Complainant's response [sic] was forwarded to Respondent on January 5, 2015 [sic]. According to the certified mailing postal receipt, Mr. Hicks signed for the complaint on January 7, 2016. Mr. Hicks failed to respond. As a result, Respondent was subpoenaed to appear at the Office of Disciplinary Counsel to provide a sworn statement. The Sworn Statement was scheduled for August 30, 2016. Respondent failed to appear.

Respondent was subpoenaed a second time to appear at the Office of Disciplinary Counsel to provide a sworn statement. The sworn statement was scheduled for March 8, 2017. Respondent failed to appear for a second time.

Respondent has violated Rule 1.3 (exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information);

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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.

8.1(c) (failure to cooperate with the office of disciplinary counsel); and 8.4(a) (violated or attempted to violate rules).

**Count II (ODC# 0034385)**

Complainant in ODC Investigative File No. 0034385, is Zachary Irons. Complainant hired Respondent in October of 2015, to assist in filing a petition with the courts in order to obtain visitation with his child. Respondent requested a retainer fee of \$1,800. Respondent agreed to accept the first half up front and the remainder in \$100 payments. Mr. Irons paid Respondent \$900 to begin drafting the necessary documents to be filed with the court. On October 20, 2015, Complainant paid his first payment of \$100 to Mr. Hicks.

Respondent stopped communicating with Complainant and failed to file the petition. After several attempts to contact Respondent, Mr. Irons requested a return of his funds. However, Mr. Hicks failed to do so.

ODC forwarded a copy of Mr. Iron's complaint to Respondent via certified mail on April 18, 2016, and June 6, 2016. Both were returned. Staff Investigator with the ODC, Tiara Barnes, attempted to hand deliver a copy of complaint to Respondent, but was unable to make contact.

As a result, Respondent was subpoenaed to appear at the Office of Disciplinary Counsel to provide a sworn statement. The Sworn Statement was scheduled for August 30, 2016. Respondent failed to appear.

Respondent was subpoenaed a second time to appear at the Office of Disciplinary Counsel to provide a sworn statement. The sworn statement was scheduled for March 8, 2017. Respondent failed to appear for a second time.

Respondent has violated Rule 1.3 (exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information); 1.5 (failure to return an unearned fee); 1.16(b)(5), (c), (d), (improper withdrawal); 8.1(c) (failure to cooperate with the office of disciplinary counsel); and 8.4(a) (violated or attempted to violate rules).

**Count III (ODC# 35133)**

The Complainant in Investigative File No. 0035133 in Reda Coleman, along with her siblings. They hired Respondent in October of 2014, to open a succession for both of their parents. The siblings paid Respondent \$1,200.

Respondent failed to complete the succession. Mr. Hicks filed the Judgment of Possession on March 27, 2015, but failed to sign it. As a result of failing to sign the pleading, along with other errors, the succession was rejected. The Complainants hired new counsel to complete the succession.

Complainant has attempted to communicate with Respondent regarding the return of the unearned portion of the fee; however, Respondent has been uncooperative.

ODC forwarded a copy of Ms. Coleman's complaint to Respondent via certified mail on October 24, 2016. The postal receipt returned was signed by Respondent on November 4, 2016. Mr. Hicks has failed to respond to the complaint filed by Ms. Coleman.

As a result, Respondent was subpoenaed to appear at the Office of Disciplinary Counsel to provide a sworn statement. The Sworn Statement was scheduled for August 30, 2016. Respondent failed to appear.

Respondent was subpoenaed a second time to appear at the Office of Disciplinary Counsel to provide sworn statement. The sworn statement was scheduled for March 8, 2017. Respondent failed to appear for a second time.

Respondent has violated Rule 1.3 (exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information); 1.5 (failure to return an unearned fee); and 8.1(c) (failure to cooperate with the office of disciplinary counsel).

**Count III [sic] (ODC# 35432)**

The Complainant in ODC Investigative File No. 003543 is Audriana S. Hughes. Respondent was hired in January of 2015 to expunge her felony record. Ms. Hughes paid Respondent \$1200. The last to [sic] Respondent communicated with Complainant was in August of 2015. At that time, Respondent requested her address so that he could forward documents. However, Complainant never received the documents or any other information from Respondent. Thereafter, Complainant contacted the court and learned that Respondent did not file anything on her behalf, in this matter.

ODC forwarded a copy of Ms. Hughes' complaint to Respondent via certified mail on January 30, 2017, which was returned marked [sic] on February 9, 2017. ODC Investigator hand delivered complaint to Respondent on February 17, 2017. Mr. Hick's response was due on March 4, 2017; however, Respondent has failed to respond to the complaint filed by Ms. Hughes.

Respondent has violated Rule 1.3 (exercise due diligence); 1.4 (failure to communicate and failure to comply with a reasonable request for information); 1.5 (failure to return an unearned fee); 1.16(b)(5), (c), (d) (improper withdrawal); 8.1(c) (failure to cooperate with the office of disciplinary counsel); 8.4(a) (violated or attempted to violate rules); and 8.4 (c) (dishonesty).

By letter dated May 31, 2017, the formal charges were mailed via USPS certified mail to Respondent's primary registration address, the address registered as his preferred address, and a third address requested by the ODC. The mailings were returned undelivered. Louisiana Supreme Court Rule XIX, §§8(C) and 11(E)(2), provide that proof of attempted service pursuant to Section 13(A) shall constitute adequate notice of the proceedings.<sup>4</sup> Respondent failed to file an answer to the charges. Accordingly, on September 1, 2017, ODC filed a motion to deem the factual

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<sup>4</sup> Rule XIX, §13(A), provides that "service of the petition in any disciplinary proceeding shall be made by ... mailing the petition by registered or certified mail to the primary address shown in the registration statement filed by respondent pursuant to Section 8C or other last known address."

allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). By order signed September 14, 2017, the factual allegations contained in the formal charges were deemed admitted. On November 13, 2017, ODC filed its submission on sanction, in which ODC recommended that Respondent be suspended for two years and ordered to pay restitution. The ODC filed nineteen exhibits (ODC 1 through ODC 19) with its submission.

Hearing Committee No. 6 filed its report on December 26, 2017.<sup>5</sup> The committee concluded that Respondent violated the Rules as charged. In recommending a sanction, the committee found that Respondent violated duties owed to his clients and the profession and that he acted knowingly and caused potential harm in one count, actual harm in two counts, and potential, if not actual, harm in the fourth count. The committee recognized the following aggravating factors: a dishonest and selfish motive, a pattern of misconduct, multiple offenses, substantial experience in the practice of law (admitted in 1995), and indifference to making restitution. As a mitigating factor, the committee recognized that Respondent has no history of discipline. After considering the *ABA Standards for Imposing Lawyer Sanctions*, specifically citing Standard 4.42, and pertinent jurisprudence, the committee recommended that Respondent be suspended from the practice of law for two years and that Respondent be required to make restitution in the amount of \$1,000.00 to Mr. Irons, \$1,200.00 to Ms. Coleman and her siblings, and \$1,200.00 to Ms. Hughes.

No objection to the committee's recommendation was filed. ODC filed its Pre-Argument Memorandum on March 5, 2018. Respondent has filed nothing for the Board's consideration.

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<sup>5</sup> Hearing Committee No. 6 was comprised of Michael D. Hislop (Committee Chair), Andree B. Leddy (Lawyer Member), and Gracie Ann Guillory (Public Member).

Oral argument of this matter was held on April 5, 2018, before Board Panel “B”.<sup>6</sup> Deputy Disciplinary Counsel Karen Hayes Green appeared via videoconference on behalf of ODC. Respondent did not appear.

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

### **I. Standard of Review**

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

#### **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.

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<sup>6</sup> Board Panel “B” is composed of Pamela W. Carter (Chair), Dominick Scandurro, Jr. (Lawyer Member), and Sheila E. O’Leary (Public Member).

**B. *De Novo* Review**

The record supports the committee's conclusions that Respondent violated Rules 1.3, 1.4, 1.5, 1.16(c), 1.16(d), 8.1(c), 8.4(a), and 8.4(c). Rule 1.16(b)(5) provides that a lawyer may withdraw from representing a client if the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. Here, there is no apparent evidence related to any issue involving a client failing to fulfill an obligation to the lawyer. Rule 1.16(b)(5) does not appear to be applicable to the circumstances presented here and the Board does not find that the ODC proved a violation of this rule.

**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 his clients and the profession. As the committee found, his conduct was knowing and caused potential and actual damage. Respondent's failure to respond to Mr. Petree's request for his file materials has delayed his ability to pursue post-conviction relief. The potential also exists that Mr. Petree was damaged by Respondent's failure to discuss the discovery materials with Mr. Petree before he entered a guilty plea. Respondent's failure to communicate, failure to fulfill the services he agreed to perform, and failure to return unearned fees has caused actual damage to Mr. Irons, Ms. Coleman and her siblings, and Ms. Hughes.

Respondent's misconduct has caused at least a delay in Mr. Irons's pursuit of his rights to visitation with his minor son and loss of the \$1,000.00 in fees paid to Respondent. Due to Respondent's misconduct, Ms. Coleman and her siblings had to hire new counsel to obtain a judgment of possession in connection with the succession of their parents. Respondent has failed to return an unearned fee in the amount of \$1,200.00. Respondent's misconduct caused a delay in Ms. Hughes's attempts to obtain an expungement of her prior felony conviction and loss of the \$1,200.00 fee she paid to Respondent to pursue the expungement. Finally, Respondent has caused damage to the profession by his misconduct in failing to respond to, or cooperate in any way with the ODC's investigation of the complaints against him. Such conduct causes the unnecessary expenditure of the limited resources of the disciplinary agency and delays the resolution of complaints, all of which does damage to the reputation of the profession.

Aggravating factors include: a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; vulnerability of victim; indifference to making restitution; and substantial experience in the practice of law (admitted in 1995). In mitigation, Respondent has no prior disciplinary record.

#### **B. The ABA Standards and Case Law**

The following *ABA Standards for Imposing Lawyer Sanctions* suggest the baseline sanction for Respondent's misconduct is suspension:

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.



7.2 Suspension is generally appropriate when a lawyer knowingly 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.

The jurisprudence further suggests that suspension is an appropriate sanction for Respondent's misconduct and that the committee's recommendation of a two-year suspension is appropriate.

In *In re Vix*, 08-2290 (La. 5/15/09), 11 So. 3d 1090, cited by the committee, the respondent was found to have acted without diligence in the cases of four clients, failed to communicate adequately with her clients, failed to return unearned fees, failed to cooperate with ODC, and violated other rules of professional conduct. For these acts, the Louisiana Supreme Court imposed a two-year suspension but deferred all but three months because the respondent had "resolved the issues that led to the misconduct." *Id.* at 1096. The respondent was subject to two years of supervised probation with conditions. While the misconduct of the respondent in *Vix* was similar to that of Respondent here, there were significant mitigating circumstances in *Vix* which are not present here. At the hearing, Ms. Vix stipulated to the facts alleged by the ODC, and by the time the hearing committee issued its report, she had made full restitution to her clients. She also presented evidence of personal and emotional problems which contributed to her conduct.

In *In re Harper*, 16-1635 (La. 11/15/16), 205 So. 3d 901, also cited by the committee, the respondent was suspended for three years. As in the present matter, the respondent did not respond to the complaints or formal charges and the facts alleged were deemed admitted. *Harper* involved misconduct relating to four clients including failure to pursue or complete legal services, failure to communicate with clients, failure to return unearned fees, and failure to cooperate with the ODC in its investigation which misconduct is very similar to that of Respondent here. However, in *Harper*, the respondent was also found to have engaged in the unauthorized practice of law while

ineligible due to failure to comply with MCLE requirements. Ms. Harper appeared in court for a hearing in a juvenile matter and when questioned by the judge, falsely replied that her ineligibility did not begin until two weeks after the hearing. The committee correctly concluded Respondent's misconduct here was less grave than the misconduct in *Harper*.

The decisions in both *In re Gray*, 2014-2085 (La. 3/17/15), 166 So. 3d 969, and *In re Lewis*, 2008-2293 (La. 1/21/09), 1 So. 3d 444, in which the Court imposed two-year suspensions and restitution requirements, lend further support for the committee's recommendation that Respondent here be suspended for two years. The *Gray* case involved complaints by four clients. The respondent was found to have neglected the legal matters of his clients, failed to communicate with his clients despite their numerous requests for information, failed to return his clients' files upon request, failed to refund unearned fees to two clients, and failed to cooperate with the ODC in its investigations. Aggravating factors included prior disciplinary record (admonition in 2009 for violating Rules 1.3 and 1.4), pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victims, substantial experience in the practice of law, and indifference to making restitution. There were no mitigating factors present.

The *Lewis* case arose out of complaints by three clients. The respondent neglected legal matters, failed to communicate with his clients, failed to account for funds received from the clients or on their behalf, failed to properly withdraw from the cases upon relocating out of state, and failed to cooperate with the ODC in its investigation. The Court accepted the committee's determination that the respondent's practice was to accept a legal fee, fail to communicate with his clients or account for the funds, and then fail to cooperate in the transition of the file after he was discharged. The respondent's conduct caused one of his clients "to spend 'an unnecessary additional two years in a state penitentiary.'" *Lewis*, at 448.

In reaching the decision to impose a two-year suspension in *Lewis*, the Court explained:

In *In re Trichel*, 00-1304 (La. 8/31/00), 767 So. 2d 694, we recognized that the baseline sanction for neglect of a client matter, failure to communicate, and failure to properly terminate the representation of one client was a one-year suspension from the practice of law. However, we found the aggravating factors in the case, particularly the respondent's prior discipline for similar misconduct, justified raising the sanction to an eighteen-month suspension. The instant matter involves multiple counts of neglect of legal matters and failure to communicate involving several clients, as well as charges of failure to refund unearned fees, failure to cooperate, and the failure of respondent to properly terminate the representation of his clients. Consequently, the baseline sanction in this case is greater than the one-year suspension identified in *Trichel*. Moreover, there are no mitigating factors present here which justify a downward deviation from the baseline. To the contrary, numerous and serious aggravating factors convince us that a lengthy suspension is warranted.

*Id.* at 453. The Court in *Lewis* did not elaborate on the specific aggravating factors which were present. However, the Board found the following aggravating factors: refusal to acknowledge the wrongful nature of the conduct, prior disciplinary offenses (private reprimand in 1991 and admonition in 1995), a dishonest or selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to cooperate with the rules or orders of the disciplinary agency, vulnerability of the victims, substantial experience in the practice of law, and indifference to making restitution. The Board found no mitigating factors.

Based upon the above discussion, the two-year suspension recommended by the committee is appropriate.

## CONCLUSION

Considering the facts admitted, the Board adopts the legal conclusions of the committee that Respondent violated Rules 1.3, 1.4, 1.5, 1.16(c), 1.16(d), 8.1(c), 8.4(a), and 8.4(c). The Board does not find that the ODC proved by clear and convincing evidence that Respondent violated Rule 1.16(b)(5). The Board recommends that Respondent be suspended from the practice of law for two years; that he be required to make restitution in the amount of \$1,000.00 to Mr. Irons,

\$1,200.00 to Ms. Coleman and her siblings, and \$1,200.00 to Ms. Hughes; and that he be ordered to provide Mr. Petree's entire file to Mr. Petree. The Board also recommends that Respondent be assessed with the costs and expenses of this matter.

**RECOMMENDATION**

The Board recommends that Bradley O'Neal Hicks be suspended from the practice of law for two years; that he be required to make restitution in the amount of \$1,000.00 to Mr. Irons, \$1,200.00 to Ms. Coleman and her siblings, and \$1,200.00 to Ms. Hughes; and that he be ordered to provide Mr. Petree's entire file to Mr. Petree. 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**

**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:**



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**Pamela W. Carter  
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.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

### **Rule 1.5. Fees**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if:

(1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;

(2) the total fee is reasonable; and

(3) each lawyer renders meaningful legal services for the client in the matter.

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

(1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances

(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(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**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the 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 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:

(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;

...