ORIGINAL

Louisiana Attorney Disciplinary Board
FILED by: Kenneth Amato
Docket# 17-DB-022
Filed-On 11/8/2018

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DANTE JEROME BUTLER

NUMBER: 17-DB-022

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 Dante Jerome Butler ("Respondent"), Louisiana Bar Roll Number 33753.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 5.4(a) (fee sharing); 5.5(a) (facilitating the unauthorized practice of law); and 8.4(a) (violate or attempt to violate the Rules of Professional Conduct or assist another to do so).[2] The hearing committee ("committee") assigned to the matter concluded that Respondent violated Rules 5.4(a), 5.5(a), and 8.4(a) as charged. The committee recommended Respondent be suspended for three years and be ordered to pay full restitution and all costs and expenses associated with this matter.

For the following reasons, the Board adopts the committee's factual findings and conclusions regarding rule violations. As a sanction, the Board recommends that Respondent be suspended for six months, fully deferred, subject to a one-year probation period and completion of the LSBA Ethics School.

[1] Respondent was admitted to the Louisiana Bar on 10/20/11. His primary registration address is 1615 Poydras St., Suite 900, New Orleans, LA 70112. Respondent is currently eligible to practice law in Louisiana.
[2] *See* attached Appendix for full text of the Rules.

PROCEDURAL HISTORY

The formal charges were filed on May 24, 2017. The charges state, in pertinent part:

III.

On October 13, 2016, the Office of Disciplinary Counsel (ODC) received a complaint from Raymond Gaylord Casaday, III (DOC No. 112950). The matter was opened as investigative file ODC 0035107.

IV.

After receiving notice of the complaint, on November 14, 2016, Respondent forwarded to the ODC his initial response.

V.

Respondent provided the ODC with a voluntary sworn statement on January 11, 2017.

VI.

Respondent's relationship with Charles Taylor of Knowledge Center Temple began sometime in 2014. Taylor approached Respondent, advising Respondent that he completed applications for post-conviction relief on behalf of incarcerated individuals and was looking for attorneys to "go over his work." Knowing that neither Taylor nor his associate, Shawna Terrell, were attorneys, Respondent agreed to "proof-read" the legal work done by Taylor and Terrell on behalf of individuals who contacted Knowledge Center Temple.

Casaday learned of Knowledge Center Temple after seeing a flyer at the correctional facility where he was incarcerated. In May of 2015, Casaday contacted Knowledge Center Temple, speaking first with Terrell and then with Taylor. Casaday advised that his criminal matter was pending and that he was seeking assistance with the later filing of an application for post-conviction relief. Taylor determined the amount of the fee, advising Casaday that the total fee for services to be provided would be $7,000. Casaday sent $500 to Knowledge Center Temple on or about June 12, 2015. Knowing that neither Taylor nor Terrell were licensed to practice law in the State of Louisiana, Casaday advised Taylor that he wanted an attorney to handle the matter.

On June 20, 2015, Terrell wrote Casaday, advising that she had received the funds and that "we do have a lawyer for you, so when you're ready to start this process please don't hesitate to let us know." Later, on June 28, 2015, Terrell wrote Casaday again, advising that she did a case analysis and could "see where we can get you another trial based upon newly discovered evidence." The letter also advised Casaday that Respondent would be representing him and provided Casaday with Respondent's telephone number. Casaday and Respondent never met in

person and shared only two telephone conversations, one of which was at the inception of representation. Casaday called Respondent, who confirmed the fee for the services to be provided.

Taylor determined how the fee would be disbursed. Respondent advised the ODC that Taylor set the fee at $6,000 for the services that Taylor was to provide to Casaday, and Taylor offered to pay Respondent $2,000 of that fee. On or about July 15, 2015, Casaday forwarded an additional $6,500 to Knowledge Center Temple, via a check payable to Terrell. Terrell cashed the check, and provided Respondent with a cash payment of $2,000. On July 30, 2015, Taylor wrote Casaday, "[W]e will get the receipt to you showing what you have paid to us as well as the lawyer." An August 15, 2015, accounting statement from Knowledge Center Temple confirms receipt of Casaday's payments and sets forth the services to be provided. According to the statement, Casaday paid $500 for "case analysis" by Knowledge Center Temple. The sum of $1,500 was assessed for "paralegal research teams," and an additional $1,500 was assessed for a "paralegal research teams-multi bill specialist." "Retained Attorney Dante Butler" was to receive $2,500.

Written communication from Taylor and Terrell to Casaday reflects that Taylor and Terrell provided direct legal services to Casaday. For example, on July 30, 2015, Taylor wrote to Casaday: "I found out that there is a ten year cleansing period that starts after parole or probation is over and if you commit a crime that is considered a felony before the period is up you can be multi-billed and saw the motion to squash was in your paperwork." On September 18, 2015, Terrell wrote to Casaday, "There are many errors in your case, we just got to put them together and get case law to support our litigation, for instance there's possibility of Entrapment in your case, withheld material dealing with Sgt. Rowan testimony, his credibility could have been impeached, like I say there's so many ways we can go with this." Taylor and Terrell also controlled the scope of the representation, preparing "motions' on behalf of Casaday and assisting Casaday with the preparation and filing of a "*pro se*" writ application with the Louisiana Supreme Court. *See State v. Casaday*, 49,679 (La.App. 2 Cir. 2/27/15), 162 So.3d 578, *writ denied*, 2015-0607 (La. 2/5/16), 186 So.3d 1162 (mem.). Later, on February 27, 2016, Taylor advised Casaday that he would be handling, on Casaday's behalf, a motion for new trial.

Taylor also provided Casaday with a memorandum in support of an application for post-conviction relief, which Casaday refused to sign due to its poor quality. On May 16, 2016, Taylor wrote to Casaday, "Mr. Butler did Proof read your Post-conviction so he is on the job. I am doing my research now, and I will have your documents prepare in due time." On October 16, 2016, Casaday wrote Respondent directly, regarding the agreement that Respondent would complete Casaday's post-conviction relief application for the $7,000 that Casaday paid. Casaday implored Respondent to meet with him, offering that he had been relocated to a closer prison facility. Casaday wrote, "If you are not going to help me do my post-conviction then just let me know this and return my money to me so I can get someone who could help me. Please." On October 21, 2016, Respondent responded to Casaday: "You have to keep in mind that you are a client of C/S."

Respondent steadfastly maintains that Casaday was not his client, rather, Casaday was a client of Charles Taylor and Shawna Terrell. Respondent wrote the ODC on November 14, 2016, "Regarding Mr. Casaday, he is not my client nor has he ever been. … I have never filed any documents on behalf of Mr. Casaday, nor do I have any plans in the future to do so." Respondent maintained that he was obligated only to "proof read all the documents that Charles Taylor present to me with regards to Raymond Casaday's case." Taylor sent to Respondent drafts of memoranda in support of Casaday's application for post-conviction relief, which Respondent reviewed, commented upon, and sent back to Taylor. Many of Respondent's comments were not incorporated into Taylor's successive drafts; however, because Respondent did not consider himself Taylor's supervisor, Respondent did not request or require review and approval of a final draft of the document prior to its submission to Casaday or to a court. Respondent did not sign any pleadings or memoranda on behalf of Casaday.

Casaday was not the only client referred to Respondent by Taylor. Respondent worked with Taylor on a legal matter for Jeremy Daigre. On April 4, 2016, Taylor forwarded to Respondent a "Supervisory Writ of Habeas Corpus to Vacate Prejudicial Illegal and/or Unconstitutional Habitual Offender Multiple Bill Sentence," that Taylor prepared on behalf of Daigre. As with Casaday, Respondent maintains that Daigre was Knowledge Center Temple's client, not his. Although Respondent has met Daigre's father, he has never spoken to, or otherwise communicated with, Daigre. Respondent wrote the ODC on November 29, 2016, "KCT completed the petition on Mr. Daigre's behalf and he submitted it to the court himself. KCT charged Mr. Daigre $6,000 for their representation and KCT paid me $2,000 to go over the documents for them." Respondent did not review the pleading before it was filed with the court. On August 22, 2016, the court denied a motion to review sentence that Daigre submitted "*pro se*" to the court. *See State v. Daigre*, 537273, 22nd J.D.C., Parish of St. Tammany. Respondent advised the ODC that Daigre's matter is ongoing and that Taylor intends to file another motion on behalf of Daigre.

VII.

Respondent shared legal fees with two non-lawyers and then abdicated his professional responsibilities over the clients' cases to the non-lawyers, thereby facilitating the unauthorized practice of law. The ODC respectfully submits that the evidence amassed to date establishes by clear and convincing evidence that, as a matter of law, Respondent, Dante Jerome Butler, has violated the Rules of Professional Conduct, Rules 5.4(a) (fee sharing), 5.5(a) (facilitating the unauthorized practice of law), and 8.4(a) (violate or attempt to violate Rules of Professional Conduct or assist another to do so).

Through his counsel, Dane S. Ciolino, Respondent responded to the formal charges on June 28, 2017. In his response, Respondent admitted that he agreed to proofread legal work performed

by Charles Taylor and Shawna Terrell, but denied that he entered into a lawyer-client relationship with Raymond G. Casaday III, or with Jeremy Daigre, denied that he knowingly or intentionally assisted anyone in the unauthorized practice of law, and denied that he knowingly or intentionally shared legal fees with nonlawyers. Respondent also alleged several mitigating factors justified a reduction in the degree of any discipline to be imposed. Respondent prayed that the charges be dismissed, or in the alternative, that an appropriate sanction be imposed.

The hearing in this matter was held on October 16, 2017, before Hearing Committee No. 12.[3] Deputy Disciplinary Counsel Susan C. Kalmbach appeared on behalf of the ODC. Respondent appeared with counsel, Dane S. Ciolino. The committee heard testimony from the following: Respondent, Raymond Casaday III (Complainant/by phone from prison), Jeremy Daigre (by phone from prison), Craig Daigre (Jeremy Daigre's father), and Shawna Terrell (by phone). ODC's Exhibits ODC-1 through ODC-29 (including multiple subparts) and Respondent's Exhibits R01 through R05 were all admitted into evidence without objection. Respondent's Exhibit R05 consists of letters of good character from the following attorneys: Maurice Ruffin, Adrienne Wheeler, Ramona Fernandez, R. Judson Mitchell.

The hearing committee filed its report on February 5, 2018. The ODC filed a notice of no objection to the committee report on February 14, 2018. On the same date, Respondent filed an objection to the committee's recommendation in which he asserted that the recommended sanction is unduly harsh.

On February 20, 2018, ODC filed its brief to the Board supporting the committee's findings, conclusions, and sanction recommendation. Respondent filed his brief to the Board on March 2, 2018. In his brief, Respondent does not contest the committee's conclusions regarding

[3] Hearing Committee No. 12 was comprised of Thomas Louis Colletta, Jr. (Committee Chair), Lisa A. Montgomery (Lawyer Member), and Patricia Caperino (Public Member).

rule violations and, for the first time, clearly admits the charged violations. *See* Respondent's Brief, pp. 8-10, 13. Respondent argues only that the three-year suspension recommended by the committee "is grossly disproportionate to Mr. Butler's misconduct." *Id.* at 1. Respondent asserts that the appropriate sanction for the misconduct is a sixty-day suspension.

Oral argument of this matter was held on April 5, 2018, before Board Panel "B."[4] Deputy Disciplinary Counsel Susan C. Kalmbach appeared on behalf of the ODC. Respondent appeared with counsel, Dane S. Ciolino.

HEARING COMMITTEE REPORT

In its report filed on February 5, 2018, the committee provided the following discussion of the evidence presented at the hearing and the committee's findings and conclusions:

> *Evidence: Fee Sharing*
>
> The evidence adduced by the ODC shows by clear and convincing evidence that Respondent shared fees with non-lawyers, specifically Taylor and Terrell. The evidence regarding fee sharing is listed below.
>
> Casaday's fee:
>
> | | |
> |---|---|
> | ODC-1 | Complaint of Raymond Gaylord Casaday, III |
> | ODC-3e | Temple statement dated August 15, 2015 re: Casaday for services from July 5, 2015, through August 15, 2015 |
> | ODC-4 | Respondent's initial response to complaint dated November 14, 2016 |
> | ODC-7c | Temple receipt dated June 20, 2015 for $500.00 payment received from Casaday |
> | ODC-7i | Temple/Butler letter to Casaday dated July 30, 2015 [FN3] [FN3 Respondent testified that he was unaware the Temple was using his letterhead.] |
> | ODC-19 | Respondent's Sworn Statement |
> | ODC-20 | Capital One Bank receipt for $6,500.00 check cashed July 15, 2015 |
> | ODC-21 | Respondent's Chase bank statement reflecting a deposit of $2,000.00 into his account on July 15, 2015 |
>
> The evidence shows that Taylor/Temple charged $7,000.00, and out of that fee, Respondent was paid $2,000 for his services. Respondent testified that the

[4] Board Panel B is composed of Pamela W. Carter (Chair), Dominick Scandurro, Jr. (Lawyer Member), and Sheila E. O'Leary (Public Member).

total fee charged by the Temple was $6,000.00, not $7,000.00; however, it is undisputed that Respondent was paid $2,000.00 out of the total fee paid the Temple by Casaday. Respondent refunded the $2,000.00 fee to Casaday on September 28, 2017.

Daigre's fee:

ODC-25b	Check no. 5172 dated June 26, 2015 in the amount of $6,000.00 payable to Dante Butler for "Appeal Process", cashed June 26, 2015

The evidence shows that Jeremy Daigre's father, Craig Daigre, wrote a check made payable to Respondent for $6,000.00. Respondent testified he cashed the check, took $2,000.00 as his fee, and he gave the balance to Terrell. Regardless of the actual amount that Respondent received as his fee in the Daigre case, Respondent admits that he shared a fee with Taylor/Temple.

Evidence: Facilitating the Unauthorized Practice of Law

The evidence adduced by the ODC shows by clear and convincing evidence that Respondent facilitated the unauthorized practice of law by working with non-lawyers, Taylor and Terrell, to render legal services related to post-conviction proceedings. Respondent testified in his sworn statement and at the hearing that he knew Taylor and Terrell were not attorneys when he agreed to work with them. He was aware that Taylor and Terrell were "pro-se paralegals" who rendered legal services to incarcerated individuals. In working with Taylor and Terrell on the post-conviction relief matters, Respondent facilitated the unauthorized practice of law in violation of the Rules.

Regarding the Casaday matter:

ODC-3a	July 30, 2015, correspondence from the Temple to Casaday
ODC-3b	August 31, 2015, correspondence from the Temple to McGee
ODC-3d	October 19, 2015, correspondence from the Temple to Griffin
ODC-4	Respondent's initial response to complaint dated November 14, 2016
ODC-6	Respondent's supplemental response to ODC dated November 29, 2016
ODC-7d	June 20, 2015, correspondence from the Temple to Casaday
ODC-7i	Temple/Butler letter to Casaday dated July 30, 2015
ODC-7j	Temple/Butler letter to Casaday dated July 30, 2015
ODC-7k	August 20, 2015, correspondence from Respondent to Casaday
ODC-7l	August 31, 2015, correspondence from the Temple to Casaday
ODC-14	October 16, 2016, letter from Casaday to Respondent
ODC-15	October 27, 2016 email from Taylor to Respondent forwarding Memorandum of Law in Support of Application

	for Post-Conviction Relief, *State v. Casaday*, 44,318, 2nd JDC, Parish of Claiborne
ODC-16	Letter from Casaday to Respondent [envelope stamped mailed in November 2016]
ODC-17	December 29, 2016, letter from Charles Taylor to Respondent
ODC-18	Memorandum of Law in Support of Application for Post-Conviction Relief, *State v. Casaday*, 44,318, 2nd JDC, Parish of Claiborne with Respondent's notations and exhibits
ODC-19	Respondent's Sworn Statement

Regarding the Daigre matter:

ODC-19	Respondent's Sworn Statement
ODC-23	Email from Taylor to Respondent dated April 4, 2016 sending "Supervisory Writ of Habeas Corpus to Vacate Prejudicial Illegal and/or Unconstitutional Habitual Offender Multiple Bill Sentence" in *State v. Daigre*, 537273, 22nd JDC, Parish of St. Tammany
ODC-24	Letter, Clerk of Court, 22nd JDC, Parish of St. Tammany dated September 14, 2016, sending Judgment denying Motion to Review Sentence in *State v. Daigre*
ODC-25b	Check no. 5172, dated June 26, 2015, in the amount of $6,000, payable to Dante Butler for "Appeal Process," negotiated on June 26, 2015
ODC-25c	Transmittal to Jeremy Daigre dated February 16, 2016 from the La. First Circuit Court of Appeal with attachments and pleadings in *State v. Daigre*, returned as unfiled
ODC-25d	April 5, 2016, correspondence from Charles Taylor to Jeremy Daigre
ODC-25e	April 12, 2016, correspondence from the Clerk of Court, 22nd JDC, Parish of St. Tammany to Jeremy Daigre with Dismissal
ODC-25f	July 9, 2016, correspondence from Charles Taylor to Jeremy Daigre
ODC-25g	July 14, 2016, Letter from Clerk of Court, 22nd JDC, Parish of St. Tammany to Jeremy Daigre, with attachments and Jeremy Daigre's handwritten notations to Craig Daigre
ODC-25h	Letter from Jeremy Daigre to Clerk of Court, 22nd JDC, Parish of St. Tammany dated July 24, 2016, with Motion to Review Sentence pleadings
ODC-25-25i	Letter from Clerk of Court, 22nd JDC, Parish of St. Tammany to Jeremy Daigre dated September 14, 2016 with Denial of Motion to Review Sentence
ODC-25j	Unsigned and undated Supervisory Writ of Habeas Corpus in the Jeremy Daigre case

In the Casaday matter, the evidence shows that Respondent worked with Taylor/Temple on the Casaday and Daigre cases. Taylor/Temple sent the cases to Respondent. Taylor and Terrell provided legal services to their clients and that [sic] Respondent participated in the arrangement, also rendering legal services. Respondent contends that he only proofed legal pleadings sent to him by Taylor and Terrell, but the evidence establishes that Respondent's work went well beyond proof reading. Moreover, Respondent also facilitated the unauthorized practice of law by his very participation in the arrangement with Taylor and Terrell.

Respondent testified he did not knowingly assist Taylor and Terrell in the unauthorized practice of law but rather, he believed he was assisting "jailhouse lawyers" in performing traditional jailhouse-lawyer duties concerning post-conviction relief pleadings to be filed by the inmates themselves. Respondent is passionate about the issue of post-conviction relief; however, he also admitted that Taylor and Terrell were not traditional "jailhouse lawyers" performing those traditional duties. He stated his actions were not intentional but perhaps negligent.

Examples of Respondent's facilitating the unauthorized practice of law include: On June 8, 2015, Terrell wrote Casaday on Temple letterhead and stated: "A bar number and attorney name will get you more results than sending in Pro'se motion at this point. You may also need someone for court if this gets more serious down the road. We are a paralegal company and we do all of the litigation with the supervision of the attorney as well. This is a win-win situation for all of us."

Terrell wrote Casaday on "Paralegal'Pro'se" letterhead on June 2015, advising "we do have a lawyer for you, so when you're ready to start this process please don't hesitate to let us know." The letter is signed by Terrell, and under her name is "Knowledge Center Temple".

Terrell wrote Casaday in follow up on June 28, 2015, stating she reviewed his case and "we see where we can get you another trial based upon newly discovered evidence. The Officer Rowman testimony can be impeached … Mr. Butler will be representing you as a matter of fact you need to call him when you get a chance. (504) 264-2919 Cell phone, please do call him when you get a chance."

On July 30, 2015, an unsigned letter to Casaday on the combined letterhead of Knowledge Center Temple, LLC and Law Office of Dante J. Butler, LLC stated: "I did speak with attorney Butler and we will get the receipt to you showing what you have paid to us as well as the lawyers."

On August 20, 2015, Respondent wrote Casaday on his letterhead, stating: "Shawna Terrell of the Knowledge Temple Center has hired me to represent you regarding a potential multi-bill hearing .."

On September 18, 2015, Terrell wrote Casaday on the combined letterhead of Knowledge Center Temple, LLC and Law Office of Dante J. Butler, LLC: "… There are many errors in your case, we just got to put them together and get case law to support our litigation, for instance there's possibility of Entrapment in your case, withheld material dealing with Sgt. Rowman testimony, his credibility could have been impeached …"

The ODC also introduced many pleadings into evidence that Respondent had reviewed for Taylor/Temple, some with his notations. *See*, e.g., July 10, 2016,

Taylor letter to Respondent, attaching Casaday documents and Memorandum of Law in Support of Application for Post-Conviction Relief with Respondent's handwritten notations; and Memorandum of Law in Support of Application for Post-Conviction Relief in *State v. Casaday*, 44,318, 2nd JDC, Parish of Claiborne with Respondent's notations (with exhibits).

The evidence in the Daigre matter also establishes that Respondent engaged in legal work with the Temple through Taylor and Terrell. For example, on April 4, 2016, Taylor emailed Respondent with the subject line: "Jeremy case original sentence not vacated". The email also attached the pleading "Supervisory Writ of Habeas Corpus to Vacate Prejudicial Illegal and/or Unconstitutional Habitual Offender Multiple Bill Sentence" in *State v. Daigre*, no. 537273 in the 22nd JDC, St. Tammany Parish. On April 5, 2015, Taylor wrote Daigre on Temple letterhead: "I am writing regarding your case … When your writ or motion is granted, that when we retain counsel to act on your behalf. Now, due to our case analysis and research in regard to your case, we discovered a defect in your multi bill hearing proceedings when the trial judge failed to vacate your original sentence .."

There are other pleadings, emails, and letters regarding the *State v. Daigre* matter and pleadings drafted by Taylor/Temple and reviewed by Respondent. *See, e.g.*, letter dated April 12, 2016 from the Clerk of Court, 22nd JDC to Jeremy Daigre enclosing a Dismissal of Writ of Habeas Corpus; letter dated July 9, 2016, from Charles Taylor to Jeremy Daigre concerning documents Daigre to mail to the Clerk of Court, 22nd JDC; letter dated July 14, 2016 from the Clerk of Court, 22nd JDC to Jeremy Daigre with Motion Under Article 902 (C.CR.P. Art.) with Jeremy Daigre's handwritten notes in margin and signed Order; letter dated July 24, 2016 from Jeremy Daigre to the Clerk of Court, 22nd JDC with Motion to Review Sentence.

Respondent's Good Character and Reputation

Respondent introduced several character letters and his resume into evidence in mitigation of possible sanctions. They are:

R-01 Resume
R-02 Casaday letter dated September [2]8, 2017 with refund check
R-03 Daigre Motion to Reconsider Sentence Filed by Respondent
R-04 Respondent's Mark-Up of Casaday Memorandum in Support of PCR

Character letters *en globo*:

R-05 Ruffin character letter dated August 14, 2017
R-05 Wheeler character letter dated September 6, 2017
R-05 Fernandez character letter dated September 12, 2017
R-05 Mitchell character letter dated September 25, 2017

The letters are self-explanatory and speak highly of Respondent. Respondent also offered two pleadings. One pleading is in the Daigre matter and it shows that Respondent continues to represent Daigre in his quest for post-conviction relief. The second pleading is in the Casaday matter and includes Respondent's mark-ups and comments on the pleading drafted by Taylor and is offered to support Respondent's claims that he did not render legal services to Casaday but only proofed or reviewed pleadings.

WITNESSES

There were several witnesses who testified at the hearing. The Respondent testified in person, as did Mr. Craig Daigre, Jeremy Daigre's father. Three witnesses testified by telephone: Ray Casaday, Jeremy Daigre, and Shawna Terrell. Charles Taylor could not be located.

Respondent's position has been that Casaday and Daigre were not his clients, but the Temple's clients, that he only proofread legal documents drafted by Temple employees, and that he did not sign any pleadings prepared by Temple employees for filing in court. Respondent admitted reviewing pleadings in both the Casaday and Daigre cases. He also admitted sharing fees with Taylor and Terrell in the Casaday and Daigre cases but said while it may have been negligent of him to do so, it was not intentional.

Jeremy Daigre testified that his father contacted the Temple after seeing a flyer for the Temple posted on a bulletin board at the jail. Daigre testified that Shawna Terrell came to see him and told him that the Temple would review his court record and if they found errors, they would hire the lawyer, who would "be his lawyer". Terrell gave her telephone number to Daigre and she gave Daigre two telephone numbers for Respondent as his contact information. Daigre testified that his father, Craig Daigre, paid Respondent for his legal services and that his father would not have paid the Temple to do legal work on his son's behalf. Daigre is being represented by Respondent at the present.

Craig Daigre testfified that he met with Respondent and paid Respondent $6,500.00 for Respondent's legal services in trying to obtain post-conviction relief for his son. He understood that Temple employees were paralegals and thought that Respondent "oversaw" or managed the Temple employees. Craig Daigre testified that Respondent made it clear that Temple employees worked for him. When asked whether Respondent's job was to proofread pleadings prepared by Temple employees, he said no. Craig Daigre referred to the notation "Appeal Process" on the memo line of the $6,500.00 check he wrote to the Respondent as the fee. Respondent is currently representing Jeremy Daigre for his post-conviction work.

Shawna Terrell testified by telephone. She confirmed the Temple's work was to provide paralegal services to incarcerated individuals and that there were no Temple employees who were attorneys. She also confirmed that Charles Taylor of the Temple determined the fees charged the clients. She testified that either she or Taylor gave Respondent his fee in the Casaday matter.

FINDINGS OF FACT

Having heard the testimony of the witnesses and reviewed the evidence submitted by the parties, the Committee finds by clear and convincing evidence that Respondent violated Rules of Professional Conduct Rules 5.4(a) (fee sharing), 5.5(a) (facilitating the unauthorized practice of law), and 8.4(a) (violate or attempt to violate Rules of Professional Conduct or assist another to do so). Respondent was aware that Taylor and Terrell of the Temple were not attorneys when he agreed to work with them. The Respondent shared in the Temple's fees for the work that was done on both the Casaday and Daigre cases. In so doing, the Respondent

facilitated the unauthorized practice of law and improperly shared legal fees with non-lawyers.

Fee Sharing: The Casaday Fee

Casaday initially paid the Temple $500.00 on June 12, 2015. Casaday paid the balance of the fee of $6,500.00 on July 15, 2015. The check for the balance of the fee was not made payable to the Temple but to Terrell individually.

Terrell cashed the $6,500.00 check on July 15, 2015. On the same day, Terrell paid Respondent $2,000.00 cash. Respondent deposited the $2,000.00 cash into his Chase account on July 16, 2015 [FN4].

[FN4 While Respondent testified that his share of the Casaday fee was $2,000.00, the Temple's statement dated August 15, 2015 to Casaday for services provided from July 5, 2015 through August 15, 2015 show that Respondent's part of the fee was $2,500.00, not $2,000.00. The actual amount of Respondent's fee does not change the undisputed fact that Respondent shared a fee with non-lawyers.]

Respondent admitted in his sworn statement and at the hearing that he shared Casaday's fee with Temple employees. Respondent refunded his $2,000.00 fee to Casaday on September 28, 2017, a little more than two weeks before the hearing on this matter.

Fee Sharing: The Daigre Fee

Respondent testified he obtained a check from Jeremy Daigre's parents for $6,000.00, cashed the check, and took $2,000.00 cash as his fee for working on Daigre's post-conviction relief. The check that Respondent obtained from the Daigres was made payable to him personally because Taylor "gave me a story" about getting the check. The check was dated June 26, 2015 and had the notation "appeal process" handwritten on the memo line.

Facilitating the Unauthroized Practice of Law: Casaday and Daigre

In both cases, the Respondent testified both in his sworn statement and at hearing that he became involved in the cases through Taylor/Temple. Respondent insists that Casaday and Daigre were not his clients, but clients of the Temple, and that the only work he did was "proofread" legal documents. The Committee finds by clear and convincing evidence that Respondent in fact rendered legal services to both Casaday and to Daigre, and Casaday and Daigre were the Respondent's clients.

Committee Report, pp. 5-15.

In addressing the appropriate sanction to be imposed, the committee first considered the factors outlined in Louisiana Supreme Court Rule XIX, §10(C). The committee found that Respondent violated duties owed to the legal profession, that he acted knowingly, and that his

misconduct caused actual harm. The committee went on to provide the following analysis in support of its recommended sanction:

> The *ABA Standards for Imposing Lawyer Sanctions* provide that disbarment is the baseline sanction for Respondent's misconduct. The unauthorized practice of law by a non-licensed person is an affront to the Louisiana Supreme Court's exclusive and plenary power to define and regulate all facets of the practice of law. *See In re Broussard*, 2005-0475 (La. 4/22/05); 900 So.2d 814, 817 (per curiam). Moreover, it is a violation of state law under La.R.S. 37:213. Pursuant to Rule 5.5(a), a lawyer shall not assist another in the practice of law in violation of the regulation of the legal profession in Louisiana. The Louisiana Supreme Court Rules of Professional Conduct, as well as the Louisiana legislature and Louisiana case law provide concrete examples of activities that are identified as the "practice of law." Rule 5.5(e)(3) provides in pertinent part:
>
> > For purposes of this Rule, the practice of law shall include the following activities:
> >
> > (i) holding oneself out an [sic] an attorney or lawyer authorized to practice law;
> > (ii) rendering legal consultation or advice to a client;
> > (iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleading, except as may otherwise be permitted by law;
> > (iv) appearing as a representative of the client at a deposition or other discovery matter;
> > (v) negotiating or transacting any matter for or on behalf of a client with third parties;
> > (vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.
>
> Additionally, La. R.S. 37:213 prohibits a person, who has not first been duly and regularly licensed and admitted to practice law by the supreme court, from practicing law, from furnishing an attorney to render legal services, and from rendering or furnishing of legal services. Under La. R.S. 37:[212], the practice of law includes the drawing of papers, pleadings, or documents in a representative capacity; the performance of any act in connection with pending or prospective proceedings before any court of record in this state; for consideration, advising another as to secular law; on behalf of another, drawing of a document affecting or relating to secular rights; and the doing of any act on behalf of another to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right.
>
> The jurisprudence further identifies activities that amount to the practice of law. For example, the court recognized a "significant issue investigated by the

ODC involved petitioner's engaging in the unauthorized practice of law by providing a lay person with substantive advice and analysis of legal issues and drafting legal pleadings that were filed by the law [sic] person in proper person." *See In re: Maryland*, 2009-2470, (La. 4/5/10); 32 So.3d 219. Maryland withdrew his application for admission to the bar but later, reapplied, therein admitting "the allegations concerning his unauthorized practice of law – but contended that he was rehabilitated from this misconduct." The court denied the application for admission. *Id.* at 220.

While non-lawyers may assist a lawyer in the practice of law, a lawyer may not delegate to paralegals, legal secretaries, and other non-lawyers tasks that call for the exercise of professional judgment by a licensed lawyer. *La. State Bar Ass'n v. Edwins*, 540 So.2d 294, 300 (La. 1989). In this case, Knowledge Center Temple employees negotiated and collected legal fees from clients and shared those fees with Respondent. Knowledge Center Temple employees also prepared pleadings, motions, memoranda, and writ applications to be filed "pro se" by clients; and rendered legal advice to clients. Respondent gave a sworn statement indicating, "pleadings are legal work. Yes, filing pleadings and things of that nature lawyers do and is considered legal work."[FN5] He also acknowledged during his sworn statement that the preparation of motions is providing legal services.[FN6] Knowledge Center Temple employees were clearly engaged in the unauthorized practice of law.

[FN5 ODC-19]

[FN6 *Id.*]

Respondent knew that the Knowledge Center Temple employees were not attorneys and that they were providing legal services on behalf of clients facilitating the unauthorized practice of law and sharing legal fees with non-lawyers in violation of Rules 5.4(a), 5.5(a), and 8.4(a).

"In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating facts." *See In re Quaid*, 1994-1316 (La. 11/30/94); 646 So.2d 343, 350; La. S. Ct. Rules, Rule XIX, §10A.

Duties Violated. Under the *ABA Standards*, Respondent violated a duty owed to the legal profession. *ABA Standards*, Standard 7.0. **Mental State**. The *ABA Standards* define three mental states. Did the lawyer act intentionally, knowingly, or negligently? "Intent" is the conscious objective or purpose to accomplish a particular result. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Respondent suggests that his "misconduct, if any, was committed negligently." The Committee finds that Respondent's misconduct was "knowing." Respondent knew that Taylor and Terrell of the Knowledge Center Temple were not lawyers. Despite Respondent's knowledge, he "knowingly" shared in the legal fees paid by Casaday and Daigre. Respondent

also "proof read" the pleadings, motions, memoranda, and writ applications prepared by Taylor and Terrell on behalf of Casaday and Daigre. Therefore, he was fully aware of the improper and statutorily prohibited legal work that Taylor and Terrell were doing on behalf of clients.

Extent of Injury/Harm. The legal profession is harmed by the unauthorized practice of law.

> Restrictions on the practice of law are designed to protect the public, protect the integrity of the judicial system, and provide a means of regulation of the legal profession. [Respondent's] failure to recognize these restrictions creates the potential for injury to the public and the legal system.

In re Archie L. Jefferson, 2004-0239 (La. 06/18/2004); 878 So.2d 503, 504. Respondent's conduct caused actual harm to Casaday and Daigre. Casaday paid a total of $7,000 to Knowledge Center Temple, which Respondent received $2,000. Craig Daigre, on behalf of Jeremy Daigre, paid $6,500 to Knowledge Center Temple, which Respondent received $2,000. Casaday and Daigre paid for legal services and reasonably believed that a licensed attorney would provide those legal services. However, Casaday and Daigre received nothing more than pointless drivel masquerading as legal documents that Respondent claims to have "proofed."

The baseline sanction for violating Rule 5.4(a) (fee-sharing with a non-lawyer), is a one-year and one-day suspension. *In re: Watley*, 2001-1775, (La. 12/701[sic]); 802 So.2d 593, 597 (per curiam) (contract with agency providing secretarial and paralegal support; one-year and one-day suspension). The baseline sanction for facilitation of the unauthorized practice of law by a non-lawyer is disbarment. *In re: Brown*, 2001-2863 (La. 3/22/02); 813 So.2d 325, 329 (per curiam) (disbarment). For misconduct "involving both facilitation of the unauthorized practice of law and fee sharing, the overall baseline sanction is disbarment." *In re: Garrett*, 2008-2513 (La. 5/5/09); 12 So.3d 332, 345 (per curiam). *See ABA Standards*, Standard 7.1 (disbarment when 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 causing serious or potentially serious injury to a client, the public, or the legal system.)

The Committee also considers the mitigating factors. As identified in Respondent's testimony and in his brief, there is an absence of prior disciplinary actions, full and fee [sic] disclosure to the ODC, and a cooperative attitude toward the proceedings; and inexperience in the practice of law. Respondent was also pleasant and cooperative at the Hearing of this matter. However, Respondent did not appear remorseful and Respondent profited from the attorney fees that were generated by the "unauthorized services performed" by the non-lawyers of the Knowledge Center Temple. *See Edwins*, 540 So.2d at 302.

The discipline to be imposed in a given case depends upon the seriousness of the offense, the circumstances of the offense, and the extent of the aggravating and mitigating circumstances. *See In re: Abdallah*, 2011-1631, (La. 10/14/11); 72 So.3d 836, 841 (per curiam).

In the matter of *In re: Morris*, 2014-1067 (La. 10/15/14); 149 So.3d 229 (per curiam), the respondent received a three-year suspension for violating Rules

> 5.4(a), 5.5(b), and 7.2(b). The respondent had an arrangement with Citizens Against Legal Abuse ("CALA"), a non-licensed domestic corporation that provided legal services to prospective clients. CALA and the respondent maintained adjacent offices, and respondent was advertised as available to represent clients referred by CALA. To facilitate the arrangement, attorney-client contracts with letterhead that included the name of CALA and of the respondent were given to prospective clients. In exchange for the referral, the respondent would remit to CALA a percentage of the fee paid by the client, characterizing the payments as "donations." CALA retained the primary responsibility for setting, quoting, and collecting legal fees from prospective clients. After concluding the contractual terms with the client, a CALA employee would contact the respondent to advise her that she had been retained and to provide details regarding the legal matter. The Board made additional factual findings regarding the respondent's relationship with CALA, which in the Board's opinion, provided sufficient evidence of violations of Rules 5.4(a), 5.5(b), and 7.2(b).
>
> The Louisiana Supreme Court agreed with the hearing committee's factual findings as modified by the Board. The court concluded that, among other violations, including conversion, the respondent, "shared legal fees with a nonlawyer, facilitated the unauthorized practice of law by a nonlawyer, [and] shared fees with a corporation not licensed to practice law." *Morris*, 149 So.3d at 241. While recognizing that the baseline sanction was disbarment, the court imposed a downward deviation to a three-year suspension in light of the mitigating circumstances that were present, including absence of a prior disciplinary record and a delay in prosecution, various illnesses during misconduct, solo practitioner with no mentor, and a practice devoted primarily to serving the under-served areas of the community.
>
> The facts of *Morris* or [sic] similar to the case *sub judice*. While the baseline sanction for Respondent's knowing violation of Rules 5.4(a), 5.5(a), and 8.4(a) is disbarment, the Committee agrees with Disciplinary Counsel that Respondent's sanction should be a three-year suspension from the practice of law, with an order of restitution, and with Respondent to be cast with all costs and expenses associated with this matter. *See* La. S. Ct. Rules, Rule XIX, §10.1.

Committee Report, pp. 15-21.

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 findings of the committee do not appear to be manifestly erroneous, are supported by the record, and are adopted by the Board.

B. *De Novo* Review

The ODC proved by clear and convincing evidence that Respondent violated Rules 5.4(a), 5.5(a), and 8.4(a) as charged. Despite at all times knowing that Taylor and Terrell were not lawyers, Respondent agreed to and did assist them in providing legal services to prison inmates in violation of Rule 5.5(a) and shared in fees received from the prisoners for those services in violation of Rule 5.4(a). The violation of Rules 5.4(a) and 5.5(a) establish the derivative violation of Rule 8.4(a) which provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct. Further, Respondent admitted to the material facts giving rise to the rule violations in his sworn statement and hearing testimony and he has now affirmatively admitted all charged violations in his brief. Respondent's Brief, 8-10.

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 profession, the client, and the public. Respondent acted knowingly in facilitating the unauthorized practice of law by Taylor and Terrell/Knowledge Center Temple ("KCT") and the sharing of fees with them. Respondent knew that Taylor and Terrell were not lawyers, yet he willingly assisted them in the preparation of legal pleadings and shared in fees for those services. Respondent's misconduct caused actual harm to Casaday and Daigre. Mr. Casaday paid a total of $6,500 (of which Respondent received $2,000) and Mr. Daigre paid a total of $7,000 (of which Respondent received $2,000) for legal work prepared by non-lawyers which Respondent "proofed." Further, his actions contributed to a delay in these prisoners' having licensed lawyers fully review their cases and pursue any legitimately available procedures for obtaining post-conviction relief.

The following mitigating factors considered by the committee are supported by the evidence: absence of prior disciplinary record; full and free disclosure to disciplinary board and cooperative attitude toward proceedings, and inexperience in the practice of law. In his brief to the Board, Respondent contends two additional factors are present: (1) timely and good faith effort to rectify consequences of misconduct and (2) good character and reputation.[5] Respondent argues

[5] In his pre-hearing memorandum, Respondent also argued absence of selfish or dishonest motive and remorse as mitigating factors. The committee found the Respondent did not appear remorseful and that Respondent profited from

that the first of these factors applies because he offered to enroll as counsel and returned all fees he received from Mr. Casaday and he has now undertaken to represent Mr. Daigre in his motion to reduce sentence. Respondent Brief, p. 18-19. As far back as his letters to Respondent and the ODC in October and November of 2016, Mr. Casaday began requesting that Respondent either move forward with his post-conviction relief or return his money. *See* Exs. ODC-1, 3, 14, 16. Mr. Casaday testified at the hearing on October 16, 2017, that Respondent sent him a letter "not long ago" saying Respondent would go ahead and do "my postconviction." T.105. Mr. Casaday no longer trusted Respondent and wanted his money back. *Id*. Respondent returned the $2,000 to Mr. Casaday by letter dated September 28, 2017, approximately three weeks before the hearing in this matter. These circumstances do not appear to justify finding timely and good faith effort to rectify the consequences of the misconduct as a mitigating factor. However, the second additional factor argued by Respondent – good character or reputation – is supported by the character letters included in Respondent's Ex. R05. See also T.190-194; Ex. R01 (Respondent's resume).

There is no discussion of any aggravating factors in the committee's report or the briefs filed by the parties. The Board finds that the evidence supports the aggravating factor of vulnerability of the victims who were incarcerated.

B. The ABA Standards and Case Law

Standard 7.2 of the *ABA Standards for Imposing Lawyer Sanctions* is instructive in considering the sanction to be imposed for Respondent's misconduct. Standard 7.2 provides:

> 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.

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the attorney fees generated. Committee Report, p. 20. Respondent did not re-urge these factors in his brief to the Board.

The Louisiana Supreme Court has imposed a wide range of sanctions in matters involving the unauthorized practice of law depending on the specific facts and circumstances presented. In cases in which the respondent attorneys facilitated a pattern and practice of the unauthorized practice of law by non-lawyers, including the negotiation of settlements, the respondents have been disbarred. *See In re Guirard*, 2008-2621 (La. 5/5/09), 11 So.3d 1017; *In re Garrett*, 2008-2513 (La. 5/5/09), 12 So.3d 332; *In re Sledge*, 2003-1148 (La. 10/21/03), 859 So.2d 671; *In re Brown*, 2001-2863 (La. 3/22/02), 813 So.2d 325; *LSBA v. Edwins*, 540 So.2d 294 (La. 1989). The ODC relies on these cases, which often involve systematic delegation of professional responsibilities to non-lawyer staff, in arguing that the baseline sanction here is disbarment. However, the circumstances presented in those cases are distinguishable from the facts presented here. This matter involves only two instances of a young lawyer assisting a non-lawyer who the Respondent perceived as a "jailhouse lawyer" in the unauthorized practice of law. Further, one of the clients affected, Jeremy Daigre, has chosen to keep Respondent as his attorney and Respondent has continued to represent him at no additional charge. T.118-119, 126, 141-143, 186-187, 189.

The case of *In re Morris*, 2014-1067 (La. 10/15/14), 149 So.3d 229, relied upon by the committee in recommending a three-year suspension is also distinguishable when considering the appropriate sanction to be imposed in this matter. The respondent in *Morris* was charged in four counts and violated thirteen rules, whereas Respondent here was charged in only one count and violated three rules. Two of the counts in *Morris* arose out of the respondent's representation of clients referred to her via her relationship with CALA, a non-licensed domestic corporation that provided legal services to prospective clients and advertised as a non-profit representation resource. The relationship between CALA and the respondent is further described in detail in the committee's report quoted previously herein, but included maintenance of adjacent offices,

advertising that the respondent was available to represent clients referred by CALA, and use of attorney-client contracts that included the names of both the respondent attorney and CALA. Only one of the two counts arising out of the CALA relationship included violations of fee sharing and facilitating the unauthorized practice of law. The two CALA counts also involved rule violations relating to lack of diligence, failure to communicate, and failure to return an unearned fee. In connection with the other two counts which were unrelated to the CALA arrangement, the respondent was found to have committed multiple rule violations including conversion of client funds, making false statements to the ODC, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The *Morris* decision included no discussion of the appropriate sanction for the fee sharing and unauthorized practice of law violations. The court concentrated only on the conversion, stating:

> In considering the issue of sanction, we focus primarily on respondent's most egregious misconduct – her conversion of $21,400 belonging to the cabdrivers and $7,258 belonging to the heirs of Doris Mae Lewis. The record reflects that respondent has not paid any restitution to her clients in these matters. While disbarment would ordinarily be appropriate under such circumstances, *see Louisiana State Bar Ass'n v. Hinrichs*, 486 So.2d 116 (La. 1986), we find that in light of the mitigating circumstances present in this case, a downward deviation to a three-year suspension from the practice of law is warranted.

Morris, *supra* at 242. The mitigating factors in *Morris* were absence of a prior disciplinary record, delay in the disciplinary proceedings, and the facts that the respondent had suffered from various illnesses during the time of her misconduct, had worked primarily as a solo practitioner without the benefit of professional mentoring relationships, and had devoted a substantial portion of her practice to representations in the public interest in under-served areas of the community.[6]

[6] Several aggravating factors were also present in *Morris* including dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, vulnerability of the victims, and indifference to making restitution.

In cases in which the respondents have engaged in isolated instances of assisting a non-lawyer in the unauthorized practice of law, the Court has imposed relatively short periods of suspension. *See, e.g.*, *In re Burns*, 2017-2153 (La. 5/1/18), 249 So.3d 811; and *In re Mopsik*, 2004-2395 (La. 5/24/05), 902 So.2d 991. In *Mopsik*, the respondent was suspended for sixty days for abdicating his professional responsibilities in a client matter to his paralegal and failing to exercise any supervision over the paralegal's activities in the matter. The Court concluded that the respondent violated Rules 5.3 (responsibilities regarding non-lawyer assistants) and 5.5 (assisting in the unauthorized practice of law). Further, the Court found that the respondent's conduct was negligent and relied on ABA Standard 7.3 which addresses negligent conduct in finding that the baseline sanction was a reprimand.[7] The Court imposed the increased sanction of suspension due to the following aggravating factors: prior disciplinary record, refusal to acknowledge wrongful conduct, vulnerability of the victim, and substantial experience in the practice of law.

In *Burns*, due to a conflict with another case, the respondent sent a paralegal to participate in a pre-trial conference and the paralegal did not inform the court or the other lawyers that he was not a lawyer. The Board found that the respondent violated Rules 5.5(a) and 8.4(a). The Board concluded that a sixty-day suspension would be the baseline sanction in that matter. However, because the respondent had given false testimony during the disciplinary proceeding, the Board found that an upward deviation was warranted and recommended that the respondent be suspended for one year and one day. One Board member dissented and would recommend a one-year suspension. *In re Burns*, Disciplinary Board Ruling, 16-DB-067 (12/28/17).

[7] ABA Standard 7.3 provides that "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."

The Supreme Court concurred in the finding of the rule violations and imposed a one-year suspension, stating:

> We find that respondent acted knowingly. He violated duties owed to the legal profession, causing actual harm. The baseline sanction for this type of misconduct is suspension. The aggravating and mitigating factors found by the board are supported by the record.
>
> Considering all the circumstances of this case, we find that the appropriate sanction in this matter is a one-year suspension from the practice of law. We will further order that respondent attend and successfully complete the next available session of Ethics School.

In re Burns, 2017-2153 (La. 5/1/18), 249 So.3d 811, 817. Justice Hughes dissented and would impose only a six-month suspension. Justices Genovese and Clark dissented and would impose a one-year and one-day suspension with one-year probation and ethics school. Several aggravating factors were present in *Burns* including: prior disciplinary record (admonitions in 2006 and 2007), dishonest or selfish motive (with respect to the misrepresentation), submission of false evidence, false statements, or other deceptive practices during the disciplinary process, and substantial experience in the practice of law. Mitigating factors present were imposition of other penalties or sanctions and the remoteness of the prior offenses.

Respondent's behavior here appears far less grievous than the misconduct involving a more pervasive pattern and practice of the facilitation of the unauthorized practice of law by non-lawyers and fee sharing in cases such as *Guirard* and *Garrett* which have resulted in disbarment. The circumstances of this matter are more in line with those in *Mopsik* which involved misconduct in the handling of one case. However, unlike Respondent here, Mr. Mopsik was a seasoned lawyer with almost forty-years experience at the time of his misconduct who had a prior disciplinary record and refused to acknowledge his wrongful conduct.

Based on all of the circumstances presented here, the Board finds that the sanction of a six-month suspension, fully deferred, conditioned upon a one-year probation period and attendance at

the LSBA Ethics School is appropriate. The Board makes this determination particularly considering Respondent's inexperience in the practice of law at the time he first encountered Mr. Taylor;[8] the fact that Respondent was actually involved with only two clients of KCT; the fact that he has now undertaken the full representation of one of the "clients," Jeremy Daigre, without charging an additional fee (T.118-119, 126, 141-143, 186-187, 189); the multiple letters submitted in support of Respondent's good character (Ex. R05); and the absence of any prior disciplinary offenses.

CONCLUSION

Considering the foregoing, the Board adopts the committee's factual findings and conclusions regarding rule violations. The Board recommends that Respondent be suspended for six months, fully deferred. The Board further recommends that the deferral of the six-month suspension period be subject to a one-year probation period and that any misconduct during the probationary period be grounds for making the deferred period of suspension executory and/or imposing additional discipline, as appropriate. Additionally, the Board recommends that Respondent be ordered to attend the LSBA Ethics School within the one-year probation period. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

[8] At the hearing, Ms. Terrell characterized Mr. Taylor as a "fraudster" and a "scammer after the fact" who had been a "jailhouse lawyer" when previously incarcerated. T.163-164. However, Taylor was not incarcerated at the time of the events in question.

RECOMMENDATION

The Board recommends that Dante Jerome Butler be suspended from the practice of law for six months, that the suspension be fully deferred subject to a one-year probation period, that any misconduct during the probationary period be grounds for making the deferred period of suspension executory and/or imposing additional discipline, as appropriate, and that Respondent be ordered to attend the LSBA Ethics School within the one-year probation period. 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

Sheila E. O'Leary
Dominick Scandurro, Jr.
Danna E. Schwab
Evans C. Spiceland, Jr.
Charles H. Williamson, Jr.

By:

Pamela W. Carter
FOR THE ADJUDICATIVE COMMITTEE

Melissa L. Theriot - Concurs with reason.
Linda G. Bizzarro – Dissents with reason.
Brian D. Landry – Dissents with reason.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DANTE JEROME BUTLER

DOCKET NO. 17-DB-022

CONCURRENCE

I concur in this sanction only in light of the very specific facts of this case, especially the inexperience and apparent naivete of the Respondent and Ms. Terrell, who appear to have both been duped by Mr. Taylor, who is now gone. As evidenced by the cases cited by ODC in this matter. permitting and facilitating the unauthorized practice of law should be carefully guarded.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By:
MELISSA L. THERIOT
Adjudicative Committee Member

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DANTE JEROME BUTLER

DOCKET NO. 17-DB-022

DISSENT

I concur with the findings of the hearing committee. Respondent knowingly entered into an arrangement to assist two people he knew were not lawyers, to provide legal advice and services to vulnerable incarcerated victims and to engage in fee sharing with the non-lawyers. I would recommend a suspension of not less than one year and one day.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: ____
LINDA G. BIZZARRO
Adjudicative Committee Member

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DANTE JEROME BUTLER

DOCKET NO.17-DB-022

DISSENT

I respectfully dissent for the reasons assigned by Ms. Bizzarro.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: ______________________________

BRIAN D. LANDRY
Adjudicative Committee Member

APPENDIX

Rule 5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

> (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
>
> (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;
>
> (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
>
> (4) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and
>
> (5) a lawyer may share legal fees as otherwise provided in Rule 7.2(c)(13).

. . .

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 8.4 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;

. . .