

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: RICHARD C. OUSTALET, JR.

DOCKET NO. 18-DB-082

REPORT OF HEARING COMMITTEE # 62

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of 2 counts filed by the Office of Disciplinary Counsel (“ODC”) against Richard C. Oustalet, Jr. (“Respondent”), Louisiana Bar Roll Number 27599.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.2(a); 1.3; 1.4(a); 1.5(a), (b), & (f)(5); 1.7(a) & (b); 1.11(d) & (e); 1.16(d); 3.2; 8.4(a) & (c).²

PROCEDURAL HISTORY

The formal charges were filed on November 8, 2018. By letter dated November 13, 2018, the formal charges were mailed via certified mail to Respondent’s primary registration address at that time.³ The mailing was returned marked as unclaimed. Respondent failed to file an answer to the charges. Accordingly, on December 13, 2018, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ By order signed

¹ Respondent was admitted to the practice of law in Louisiana on October 5, 2001. Respondent is currently eligible to practice law.

² See the attached Appendix for the text of these Rules.

³ 333 Laurel St., Apt. K, Baton Rouge, LA 70801.

⁴ 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

December 18, 2018, the factual allegations contained in the formal charges were deemed admitted. On February 13, 2019, ODC filed its submission on sanction.

For the following reasons, the Committee finds that Respondent's conduct in Count 1-ODC 0036692 was a violation of the Louisiana Rules of Professional Conduct. By delaying resolution of Complainant's pending criminal matter, Respondent violated Rule 1.3 (diligence) and Rule 3.2 (expedite litigation). By advising Complainant that he could, and would, complete his legal representation and then abandoning said representation, Respondent violated Rule 1.4(a) (communication), Rule 1.16(d) (improper termination of representation), and Rule 8.4(c) (misrepresentation). By remaining as counsel of record in Complainant's state criminal proceeding while serving as an Administrative Law Judge for the State of Louisiana, Respondent violated Rules 1.7(a), (b) (concurrent conflict), Rules 1.11(d),(e) (government lawyers), and Rule 8.4(c). By failing to account for and return the unearned fees from Complainant's incomplete legal representation and effectively converting said funds to his own use, Respondent violated Rules: 1.5(a), (b), (f)(5) (reasonable fee, fee and scope of representation, return of unearned fee); 1.16(d) (improper termination of representation); and 8.4(c) (misrepresentation). Respondent violated Rule 8.4(a) (violate or attempt to violate rules).

For the following reasons, the Committee finds that Respondent's conduct in Count 2-ODC 0036884 was a violation of the Louisiana Rules of Professional Conduct. By improperly delaying resolution of Complainant's pending matter in St. Mary Parish and not pursuing Complainant's application for post-conviction relief, Respondent violated Rules 1.3 (diligence)

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 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.

and 3.2 (expedite litigation). By changing the scope of the representation without properly explaining the nature of the change or the basis of the fee and failing to secure Complainant's understanding of and agreement to the change, Respondent violated Rules 1.2(a) (scope of representation) and 1.5(b). By failing to keep Complainant apprised of the status of his legal matters, Respondent violated Rule 1.4(a). By effectively abandoning Complainant's representation without accounting for or returning the unearned fee or the client file upon request, Respondent violated Rules 1.5(f)(5) and 1.16(d). Respondent violated Rule 8.4(a).

For these reasons, the Committee recommends the sanction of two years suspension from the practice of law, the Respondent cast with all costs and expenses.

FORMAL CHARGES

The formal charges read, in pertinent part:

Count 1 / ODC 0036692 (John)

On April 27, 2018, Respondent was sent notice of Mr. John's complaint and a request for an initial response, via certified United States mail to the primary/preferred address registered with the Louisiana State Bar Association (LSBA). Although notice of the certified mail was left, it was returned to the ODC as "unclaimed." On May 7, 2018, the ODC again sent notice of the complaint and supplemental correspondence to Respondent at his LSBA-registered primary/preferred address. The correspondence sent via regular United States mail was not returned to the ODC, indicating receipt. Respondent did not submit an initial response to the complaint, and on June 1, 2018, the ODC sent to Respondent at his LSBA-registered primary/preferred and (then) secondary addresses a second request for an initial response. The correspondence was not returned to the ODC, indicating receipt, and on June 7, 2018, Respondent submitted an initial response.

Mr. John was charged in late 2013 with a felony, and he was arraigned in January of 2014. *State v. John*, CR-701-13, 31st J.D.C., Parish of Jefferson Davis. The Office of the Public Defender (OPD) was appointed to represent Mr. John, and Respondent was assigned the representation. After Respondent's contract with the OPD ended, Mr. John hired Respondent to continue with the representation in the criminal matter and to also represent him in a custody matter. The agreed-to fixed fee for the representation was \$7,500, which Mr. John's family paid to Respondent on Mr. John's behalf. Respondent formally enrolled in the criminal matter on August 4, 2015.

Prior to resolution of Mr. John's matters, in late 2015, Respondent relocated to Baton Rouge to accept a position with the Louisiana Division of Administrative Law. Mr. John knew of Respondent's relocation; however, Respondent indicated to Mr. John that he could, and would, complete the representation. Despite Respondent's assurances, Mr. John's criminal matter remained unresolved. Mr. John repeatedly asked Respondent whether he was unable or unwilling to complete the representation and, if so, to return the unearned fee so that he might hire new counsel. Mr. John reports that during an early 2017 court appearance, Respondent failed to appear, and the court advised that Respondent no longer was representing him. To the contrary, on April 17, 2017, Respondent emailed the ODC: "After I began representing Mr. John, I was hired by the State of Louisiana as an Administrative Law Judge and relocated to Baton Rouge. Since that time, I have continued to represent Mr. John." Respondent, however, did not complete Mr. John's representation, and it was necessary for the court to re-appoint the OPD to complete the representation of Mr. John in his criminal matter. Thereafter, the criminal charges against Mr. John were *nolle prosequed* on May 14, 2018.

In Respondent's capacity as an attorney for the Division of Administrative Law for the State of Louisiana, he was prohibited from being an attorney of record, or serving in any advisory capacity, in a lawsuit or case in which a party includes the State of Louisiana. Neither Mr. John nor the Division of Administrative Law gave informed consent, as confirmed in writing, to Respondent's representation of both Mr. John and the State of Louisiana.

In his July 17, 2018, initial response to this complaint, Respondent advised the ODC that he was returning the unearned fee to Mr. John. Respondent has not provided the ODC with requested confirmation that he did, in fact, return the unearned fee. As of August 27, 2018, none of the fee paid had been returned to Mr. John or to his family.

Specific to the custody matter, Mr. John was seeking enforcement of supervised visitation. Mr. John advises that Respondent took no action in assisting him with his visitation matter. Ultimately, Mr. John's parental rights were terminated, and Mr. John is seeking prose relief with an appellate court.

Count 2 / ODC 0036884 (LaSage)

On July 9, 2018, Respondent was sent notice of Ms. LaSage's complaint and a request for an initial response, via certified United States mail to the primary/secondary/preferred address Respondent has registered with the Louisiana State Bar Association (LSBA). The correspondence was received on July 13, 2018. Indicating that he needed to retrieve client Brian LaSage's records from storage, Respondent requested, and the ODC agreed to, additional time for the submission of an initial response. Respondent, however, did not submit the initial response, and on August 23, 2018, the ODC sent a second request for an initial response to Respondent's LSBA-registered primary/secondary/preferred address. That correspondence was not returned to the ODC, indicating receipt, and on September 10, 2018, Respondent submitted his initial response.

On September 11, 2018, the ODC sent to Respondent a request for a supplemental response, seeking a copy of Mr. LaSage's complete client file, which

in July 17, 2018, correspondence, Respondent had indicated he was retrieving from storage. Respondent has not responded to the September 11, 2018, request.

Investigation reveals that Mr. LaSage had criminal matters pending in several parishes. Relevant herein are:

1. State v. LaSage, 2010-C-484087, 17th J.D.C., Parish of LaFourche
2. State v. LaSage, 80639, 15th J.D.C., Parish of Acadia
3. State v. LaSage, 2010-183168, 16th J.D.C., Parish of St. Mary

On November 19, 2010, Mr. LaSage entered a plea of guilty in Lafourche Parish. In late 2011, Mr. LaSage was present in court on his Acadia Parish matter, and by chance, Respondent also was present. Impressed with Respondent's demeanor, Mr. LaSage spoke with Respondent and asked if he could assist him with seeking post-conviction relief in his LaFourche Parish matter. Respondent asked Mr. LaSage to have his wife contact him, and ultimately, Ms. LaSage met with Respondent at his office, bringing with her Mr. LaSage's client file.

The agreed-to, fixed fee was \$5,000, which Ms. LaSage delivered to Respondent. No engagement contract was signed; however, on October 11, 2011, Respondent wrote to Mr. LaSage regarding the "Post-Conviction Relief" representation. Respondent also indicated his need for information regarding "all convictions" for which Mr. LaSage had been sentenced and was serving time. The letter confirmed Respondent's intention to visit Mr. LaSage at the prison facility.

During their only meeting at the prison facility, Mr. LaSage expressed to Respondent his concerns regarding the time delays for seeking post-conviction relief in LaFourche Parish. Respondent advised Mr. LaSage that he need not be concerned with the two-year statutory limit because post-conviction relief could be filed at any time based on what Respondent referred to as "actual innocence." Respondent asked Mr. LaSage to forward to him a completed post-conviction relief application, which Mr. LaSage had prepared with the assistance of inmate counsel. Mr. LaSage provided the ODC with copies of fund withdrawal requests, as well as with copies of his "Inmate's Request for Legal/Indigent Mail." On January 12, 2012, Mr. LaSage completed a fund withdrawal request form that reflects his transmittal of "Legal Mail to Attorney Post-Conviction (Ric Oustalet, Jr.)," which Mr. LaSage indicates was his mailing to Respondent of the PCR application that he had completed with the assistance of inmate counsel.

Respondent, in his initial response, states that after learning of Mr. LaSage's other pending matters, he advised Mr. LaSage that he would represent him on the pending criminal matters for the previously agreed-upon \$5,000. Mr. LaSage, however, was not seeking and did not need legal representation in his open matters, as he was represented by the OPD. Mr. LaSage did not have additional funds to pay Respondent, as Mr. LaSage was incarcerated, and Ms. LaSage was home with two children.

Respondent advised Mr. LaSage to terminate the OPD's representation in Acadia and St. Mary Parishes and to advise the courts that Respondent now would be his counsel of record. According to Respondent, "I also informed him that we would re-visit his request for PCR after the disposition of all criminal charges. I did not tell Mr. LaSage that I would represent him pro-bono" on his criminal charges,

I merely recognized that the pending criminal charges were his more serious current issue and that we could continue to discuss the PCR issue after finalizing his other matters."

The court record reflects that Respondent enrolled and completed Mr. LaSage's legal representation in the Acadia Parish matter. The record in the St. Mary Parish reflects a less than diligent representation. In February of 2012, the OPD was relieved, and Respondent enrolled. Respondent obtained a continuance of trial until January 28, 2013, with an intervening pretrial conference date of January 14, 2013, and plea date of January 17, 2013. Respondent failed to appear at the pretrial conference date and at the plea agreement date. When Respondent failed to appear on the date set for trial, the court issued a rule to show cause why Respondent should not be held in contempt of court. The rule was taken up on February 21, 2013, and "resolved" by Respondent's issuance of an apology to the court, opposing counsel, and court staff. Trial was set for May 6, 2013, and on that date, the charges against Mr. LaSage were *nolle prosequied*. Respondent writes in his initial response that "[w]e did not learn of the dismissal until late 2013."

Sometime in 2014, Respondent, in Mr. LaSage's words, "fell of the grid." The LaSages last spoke with Respondent in 2014, when Respondent advised Ms. LaSage that he would collect Mr. LaSage's client file from storage and review the contents. Despite these assurances, no application for post-conviction relief was filed in Lafourche Parish on behalf of Mr. LaSage. Respondent writes in his initial response that Mr. LaSage does not have "reasonable grounds" to support the filing of an application for post-conviction relief. Respondent did not, however, share this information with Mr. or Mrs. LaSage, either before or during their last conversation in 2014.

The LaSages later learned, not from Respondent, that Respondent had relocated to Baton Rouge. Mr. LaSage believed that Respondent was working at the Office of the Attorney General, and he attempted to send correspondence to Respondent at that location. In fact, in late 2015, Respondent relocated to Baton Rouge, accepting employment as an attorney for the State of Louisiana, Division of Administrative Law. In that capacity, Respondent was prohibited from being an attorney of record, or serving in any advisory capacity, in a lawsuit or case in which a party includes the State of Louisiana.

Mr. LaSage's efforts to obtain his client file so that he might proceed pro se have been futile. Respondent has Mr. LaSage's original documents from the Lafourche Parish matter, including DNA reports and transcripts.

The ODC respectfully submits that in Count 1 / ODC 0036692 (John), the evidence is clear and convincing that, as a matter of law, Respondent violated the Rules of Professional Conduct, Rules 1.3 (diligence); 1.4(a) (communication); 1.5(a), (b), (f)(5) (reasonable fee; scope of representation, return of unearned fee); 1.7(a), (b) (concurrent conflict); 1.11(d), (e) (government lawyers); 1.16(d) (improper termination of representation); 3.2 (expedite litigation); 8.4(a) (violate or attempt to violate rules); and 8.4(c) (misrepresentation).

The ODC further submits that in Count 2 / ODC 0036884 (LaSage), the evidence is clear and convincing that, as a matter of law, Respondent violated the

Rules of Professional Conduct, Rules 1.2(a) (scope of representation); 1.3; 1.4(a); 1.5(b), (f)(5); 1.16(d); 3.2; and 8.4(a).

EVIDENCE

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1-31. Respondent did not submit evidence or argument for the Committee's consideration, nor did he request to be heard in mitigation pursuant to Rule XIX, §11(E)(4).

FINDINGS OF FACT

In support of its case against Respondent, the ODC submitted a variety of evidence, including email and written correspondence, complaints to the ODC, Court Judgments, status of service attempts, requests for responses and client files, and orders from the Hearing Committee. Absent responses to repeated requests on the part of the ODC for answers and documents, there is no reason for the Committee to doubt the credibility of the evidence submitted by the ODC.

RULES VIOLATED

The committee agrees that the respondent's conduct violated of the following Rules of Professional Conduct:

Rules 1.3 (Diligence) and Rule 3.2 (Expedite Litigation)

In the John matter (ODC 0036692), Respondent delayed resolution of Complainant's criminal matter.

Rules 1.4(a) (Communication), 1.16(d) (Improper Termination of Representation), and 8.4(c) (Misrepresentation).

In the John matter, Respondent advised Complainant that he would complete legal representation and then effectively abandoned the representation.

Rules 1.7(a), (b) (Concurrent Conflict), 1.11(d), (e) (Government Lawyers), and 8.4(c) (Dishonesty).

In the John matter, Respondent remained as counsel of record in Complainant's criminal proceeding while serving as an Administrative Law Judge for the State of Louisiana.

Rules 1.5(a), (b), (f)(5) (Reasonable Fee, Fee and Scope of Representation, Return of Unearned Fee), 1.16(d) (Improper Termination of Representation), and 8.4(c) (Misrepresentation).

In the John matter, Respondent failed to account for and return the unearned fee from Complainant's incomplete legal representation, and effectively converted said funds to his own use.

Rule 8.4 (c) (Violate or Attempt to Violate Rules)

In the John matter, Respondent's actions constitute a violation of multiple rules of professional conduct.

Rules 1.3 (Diligence) and 3.2 (Expedite Litigation).

In the LaSage matter (ODC 0036884), Respondent delayed resolution of Complainant's pending matter in St. Mary Parish and never pursued Complainant's application for post-conviction relief.

Rules 1.2(a) (Scope of Representation) and 1.5(b) (Fees/Scope of Representation).

In the LaSage matter, Respondent changed the scope of representation without properly explaining the nature of the change or the basis of the fee and failing to secure Complainant's understanding of, and agreement to, said change.

Rule 1.4(a) (Communication)

In the LaSage matter, Respondent failed to properly keep Complainant apprised of the status of his legal matters.

Rules 1.5(f)(5) (Return of Unearned Fees), and 1.16(d) (Return of Client File).

In the LaSage matter, Respondent effectively abandoned Complainant's representation without returning unearned fee or client file upon request.

Rule 8.4 (c) (Violate or Attempt to Violate Rules)

In the LaSage matter, Respondent's actions constitute a violation of multiple rules of professional conduct.

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee 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 the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to his client, the public, the legal system, and the profession. In doing so, he acted knowingly in accepting fees for legal representation and causing delays due to neglect. He has intentionally failed to return unearned fees and client files. Respondent has also knowingly and intentionally engaged in a conflict of interest.

Respondent's misconduct caused harm to his clients. Failing to return client John and LaSage's unearned fees amounted to conversion of those client's funds. *In re; Deshotels*, 2003-2060, pl 13 (La. 12/12/03), 863 So. 2d 507, 514 (per curiam) (deemed admitted). The harm to Complainant LaSage was compounded by Respondent's failure to return his client file for use in further efforts at obtaining post-conviction relief.

Respondent's misconduct caused harm to the legal profession, the public, and the profession by serving as an attorney in public service while representing clients. "[A]n attorney occupying a position of public trust is held to even a higher standard of conduct than an ordinary attorney." *In re Bankston*, 2001-2780 (La. 3/8/02), 810 So. 2d 1113 (per curiam); see *In re: Griffing*, 2017 0874, p.7 (La. 10/18/17), 236 So. 3d 113, 1221-22 (per curiam).

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. ABA Standard 4.42(a)-(b) states that suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for client and causes injury to a client or, (b) when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Standard 7.2 also states that 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 committee agrees with the ODC analysis of the mitigation and aggravating factors in this case. Specifically, in aggravation, there exists: 1. A dishonest or selfish motive in failing to account for or relinquish unearned fees; 2. Multiple offenses; 3. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the ODC and failing to participate in these proceedings; 4. Vulnerability of the incarcerated Complainants; and 5. Indifference to making restitution. Absent an appearance by Respondent, the mitigating factors are limited to the lack of prior discipline.

In considering the sanction of suspension, the committee reviewed several relevant cases referenced by the ODC, specifically:

In the matter of *In re: Engum*, 2009-1619 (La. 10/28/09), 21 So. 3d 926 (per curiam) (three counts), Engum relocated, accepting a new position with the Orleans Parish District Attorney's Office. Engum did not properly notify her clients of her move and did not provide an accounting or refund of the unearned fees. For her knowing neglect of client legal matters, failure to communicate with clients, failure to timely account for or refund unearned fees, and failure to cooperate with the ODC in its investigations, Engum was suspended for one year and one day.

In the matter of *In re: Lewis*, 2008-2293 (La. 1/21/09), 1 So. 3d 444 (per curiam), the court imposed a two year suspension for Mr. Lewis's neglect of three separate legal matters, failing to communicate with his clients, failing to account for funds received from the clients or on their behalf, failing to properly withdraw from the cases upon relocating out of state, and failing to cooperate with the ODC in its investigation.

Additional jurisprudence supporting a two-year suspension includes *In re: Booth*, 2008-2353 (La. 3/17/09), 6 So. 3d 158 (per curiam) (two counts), where the Respondent received a suspension of two years for neglecting a client matter, failing to properly terminate representation,

failing to adequately communicate with the client, failing to return the client file, and failing to return an unearned fee. See also *In re: Hicks*, 2018-1211 (La. 11/5/18), 255 So. 3d 102 (per curiam) (deemed admitted) (four counts; two-year suspension for neglect of legal matters, failure to communicate with clients, failure to refund unearned fees, and failure to cooperate with the ODC); *In re: Gray*, 2014-2085 (La. 3/17/15), 166 So. 3d 969 (per curiam) (four counts; two-year suspension for neglect of four legal matters, failure to communicate with those clients, failure to return clients' files upon request, failure to refund unearned fees to two clients, and failure to cooperate with the ODC).

CONCLUSION


The Committee finds that Respondent's intentional and knowing conduct violated duties to the public, profession and legal system. Specifically, Respondent violated Professional Rules of Conduct 1.2(a), 1.3, 1.4(a), 1.5(a), 1.5(b), 1.5(f)(5), 1.7(a), 1.7(b), 1.11(d), 1.11(e), 1.16(d), 3.2, 8.4(a) and 8.4(c). In doing so Respondent caused harm to his clients, the profession, the public, and the legal system. For this reason, the Committee recommends the sanction of a two-year suspension with Respondent cast with all costs and expenses.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Committee Chair Kenneth P. Mathews, to sign on their behalf.

Mandeville, Louisiana, this 14 day of March, 2019.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 62**

**Kenneth P. Mathews, Committee Chair
Amanda B. Massey, Lawyer Member
Paul F. Delaup, Public Member**

BY: 
**Kenneth P. Mathews, Committee Chair
For the Committee**

APPENDIX

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Rule 1.3. Diligence

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

Rule 1.4. Communication

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

Rule 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.

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

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee: (1) is subject to Rules 1.7 and 1.9; and (2) shall not: (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or (ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes: (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Rule 1.16. Declining or Terminating Representation

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

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

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;
