

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: NICHOLAS ANTHONY BELLARD

DOCKET NO. 18-DB-070

REPORT OF HEARING COMMITTEE # 43

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of three counts filed by the Office of Disciplinary Counsel (“ODC”) against Nicholas Anthony Bellard (“Respondent”), Louisiana Bar Roll Number 30220.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, 8.1(c), and 8.4(a).²

PROCEDURAL HISTORY

The formal charges were filed on September 21, 2018. By letter dated September 25, 2018, the formal charges were mailed via certified mail to Respondent’s primary registration address.³ The mailing was received on September 27, 2018. Respondent failed to file an answer to the charges. Accordingly, on November 2, 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 December

¹ Respondent was admitted to the practice of law in Louisiana on April 13, 2006. Respondent is currently ineligible to practice law in Louisiana for failure to pay his bar dues and disciplinary assessment, failure to complete his annual MCLE requirements, and failure to file his annual trust account overdraft disclosure authorization.

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

³ 212 Nakel Ln., Church Point, LA 70525.

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 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.

3, 2018, the factual allegations contained in the formal charges were deemed admitted. On January 31, 2019, ODC filed its submission on sanction.

For the following reasons, the Committee finds, as follows:

- There exists clear and convincing evidence that Respondent violated Rule 1.5 and Rule 1.15 of the Rules of Professional Conduct with regard to the allegations contained in Count I of the Formal Charges;
- There exists clear and convincing evidence that Respondent violated Rules 1.3, 1.4, 1.16, 3.2, 8.1(c), and 8.4(a) of the Rules of Professional Conduct with regard to the allegations contained in Count II of the Formal Charges; and
- There exists clear and convincing evidence that Respondent violated Rules 1.3, 1.4, 1.16, 3.2, 8.1(c), 8.4(a) of the Rules of Professional Conduct with regard to the allegations contained in Count III of the Formal Charges.

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I (ODC Nos. 31364,32803, 33661)

Between January 2013 and April 2016, the ODC received sixteen overdraft and/or insufficient fund notices from Farmer's State Bank and Trust regarding Respondent's trust account. Accordingly, the matters were opened for investigation.

An audit was performed by ODC's Certified Internal Auditor, Angelina Marcellino. The auditor reviewed and analyzed Respondent's trust account transactions for the period of time between August 2012 and April 2016, the date on which Respondent closed his trust account.

The final audit report revealed Respondent's misuse of his client trust account, resulting in commingling and conversion. Examples from the audit findings are set forth below:

- A. Examples of Deposits Indicating Conversion - The internal audit identified several deposits made into Respondent's trust account without any disbursements being identified as payments to or on behalf of clients or third parties:

- During March 2014, several deposits totaling \$42,850.00 were made into Respondent's trust account from Kryton Environmental Services; however, the audit identified no associated disbursements prior to the closing of Respondent's trust account with a zero balance, indicating conversion; and
- On December 18, 2013, \$14,014.00 were deposited in Respondent's trust account and identified with Pam and Michael Grotefend; however, no associated disbursements were identified prior to the trust account's closure, indicating conversion.

B. Examples of Disbursements Indicating Conversion - The audit further revealed that, in other instances, although Respondent disbursed funds from the trust account, there were no associated deposits identified:

- The audit identified two disbursements, totaling \$25,000.00, which were made to client, Mario Figueiredo; however, no identified deposits were associated with Mr. Figueiredo. Respondent failed to provide any documentation regarding the aforementioned disbursements;
- The audit identified a \$5,000.00 disbursement to client, Susan Goss, which Respondent asserted represented a full refund of attorney fees to Ms. Goss; however, there were no identified deposits to Respondent's client trust account associated with Ms. Goss. Respondent failed to provide any client agreement for Ms. Goss;
- The audit revealed disbursements totaling \$48,000.00, which were identified as proceeds from a sale of property located at Lourdes Road; again, no deposit was identified in association with those disbursements; and
- The audit identified disbursements totaling \$72,314.00 made to "cash" during the audit period, a clear violation of Rule 1.15 of the Rules of Professional Conduct, which specifically prohibits cash withdrawals and checks made payable to "cash" from an attorney's trust account.

C. Other Examples of Misuse Resulting in Commingling and Conversion:

The audit revealed other acts of commingling and conversion by Respondent. For example, on June 4, 2013, \$151,189.76 was deposited into Respondent's trust account associated with Freddie

Richard. Disbursements totaling \$150,332.74 were made in the same matter; however, in addition to other errors, a \$400.00 payment due to a third party, as well as a \$475.00 payment due to Respondent in fees, were not identified as paid during the audit period or subsequent to Respondent closing the trust account, indicating conversion and commingling.

Despite the opportunity, Respondent provided no documentations or explanation for the identified misuses in order to determine if deposited funds were disbursed correctly or if there were any unpaid obligations to clients or third parties. While Respondent's lack of record keeping makes it impossible to quantify the actual harm to Respondent's clients and to third parties, the potential for very serious harm is apparent from the internal audit report.

In a sworn statement to the ODC, Respondent admitted that during the audit period, he stopped keeping any accounting of his client trust account. See La. S.Ct. Rules, Rule XIX, §28A. Respondent further admitted to transferring money from his trust account to former clients for matters unrelated to any litigation despite knowing these transfers were violations of the trust accounting rules.

The Office of Disciplinary Counsel respectfully suggests that there exists clear and convincing evidence that Respondent has violated Rule 1.5 and Rule 1.15 of the Rules of Professional Conduct.

COUNT II **(Guillory - ODC No. 35144)**

On October 19, 2016, the ODC received a complaint from Mr. Martin Guillory on behalf of the Mire Branch Water Corporation (Mire Water Corp.) against Respondent. On October 31, 2016, Respondent was forwarded the initial complaint for response via certified mail to his bar registered primary address at 532 SE Court Circle, Crowley, Louisiana.⁵ The mail was returned to our office on November 7, 2016, marked undeliverable as addressed.

On December 7, 2016, another attempt at service of the initial complaint was made to Respondent at 804 Main Street, Cankton, Louisiana, an address given to the undersigned's legal assistant by the Respondent.⁶ The mail was signed for on December 9, 2016. Despite receipt, Respondent failed to offer a reply to the ODC.

On January 6, 2017, additional correspondence was sent to Respondent at his Cankton address, requesting a response to the allegations. Respondent failed to offer a reply.

⁵ 532 SE Court Circle, Crowley, Louisiana, was Respondent's primary registered address from September 29, 2015 through December 9, 2016.

⁶ 804 Main Street Cankton, Louisiana, was never registered with the Louisiana State Bar Association.

On February 22, 2017, the ODC hand delivered the complaint to Respondent, which Respondent signed, affirming service. To date, Respondent has not offered a written response.

Mr. Guillory, on behalf of Mire Water Corp., paid Respondent \$1,900.00 to file suit in a dispute against a water meter company. Respondent, however, failed to perform any work, requiring Mr. Guillory to hire subsequent counsel to file suit, and ultimately, settle the case.

Also, Mr. Guillory, on behalf of Mire Water Corp., paid Respondent \$1,250.00 to file suit against a former employee of the corporation. Respondent failed to perform any work, requiring Mr. Guillory to hire subsequent counsel to file suit and pursue the judgment.

Mr. Guillory attempted to contact Respondent several times regarding the above described litigation; however, Respondent did not reply to Mr. Guillory's request for information. Moreover, Respondent has not returned any of the fees paid to him to pursue the aforementioned actions, which is effectively abandonment of the representation.

The Office of Disciplinary Counsel respectfully suggests that there exists clear and convincing evidence that Respondent has violated Rules 1.3, 1.4, 1.16, 3.2, 8.1(c), 8.4(a) of the Rules of Professional Conduct.

COUNT III
(Vautrot - ODC No. 35631)

On March 28, 2017, the ODC received a complaint from Mr. Frank J. Vautrot, Jr. against Respondent. On April 4, 2017, Respondent was forwarded the initial complaint for response via certified mail to 804 Main Street, Cankton, Louisiana. [FN3. 804 Main Street, Cankton, Louisiana, was not Respondent's primary registered address at the time; however, it was an address given to the undersigned's legal assistant by the Respondent prior to forwarding the complaint.] Respondent signed receipt of the initial complaint on April 12, 2017. To date, Respondent has not offered a written response to this complaint.

Mr. Vautrot hired Respondent to file a lawsuit on his behalf. Despite being paid in excess of \$1,500.00 to pursue the action, Respondent failed to perform any work. Mr. Vautrot repeatedly tried to contact Respondent to ask about his case, only to be told repeatedly that Respondent was "working on it."

Eventually, Respondent stopped responding to Mr. Vautrot entirely, prompting Mr. Vautrot to appear at Respondent's father's house to inquire about Respondent's whereabouts. While there, Respondent's father called Respondent on his phone, and after Respondent answered, gave Mr. Vautrot the phone. On that call, Respondent told Complainant that he would leave Mr. Vautrot some paperwork about his case

that day; however, Respondent failed to provide Mr. Vautrot with that paperwork or ever contact Mr. Vautrot again. Respondent effectively abandoned the representation and none of the fees paid had been returned.

In his May 10, 2017 sworn statement, Respondent stated that he filed the suit for Mr. Vautrot; however, Respondent claims that after the initial filing, the case was transferred to a different venue due to the Justice of the Peace in the initial venue becoming ill. Respondent has offered no documents to the ODC or Mr. Vautrot to support this assertion.

Further, during his sworn statement, it was requested that Respondent provide a written response to the ODC regarding Mr. Vautrot's complaint. Despite assurance under oath that he would do so, Respondent has not provided a written response.

The Office of Disciplinary Counsel respectfully suggests that there exists clear and convincing evidence that Respondent has violated Rules 1.3, 1.4, 1.16, 3.2, 8.1(c), 8.4(a) of the Rules of Professional Conduct.

EVIDENCE

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1-41. 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 AND RULES VIOLATED

By order signed December 3, 2018, the factual allegations contained in the formal charges were deemed admitted and proven by clear and convincing evidence:

- Respondent violated Rule 1.5 and Rule 1.15 of the Rules of Professional Conduct with regard to the allegations contained in Count I of the Formal Charges;
- Respondent violated Rules 1.3, 1.4, 1.16, 3.2, 8.1(c), and 8.4(a) of the Rules of Professional Conduct with regard to the allegations contained in Count II of the Formal Charges; and
- Respondent violated Rules 1.3, 1.4, 1.16, 3.2, 8.1(c), 8.4(a) of the Rules of Professional Conduct with regard to the allegations contained in Count III of the Formal Charges.

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:

- A. Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- B. Whether the lawyer acted intentionally, knowingly, or negligently;
- C. The amount of the actual or potential injury caused by the lawyer's misconduct; and
- D. The existence of any aggravating or mitigating factors.

Applying these factors herein, the Committee finds:

A. Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession:

The Committee finds that Respondent violated duties owed to various clients due to Respondent's misuse of his client trust account, resulting in comingling and conversion as set forth in Count I above, the Mire Branch Water Corporation as set forth in Count II above, and Frank J. Vartrot, Jr. as set forth in Count III above.

B. Whether the lawyer acted intentionally, knowingly, or negligently:

- 1. The Committee finds that Respondent acted intentionally with regard to the Count I claims, since Respondent admitted that during the audit period, he stopped keeping any accounting of his client trust account and to transferring money from his trust account to former clients for matters unrelated to any litigation, despite knowing these transfers were violations of the trust accounting rules.
- 2. The Committee finds that Respondent acted intentionally with regard to the Count II claims in that Respondent failed to perform any of the work which he was hired to do by the Mire Water Corporation. The Committee finds it particularly noteworthy that upon being contacted by Martin Guillory, a representative of the Mire Water Corporation on multiple occasions, Respondent not only failed to respond to Mr. Guillory, he also failed to refund any portion of the fees paid to him by Mire Water Corporation or to perform the work which he was hired to do.
- 3. The Committee finds that Respondent acted intentionally with regard to the Count III claims in that Respondent failed to offer any evidence that he performed the work he was hired to do by Mr. Vautrot. The Committee also finds it noteworthy that Respondent stopped communicating with Mr. Vautrot and failed to refund any

portion of the fees paid to him by Mr. Vautrot or to show Mr. Vautrot that he did indeed perform the work which he was hired to do.

C. The amount of the actual or potential injury caused by the lawyer's misconduct:

1. The Committee finds that Respondent's misconduct caused potential harm to the thus far unnamed clients and third parties referred to in Count I. While Respondent may – and likely did cause actual harm to clients and/or third-parties, no evidence was introduced showing actual harm. However, as the ODC correctly points out, the potential for very serious harm was apparent from the internal audit report.
2. The Committee finds that Respondent caused actual harm to the Mire Water Corporation by failing to perform the work he was hired to do, thereby requiring the Mire Water Corporation to hire subsequent counsel, and by failing to refund the fees paid to him by Mire Water Corporation.
3. The Committee finds that Respondent caused actual harm to Mr. Frank Vautrot, Jr. by failing to provide Mr. Vautrot with proof that he performed the work he was hired to do and by failing to refund the fees paid to him by Mr. Vautrot.

D. The existence of any aggravating or mitigating factors:

1. Aggravating Factors:
 - a. Multiple offenses;
 - b. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
 - c. Indifference to making restitution; and
 - d. Failure to cooperate with the ODC in this investigation.
2. Mitigating Factors: None known.

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

The Louisiana Supreme Court relies on the ABA Standards for Imposing Lawyer Sanctions (hereinafter "ABA Standards" or "Standard") to determine the baseline sanction by "the type of duty violated, the lawyer's mental state and the extent of the injury caused; and then adjust[s] the sanction in accordance with the aggravating and mitigating factors present." *In re Quaid*, 1994-1316, p.13 (La. 11130/94), 646 So. 2d 343,350. The ABA Standards defines "intent" as 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. Finally, "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's knowing, if not intentional, failure to perform services for his client and return unearned fees is in violation of Rules 1.3 (diligence), 1.4 (communication), 1.16(failure to return unearned fee), and 3.2(failure to expedite litigation). In violating Rules 1.3 and 1.4, Respondent violated duties owed to the client and the profession. (Standard 4.0 and Standard 7.0). Respondent's abandonment of the representation caused actual harm to his clients.

Respondent's knowing, if not intentional, conversion of client funds, commingling of trust account funds, and misuse of his client trust account are in violation of Rules 1.5 and 1.15. In violating these rules, Respondent violated duties owed to the client and the profession. (Standard 4.0 and Standard 7.0). While Respondent's lack of record keeping makes it impossible to quantify the actual harm to Respondent's clients and to third parties, the potential for very serious harm is apparent from the internal audit report.

Respondent's knowing, if not intentional, refusal to submit a written response to the complaints in Count II and Count III, despite numerous attempts to request same from Respondent, is in violation of Rule 8.1(c)(failure to cooperate with an ODC investigation). In violating Rule 8.1(c), Respondent violated duties owed to the profession (Standard 7.0) and to the public (Standard 5.1). Respondent's repeated failure to respond to, and cooperate with, OdC caused actual harm to the legal profession by forcing ODC to unnecessarily expend its limited resources in an attempt to sufficiently investigate this matter. *In re Ford*, 2014-0831, p.4 (La. 6/2014), 141 So. 3d

800, 802-803 (per curiam). "Chronic failure to cooperate with the ODC "has been recognized as burdening an already taxed disciplinary system. *In re Waltzer*, 2004-1032, pp. 15-16 (La. 10/8/04),883 So. 2d 973,982 (per curiam).

The relevant ABA Standards are provided as follows:

4.1 FAILURE TO PRESERVE THE CLIENT'S PROPERTY

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.4 LACK OF DILIGENCE

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

- 4.41 Disbarment is generally appropriate when:
 - a. a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - b. a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - c. a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.42 Suspension is generally appropriate when:
 - a. a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
 - b. a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

JURISPRUDENCE

Disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *In re McClanahan*, 2009-1883, p.17 (La. 2/5/10), 26 So. 3d 756, 769 (per curiam). 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. *In re Abdallah*, 2011-1631, p.7 (La. 10/14/11), 72 So. 3d 836, 841 (per curiam).

In *Louisiana State Bar Association v. Hinrichs*, 486 So. 2d 116 (1986), the Louisiana Supreme Court set forth an extensive discussion of the appropriate sanction for DR 9-102 violations (preserving identity of funds and property of others). DR 9-102 violations occurred when an attorney failed to deposit funds wholly or partially belonging to his client in a separate client trust account; an attorney withdrew funds from the client trust account that were not due to the attorney beyond any dispute; and an attorney failed to deliver to his client, as requested, funds that the client is entitled to receive. *Hinrichs*, 486 So. 2d at 122; see now Rules of Prof. Conduct, Rule 1.15.

The *Hinrichs* court noted that. disbarment in such cases is appropriate when one or more of the following elements is present:

1. The lawyer acts in bad faith and intends a result inconsistent with his client's interest;
2. The lawyer commits forgery or other fraudulent acts in connection with the violation;
3. The magnitude or duration of the deprivation is extensive;
4. The magnitude of the damage or risk of damage;
5. Expense and inconvenience caused by the client is great; or

6. The lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings. *Hinrichs*, 486 So. 2d at 122.

A three-year suspension from practice typically is appropriate when the lawyer is guilty of a high degree of negligence in causing his client's funds to be withdrawn or retained in violation of the disciplinary rule, but the lawyer does not commit other fraudulent acts in connection therewith. *Hinrichs*, 486 So. 2d at 122-23. The attorney may benefit from the infraction, but in contrast with disbarment cases, the client may not be greatly harmed or exposed to great risk of harm. *Hinrichs*, 486 So. 2d at 123. A three-year suspension rather than disbarment is appropriate if the attorney "fully reimburses or pays his client the funds due without the necessity of extensive disciplinary or legal proceedings." *Hinrichs*, 486 So. 2d at 123.

Based upon the above ABA Standards and *Hinrichs* analysis, it is clear that the baseline suspension in this matter ranges from a lengthy suspension to disbarment. A review of Louisiana jurisprudence factually similar to the instant matter supports a recommended sanction of disbarment. *See In re Weber*, 2015-0982 (La. 8/28/15), 177 So. 3d 106 (wherein the court determined that disbarment was warranted for an attorney's neglect of a legal matter, failure to communicate with a client, conversion of client funds, and failure to cooperate with Office of Disciplinary Counsel (ODC) in its investigation); *In re: Hatfield*, 08-2632 (La.2/20/09), 2 So.3d 425 (the court disbarred an attorney who neglected legal matters, failed to communicate with his clients, failed to refund unearned fees, and failed to cooperate with the ODC in its investigations); *In re: Poirrier*, 01-1116, 01-1118 (La.6/29/01), 791 So.2d 94 (the court disbarred an attorney who abandoned his law practice, neglected several legal matters, failed to communicate with his clients, failed to account for or refund unearned fees and/or unused costs, failed to return his clients' files, and failed to cooperate with the ODC.)

CONCLUSION

For the reasons set forth above, it is the unanimous opinion of this Committee that Respondent be suspended from the practice of law for three (3) years, in addition to Respondent paying restitution found to be owed, refunding unearned attorney fees, and paying all costs associated with these proceedings.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Robert L. Beck III to sign on their behalf. Committee Member R. Reed Medelson, Jr. also notes that while he concurs with this opinion, disbarment would not be unreasonable, considering the aggravating factors present in this case, including, but not limited to, Respondent's lack of cooperation with the disciplinary process, and the lack of any mitigating factors.

Signed in Alexandria, Louisiana, this 7th day of June, 2019.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 43**

**Robert L. Beck III, Committee Chair
Paul J. Tellarico, Lawyer Member
R. Reed Mendelson, Jr., Public Member**

BY: 
**Robert L. Beck III, Committee Chair
For the Committee**

APPENDIX

Rule 1.3. Diligence

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

Rule 1.4. Communication

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

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

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

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

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

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation

and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect: (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or (2) a contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if: (1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive; (2) the total fee is reasonable; and (3) each lawyer renders meaningful legal services for the client in the matter.

(f) Payment of fees in advance of services shall be subject to the following rules: (1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account. (2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account. (3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances. (4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances. (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited. A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

(g)...

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the lawyer is discharged.

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

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

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

Rule 3.2. Expediting Litigation

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

Rule 8.1. Bar Admission and Disciplinary Matters

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

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

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
