ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: GEORGE A. FLOURNOY

NUMBER: 16-DB-090

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 George A. Flournoy ("Respondent"), Louisiana Bar Roll Number 05620.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct in three counts included in the formal charges:

> Count I (DuBois) -- 8.4(a)(violating or attempting to violate the Rules of Professional Conduct), 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), 5.3(failing to reasonably ensure his non-lawyer assistant's conduct was compatible with the professional obligation of the lawyer);
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> Count II (LaFleur) -- 1.5(a)(charging and collecting an unreasonable fee);
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> Count III (Webster) – 1.3(failing to act with reasonable diligence and promptness in representing his client), 1.4(failing to properly communicate with his clients about the status of their case), 1.16(a)(continuing to take steps in the prosecution of his clients' claims), 3.4(c)(knowingly disobeying an obligation under the rules of a tribunal), 8.4(a)(violating or attempting to violate the Rules of Professional Conduct), 8.4(d)(engaging in conduct prejudicial to the administration of justice). [2]

At the outset of the hearing, the ODC withdrew all charges relating to Rules 1.3 and 1.4. T.18-20. The hearing proceeded on all other charged rule violations. The hearing committee ("committee") assigned to the matter concluded the ODC proved that Respondent violated Rules 1.5(a), 5.3, 8.4(a), and 8.4(c) as charged in Counts I and II. However, the committee found that the ODC failed to prove the remaining alleged rule violations (1.16, 3.4(c), 8.4(d)) asserted in

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[1] Respondent was admitted to the Louisiana Bar on 10/02/74. His primary registration address is 1239 Jackson St., Alexandria, LA 71301. Respondent is currently eligible to practice law in Louisiana.

[2] *See* attached Appendix for full text of the Rules.

Count III. The committee recommended Respondent be suspended for eighteen months, with all but sixty days deferred on the condition that Respondent be on Supervised Probation for a period of two years or the completion of thirty hours of Law Office Management Continuing Legal Education hours whichever occurs first.

For the following reasons, the Board adopts the committee's factual findings and conclusions regarding rule violations. The Board further makes additional factual findings as set forth herein in connection with Count II. The Board recommends that Respondent be suspended for one year, with all but thirty days deferred, and that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

PROCEDURAL HISTORY

The formal charges were filed on November 29, 2016. The charges state, in pertinent part:

I.

> **COUNT I – (Tammy DuBois – 23330)** – This complaint was filed against Respondent by his former client, Tammy DuBois.
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> In or around March of 2004, Tammy DuBois was injured in the course and scope of her employment with Cubic Applications, Inc. She later hired Respondent to represent her in a workers' compensation claim and a personal injury claim as a result of her injuries.
>
> In February of 2007, Respondent and opposing counsel, Dona Renegar, agreed to a partial settlement of $7,000.00 in penalties and $6,000.00 in attorney's fees, for a total of $13,000.00. On April 19, 2007, Attorney Renegar wrote to Respondent enclosing a check for $13,000.00, and requested that Respondent's client execute and return the *Agreement and Partial Release of Claims*.
>
> On April 27, 2007, Tammy DuBois executed *the Agreement and Partial Release of Claims* before Notary Mary R. White; witness Leah W. Gorum; and witness Amy Cross. Respondent also signed indicating his approval as to form and content. In a Settlement Statement dated April 27, 2007, Respondent accounted for disbursement of the $13,000.00 partial settlement.
>
> On June 7, 2007, Attorney Renegar wrote to Respondent enclosing a check for $3,717.95 "in satisfaction of the April 12, 2007 Judgment" and stating that,

"Also enclosed is a Satisfaction of Judgment which I would appreciate you and Ms. Dubois signing before a notary and two witnesses, and returning same to me at your earliest convenience." On or around June 8, 2007, the Respondent's Legal Secretary, Mary R. White, signed Ms. DuBois name to the *Agreement and Partial Release of Claims* [sic] without her consent. The document states that, "BE IT KNOWN, that on the 8th day of June, 2007, before me, undersigned Notary Public, and in the presence of the subscribing witnesses personally came and appeared TAMMY S. DUBOIS who declared that…" In addition to containing Ms. DuBois' forged signature, the *Satisfaction of Judgment* also contains the signatures of Respondent; Mary R. White as Notary; and witnesses Amy Cross and Leah W. Gorum. Respondent signed indicating that he approved to [sic] the content and form of the document.

Further, in his December 24, 2007, response to the disciplinary complaint, Respondent provided false information regarding execution of the *Satisfaction of Judgment*. Respondent initially stated that on April 27, 2007, when Mr. [sic] DuBois "came in to receive payment of the $7,000.00 in penalties, she signed 'an agreement and partial release of claims' and 'satisfaction of judgment'. I did not forward the 'satisfaction of judgment' to defense counsel until June 8, 2007, when I finally received payment of court costs in the amount of $3,717.05. The date in the 'satisfaction of judgment' had been left blank at the time of signing by Ms. Dubois. My secretary filled in the June 8, 2007, date because that was the date the letter was mailed out of this office to defense counsel, enclosing the 'satisfaction of judgment'."

However, the Respondent's initial explanation was impossible, considering that opposing counsel did not forward the *Satisfaction of Judgment* to Respondent until June 7, 2007.

Between June 5, 2007, through June 9, 2007, Tammy DuBois was in South Carolina to attend her daughter's graduation from Army Boot Camp. Ms. DuBois provided copies of receipts, photographs, and other documents confirming her presence in South Carolina during that time. The *Satisfaction of Judgment* was executed on June 8, 2007, while Ms. DuBois was in South Carolina. Complainant states that her signature was forged to the *Satisfaction of the Judgment* [sic] executed on June 8, 2007.

On April 21, 2010, ODC took Respondent's sworn statement regarding these events. Respondent then admitted that Ms. DuBois apparently did not sign the *Satisfaction of Judgment*.

Respondent caused or allowed Ms. DuBois' signature to be forged to a Satisfaction of Judgment. Respondent then provided false information to ODC in an effort to conceal his misconduct. Respondent violated Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; Rule 5.3 by failing to reasonably ensure his non-lawyer assistant's conduct was compatible with the professional obligations of the lawyer; and Rule 8.4(a) violated or attempted to violate the Rules of Professional Conduct.

II.

COUNT II – (Ward LaFleur – 23868) – This complaint was filed against Respondent by opposing counsel, Ward LaFleur, in a workers' compensation matter. The matter was assigned Investigative File No. 0023868. Respondent was hired to represent Donna Tyson in a workers' compensation claim against Thompson Home Health. Initially, Attorney K. Eric LaFleur represented Thompson Home Health and their insurance carrier. Complainant Ward LaFleur represented Thompson Home Health in a subsequent claim brought by Donna Tyson.

Donna Tyson was involved in a motor vehicle accident in January of 2003, during the scope and course of her employment with Thompson Home Health. A Workers' Compensation Form 1008, for a disputed claim, was filed on March 17, 2004, on behalf of Ms. Tyson. On the eve of trial, Respondent and Eric LaFleur reached an agreement to settle the case for the lump sum amount of $9,760.00. Pursuant to Act, LSA-R.S. 23:1143, the Respondent's attorney fees were not to exceed 20% of the settlement amount. Further, pursuant to Judge Braddock's September 2, 2005, *Order*, Respondent was approved to collect a fee of 20% of the $9,760.00 settlement, which amounts to a fee of $1,952.00. However, on or about September 6, 2005, Respondent collected a fee of $4,000.00, which is approximately 41% of the settlement.

Respondent violated **Rule 1.5(a)** by charging and collecting an unreasonable fee in a workers' compensation case. Judge Braddock approved a fee of 20%, or $1,952.00; however, Respondent took a fee of $4,000.00, or approximately 41%. Respondent's fee exceeded Judge Braddock's approval by $2,048.00; and exceeded the cap on attorney's fees in workers' compensation matters by approximately 21%.

III.

COUNT III – (Rubin and Sheila Webster matter) – This complaint was filed against Respondent by his former clients, Rubin and Sheila Webster. The Websters were injured in a December 2008 automobile accident. In January of 2009, they hired Respondent to represent them in a personal injury claim. A suit was filed on their behalf in the matters of *Rubin Webster vs. Zurich American Insurance Company*, *et al*, Docket No. 70,731, Division "A"; and *Sheila Webster vs. Zurich American Insurance Company*, *et al*, Docket No. 70,732, Division "B", both filed in the 13th Judicial District Court, Evangeline Parish. Thereafter, Respondent failed to exercise due diligence in the prosecution of the case and failed to comply with the Complainant's reasonable request for information. On May 26, 2010, Complainants terminated Respondent and instructed him to forward their file to their new attorney, Paul Cox. On June 1, 2010, Respondent filed a *Petition of Intervention* in the Websters' case to protect his fee interest and expenses. On June 22, 2010, Judge Larry Vidrine signed an *Order* granting the motion to enroll Mr. Cox as the Websters' counsel of record.

Despite having been terminated, Respondent noticed the deposition of fact witness Tabitha Sortino for November 1, 2010. This required Mr. Cox to file a *Motion to Quash Deposition and Prevent Intervenor from Attempting to Prosecute This Case*, said motion filed into the record on November 2, 2010. District Court Judge Larry Vidrine signed an *Order* quashing the deposition set by Respondent/Intervenor; ordering Respondent/Intervenor not to advance or participate in any depositions, motions, as well as participate at the trial in this matter, or prosecute this case in any way now or in the future; and set a hearing for Respondent/Intervenor to show cause why these orders should not be upheld.

Meanwhile, plaintiffs' counsel, Mr. Cox, had noticed the deposition of investigating officer, Trooper Will Williams, for December 8, 2010. On or about December 7, 2010, despite having been terminated, Respondent filed a *Motion and Order to Quash Deposition*. Judge Vidrine denied Respondent's motion.

Also on or about December 7, 2010, despite having been terminated, Respondent filed two separate sets of Interrogatories propounded to plaintiffs (his former clients) and defendants.

On December 8, 2010, despite having been terminated, Respondent submitted a Supplemental Interrogatory to Defendants and Request for Production.

On December 10, 2010, despite having been terminated, Respondent wrote to Judge Larry Vidrine stating, "Consider this a request that a Pre-Trial Order be issued…"

On December 14, 2010, Judge Vidrine issued Reasons for Judgment following the show cause hearing that took place on December 6, 2010. Judge Vidrine stated that, "It is clear that [Respondent's] interest in this matter is no more than a privilege which guaranties (sic.) to him a reasonable fee for the services he rendered until he was terminated and is guaranteed the repayment of the expenses he has expended on behalf of the Websters. He is therefore ordered to remove himself from participating in any way in the prosecution of this case on behalf of the Websters."

On December 16, 2010, despite having been terminated, and despite Judge Vidrine's ruling, Respondent forwarded a Motion and Order to Schedule Pre-Trial Conference, which he presented "for filing purposes", and which he asked, "Kindly present same to Judge Vidrine for his consideration."

On or about December 22, 2010, despite having been terminated, and despite Judge Vidrines's ruling, Respondent submitted a Notice of Deposition seeking to take the deposition of Tabitha Sortina on January 12, 2011.

The Websters' claims reportedly settled at mediation on December 22, 2010.

During his period of representation the Respondent violated Rule 1.3 by failing to act with reasonable diligence and promptness in representing his client, and Rule 1.4 by failing to properly communicate with his client regarding the status of their case. Respondent's post-termination conduct violated Rule 1.16(a) by continuing to take steps in the prosecution of his former clients' claims; Rule 3.4(c) by knowingly disobeying an obligation under the rules of a tribunal; Rule 8.4(d) by engaging in conduct prejudicial to the administration of justice; and Rule 8.4(a) violating or attempting to violate the Rules of Professional Conduct.

After being granted an extension of time to respond, Respondent answered the formal charges on January 31, 2017. As to Count I (DuBois), Respondent admitted that he told his secretary to sign the Complainant's and Respondent's names on the Satisfaction of Judgment because he had already explained to the Complainant what would be done with the court cost reimbursement and she was in agreement. He further responded that his December 2007 initial response to the complaint, in which he stated that the Complainant had signed the Satisfaction of Judgment, was incorrect because he had not reviewed the entire file and that, while his response "was sloppy and careless," there was no intent to defraud. In response to Count II, Respondent argued that the twenty percent fee limitation in La.R.S. 23:1141 and 1143 and in the judge's order applied only to amounts paid by the defendant for benefits and did not apply to the portion of the settlement negotiated for attorneys fees pursuant to La.R.S. 23:1201(F). Therefore, Respondent maintained that the fee he received, which fee was confirmed by letter with counsel for the defendant and agreed to by Respondent's client, was not excessive. Regarding Count III, Respondent asserted that after he was discharged by the Websters, he withdrew as their counsel and intervened in the lawsuit on his own behalf to protect his right to attorneys fees, and that the subsequent actions which he took in the lawsuit were in pursuit of his claim as an intervening party.

The hearing in this matter was held on July 11, 2018, before Hearing Committee No. 6.[3] Deputy Disciplinary Counsel Karen Hayes Green appeared on behalf of the ODC. Respondent appeared with counsel, Gregory N. Wampler. Mr. Wampler's representation of Respondent was limited only to questioning Respondent as a witness. Otherwise, Respondent appeared pro se. As

[3] Hearing Committee No. 6 was comprised of Andree B. Leddy (Committee Chair), Zebulon M. Winsted (Lawyer Member), and Andrew W. Vanchiere (Public Member).

previously indicated, at the outset of the hearing, the ODC withdrew all charges relating to Rules 1.3 and 1.4. T.18-20. The committee heard testimony from the following: Respondent, Mary Attenhofer (also known as Mary R. White, notary and legal secretary/bookkeeper with Respondent's law firm), Tammy DuBois (client/complainant in Count I), Ward Lafleur (opposing defense counsel/complainant in Count II), and Paul Cox (attorney who represented the Websters after Respondent was terminated/Count III). ODC's Exhibits ODC 1 through ODC 46, Dubois-1 through Dubois-13, Tyson-1 through Tyson-16, and Webster 1 through Webster 3 were all admitted into evidence. Deputy Disciplinary Counsel Green represented at the hearing that attorney Eric Lafleur had also been subpoenaed to testify before the committee. Eric Lafleur did not appear at the hearing. Ms. Green further represented that he was unresponsive to her attempts to reach him both before and during the hearing. T.159, 202-204, 206, 301-302.[4]

The hearing committee filed its report on September 21, 2018. The ODC filed a notice of objection to the findings, conclusions, and recommendations of the committee also on September 21, 2018. The ODC asserted that while the committee correctly found an excessive fee, there was no legal basis for the conclusion that restitution should not be paid and further objected to the sanction recommendation deferring all but sixty days of an eighteen-month suspension as too lenient.

On October 1, 2018, Mr. Wampler filed a motion to withdraw as counsel for Respondent, which motion was granted on October 16, 2018.

On October 15, 2018, ODC filed its brief to the Board in support of the assertions made in its notice of objection to the committee's report. In its brief, the ODC also objected to the

[4] It is noted that there is no filing in the record indicating that Eric Lafleur was served with a subpoena for the July 2018 hearing or that he was served with a mailing enclosing a subpoena for a prior setting and advising of the new hearing date.

committee's finding that Respondent did not violate Rule 1.16(a)(3) as alleged in Count III (Webster) of the formal charges. The ODC argues that the sanction recommended by the committee is too lenient and that Respondent should be suspended for eighteen months, with no portion of the suspension deferred, and ordered to pay restitution to Ms. Tyson and all costs associated with these proceedings.

After the briefing deadlines had passed, Respondent was granted leave to file his brief late. In his brief, Respondent maintains that he believed Ms. DuBois had given permission to sign the satisfaction of judgment and that the fee charged to Ms. Tyson was not excessive and she understood the breakdown of the fee. He acknowledged that he made an inaccurate statement in his initial response to the ODC, but did so with no intention to mislead, and only later realized that the statement was wrong. He also recognized his "mistake" in "not viewing closely the settlement documents" in Ms. Tyson's case. Respondent brief, p. 3. Respondent further argued that he did not have remorse because "while, admittedly, not understanding the intricacies of the Rules," he had represented his clients well and obtained the recovery to which they were entitled. *Id.* at 5. He also referenced the long delay in the prosecution of these claims, stating "the specter of having a disbarment/suspension hanging over my head for over 10 years is difficult to say the least." *Id.* at 5.

Oral argument of this matter was held on November 15, 2018, before Board Panel "B."[5] Deputy Disciplinary Counsel Karen Green appeared on behalf of the ODC. Respondent appeared pro se.

[5] Board Panel "B" was composed of Pamela W. Carter (Chair), Dominick Scandurro, Jr. (Lawyer Member), and Evans C. Spiceland, Jr. (Public Member).

HEARING COMMITTEE REPORT

The committee filed its report on September 21, 2018. The committee made the following findings and conclusions:

* * *

> For the following reasons, the Committee finds that Respondent violated Rule 1.5(a), Rule 5.3, Rule 8.4(a), and Rule 8.4(c). The Committee finds that the Office of Disciplinary Counsel failed to prove violations of Rule 1.16(a), Rule 3.4(c), or Rule 8.4(d).

* * *

FINDINGS OF FACT

> As to the alleged violations of the Rules found in Count I of the formal charges, Respondent and Ms. Attenhofer both admitted that Respondent instructed Ms. Attenhofer to sign a client's name and Respondent's name to a Satisfaction of Judgment and then Notarize the same document. Respondent and Ms. Attenhofer testified that it was routine practice to sign the client's name to the back of checks and other matters as a convenience to the client. Ms. DuBois testified that she never gave permission for her name to be signed for her. The Satisfaction of Judgment was set up as an authentic act requiring the signatures to be in front of a Notary Public and two witnesses. Respondent admitted that early in the investigation he erroneously responded to the Complaint with an incorrect statement in December 24, 2007, but this was corrected on April 21, 2010. As the incorrect statement was made approximately six months before the complaint in Count II was made and there is no indication that the false statement impeded the investigation into Respondent. There was no testimony that the admitted conducted [sic] harmed anyone. When asked if he believed that the actions directed by him to his staff constituted a violation of the Rules his reply was that he did not believe it was a violation. As such it shows a lack of remorse and understanding that he has violated the Rules.
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> As to the alleged violation found in Count II, the record includes a sample of Respondent's Employment Contract with his client's [sic] which Respondent testified is consistent with all of his client matters. This document can be found at page 651 of Exhibit ODC 30. The language the Committee found determinative reads "In any Worker's Compensation claim, the fee shall be 20% on all amounts recovered … Any legally allowed award for Attorney's fees under the provisions of R.S. 22:658, 22:1220, 23:1125, 23:1201, 23:1201.2, or any other statute or law shall accrue only to Attorneys and are in addition to fees due under other provisions of this contract". Respondent readily admitted that the fees he took were for a Worker's Compensation claim and were in excess of 20% of the amounts recovered; however, Respondent claims that the fees were 1201 fees which could

be more than 20%. There was extensive discussion of the Byzantine structure of Worker's Compensation fees; however, the Committee is convinced, that because of the specific language used in the Joint Petition for Approval of Compromise and Settlement Agreement, the only legally allowed award for Attorney's fees from the $9,760.00 was 20% of said amount. It is unnecessary to determine whether the fees were settlements of 1141 fees or 1201 fees due to the specific language used in the Petition which was signed by Respondent. The Petition clearly states that the settlement is for a lump sum covering all matters and does not break the settlement down. As such all claims including those for attorney's fees were compromised for the lump sum. Without specific language to the contrary the Committee finds that the Employment Contract's language regarding "legally allowed award for Attorney's fees" is not operative and the only fee allowed under the Employment Contract was the default 20%. The proven facts are only for this one isolated instance. Despite Disciplinary Counsel's assertion that she might argue a more wide ranging violation no such evidence was presented nor were there charges brought concerning more than this one isolated instance. Due to our finding that the specific language involved here was unreasonable, generally a requirement for reimbursement would normally be made, but the Committee recognizes that more than 13 years has elapsed since this wrongful payment with no claim being prosecuted by his client. This is now a prescribed payment under law and the Committee is loathe to require a repayment when there is no legal basis for a claim to be brought. Respondent should be made to understand the breach of his duty to the profession and legal system, but while this is strictly speaking a breach of a duty to a client, the client does not appear to feel abused. Had he acted with the same lack of diligence in the wording of the Petition to the detriment of his client this would be a malpractice claim. In this instance it appears to be the intended split between client and Respondent, but still a violation as it is an illegal fee and thus unreasonable.

As to the alleged violations found in Count III, the Office of Disciplinary Counsel dismissed the charges related to Rules 1.3 and 1.4. The Committee finds that the documentary evidence clearly shows that Respondent could not have violated Rule 3.4(c) as none of the alleged misconduct occurred after the tribunal, in this case Judge Vidrine of Evangeline Parish, had issued its Reasons for Judgment. The certified court records, as opposed to the ODC individual exhibit, indicates that while the Reasons were signed a week earlier the clerk of court did not send them to Respondent until December 22, the same day as the last alleged misconduct. The live testimony was bereft of anyone remembering an oral ruling from the bench. Clearly if the tribunal has not ruled until after the alleged misconduct has occurred there cannot be a breach of the mandate not to disobey a tribunal's rules for conduct that occurred before the tribunal's ruling. Further the Committee finds that the Office of Disciplinary Counsel failed to prove facts that Respondent's actions violated Rules 8.4(d) or 1.16(a). The Committee recognizes that this was a unique procedural situation where Respondent had successfully been granted Intervenor status by the Court thus becoming an independent party to the litigation. It is at least as possible as not that Respondent was protecting his contractual rights as attempting to prosecute his former client's case. Had Respondent not been granted

Intervenor status this would not be the case, but as the facts in this case stand the clear and convincing burden has not been reached. The testimony from Mr. Cox made clear that none of Respondent's actions retarded or ultimately harmed the resolution of the cases. The Committee finds the Disciplinary Counsel failed to prove the alleged rule violation found in Count III.

RULES VIOLATED

The Committee finds that Rules 1.5(a), 5.3, 8.4(a), and 8.4(c) were violated by Respondent.

Committee Report, pp. 1, 5-8.

The committee further provided the following analysis in support of the recommended sanction:

> . . . Here, Respondent violated duties owed to a client, the legal system and the profession. He acted in part negligently and in part knowingly. Respondent's misconduct caused actual and potential harm as fully explained next. The actual harm was caused by the negligent taking of an unreasonable fee. The fee was unreasonable because it was not kept separate from the global settlement of the Worker's Compensation claim, so even if Respondent's arguments vis a vis 1201 fees not being limited to 20% is accurate he would have needed to exclude those sums from the Joint Petition which he failed to do. The Committee recognizes that the client apparently did not feel harmed, but a client's mere acceptance of a fee does not make it reasonable. More concerning to the Committee were Respondent's actions violating his duty to the legal system and profession by not only failing to adequately supervise but by corrupting the signing of an authentic act. This could have led to significant harm, but fortunately no such harm has occurred.
>
> The *ABA Standards for Imposing Lawyer Sanctions* suggest that Suspension is the baseline sanction for Respondent's misconduct. The Louisiana Supreme Court has given some guidance on similar situations which the Committee has taken into account. Those cases which the Committee has reviewed follow.
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> In *In re Landry*, the Court imposed a 6 month suspension, with all but 30 days deferred, on the respondent who filed false affidavits with a court, in violation of RPC 3.3 and 8.4(c)&(d). 2005-1871 (La. 7/6/06), 934 So.2d 694. The respondent had his secretaries sign affidavits of death and heirship, knowing that they did not have the requisite knowledge of the decedent to do so. The Court considered several mitigating factors in imposing a sanction, which included remorse and lack of an improper motive. There were no aggravating factors present.
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> In *In re Porter*, the Court suspended the respondent for one year for abandoning his clients without notice and falsely notarizing a signature on an affidavit verifying a petition. 2005-1736 (La. 3/10/06), 930 So.2d 875. The respondent notarized an affidavit verifying a petition, which was purportedly

signed by one of the plaintiffs, but was actually not. Rather, it was signed by the plaintiff's husband. The respondent violated, among others, RPC 3.3 and 8.4(a)(c)&(d). In concluding the one year suspension was appropriate, the Court gave consideration to three mitigating factors and two aggravating factors.

In *In re Warner*, the Court suspended the respondent for one year and one day for acting with fraudulent intent when directing the daughter of the decedent, who was a client of the respondent in a personal injury action, to sign her deceased father's name on a release and a settlement check. 2003-0486 (La. 6/7/03), 851 So.2d 1029. In determining the sanction, the Court gave weight to the fact that the respondent had a prior disciplinary history for similar conduct and the respondent's dishonest/selfish motive.

In *In re Bordelon*, the Court suspended the respondent for 60 days for an isolated violation of 8.1(a)(making false statements to ODC). 2004-0759 (La. 1/7/05), 894 So.2d 315. The Court recognized one aggravator (substantial experience in the practice of law) and one mitigator (absence of a disciplinary history). (The Court determined that the underlying allegations in the complaint did not constitute misconduct.)

In *In re Parks*, the Court suspended the respondent for one year and one day for making several false statements to ODC during the course of an investigation. 2008-3006 (La. 4/24/09), 9 So.3d 106. The underlying misconduct constituted dishonest acts related to a car accident. Aggravators: dishonest or selfish motive, a pattern of misconduct, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, and refusal to acknowledge the wrongful nature of the conduct. Mitigators: absence of a prior disciplinary record and inexperience in the practice of law.

In *In re Juakali*, the Court suspended the respondent for one year, with six months deferred, for improperly charging $400 in legal fees while acting as a curator. 97-1460 (La. 9/5/97), 699 So.2d 361.

The Committee finds that there are both aggravating and mitigating factors. The Aggravating factors are: 1) substantial experience in the practice of law, 2) multiple offenses, 3) vulnerability of victims, 4) submission of false statement to ODC, and 5) Lack of remorse and understanding that he has violated the Rules. The Mitigating factors are: 1) No prior disciplinary history, 2) no significant harm to the public, 3) Age of violations and Delay in disciplinary proceedings, and 4) Lack of selfish motive.

CONCLUSION

The Committee recommends that Respondent be Suspended from the Practice of Law for a period of 18 months with all but 60 days deferred on the condition that Respondent be on Supervised Probation for a period of 2 years or the completion of 30 hours of Law Office Management Continuing Legal Education hours whichever occurs first. The Committee feels that the root of all of the violations is a fundamental misunderstanding of the best practices of Law Office Management.

Committee Report, pp. 8-11.

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 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 relating to Count I (DuBois) and Count III (Webster) do not appear to be manifestly erroneous, are supported by the record, and are adopted by the Board.

The factual findings of the committee relating to Count II (Lafleur) are also supported by the record and adopted by the Board. The complaint in Count II relates to an attorney fee taken by Respondent in connection with his representation of his client, Donna Tyson, in the settlement of a workers' compensation claim. The Board makes the following additional findings of fact

relating to the background leading up to the settlement, the basis for the fee taken by Respondent, and the circumstances in which the complaint was filed against Respondent:

> Respondent filed a workers' compensation claim on behalf of Ms. Tyson against her employer, Thompson Home Health ("Thompson"). Thompson was represented by attorney K. Eric Lafleur. Eric Lafleur is the brother of complainant, Ward F. Lafleur, and both attorneys work with the law firm of Mahtook & Lafleur.
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> A sample of Respondent's standard client contract can be found in Ex. ODC 30 at Bates page 651. While this document is not the actual contract signed by Ms. Tyson, Respondent testified that it is the standard agreement he uses with all cases. T.250-251. The contract includes the following terms:
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> > In any Worker's Compensation claim, the fee shall be 20% on all amounts recovered.
> >
> > Any legally allowed award for Attorney's fees under the provisions of R.S. 22:658, 22:1220, 23:1125, 23:1201, 23:1201.2, or any other statute or law shall accrue only to Attorneys and are in addition to fees due under other provisions of this contract.
>
> The record indicates that in July 2005, on the day before the scheduled trial, the parties reached an agreement to settle Ms. Tyson's claim. On July 19, 2005, Respondent wrote to Eric Lafleur confirming the agreement to settle as follows: "$4,500.00 in penalties, $4,000.00 in attorney fees and $1,260.00 in SEB. Furthermore, you will remain responsible for any and all work related medical expenses incurred, but still unpaid, if any, through the date of this settlement."[6] Ex. Tyson-3; T.177-178; *see also* Ex. Tyson-10 (affidavit of Ms. Tyson). The amounts listed in this letter total $9,760.00.
>
> Upon reaching the settlement agreement, Eric Lafleur drafted what appear to be routine or form settlement pleadings, including a joint petition for approval of settlement with order and a motion and order for approval of attorney fees. These pleadings were filed on September 1, 2005, and the orders were signed by the Workers' Compensation Judge on September 2, 2005. Exs. ODC 14, ODC 14a, ODC 14b; T. 179-180. The joint petition was signed by Eric Lafleur, Ms. Tyson, and Respondent and the motion for approval of attorney's fees was signed by Ms. Tyson and Respondent.
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> The joint petition for approval of settlement contained the following provisions:
>
> > 6.
> >
> > Employee has agreed to settle all claims for indemnity benefits, supplemental employee benefits and medical benefits, and/or any other basis against Employer and Association for the sum of NINE THOUSAND SEVEN HUNDRED SIXTY AND 00/100 ($9,760.00) DOLLARS. It is the wish of all parties to settle all claims of Employee for workers' compensation indemnity benefits,

[6] It is noted that this letter was considered by the court as evidence in a subsequent workers' compensation claim filed by Respondent on behalf of Ms. Tyson to recover unpaid medical expenses which matter will be discussed later herein. *See Tyson v. Thompson Home Health*, 2008-193 (La.App. 3d Cir. 12/10/08), 3 So.3d 517, 520.

supplemental employee benefits and medical benefits (in addition to any and all outstanding medical bills and/or charges for medical treatment, which employer has already authorized and agreed to pay as a result of Employee's work-related accident and injury) upon the payment of NINE THOUSAND SEVEN HUNDRED SIXTY AND 00/100 ($9,760.00) DOLLARS.

7.

Employee waives any and all rights under LSA-R.S. 23:1271.

8.

All of the parties expressly aver that there are serious disputes existing between them regarding Employee's disability and entitlement to workers' compensation benefits and/or medical treatment and/or other remedies under the Act.

9.

Employer has been contacted and Employer concurs in the terms of the settlement.

10.

Employee, Employer, and Association aver that the aforesaid amount will be received by Employee in full, final, and complete settlement of any and all past, present, and future claims, demands, damages, compensation, medical expenses (in addition to any and all outstanding medical bills and/or charges for medical treatment, which employer has already authorized and agreed to pay as a result of Employee's alleged work related accident and injury), penalties, attorney's fees, costs and charges, and all causes and rights of action whatsoever, including wrongful discharge and/or intentional tort, which Employee may or might have and/or to which he may be entitled, known and unknown, anticipated and unanticipated, under the Workers' Compensation laws of the State of Louisiana, the tort laws and any and all other laws whatsoever in any way resulting from and/or to result from the January 27, 2003 accident, and any and all other accident [sic] sustained by her in the past arising out of or occurring in the course and scope of her employment with Employer.

Ex. ODC 14, pp. 300-302. The order granting approval of the settlement did not state the amount of the settlement, but recognized that "there are one or more serious bona fide disputes existing between the parties." Ex. ODC 14a. The order approving the attorney's fees included no amounts specific to the settlement, but ordered "that Employee's Attorney's fees are at the applicable rate set forth under the Louisiana Workers' Compensation Act, LSA-R.S. 23:1143, be and are hereby approved." Ex. ODC 14b.

Upon receipt of the settlement check, Respondent deducted a $4,000.00 fee as anticipated by the July 19, 2005, letter confirming the settlement agreement. Respondent did not take a fee on the penalties and supplemental earnings portions outlined in the confirmation letter. The breakdown of the settlement funds and

attorney's fee was understood by Ms. Tyson at the time of the settlement. Exs. Tyson-4, Tyson-10.

In September 2006, Ms. Tyson received a collections letter for unpaid medical expenses. Included in the list of expenses were two charges (February 7, 2003, and February 21, 2003) totaling $700.00 for medical treatment related to the work-related accident which were incurred prior to the settlement of Ms. Tyson's workers' compensation claim. Respondent made demand on Thompson for payment of these charges and Thompson refused. In January 2007, Respondent filed a new workers' compensation complaint seeking payment of the two charges plus penalties and attorney fees. Exs. Tyson-10 and Tyson-13.

Ward Lafleur, complainant in this disciplinary matter, represented Thompson in the second workers' compensation claim. After several years of litigation, Ms. Tyson ultimately prevailed in the second matter. Ex. Tyson-13. At some point during that litigation, Respondent presented evidence to the court showing a breakdown of how the settlement funds from the original claim had been disbursed. Ward Lafleur filed the present disciplinary complaint during the pendency of the second workers' compensation matter after receiving that evidence of the settlement disbursement. Ex. ODC 7. Ms. Tyson has made no complaint against Respondent.

B. *De Novo* Review

The ODC proved by clear and convincing evidence that Respondent violated Rules 5.3, 8.4(a) and 8.4(c) as charged in Count I (DuBois). Respondent admitted that he instructed his secretary to sign his client's name to the Satisfaction of Judgment. While the final payment of costs from the defendant did satisfy the judgment, the secretary's signing the client's name to the pleading compounded by her having the act witnessed by two persons and then notarizing the pleading was improper. These circumstances demonstrate that Respondent failed to ensure his nonlawyer employee's conduct was compatible with Respondent's professional obligations in violation of Rule 5.3 and engaged in conduct involving misrepresentation in violation of Rule 8.4(c). In his initial answer to the complaint submitted to the ODC, Respondent also provided inaccurate information regarding his client's having signed the Satisfaction of Judgment and the circumstances involved. He later corrected this statement during his sworn statement and admitted that he instructed his secretary to sign his client's name. He explained that at the time he made his

initial response, he was out of town and was not able to review the whole file and wrote what he thought had happened. While Respondent should have been more diligent in reviewing the facts before responding to the complaint, this conduct, which was later corrected, on its own is not so egregious as to constitute a violation of Rule 8.4(c)(conduct involving dishonesty, fraud, deceit, or misrepresentation).

The violations of Rules 5.3 and 8.4(c) in Count I 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.

As to the charges in Count II (Lafleur), there is no evidence in the record to dispute the breakdown of the settlement agreement stated in the July 19, 2005, letter confirming the agreement. Ex. Tyson-3; T.177-178; *see also* Ex. Tyson-10 (affidavit of Ms. Tyson). As previously noted, Ms. Green has represented that Eric Lafleur was subpoenaed to testify before the committee, but failed to appear. T.159, 202-204, 206, 301-302. Complainant, Ward Lafleur, did not participate in the settlement and could not testify as to the breakdown. However, the agreed breakdown was not set forth in the joint petition for approval of the settlement or in the motion to approve attorney's fee drafted by the defendant's attorney and Respondent took no action to attempt to correct these pleadings before they were filed. Consequently, there was no order specifically awarding $4,000.00 in attorney fees. The only approved attorney fee was "at the applicable rate set forth under the Louisiana Workers' Compensation Act, LSA-R.S. 23:1143." La.R.S. 23:1143(B)(1) provides that "an attorney may withhold, as proposed attorney fees, a sum not to exceed twenty percent of all amounts recovered in his trust account which funds shall remain the property of the claimant, pending approval of such fees by the workers' compensation judge." Further, as found by the committee, because there was no other "award" of attorney fees, the

provision in the client contract relating to "any legally allowed award for Attorney's fees . . ." was not operative and the only fee allowed under the contract was the default twenty percent.[7] Therefore, it appears that the fee charged by Respondent in the first claim filed on behalf of Ms. Tyson, which fee amounted to approximately forty percent of the total settlement amount, was excessive and in violation of Rule 1.5(a). Although the evidence reflects that the agreement reached by the attorneys contemplated a $4,000.00 attorney fee in addition to amounts for penalties and unpaid benefits, and the client was completely aware of and agreed to that fee, the settlement breakdown was not properly memorialized in the settlement pleadings and approved by the workers' compensation judge, and therefore a technical rule violation occurred.

Finally, for the reasons outlined in the committee's report, the ODC did not meet its burden of proving by clear and convincing evidence that Respondent violated Rules 1.16(a), 3.4(c), 8.4(a)(as to the Webster claim), or 8.4(d) as charged in Count III.

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.

[7] It is noted that when a separate claim for penalties and attorney fees is made, the amount of the separate attorney fees awarded may exceed twenty percent of the benefits recovered. For example, in the second claim filed by Respondent on behalf of Ms. Tyson for Thompson's failure to pay $700.00 in medical expenses, Respondent was awarded a total of $8,500.00 in attorney fees. See Ex. Tyson-13, pp. 4-6.

Respondent's misconduct in connection with Count I violated duties to the client, the legal system, and the profession. Respondent acted knowingly in allowing his secretary to sign his client's name on the Satisfaction of Judgment which signature was notarized by the secretary and the judgment then filed into the court record. However, the evidence shows that no harm was caused by this misconduct. The judgment was in fact satisfied by the cost payment forwarded by the defendant to Respondent with the unsigned Satisfaction of Judgment and the client had received everything to which she was entitled. The evidence here does not indicate any illicit motive on the part of Respondent, but under other circumstances, the potential for harm from such actions could be significant.

Respondent's actions in Count II violated his duty to the client. His misconduct was negligent in that he did not ensure that the agreed breakdown of the settlement amount, including the amount paid for the attorney fee, was set forth in the settlement pleadings approved by the workers' compensation judge. As a result, Respondent caused actual harm because, absent approval of the fee greater than twenty percent, his fee was excessive.

The following aggravating factors are supported by the evidence: prior disciplinary offense; multiple offenses; submission of a false statement during the disciplinary process; refusal to acknowledge wrongful nature of conduct; and substantial experience in the practice of law. The mitigating factors present are absence of dishonest or selfish motive; delay in disciplinary proceedings; and remoteness of prior offenses. With respect to prior disciplinary offenses, while no evidence of prior discipline was presented at the hearing, the Board records show that Respondent has been disciplined in the past.[8] In 2004, Respondent consented to discipline in the

[8] "The Louisiana Attorney Disciplinary Board is the permanent statewide agency which administers the lawyers disciplinary system and, as such, the agency which maintains records of all such discipline. We are therefore able to take judicial notice of Respondent's prior disciplinary record." *In re White*, 96-DB-002, Recommendation of the Louisiana Attorney Disciplinary Board, p. 14.

form of a public reprimand for failing to fully protect the interests of two third-party medical providers in settlement funds.

B. The ABA Standards and Case Law

The following ABA *Standards for Imposing Lawyer Sanctions* provide guidance in determining the appropriate sanction to be imposed given the circumstances presented in this matter:

> 5.11 Disbarment is generally appropriate when:
> (a) …
> (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
>
> 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.
>
> 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> 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.
>
> 7.3 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 above standards and the jurisprudence, including the jurisprudence outlined in the committee's report and quoted previously herein, suggest that the baseline sanction for Respondent's misconduct is suspension.

The ODC argues that Respondent should be suspended for eighteen months with no portion of the suspension deferred. However, the misconduct of the respondents in the cases cited by the ODC in support of this argument is generally more egregious than the misconduct of Respondent here. *See e.g.*, *In re Jones*, 2012-1700 (La. 1/25/13), 106 So.3d 1019;[9] *In re Williams*, 2010-1972 (La. 1/7/11), 52 So.3d 864; and *Louisiana State Bar Association v. Edwins*, 519 So.2d 93 (La. 1988).

In *In re Jones*, the respondent was suspended for two years for having engaged in a "pattern of serious misconduct" which warranted "a severe sanction." *In re Jones*, 106 So.3d at 1028. The matter included multiple counts in two consolidated proceedings which involved misconduct in connection with the representation of several clients. The respondent notarized succession and donation documents outside the presence of the signatories and caused the documents to be filed in conveyance records knowing it would make the donations invalid and, in one matter, did nothing to correct the problem when a lawsuit was filed alleging the signatures were forged; signed and notarized loan closing documents that he knew or should have known were part of an illegal "house flipping" scheme; and as attorney for heirs in a succession, signed succession pleadings that omitted two of seven heirs and then failed to take any remedial action after learning of the error. The respondent knowingly and intentionally violated duties to his clients, the legal system, and the legal profession and caused actual harm to several clients and the legal profession. In aggravation, the Court found the following factors were present: a dishonest or selfish motive, a pattern of

[9]The name of the respondent in *In re Jones*, 2012-1700 (La. 1/25/13), 106 So.3d 1019, is O'Neal Jones. The decision is erroneously referenced in ODC's brief as *In re O'Neal*.

misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and substantial experience in the practice of law. The only mitigating factor present was the respondent's lack of a prior disciplinary record.

In *In re Williams*, the respondent was suspended for three years, with eighteen months deferred. The Court found the respondent had "engaged in a substantial amount of misconduct that involved five clients, some of whom were particularly vulnerable." *In re Williams*, 52 So.3d 873. The respondent's misconduct included inducing a former, elderly client to make an improper loan/investment in his law practice, committing a criminal offense by possessing cocaine, and failing to refund unearned fees to several clients. The "respondent's conduct was knowing, if not intentional, and violated duties owed to his clients and the public." *Id.* at 872. Aggravating factors present were a dishonest or selfish motive, pattern of misconduct, multiple offenses, vulnerability of the victim, and substantial experience in the practice of law. Mitigating factors were absence of a prior disciplinary record, personal or emotional problems, timely good faith effort to make restitution or to rectify the consequences of the misconduct, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, imposition of other penalties or sanctions, remorse, and mental disability or chemical dependency.

In *Edwins*, the respondent was found to have engaged in misconduct in connection with his representation of two workers' compensation cases. In both cases, he was found to have failed to render accurate and complete accountings of the settlement funds received, failed to maintain complete records of the funds of the clients, failed to promptly deliver to the client funds in his possession which the client was entitled to receive, charged fees in excess of the amount permitted under the workers' compensation statute, and permitted the commingling of funds belonging to his clients in an account owned by respondent's non-lawyer employee and held in the name of a

third person. Aggravating factors present were prior disciplinary offenses (thirty day suspension for making cash advances to his client with intention of securing or keeping the legal representation of his client and ninety day suspension for soliciting employment), dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, vulnerability of victim (one client with seventh grade education), substantial experience in the practice of law, and indifference to making restitution. Mitigating factors were physical or mental disability (respondent was experiencing severe back problems at time), imposition of other penalties or sanctions, and remoteness of prior offenses. The respondent was suspended for two years with reinstatement conditioned upon payment of restitution in an amount not clearly identified, but significantly greater than $6,000.00.

It is suggested that Respondent's misconduct here warrants a sanction more in line with that imposed in *In re Landry*, 2005-1871 (La. 7/6/06), 934 So.2d 694. In *In re Landry*, the respondent had his secretaries sign affidavits of death and heirship, knowing that they did not have the requisite knowledge of the decedent to do so. Despite having no personal knowledge of the situation, the two secretaries swore in the affidavit that they were "well acquainted" with the decedent and knew that she died intestate. The respondent reviewed the affidavit and notarized it and filed it into the court record with the petition for possession. In fact, the decedent had written a will and the judgment of possession obtained by the respondent was later successfully challenged in court. Mitigating factors included absence of a prior disciplinary record, full and free disclosure to the disciplinary board and cooperative attitude toward the proceedings, inexperience in the practice of law, good character and reputation, and remorse. There were no aggravating factors. The respondent was suspended for six months, with all but thirty days deferred, conditioned upon a six-month period of unsupervised probation.

Respondent's conduct here in instructing his secretary to sign Ms. DuBois's name on the Satisfaction of Judgment and then allowing the pleading with the notarized signature to be filed into a court record is certainly a significant, and Respondent's most concerning, violation of the Rules. On the other hand, the judgment had in fact been satisfied and the completion of the Satisfaction of Judgment by the client would have been somewhat perfunctory. As previously noted, such misconduct under different circumstances could cause significant harm, but in this situation, Respondent did not act with a selfish or dishonest motive and no harm was caused by Respondent's actions. Further, Respondent acted negligently in taking an excessive fee in the case of Ms. Tyson. Additionally, the record reflects that Respondent appears to have provided appropriate services to and achieved good outcomes for both Ms. DuBois and Ms. Tyson.

The Board also finds the delay in the disciplinary process here is significant. Respondent's misconduct occurred over ten years ago and the complaints based upon same were filed in 2007 and 2008. The formal charges were not filed in this matter until November of 2016. The Board is aware of no additional misconduct by Respondent during the interim of more than ten years since the two complaints were filed.

Considering all of the circumstances discussed above, the Board recommends that Respondent be suspended for one year, with all but thirty days deferred. The Board further recommends that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. *See In re Dobbins*, 2001-2022 (La. 1/15/02), 805 So.2d 133, 137 ("…in cases where the disciplinary board recommends that all or part of a suspension be deferred, it should also recommend either a period of probation, or a period within which the deferred suspension may become executory, in the event of misconduct by the respondent during this period.") Additionally, the Board concurs

in the committee's conclusion that restitution should not be recommended considering Respondent acted negligently in the Tyson matter and the significant amount of time that has elapsed since that matter was settled. The Board does not concur in the committee's recommendation that Respondent be required to attend continuing education in law office management.

CONCLUSION

The Board adopts the committee's factual findings and makes the additional findings outlined above in connection with Count II. The Board also adopts the committee's conclusions regarding rule violations. The Board recommends that Respondent be suspended for one year, with all but thirty days deferred, and that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. The Board further recommends that Respondent be assessed with the costs and expenses of this matter.

RECOMMENDATION

The Board recommends that George A. Flournoy be suspended for one year, with all but thirty days deferred, and that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. The Board further recommends that he be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Pamela W. Carter
Brian D. Landry
Sheila E. O'Leary
Dominick Scandurro, Jr.
Melissa L. Theriot

By _____
Evans C. Spiceland, Jr.
FOR THE ADJUDICATIVE COMMITTEE

Danna E. Schwab - Dissents with reason.
Linda G. Bizzarro - Dissents with reason.
Charles H. Williamson, Jr. - Dissents with reason.

RECOMMENDATION

The Board recommends that George A. Flournoy be suspended for one year, with all but thirty days deferred, and that any misconduct during the period of deferred suspension may be grounds for making the deferred suspension executory or imposing additional discipline, as appropriate. The Board further recommends that he be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Pamela W. Carter
Brian D. Landry
Sheila E. O'Leary
Dominick Scandurro, Jr.
Melissa L. Theriot

By 

Evans C. Spiceland, Jr.
FOR THE ADJUDICATIVE COMMITTEE

Danna E. Schwab - Dissents with reason.
Linda G. Bizzarro - Dissents with reason.
Charles H. Williamson, Jr. - Dissents with reason.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: GEORGE A. FLOURNOY

DOCKET NO. 16-DB-090

DISSENT

I would uphold the recommendation of the Hearing Committee as to the sanction.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: DocuSigned by: Danna Schwab DB099224E8E3484...

D. Schwab
Adjudicative Committee Member

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: GEORGE A. FLOURNOY

DOCKET NO. 16-DB-090

DISSENT

Considering the respondent's multiple offenses and submission of a false statement during the disciplinary process, I would also uphold the recommendation of the Hearing Committee as to the sanction.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: DocuSigned by: Linda G. Bizzarro BBE507ED1E7B46C... **Bizzarro**

Adjudicative Committee Member

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: GEORGE FLOURNOY

DOCKET NO. 16-DB-090

DISSENT

I dissent for the same reasons expressed by Linda Bizzarro and would uphold the recommendation of the Hearing Committee as to the sanction.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: 

CHARLES H. WILLIAMSON, JR.
Adjudicative Committee Member

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.

. . .

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.

. . .

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

. . .

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

. . .

Rule 5.3 Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice; . . .