

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JOHN N. BOKENFOHR

NUMBER: 16-DB-092

RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD



INTRODUCTION

This attorney discipline matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against John N. Bokenfohr (“Respondent”), bar roll number 28500.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct (“Rule(s)”): 1.2(d) (counseling or assisting counseling a client in conduct that the lawyer knows to be criminal or fraudulent); 3.4(a) (unlawfully obstructing another party’s access to evidence or unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value); and 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal). Although not charged in the formal charges, Rule 3.3(b) is relevant to this proceeding.<sup>2</sup> The Hearing Committee assigned to this matter concluded that ODC did not meet its burden of proof and recommended that the charges be dismissed.

For the following reasons, the Board adopts the findings, conclusions, and recommendation of the Committee. Accordingly, the Board dismisses the formal charges.

PROCEDURAL HISTORY

The formal charges were filed on December 2, 2016. The charges state, in pertinent part:

In November 2014, respondent John N. Bokenfohr was retained to represent a client, Randall Matthews, following Matthew's arrest in Bossier Parish on November 13, 2014 on charges of Aggravated Battery.

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<sup>1</sup> Respondent is currently eligible to practice law in Louisiana.  
<sup>2</sup> The text of these Rules is contained in the attached Appendix.

Prior to the defendant's arrest, law enforcement officials had served and executed a search warrant on the defendant's business which included the following description of sought-after evidence: "any and all surveillance equipment, cameras (or) recordings." At the time of the incident in question, the defendant Matthews maintained a video camera recording system which was later determined to have captured the incident on which the felony charges were based.

At the time the search warrant was executed, officers observed evidence of a video recording system in place on the premises; the defendant deflected their efforts to recover the equipment by claiming that the system was "inoperable and failing to disclose that he previously had concealed a critical component- the computer CPU containing video images of the incident in question.

Defendant later revealed to respondent that he had retained video evidence of the incident and respondent arranged for the equipment to be transferred to a video technician for downloading and analysis of the digital images. Despite the fact that the equipment was brought to his office by the client on two separate occasions – during which time the respondent viewed the video evidence - he failed to take possession of the evidence and immediately turn it over to the appropriate authorities.

Instead he "facilitated" the transfer of the evidence to a computer forensic expert which he had retained, instructing the expert to reproduce the digital images contained on the unit's hard drive. Only after the expert had retrieved the data did respondent instruct the expert to furnish the evidence to the state.

Respondent's client was late [sic] convicted by a Bossier Parish Jury of Obstruction of Justice on July 27, 2015 in connection with the failure to promptly turn over evidence of a crime.

By his acts and omissions, respondent John N. Bokenfohr has knowingly and intentionally violated the Rules of Professional Conduct 1.2(d) (counseling or assisting a client in conduct that the lawyer knows to be criminal or fraudulent); 3.4(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value; 3.4(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.

Respondent filed an answer to the charges on December 28, 2016, in which he denied violating the Rules of Professional Conduct. In its prehearing memorandum, ODC argued that disbarment is the baseline sanction in this matter, but a downward deviation to a three-year suspension is warranted based upon Respondent's lack of a disciplinary record. ODC's Prehearing Memorandum (filed 3/23/2017), p. 7.

The hearing of this matter was held on April 7 and June 23, 2017, before Hearing Committee Number 60 (“the Committee”).<sup>3</sup> Deputy Disciplinary Counsel Robert S. Kennedy, Jr., appeared on behalf of ODC. Respondent appeared with counsel, James C. McMichael, Jr. The Committee heard the testimony of John Schuyler Marvin (District Attorney for the 26<sup>th</sup> JDC); Hon. Michael Craig (District Judge in the 26<sup>th</sup> JDC, presided over the Matthews matter); Darren Barclay (Deputy Chief, Bossier City Police Department); Robert Lane Pittard (Assistant District Attorney in the 26<sup>th</sup> JDC, prosecuted the Matthews matter); Marion Marks (expert hired by Respondent); William Fuller (Sergeant, Bossier City Police Department); Hon. Katherine Clark Dorroh (District Judge in the 1<sup>st</sup> JDC, character witness); Hon. Brady Dennis O’Callaghan (District Judge in the 1<sup>st</sup> JDC, character witness); James M. Jones, Jr. (character witness); Eric G. Johnson (character witness); and Respondent. The Committee also admitted into evidence ODC Exhibits 1-10 and Respondent Exhibits 1-9, 11-15, and 17-19.

The Committee made the following findings and conclusions:

#### FINDINGS OF UNDISPUTED FACT

The underlying facts that form the basis for the charges were not in dispute. The testimony from all witnesses confirmed the following:

- On November 7, 2014 around 2:30 p.m., the police responded to call involving a fight in the parking lot at the Cash and Flash pawn shop between owner and operator Randy Matthews and a customer. (T2 pg. 99).
- During the course of their investigation and while still at the scene, the police determined that video surveillance might have captured the events (T2 pg. 105). Voluntary admittance into the establishment was unsuccessful and a Search Warrant was obtained by the police for "any and all surveillance equipment, cameras (or) recordings." (T2 pg. 108).
- Several police officers searched the premises for surveillance equipment and did not find a surveillance tape or CPU. Nothing was recovered on the search warrant.
- Randy Matthews informed the officers that the surveillance equipment had been broken and was not in use. (T2 pg. 113).

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<sup>3</sup> The Committee was composed of Zelda W. Tucker (Chair), Stephen V. Callaway (Lawyer Member), and Margret L. Caplis (Public Member).

- On November 13, 2014, Randy Matthews was arrested and charged with Aggravated Battery.
- Respondent John N. Bokenfohr was retained to represent Mr. Matthews on the Aggravated Battery charge in November 2014, a few days before Thanksgiving.
- On November 25, 2014, Respondent filed a Motion for Discovery.
- Sometime in December before Christmas, Respondent learned from Mr. Matthews that he actually had a surveillance CPU that had captured the events from the parking lot fight of November 7, 2014, that formed the basis of the felony criminal charges. Mr. Matthews brought the CPU to respondent's office and they viewed the surveillance video. Respondent advised Mr. Matthew's that he needed to turn the CPU over to the police, and after researching the obstruction of justice charge he advised Matthews that he was going to be charged with that crime.
- On January 15, 2015, a Bill of Information was filed on the aggravated battery charge.
- Mr. Matthew's transported the CPU to the respondent's office again in February 2015 for a viewing by Respondent and attorney Craig Smith. Respondent and attorney, Craig Smith, again advised him to turn in the video.
- On March 4, 2015, Mr. Matthews brought the CPU to respondent's office and turned it over to Mr. Marion Marks, a forensic specialist, for copying.
- Respondent reviewed the video three times prior to March 9, 2015 but did not take possession of the evidence and turn it into the authorities.
- On March 9, 2015, respondent provided an original copy and an enhanced copy of the recording to the District Attorney in response to an outstanding discovery request.
- On March 10, 2015, respondent instructed Mr. Marks to turn over the CPU and copies to the Bossier Parish Police.
- On March 10, 2015, the pretrial discovery hearing and preliminary exam was held in the criminal proceedings.
- On April 14, 2015, a Bill of Information was filed charging Mr. Matthews with Obstruction of Justice. On April 29, 2015, Mr. Matthews appeared at arraignment on the obstruction charge. Respondent announced he was not representing Mr. Matthews on the obstruction charge. Respondent requested that his trials be severed and Judge Craig denied his motion.
- Mr. Matthews filed a pro se Motion to continue the trial date from May 18, 2015, and Judge Craig continued the trial date of the consolidated matters to July 27, 2015.
- Mr. Matthews was tried on both charges on July 27, 2015 and the video recording was used in the trial.
- On July 29, 2015, the jury convicted Mr. Matthews of simple battery and obstruction of Justice.

Hearing Committee Report, pp. 5-7.

## FINDINGS AND RECOMMENDATIONS

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

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

The Hearing Committee believes that the ODC failed to prove by clear and convincing evidence that the Respondent violated Rule 1.2. The Committee finds that the evidence presented failed to show that the Respondent counseled Mr. Matthews to engage in conduct or assisted Mr. Matthews in conduct that Respondent knew to be criminal or fraudulent. The evidence revealed that once Respondent believed that there was a video of the altercation; it was clear by his actions that he knew that to withhold the video would be a violation of the law and his duties to the Court and District Attorney. As a result, the Committee found that the Respondent counseled Matthews to get the video working and to bring it in because it might help his case. Once the Respondent actually viewed the video, it was clear that the video was evidence and could be used either for or against Matthews on the charge of aggravated battery. The Committee found that the evidence presented showed that the Respondent counseled Matthews as follows: (1) turn in the CPU-video; (2) informed Matthews that when he did so that he would be charged with the crime of obstruction of justice; (3) informed Matthews of what the penalty was for obstruction of justice; and (4) informed Matthews that the video would be helpful in defending the aggravated battery charge and that from a penalty point of view that a conviction of simple battery and obstruction of justice was better than a conviction for aggravated battery. This same counsel was provided to Matthews by Respondent and attorney Craig Smith at the second viewing of the CPU-video at Respondent's office sometime between February 6th and 10th of 2015.

The Committee found credible the testimony of the Respondent and found no competing evidence presented by the ODC to support a violation of Rule 1.2.

### Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

The Hearing Committee is of the opinion that the ODC failed to present clear and convincing evidence that the Respondent violated Rule 3.4. The Committee finds that the uncontroverted evidence showed that the Respondent never obstructed access to the video evidence or unlawfully altered, destroyed or

concealed the video evidence. Nor did Respondent assist another person in doing any such act. The facts were that Matthews did agree to turn in the CPU-video at the second meeting in February 2015 and, after raising the money to pay videographer Marks, Matthews turned the CPU over to Marks. The Respondent's instructions to Mr. Marks were to get the video of the November 7, 2014 altercation and make copies of the video for the police, the District Attorney and Respondent. Mr. Marks did as instructed and made three sets of copies of the original video and an enhanced video. These sets of original and enhanced videos were obtained by Respondent from Mr. Marks on March 6, 2015 and, on March 9, 2015, Respondent delivered a complete set to D.A. Pittard. The Committee finds that the evidence was clear that the video was not destroyed and the copies delivered to Mr. Pittard were not altered.

#### 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;

The Hearing Committee is of the opinion that the evidence failed to prove a violation of Rule 3.4(c). The Committee found credible the testimony of the Respondent and Judge Craig that the search warrant expired ten days after issuance. By the time the respondent became aware of the CPU, there was no search warrant in effect. The Committee also found credible the testimony of the Respondent that he felt that from the time he knew the video actually existed, it was critical in representing his client and complying with his obligations to the Court and District Attorney that the video be produced. He knew that if he could not convince Matthews to turn over the video that he would then be bound to inform the Court and the District Attorney of the existence of the CPU. He knew that Matthews was involved in an obstruction of justice issue and he always thought that Matthews would comply with his legal advice which Mathews did do. The Hearing Committee is of the opinion that the evidence presented did not show that the Respondent disobeyed an obligation under the rules of the tribunal in violation of Rule 3.4(c).

The Hearing Committee allowed the ODC to expand the initial formal charges, over the objection of Respondent, by adding the charge that Respondent violated Rule 3.3 (b).

#### Rule 3.3. Candor Toward the Tribunal

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage in engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

The Hearing Committee is of the opinion that the ODC failed to prove by the evidence presented that the Respondent violated Rule 3.3 (b). The ODC argued

that the Respondent should have taken immediate possession of the CPU and turned it in to the authorities. Given these findings of fact, the ODC presented no factual or documentary evidence to give guidance on what does or does not constitute reasonable remedial measures under Rule 3.3 (b). The findings of fact as stated above show that the Respondent always counseled Matthews to turn in the CPU to the authorities. The Hearing Committee could find no evidence to support a conclusion that the actions or inactions of the Respondent given these findings of fact were in violation of Rule 3.3(b).

Hearing Committee Report, pp. 21-24.

On December 28, 2017, ODC filed an objection to the Committee's legal conclusions, which is further detailed in its brief filed on January 23, 2018. Respondent filed a reply to ODC's brief on February 5, 2018.

Oral argument of this matter was heard on February 22, 2018, before Board Panel "C."<sup>4</sup> Deputy Disciplinary Counsel Robert S. Kennedy, Jr., appeared on behalf of ODC. Respondent appeared with counsel, James C. McMichael, Jr.

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

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

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's

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<sup>4</sup> The Panel was composed of Danna E. Schwab (Chair), Melissa L. Theriot (Lawyer Member), and Charles H. Williamson, Jr. (Public Member).



application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

**A. The Manifest Error Inquiry**

The factual findings of the Committee do not appear to be manifestly erroneous and are supported by the record. A timeline of the relevant facts is reproduced below:

- November 7, 2014: Mr. Matthews commits a battery upon Mr. Stroud. Mr. Matthews, or his agent, removed and/or concealed a CPU containing video evidence of the battery.
- Thanksgiving Week 2014: Respondent enrolls as counsel for Mr. Matthews.
- Approximately Christmas Week 2014: Mr. Matthews brings the CPU to Respondent's office. This is the first time Respondent learns of and views the video evidence of the battery. He instructs Mr. Matthews to release the CPU to the police and informs Mr. Matthews that he will likely be charged with obstruction of justice.
- January 15, 2015: Mr. Matthews is indicted for aggravated battery.
- January 20, 2015: Mr. Matthews is arraigned.
- Sometime Between February 6-10, 2015: Mr. Matthews brings the CPU to Respondent's office. Attorney Craig Smith is also present. Mr. Smith and Respondent instruct Mr. Matthews to release the CPU.
- March 3, 2015: Respondent contacts Marion Marks regarding the CPU.
- March 4, 2015: Mr. Matthews brings the CPU to Respondent's office and gives it to Mr. Marks for the purposes of retrieving the video evidence and making copies for the D.A. and police.
- March 9, 2015: Respondent informs DA Marvin and ADA Pittard of the video evidence and provides a copy.
- March 10, 2015: Preliminary Examination. The CPU is released to the prosecution.
- April 14, 2015: Mr. Matthews is indicted for obstruction of justice based upon his actions on November 7, 2014.

**B. De Novo Review**

The Committee correctly applied the Rules of Professional Conduct. Each is addressed below.

**Rules 1.2(d) and 3.4(a):**

Rule 1.2(d) states:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or



assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Similarly, Rule 3.4(a) states:

A lawyer shall not ... unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; ...

Here, Respondent did not counsel Mr. Matthews to or assist him in a criminal or fraudulent act, nor did he obstruct another party's access to evidence or counsel/assist Mr. Matthews in doing so. Rather, on multiple occasions, Respondent instructed Mr. Matthews to turn over the evidence to the police and/or prosecutor. Additionally, Respondent informed Mr. Matthews that he was likely to be charged with obstruction of justice. This is based upon Respondent's testimony, which the Committee found to be credible and to which ODC did not offer a rebuttal. Ultimately, Respondent was successful in convincing his client to release the CPU to the prosecution, albeit after an expert retrieved, preserved, and made copies of the video. However, as will be discussed below, having an expert examine and preserve the evidence was reasonable under the circumstances and does not constitute obstruction in this matter. Accordingly, the Board adopts the Committee's conclusion that Respondent did not violate Rules 1.2(d) and 3.4(a).

ODC argues that Mr. Matthews was engaged in the continuing offense of obstruction of justice, which began when the CPU was initially removed on November 7, 2014, and continued until it was released to the prosecution on March 10, 2015. Furthermore, ODC argues that because this was a continuing offense, Respondent is guilty of assisting in that crime based upon his mere knowledge of the existence of the CPU and video and his failure to immediately seize the CPU and/or disclose its existence to the prosecution. However, a plain reading of the obstruction of justice indictment indicates that Mr. Matthews was only charged with his actions on November 7,

2014, as opposed to being charged with a continuing offense. *See* Respondent Exhibit 2. Even if one concludes Mr. Matthews was engaged in a continuing offense, Respondent took reasonable remedial measures as required and authorized by Rule 3.3(b), which is discussed below.

**Rules 3.4(c) and 3.3(b):**

Rule 3.4(c) states, “A lawyer shall not ... 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 3.3(b) defines one of these obligations: “A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”<sup>5</sup> Here, Respondent did not disobey an obligation to a tribunal. Rather, upon learning of the existence of the CPU and video in December of 2014 and upon realizing that Mr. Matthews had committed the crime of obstruction of justice, Respondent took reasonable remedial measures by instructing his client to release the CPU to the prosecution, which was ultimately done after efforts were made to preserve the fragile evidence.<sup>6</sup>

ODC argues that upon learning of the existence of the CPU, Respondent should have immediately taken possession of the CPU and turned it over to the prosecution, or, at least immediately informed the prosecution of its existence. ODC bases this argument on the Rules discussed herein and on the Court’s holding in *State v. Green*. 493 So.2d 1178 (9/8/86). In *Green*, Mr. Green gave a box of items to his attorney after Mr. Green had been engaged in an altercation that resulted in a shooting. Upon examining the contents of the box, the attorney discovered a gun.

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<sup>5</sup> ODC did not charge Respondent with violating Rule 3.3(b) in the formal charges. However, given its inherent connection to Rule 3.4(c) and the specific allegations in the formal charges, Respondent had sufficient notice in order to defend against Rule 3.3(b). *See In re Ruffalo*, 390 U.S. 544 (1968).

<sup>6</sup> Marion Marks testified that the CPU was not in good condition and was being inappropriately handled by Mr. Matthews, which put the data at risk of being lost. Transcript (4/7/17), p. 182.

The attorney immediately turned over the box, including the gun, to the police. At trial, Mr. Green challenged the admissibility of the gun, arguing that it was subject to the attorney-client privilege. The Court disagreed, holding that the gun was not excludable by operation of the privilege because the attorney had an “obligation to turn over evidence which he reasonably believed to be material to the crime charged or to the investigation of a crime.” *Green* at 1182.

However, Rule 3.3(b) and the holding in *Green* do not contain a temporal element mandating disclosure within a particular time period. The Board concludes that Respondent’s actions under the unique facts of this case were reasonable. First, Respondent could not turn over the CPU to the prosecution when he first learned of it in December 2014 because he did not have possession of the CPU. ODC argues that Respondent had actual and constructive possession of the CPU on all three occasions Mr. Matthews brought the CPU to Respondent’s office. Brief of ODC (filed 1/23/18), p. 6. However, the fact the CPU was present in Respondent’s office in December 2014 and February 2015 does not prove Respondent had actual possession or otherwise exercised dominion or control of the CPU because his client was unwilling to release the CPU. The video was delivered to the prosecution five days after Mr. Matthews released the CPU to Mr. Marks, on March 9, 2015, and the CPU was delivered within six days, on March 10, 2015. That short delay is reasonable under the circumstances, especially given the fragile condition of the CPU, as noted above. ODC has not cited a law or rule that would require or give Respondent the right to physically seize evidence that was not in his possession, nor does the Board impose a duty here. In contrast, Respondent has cited persuasive authority that suggests having an expert examine the evidence for a short period of time is allowable and reasonable. *See* Respondent Exhibit 9 (ABA Criminal Justice Standards for the Defense Function, Standard 4-4.7).<sup>7</sup>

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<sup>7</sup> ABA Criminal Justice Standards for the Defense Function, Standard 4-4.7, states in pertinent part:

Second, Respondent's failure to immediately inform the prosecution of the CPU's existence in December 2014 does not appear to be a violation of Rule 3.3(b). Again, as stated above, Rule 3.3(b) and the holding in *Green* do not contain temporal elements. Upon learning of the CPU's existence, Respondent instructed his client on several occasions to release the evidence to the prosecution, which was ultimately done. At the time the prosecution received the evidence, discovery was ongoing and the aggravated battery trial was over two months away (May 18, 2015).<sup>8</sup> Thus, the disclosure does not appear to be untimely.<sup>9</sup>

Upon learning of his client's obstruction of justice, Respondent took reasonable remedial measures, by urging this client to disclose the evidence and, once the client agreed to relinquish the evidence, preserving the integrity of the evidence for the prosecution by means of expert examination. This entire process took less than three months and the evidence was delivered to the prosecution over two months ahead of the initial trial date. Accordingly, the Board adopts the Committee's conclusion that Respondent did not violate Rules 3.4(c) and 3.3(b).

## CONCLUSION

For the foregoing reasonings, the Board adopts the Committee's findings, conclusions, and recommendation. Accordingly, the Board dismisses the formal charges.

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(d) Receipt of physical evidence: Defense counsel should not take possession of such physical evidence, personally or through third parties, and should advise the client not to give such evidence to defense counsel; except in circumstances in which defense counsel may lawfully take possession of the evidence. Such circumstances may include: ... (v) when defense counsel reasonably believes that examining or testing such evidence is necessary for effective representation of the client.

First, Respondent testified that his client was concerned about the CPU being lost by the police. Thus, having copies of the files made put his client's concerns to rest, which led to the CPU being turned over to the prosecution. Transcript (4/7/17), p. 246. Second, as noted above, Mr. Marks testified that the CPU was in a fragile condition and the data was at risk of being lost. Thus, Respondent's actions helped preserve the evidence, assisting both his client and the prosecution.

<sup>8</sup> The trial was continued to July 27, 2015.

<sup>9</sup> ODC argues that the evidence would have been helpful to the prosecution with charging Mr. Matthews. Brief of ODC (filed 1/23/18), pp. 8-9. However, the prosecution apparently had enough evidence to charge Mr. Matthews with aggravated battery because that is what the prosecution did on January 15, 2015.

**RULING**

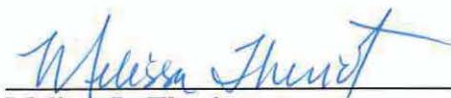
The Board orders that the formal charges filed against John N. Bokenfohr be dismissed.

The costs and expenses of this proceeding are to be borne by the Disciplinary Board.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

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

**BY:**



**Melissa L. Theriot  
FOR THE ADJUDICATIVE COMMITTEE**

**Linda G. Bizzarro - Dissents with reason.  
Brian D. Landry - Recused.**

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: JOHN BOKENFOHR**


**DOCKET NO. 16-DB-092**

**DISSENT**

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In my opinion the findings of the Committee appear to be manifestly erroneous and are not supported by the evidence in the record and applicable law in *La. v. Green*.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

By:   
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**Linda G. Bizarro**  
**Adjudicative Committee Member**

## APPENDIX

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

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(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

### **Rule 3.3. Candor Toward the Tribunal**

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(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

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### **Rule 3.4. Fairness to Opposing Party and Counsel**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

\*\*\*

(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;

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