

ORIGINAL

Louisiana Attorney Disciplinary Board

FILED by: *Dona P. Burgess*

Docket#

19-DB-008

Filed-On

12/4/2019

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: KIRBY DALE KELLY

DOCKET NO. 19-DB-008

REPORT OF HEARING COMMITTEE #17

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of five counts filed by the Office of Disciplinary Counsel (“ODC”) against Kirby Dale Kelly (“Respondent”), Louisiana Bar Roll Number 22479.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.15, 5.1, 5.3, 8.1(c), 8.4(a), 8.4(c).²

PROCEDURAL HISTORY

The formal charges were filed on February 19, 2019. By letter dated February 22, 2019, the formal charges and Letter Citation were mailed via certified mail to Respondent’s primary registration address³, see Hearing Exhibit ODC 2. After multiple delivery attempts, the mailing remained unclaimed. Service upon the Respondent was thus perfected under Louisiana Supreme Court Rule XIX, Section 13 Service (A) Service of Petition. Respondent failed to file an answer to the charges. Accordingly, on July 8, 2019, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ Attached as Exhibit A and

¹ Respondent was admitted to the practice of law in Louisiana on October 8, 1993. Respondent is currently suspended from the practice of law on an interim basis. *In re Kelly*, 2018-2113 (1/14/19).

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

³ 1845 Line Ave., Shreveport, LA 71101.

⁴ This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a

made a part of that Motion was the USPS Tracking Certificate of the Certified Mail Citation Letter and Formal Charges showing the delivery attempts made, but the mailing was unable to be delivered because of “no access to delivery location.” Notice by the post office was left; however, the mailing was unclaimed. The Motion to Deem Factual Allegations Admitted was served upon the Respondent by United States Mail pursuant to Louisiana Supreme Court Rule XIX, Section 13 Service (C) Service of Other Papers. The Certificate Filed per Louisiana Supreme Court Rule XIX, Section 13 Service (D) Proof of Service shows it was mailed to the Respondent by United States Mail on July 8, 2019 at the Address set forth in Hearing Exhibit ODC 2. The Respondent, again, did not respond and by order signed July 10, 2019, the factual allegations contained in the formal charges were deemed admitted. This Order was served on Respondent per Supreme Court Rule XIX, Section 13 Service (C) on July 15, 2019, as evidenced by the Certificate of Mailing per Section 13 Service (D) and the Respondent did not respond. On October 29, 2019, ODC filed its submission on sanction.

The Hearing Committee makes specific Findings of Fact and Rule Violations hereinafter. The Hearing Committee specifically found that the alleged facts and alleged Rule Violations set forth in Count I, II, III, IV and V have been proven by clear and convincing evidence. That the commission of those acts constituting Rule Violations were knowingly and intentionally committed by the Respondent, Kirby Dale Kelly, and such violations caused significant harm and injury to a number of clients, third party medical providers, the Public, the Legal System and

motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

the Profession. The Respondent failed to answer the Formal Charges and has made no filings or appearances in these proceedings. The evidence is clear and convincing that specific clients, unnamed clients, specific third party medical providers and unnamed third party providers of services were substantially injured monetarily and the Respondent has made no restitution and made no attempts of restitution. There are set forth hereinafter significant aggravating factors and only one mitigating factor (absence of prior disciplinary record). For those reasons and more, specifically set forth hereinafter, the Hearing Committee recommends that the Respondent, Kirby Dale Kelly be permanently disbarred, and that he should be assessed with the costs and expenses of these proceeding pursuant to Rule XIX, Section 10.1.

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I

A complaint was filed by a third-party medical provider, HealthCare Express, on March 13, 2018. Healthcare Express treated numerous personal injury clients of Respondent, who furnished the clinic with letters of guarantee promising to withhold payment of expenses from settlement. Despite repeated demands dating back to 2017, Respondent failed to deliver \$74,040.00 in outstanding medical expenses withheld from settlements for 54 clients. In response to the complaint, Respondent claimed that any conversion resulted from Respondent's asserted inability to supervise subordinate lawyer's and staff.

By his acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 1.15 by converting and failing to pay funds owed to third party medical provider and Rule 5.1/5.3 by failing to supervise subordinate lawyers or non-lawyer assistants.

COUNT II

A complaint was filed by a respondent's client, Germaine Montgomery, on September 10, 2018. Ms. Montgomery hired the respondent in 2017 to represent her personal injury claim. Respondent thereafter refused to communicate with her about the status of her claim. She expressed concerns about the claim's current status because the case is now beyond the one-year anniversary date of the accident.

Respondent failed to respond to the complaint despite being served with same by certified mail at his primary bar registration address.

By his acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 8.1(c) by failing to cooperate with disciplinary authority; Rule 8.4(a) by violating or attempting to violate the Rules of Professional Conduct; and Rule 8.4(c) for conduct involving dishonesty, deceit, fraud or misrepresentation.

COUNT III

A complaint was filed by Bobby R. Marshall on October 20, 2018. Mr. Marshall hired the respondent following a 2015 traffic accident in which he sustained personal injuries. The liability insurer GEICO tendered settlement in December 2015 and the respondent disbursed the proceeds on December 2, 2015, withholding \$5223.68 from settlement to pay Willis-Knighton hospital in Shreveport. Respondent's office provided the client with a copy of an (unnegotiated) check payable to Willis Knighton, representing that payment to the provider had been made.

Thereafter, Respondent failed to pay the provider and the hospital turned over the indebtedness against the client to a credit bureau for collection. Respondent subjected his client to a separate unpaid liability withheld from settlement due to a second party identified as William Norwood in the amount of \$398.25.

Respondent failed to respond to the complaint despite being served with same by certified mail at his primary bar registration address.

By his acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 1.15 by converting and failing to pay funds owed to third party medical provider; Rule 8.1 (c) by failing to cooperate with disciplinary authority; Rule 8.4(a) by violating or attempting to violate the Rules of Professional Conduct; and Rule 8.4(c) for conduct involving dishonesty, deceit, fraud or misrepresentation that payment was made to third party.

COUNT IV

A complaint was filed by Daniel Wilson, a representative of Shreveport Doctors Rehabilitation Center, on October 29, 2018. The medical facility treated Respondent's client, Essie Parker, with a letter of guarantee by the respondent. Following treatment, the patient was discharged from care and later informed the provider that her case was settled and disbursements made in January 2018. The patient furnished the provider with copies of an (unnegotiated) check shown drawn on the respondent's trust account and made payable to "Shreveport Doctors Rehab" for \$1909.60, dated September 29, 2017; however, the medical provider never received payment.

A copy of the complaint was sent by certified mail to Respondent's primary bar registration address but was returned as "unclaimed." ODC investigator effected service of the complaint by hand delivery to Respondent at his residence (an address not registered with the LSBA) and Respondent failed to respond to the complaint.

By his acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 1.15 by converting and failing to pay

funds owed to third party medical provider; Rule 8.1(c) by failing to cooperate with disciplinary authority; Rule 8.4(a) by violating or attempting to violate the Rules of Professional Conduct; and Rule 8.4(c) for conduct involving dishonesty, deceit, fraud or misrepresentation that payment was made to third party.

COUNT V

A complaint was filed by Yolanda Johnson Head, who hired the respondent following a car accident on August 10, 2017 in which she sustained personal injuries. The liability insurer Claims Direct Access by Prime Insurance Co. tendered settlement in April 2018 and the respondent disbursed the proceeds on September 12, 2018. Eastgate Chiropractic reduced the bill from \$6271 to \$4500 and the respondent's office provided the client with a copy of an (unnegotiated) check in the amount of \$4500 payable to Eastgate Chiropractic; however, Respondent failed to remit the payment to the medical provider.

On December 11, 2018, Eastgate Chiropractic made a demand of \$6271 directly to Ms. Head for payment of her medical services. She thereafter attempted to contact the Respondent but received no response and filed the instant complaint with ODC. Respondent did not respond to the complaint despite being served with same by certified mail at his primary bar registration address.

By his acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 1.15 by converting and failing to pay funds owed to third party medical provider; Rule 8.1(c) by failing to cooperate with disciplinary authority; Rule 8.4(a) by violating or attempting to violate the Rules of Professional Conduct; and Rule 8.4(c) for conduct involving dishonesty, deceit, fraud or misrepresentation that payment was made to third party.

EVIDENCE

The Committee reviewed the record of these proceedings and the exhibits submitted by ODC, which are Exhibits ODC 1-2. Respondent did respond to the Formal Charges and did not submit evidence or argument for the Committee's consideration, nor did he request to be heard in mitigation pursuant to Rule XIX, §11(E)(4).

FINDINGS OF FACT

The factual allegations contained within the formal charges, **COUNTS I—V**, are deemed admitted and proven by clear and convincing evidence pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). This Report will incorporate those proven facts supported in part by the

exhibits submitted by the ODC (Exhibits ODC 1-2) on each Count, and will set forth on each Count the Rules of Professional Conduct Violated.

COUNT I—FINDINGS OF FACT

Healthcare Express (hereinafter Healthcare) treated numerous personal injury clients of Respondent. Respondent issued to Healthcare letters of guarantee promising to withhold payment of expenses from settlements obtained for personal injury clients. In the complaint filed by Healthcare on March 13, 2018, Healthcare alleged that Respondent had failed to deliver \$74,040.00 in outstanding medical expenses withheld from settlements for 54 clients. Respondent did respond to the Healthcare complaint and claimed that any conversion resulted from Respondent's asserted inability to supervise subordinate lawyers and staff. (See Formal Charges, **COUNT I**).

On September 28, 2016, the ODC received a trust account discrepancy self-report from Mr. A.M. Stroud, III on behalf of Respondent. Upon receipt of the self-report and Mr. Stroud's acknowledgement of a matter regarding reconciliations of the trust account, ODC requested documentation from Mr. Kelly in order to audit the trust account. (ODC 1, pages 1-2). An Audit was done and per ODC 1, page 1, the following documents were reviewed:

- Portions of Respondent's Trust Account and Operating Account maintained by Respondent at Citizens National Bank were reviewed;
- Copies of deposited items for a specific period to Respondents Operating Account were reviewed;
- A Trust Account Transaction List for specific periods was examined, IOLTA Reconciliations for specific periods were reviewed;
- Respondent's correspondence and documentation provided to the ODC were reviewed;
- and correspondence and documentation provided by Healthcare were reviewed.

The result of the review of these documents was the **AUDIT REPORT** dated December 12, 2018, performed by Angelina Marcellino, CIA Forensic Auditor, Louisiana Disciplinary Board, Office of Disciplinary Counsel, which is ODC 1.

ODC 1 does show 54 specific Respondent clients that were treated by Healthcare and that Healthcare maintained it was not paid by the Respondent in the amounts of \$74,040.00 set forth in the Healthcare complaint. Although ODC 1 does not clearly show the unpaid amount due to Healthcare as \$74,040.00, it does show that on 23 of Respondent's clients the total sums shown as withheld from those clients' settlements to be paid to Healthcare to be \$32,698.00, but none of those sums have been received by Healthcare. This clearly indicates that Respondent did collect on behalf of his clients sufficient sums to pay Healthcare sums due for treatment of those clients, and shows in settlement documents that those sums were withheld from settlement proceeds to pay Healthcare, but that Healthcare was NOT PAID by Respondent. The Audit Report also indicates that for the specific periods covered Healthcare was not paid \$38,873.00 for treatment of 30 of Respondent's clients. The Report indicates that for the specific periods covered that there were no supporting Respondent documents to show trust account activity on those clients, no settlement amounts received, and no Disbursement Statements. This Audit Report indicates only that for those sums Healthcare maintains it is owed on those 30 Respondent clients that there is no documentation showing that Respondent received sums on those clients during those specific periods sufficient to pay any such sums to Healthcare. (ODC 1, pages 3-4).

The December 12, 2018, Audit Report has a major conclusion contained in **V. CONCLUSION AND OPINION**, which in part reads:

The trust account xxxx5326 balance at the end of the audit period is \$87,187.41. Review of the information provided reflects approximately \$320,000.00 (detailed in attached Exhibit Audit -3 and Audit Report detail) in unpaid obligations to clients and third parties which are associated with deposits that should have been made to the trust account during

the audit period. The trust account xxxx5326 balance as of October 31, 2016 is over \$230,000.00 short to honor the obligations identified. Furthermore, the lack of documentation provided to the ODC hindered identification of potential additional client or third-party obligations and the claim from Healthcare Express identifies \$46,778.80 is due in addition to what was identified with the information provided by Mr. Kelly. (ODC 1, page 130 and Exhibits attached thereto).

This Conclusion portion of the Audit Report indicates that the Respondent's actions have harmed not only Healthcare and the Respondent clients identified in said report, but countless other Respondent clients and other third parties.

COUNT I—RULES VIOLATED

Pursuant to the undenied facts plead in Formal Complaint, Count I, and Respondent's claim that any conversion resulted from Respondent's asserted inability to supervise subordinate lawyers and staff, the Respondent clearly and convincingly violated Rules of Professional Conduct, Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers (a), (b) and (c), and Rule 5.3. Responsibilities Regarding Nonlawyer Assistance (a), (b) and (c).

The third party, Healthcare Express treated numerous clients of Respondent and Count I clearly and convincingly indicates that the charges for treatment by Healthcare of 54 named clients of Respondents were not paid in the total amount of \$74,040.00. ODC 1, the Audit Report, indicates that settlements were obtained by Respondent for 23 of those clients and sums were withheld from those settlement proceeds to pay Healthcare the sum of \$32,698.00, but Healthcare WAS NOT paid any of those withheld sums. This withholding of client settlement proceeds to pay Healthcare and then not paying Healthcare those sums is clearly and convincingly a conversion which damaged the 23 clients by leaving unpaid provided medical service charges that they may ultimately be liable for, and clearly damaged Healthcare the \$32,698.00 for services rendered and not paid for. The amount set forth in **COUNTS I** as withheld and not paid to Healthcare is 74,040.00, and that factual sum is deemed admitted and

proven by clear and convincing evidence pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3); Healthcare was, therefore, damaged by Respondent's conversion in the amount of \$74,040.00. This conversion and the Audit Report (ODC 1) stating that the Trust account is underfunded by \$230,000.00 necessary to pay the identified obligations is a clear and convincing violation of Rule of Professional Conduct Rule 1.15. Safekeeping Property, (a), (d) and (f). The most egregious being (d) which states in part:

“Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”

COUNT II—FINDINGS OF FACT

Germaine Montgomery, one of Respondent's clients, filed a complaint with the ODC on September 10, 2018. Ms. Montgomery hired the Respondent in 2017 to represent her on a personal injury claim. Subsequent to his retention by Ms. Montgomery the Respondent refused to communicate with her about the status of her claim. Ms. Montgomery has expressed concerns about the current status of her claim because the case is now beyond the one-year anniversary date of the accident and may have prescribed without action having been taken.

Respondent has failed to respond to the complaint despite being served with same by certified mail at his primary bar registration address. (See Formal Charges, **COUNT II**).

COUNT II—RULES VIOLATED

Pursuant to the undenied and clearly and convincingly proven facts plead in Formal Complaint, Count II, by Respondent's acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 8.1 (c) by failing to cooperate with disciplinary authority; Rule 8.4(a) by violating the Rules of Professional Conduct and Rule 8.4(c) for conduct involving dishonesty, deceit, fraud or misrepresentation.

COUNT III—FINDINGS OF FACT

Bobby R. Marshall, one of Respondent's clients, filed a complaint with the ODC on October 20, 2018. Mr. Marshall hired the Respondent to represent him in recovering damages he suffered in a traffic accident that occurred in 2015 in which he sustained personal injuries. (Formal Charges, **Count III**). GEICO, the liability insurer, tendered settlement proceeds on or about September 15, 2015. (ODC 1, Exhibit Audit-3, page 1). Respondent disbursed proceeds from the settlement proceeds on December 2, 2015, and withheld from the proceeds the sum of \$5,223.68 to pay Willis-Knighton Hospital, and withheld from the proceeds the sum of \$398.25 to pay a separate unpaid liability due to a second party identified as William Norwood. Respondent provided Mr. Marshall with a copy of a check payable to Willis Knighton Hospital (unnegotiated), thereby representing that the provider had been paid. (Formal Charges, **Count III**). Willis Knighton Hospital and William Norwood were not paid by the Respondent (see ODC 1, Exhibit Audit-3, page 1). Willis-Knighton Hospital turned the claim over to the credit bureau for collection of the indebtedness from Mr. Marshall. (Formal Charges, **Count III**).

Respondent failed to respond to the complaint of Bobby R. Marshall despite being served with same by certified mail at his primary bar registration address. (Formal Charges, **Count III**).

COUNT III—RULES VIOLATED

Pursuant to the undenied and clearly and convincingly proven facts plead in Formal Complaint, Count III, by Respondent's acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 1.15. Safekeeping Property (a), (d) and (f). The most egregious being (d) which states in part:

“Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”

by converting and failing to pay funds owed to third parties, including a third party medical provider; Rule 8.1. Admission and Disciplinary Matters (c), by failing to cooperate with disciplinary authority; Rule 8.4. Misconduct (a), by violating or attempting to violate the Rules of Professional Conduct; and Rule 8.4 Misconduct (c), for conduct involving dishonesty, deceit, fraud or misrepresentation that payment was made to third party.

COUNT IV—FINDINGS OF FACT

On October 29, 2018, a complaint was filed with the ODC by Shreveport Doctors Rehabilitation Center (Medical Provider). The complaint was filed by the Medical Provider representative, Daniel Wilson. Respondent's client, Essie Parker was treated by the Medical Provider. Respondent issued to Medical Provider a letter of guarantee promising to withhold payment of expenses from settlements obtained for personal injury clients. Following treatment by Medical Provider Essie Parker was discharged from care and she subsequently informed Medical Provider that her case had settled and that disbursements were made in January 2018. Essie Parker furnished to Medical Provider a copy of an (unnegotiated) check shown drawn on Respondent's Trust Account and made payable to "Shreveport Doctors Rehab" for \$1,909.60, dated September 29, 2017. The Medical Provider never received the original of the check, the copy of which Essie Parker showed it, and that obligation WAS NOT PAID by Respondent and the Medical Provider never received payment. (Formal Charges, **Count IV**).

A copy of the complaint was sent by certified mail to Respondent's primary bar registration address but was returned as "unclaimed." ODC investigator effected service of the complaint by hand delivery to Respondent at his residence (an address not registered with the LSBA). The Respondent has failed to respond to the complaint. (Formal Charges, **Count IV**).

COUNT IV—RULES VIOLATED

Pursuant to the undenied and clearly and convincingly proven facts plead in Formal Complaint, **Count IV**, by Respondent's acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 1.15. Safekeeping Property (a), (d) and (f). The most egregious being (d) which states in part:

“Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”

by converting and failing to pay funds owed to third parties, including a third party medical provider; Rule 8.1. Admission and Disciplinary Matters (c), by failing to cooperate with disciplinary authority; Rule 8.4. Misconduct (a), by violating or attempting to violate the Rules of Professional Conduct; and Rule 8.4 Misconduct (c), for conduct involving dishonesty, deceit, fraud or misrepresentation that payment was made to third party.

COUNT V—FINDINGS OF FACT

On August 10, 2017, a complaint was filed by Yolanda Johnson Head. Ms. Head hired the Respondent following a car accident in which she sustained injuries. In April of 2018 the liability insurer, Claims Direct Access by Prime Insurance Co., tendered settlement proceeds. The Respondent disbursed the settlement proceeds on September 12, 2018. Eastgate Chiropractic, a medical provider for Ms. Head, voluntarily reduced its bill from \$6,271.00 to \$4,500.00. At disbursement of proceeds the Respondent provided Ms. Head with a copy of a check (unnegotiated) in the amount of \$4,500.00 made payable to Eastgate Chiropractic. Respondent failed to remit the original of such check to the medical provider, and the medical provider was not paid. (Formal Charges, **Count V**)

On December 11, 2018, Eastgate Chiropractic made a demand for payment against Ms. Head for the \$6,271.00 sum for her medical services. Thereafter Ms. Head attempted to contact the Respondent regarding these matters. When Ms. Head received no response from the Respondent she filed the instant complaint with the ODC. Respondent did not respond to the complaint despite being served with same by certified mail at his primary bar registration address. (Formal Charges, **Count V**).

COUNT V—RULES VIOLATED

Pursuant to the undenied and clearly and convincingly proven facts plead in Formal Complaint, **Count V**, by Respondent's acts and omissions, respondent has knowingly and intentionally violated Rule of Professional Conduct Rule 1.15. Safekeeping Property (a), (d) and (f). The most egregious being (d) which states in part:

“Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”

by converting and failing to pay funds owed to third parties, including a third party medical provider; Rule 8.1. Admission and Disciplinary Matters (c), by failing to cooperate with disciplinary authority; Rule 8.4. Misconduct (a), by violating or attempting to violate the Rules of Professional Conduct; and Rule 8.4 Misconduct (c), for conduct involving dishonesty, deceit, fraud or misrepresentation that payment was made to third party.

SANCTIONS

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

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

**COUNT I—HEALTHCARE EXPRESS
COUNT III---BOBBY R. MARSHALL
COUNT IV---SHREVEPORT DOCTORS REHABILITATION CENTER
(CLIENT ESSIE PARKER)
COUNT V---YOLANDA JOHNSON HEAD**

Rule XIX, Section 10 (C) Factors

- (1) The Findings of Fact and Rules violated set forth above clearly indicate that Respondent violated duties owed to his clients and the third party provider of services (Healthcare, Willis Knighton Hospital, Shreveport Doctors Rehabilitation Center and Eastgate Chiropractic). The Public, the Legal System and the Legal Profession were, also, clearly and convincingly damaged by the violation of these Rules. The Public has a right to believe that those lawyers that represent them and pursue claims on their behalf will properly manage and disburse any proceeds collected for those claims, and when that does not occur (as clearly happened here) the Legal System and the Legal Profession are clearly and convincingly damaged by the erosion of a trust that without such System and Profession cannot properly function.
- (2) Here the formal charges recited and the deemed-admitted order confirms that the respondent acted both knowingly and intentionally with respect to the charged violations of the rules of Professional Conduct. A review of ODC 1 clearly and convincingly indicates that the magnitude of mismanagement of a significant number of clients' funds and the trust account caused the trust account to be

inadequately funded to honor obligations against same in the amount of \$230,000.00 as of October 31, 2016. This was not caused by negligent acts, but was clearly and convincingly caused by the intentional and knowing acts of the Respondent

- (3) ODC 1 and Count I, III, IV and V clearly and convincingly prove that Respondent's clients treated by Healthcare were injured by at least \$32,698.00, Healthcare was injured in the amount of \$74,020.00, Bobby R. Marshall and Willis Knighton Hospital were injured in the amount of \$5,223.68, Shreveport Doctors Rehabilitation Center and Essie Parker were injured in the amount of \$1,909.60, and Yolanda Johnson Head and Eastgate Chiropractic were injured in the amount of \$6,271.00. Additionally, Bobby R. Marshall, and Yolanda Johnson Head were injured by the medical providers pursuing collection efforts against them for medical services provided and unpaid by the Respondent. Those clients and numerous other clients and third parties were injured to the extent of at least \$230,000.00 by the trust account being underfunded to pay such valid claims against same.
- (4) Section 9.31 Aggravating factors of the ABA Standards which are applicable here include: (b) dishonest and selfish motive, (c) pattern of misconduct, (d) multiple offenses, (e) bad faith obstructions of the disciplinary process (respondent refused to cooperate with disciplinary authorities as reflected in the formal charges deemed admitted), (g) refusal to acknowledge wrongful nature of misconduct, (h) vulnerability of victims (several complainants were individual clients who were deprived of funds to pay medical providers as well as client funds), (i) substantial

experience in the practice of law (admitted April 8, 1993. See ODC 2), (j) indifference to making restitution (formal charges reflect respondent's failure to make restitution).

Section 9.32 mitigating factors of the ABA Standards which are present: The only mitigating factor applicable to this case is 9.32(a) (absence of a prior disciplinary record).

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

ABA Standards, Appendix 1 for violation of Rules 5.1 and 5.3 refers you to Standard 7.0 *Violations of Duties Owed as a Professional* and applying the Rule XIX, Section 10 (C) Factors set forth above would yield the following result:

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

ABA Standards, Appendix 1 for violation of Rule 1.15 refers you to Standard 4.1 *Failure to Preserve Client's Property* and applying the Rule XIX, Section 10 (C) Factors set forth above would yield the following result:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

ABA Standards, Appendix 1 for violation of Rule 8.1 (c) refers you to Standards 5.1 *Failure to Maintain Personal Integrity* and 7.0 *Violations of Duties Owed as a Professional* and applying the Rule XIX, Section 10 (C) Factors set forth above would yield the following results:

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of Justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or

the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(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.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

ABA Standards, Appendix 1 for violation of Rule 8.4 (a) refers you to Standards 4.0 *Violations of Duties Owed to Clients* , 5.0 *Violations of Duties Owed to Public* , 6.0 *Violations of Duties Owed to Legal System* and 7.0 *Violations of Duties Owed as a Professional* and applying the Rule XIX, Section 10 (C) Factors set forth above would yield the following results:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of Justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(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.

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

ABA Standards, Appendix 1 for violation of Rule 8.4 (c) refers you to Standards 4.6 *Lack of Candor* and 5.1 *Failure to Maintain Personal Integrity* and applying the Rule XIX, Section 10 (C) Factors set forth above would yield the following results:

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of Justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (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.

LOUISIANA SUPREME COURT RULE XIX, APPENDIX D

states the following regarding Permanent Disbarment:

APPENDIX D. GUIDELINES DEPICTING CONDUCT WHICH MIGHT WARRANT PERMANENT DISBARMENT, SUGGESTED BY THE COMMITTEE TO STUDY PERMANENT DISBARMENT

The following guidelines illustrate the types of conduct which might warrant permanent disbarment. These guidelines are not intended to bind the Supreme Court of Louisiana in its decision making. It is hoped that these guidelines provide useful information to the public and to lawyers concerning the types of conduct the Court might consider to be worthy of permanent disbarment.

GUIDELINE 1. Repeated or multiple instances of intentional conversion of client funds with substantial harm.

LOUISIANA JURISPRUDENCE ON DISBARMENT AND PERMANENT DISBARMENT

The seminal Louisiana Supreme Court case governing conversion of client funds is the case of **LSBA v. Hinrichs**, 486 So.2d 116 (La., 1986) which indicates that "In a typical case for

disbarment for violation of DR 9-102 (conversion), one or more of the following elements are usually present:” (1) the lawyer acts in bad faith and intends a result inconsistent with his client’s interest; (2) the lawyer commits forgery or other fraudulent acts in connection with the violation; (3) the magnitude or the duration of the deprivation is extensive; (4) the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; and (5) the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings. In the *Hinrichs* case not all of the elements for disbarment were present, and the Respondent was suspended from the practice of law for a period of two (2) years. The amount of the single mismanaged and converted settlement proceeds was \$13,185.00, which the Respondent did refund (part before complaint filed and the balance after complaint was filed and legal action) together with an additional \$3,500.00. The ruling determined that: the Respondent was grossly negligent in his treatment of his client’s funds; that no other fraudulent acts were committed in connection with the conversion; that the Respondent benefitted from the conversion by the payment of his personal debts from the funds of his client in his trust account; and that the client was seriously injured in his day-to-day living and in his dealings with creditors.

The *Hinrichs* case, although decided 33 years ago is still the standard and was cited most recently in the case of **In Re: Michael T. Bell**, No. 2019-B-1345, Supreme Court of Louisiana (November 5, 2019). Utilizing the *Hinrichs* disbarment elements the Supreme Court stated in *Bell* that the Respondent’s conduct met virtually all of the criteria for disbarment. The Respondent was disbarred for violation of a number of Rules of Professional Conduct, including, but not limited to violation of Rule 1.15, Rule 8.1(c), Rule 8.4 (a) and (c). The *Bell* case involved only one client and the settlement proceeds of that client mismanaged and converted by

the Respondent amounted to \$16,000.00. The Respondent did respond to the ODC complaint, but did not respond to the Formal Charges and the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, Section 11(E)(3). In *Bell* the Court ruled that the Respondent violated duties owed to his client, the public, the legal system, and the legal profession, causing actual harm. Respondent's conduct was both knowing and intentional. Considering the ABA's *Standards for Imposing Lawyer Sanctions*, the baseline sanction in the matter was disbarment. The Supreme Court adopted the Hearing Committee's recommendation for disbarment and the Respondent was disbarred.

In the case before this Hearing Committee all five of the *Hinrichs* elements or factors are present. The Respondents acts were knowingly and intentionally committed and in bad faith. In particular, the formal charges reflect that the respondent tendered to clients unnegotiated checks payable to the medical providers, thereby asserting that the checks had been negotiated and the providers been paid; such conduct being clearly fraudulent. (see Counts III, IV and V). According to ODC 1 this conduct commenced prior to October 31, 2016, and we have no termination date, indicating an extended duration of the conversions. At a minimum two (2) known clients and no telling how many unknown clients have been damaged and/or inconvenienced by being asked to pay the outstanding balances to health care providers. Respondent has not answered the Formal Charges and has made NO RESTITUTION to clients or third party health care providers.

All of the Louisiana Supreme Court Rule XIX, Section 10(C) factors are present and substantial: (1) The Respondent violated numerous duties owed to numerous clients, third parties, the public, the legal system and to the professions. (2) The acts of Respondent

constituting the Rule violations were knowingly and intentionally committed. (3) The actual damage or injury caused by the Respondent's violation of the Rules was substantial to clients, third parties, the public, the legal system and the profession. (4) There are numerous aggravating factors and only one mitigating factor (number of years practiced with no prior complaints or formal charges). Because of the extend of the above set forth factors the only real sanction that will protect the public, the legal system and the profession from future similar Rule violations by the Respondent is permanent disbarment.

The Hearing Committee submits that the cases cited by the Office of Disciplinary Counsel in its **ODC'S DEEMED-ADMITTED SUBMISSIONS IN SUPPORT OF SANCTION ON DEEMED-ADMITTED ORDER**, filed on October 29, 2019, in support of permanent disbarment are clearly applicable to this case. (*In re: Glen Edward Smith*, 2006-1709 (La. 11/17/06) 942 So.2d 34 and *In re: Robert Hodge*, 2008-2296 (La. 2/4/09) 999 So.2d 1131). A more current case where the sanction of permanent disbarment was imposed and very similar to this case is *In re John D. Conry*, No. 2014-B-1762, (La. 01/28/2015) 158 So.3d 786. In *Conry* the Respondent was formally charged with 14 separate counts described as:

- 3 Counts involving Overdrawn Trust Account, one requiring ODC Audit
- 2 Counts involving Failure to Refund Unearned Fees
- 1 Count involving Failure to Represent Client
- 1 Count Settling Litigation Without Client Consent
- 1 Count Failure to Pay Medical Provider After Settlement
- 6 Counts Failure to Disburse Settlement Proceeds to Client or Improper Disbursements

The Respondent answered the Formal Charges and stipulated violation of Rules on ten (10) of the Formal Counts. The formal charges were consolidated and then proceeded to a formal hearing. The Respondent participated in the formal hearing first by telephone and later appeared in person. The ODC introduced documentary evidence showing Six (6) Clients who did not receive settlement proceeds or did not receive their share of settlement proceeds were paid by the Louisiana State Bar Association's Client Assistance Fund sums totaling \$77,701.73.

The Supreme Court in its ruling stated the following:

"The record reflects that respondent, among other things, mismanaged his client trust account. This resulted in his failure to remit funds to clients and third parties and in his conversion of client funds. The ODC's auditor determined that, between July 2009 and March 2010 alone, respondent converted approximately \$188,000.00 of client funds to his own use. The record reflects that respondent also failed to pay approximately \$59,500.00 owed to third parties. Respondent's failure to appropriately manage his trust account is a clear violation of the Rules of Professional Conduct."

"Respondent knowingly and intentionally violated duties owed to his clients, the public, and the legal profession. His conduct caused significant actual harm to his clients and third parties. The applicable baseline sanction in this matter is disbarment.

The aggravating factors present are a dishonest or selfish motive, a pattern of misconduct, and multiple offenses. The mitigating factors present are the absence of a prior disciplinary record, personal or emotional problems, and inexperience in the practice of law.

In its report, the disciplinary board concluded that respondent's offenses are so egregious that he should be permanently prohibited from applying for readmission to the bar. We agree."

SANCTION IN GERMAINE MONTGOMERY COUNT II

Rule XIX, Section 10 (C) Factors

- (1) The Findings of Fact and Rules violated set forth above clearly indicate that Respondent violated duties owed to his client. The Public, the Legal System and

the Legal Profession were, also, clearly and convincingly damaged by the violation of these Rules. The Public has a right to believe that those lawyers that represent them will communicate with them and pursue and not abandon their claims. The Legal System and the Legal Profession are clearly and convincingly damaged by the erosion of a trust that without such System and Profession cannot properly function.

- (2) Here the formal charges recited and the deemed-admitted order confirms that the respondent acted both knowingly and intentionally with respect to the charged violations of the rules of Professional Conduct.
- (3) Count II clearly and convincingly proves that Germaine Montgomery was injured by the loss of a potential claim by Respondent's inactions. We do not know what the value of that claim is, but we do know that whatever value it may have had was clearly lost by Respondent's inactions.
- (4) Section 9.31 Aggravating factors of the ABA Standards which are applicable here include: (b) dishonest and selfish motive, (c) pattern of misconduct, (d) multiple offenses, (e) bad faith obstructions of the disciplinary process (respondent refused to cooperate with disciplinary authorities as reflected in the formal charges deemed admitted), (g) refusal to acknowledge wrongful nature of misconduct, (h) vulnerability of victims (several complainants were individual clients who were deprived of funds to pay medical providers as well as client funds), (i) substantial experience in the practice of law (admitted April 8, 1993. See ODC 2), (j) indifference to making restitution (formal charges reflect respondent's failure to make restitution).

Section 9.32 mitigating factors of the ABA Standards which are present: The only mitigating factor applicable to this case is 9.32(a) (absence of a prior disciplinary record).

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

ABA Standards, Appendix 1 for violation of Rule 8.1 (c) refers you to Standards 5.1 *Failure to Maintain Personal Integrity* and 7.0 *Violations of Duties Owed as a Professional* and applying the Rule XIX, Section 10 (C) Factors set forth above would yield the following results:

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of Justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (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.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

ABA Standards, Appendix 1 for violation of Rule 8.4 (a) refers you to Standards 4.0 *Violations of Duties Owed to Clients* , 5.0 *Violations of Duties Owed to Public* , 6.0 *Violations of Duties Owed to Legal System* and 7.0 *Violations of Duties Owed as a Professional*, Rule 1.4 *Communication* refers you to Standard 4.4 *Lack of Diligence*, and applying the Rule XIX, Section 10 (C) Factors set forth above would yield the following results:

4.4 Lack of Diligence

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

4.41 Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

7.0 Violations of Duties Owed As A Professional

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

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.

ABA Standards, Appendix 1 for violation of Rule 8.1 (c) refers you to Standards 5.1

Failure to Maintain Personal Integrity and 7.0 *Violations of Duties Owed as a Professional* and

applying the Rule XIX, Section 10 (C) Factors set forth above would yield the following results:

5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, upon application Of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty fraud, deceit, or misrepresentation.

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.

7.0 Violations of Duties Owed As A Professional

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or

misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

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.

LOUISIANA JURISPRUDENCE REGARDING PROPER SANCTION

Count II-Germaine Montgomery is one of five counts contained within the Formal Charges filed against the Respondent. **Count II** is arguably the least severe of the Formal Charge Counts against the Respondent. When determining the recommended sanctions to be imposed against the Respondent the Hearing Committee is of the opinion that **Count II** should not be considered separately for the determination of the recommended sanctions, but should only be added to the offenses set forth in **Counts I, III, IV and V** and considered as another offense for Section 9.31 Aggravating factors of the ABA Standards. The Louisiana Jurisprudence cited under the Sanction Section above for **Counts I, III, IV and V** are applicable to **Count II**.

CONCLUSION ON COUNTS I, II, III, IV AND V

It is the unanimous recommendation of Louisiana Attorney Disciplinary Board, Hearing Committee #17 that because the offenses of the Respondent, Kirby Dale Kelly, are so numerous and so egregious that he should be permanently disbarred, and that he should be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, Section 10.1.

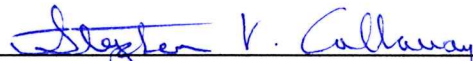
This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Stephen V. Callaway, Hearing Committee #17 Chair, to sign on their behalf.

Shreveport, Louisiana, this 3 day of December, 2019.

**Louisiana Attorney Disciplinary Board
Hearing Committee #17**

**Stephen V. Callaway, Committee Chair
Jeffrey L. Little, Lawyer Member
Albert R. Dennis III, Public Member**

BY:


**Stephen V. Callaway, Committee Chair
For the Committee**

APPENDIX

Rule 1.15. Safekeeping Property

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

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

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

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

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

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

(g)...

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers

- (a) A partner in a law firm, 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 all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with 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 other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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 8.1. Bar Admission and Disciplinary Matters

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

...

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

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

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

...

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

...