ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: LANE NORWOOD BENNETT

DOCKET NUMBER: 18-DB-088

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

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INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Lane Norwood Bennett ("Respondent"), Louisiana Bar Roll Number 25982.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.7(a), 1.8(a), 8.4(a), 8.4(b), and 8.4(c).[2]

PROCEDURAL HISTORY

The formal charges were filed on December 4, 2018. Respondent filed an answer to the charges on January 22, 2019, through his then-counsel, Carey R. Holliday. The hearing of this matter was held on April 25 and June 26, 2019 before Hearing Committee No. 40 ("the Committee").[3] Deputy Disciplinary Counsel Karen Hayes Green appeared on behalf of ODC.[4] Respondent appeared with counsel, Mr. Holliday. On March 4, 2020, the Committee issued its report in which it recommended that Respondent be disbarred. On March 20, 2020, Respondent filed an objection to the report and recommendation. Accordingly, this matter was scheduled for oral argument before a Panel of the Disciplinary Board on August 27, 2020. However, on July 9, 2020, Respondent filed a Motion for Summary Remand. The motion was based, in part, on errors

[1] Respondent was admitted to the practice of law in Louisiana on April 23, 1999. Respondent is currently eligible to practice law in Louisiana.
[2] See the attached Appendix for the text of these Rules.
[3] Members of the Committee included Myron A. Walker, Jr. (Chair), Brian L. Coody (Lawyer Member), and Vance H. Normand, Jr. (Public Member).
[4] Ms. Green left the employ of ODC in December of 2019 to return to private practice. Deputy Disciplinary Counsel Gregory L. Tweed now represents ODC in this matter.

that existed in the hearing transcripts. On July 14, 2020, Respondent filed an unopposed motion to continue oral argument before the Board. The Board granted the continuance on July 23, 2020, and also allowed Dane S. Ciolino to enroll as co-counsel for Respondent. On July 27, 2020, the Board issued the corrected transcripts to the parties.

On August 11, 2020, the Board granted in part and denied in part Respondent's Motion for Summary Remand. The matter was remanded to the Committee for: 1) reconsideration based upon the corrected hearing transcripts; and 2) ruling on ODC's and Respondent's motions to strike, filed on September 3 and 4, 2019, respectively. On August 27, 2020, Respondent filed a Motion to Set Scheduling Order, requesting deadlines for briefs and argument before the committee, which was denied by the Committee chair. The Committee's amended report and ruling on the motions to strike were issued on September 4, 2020.

In issuing its amended report, the Committee stated that it reviewed its original report, the errata sheets filed by the parties, the corrected transcripts, and the motions to strike filed by the parties. In so doing, the Committee found no new information or changed circumstances which would add to or detract from its original findings and recommendation in this matter. In considering the errata and the corrections caused thereby, the Committee found nothing of substance, but much in the way of spelling errors, none of which in any way confused the Committee on original consideration, or caused a misunderstanding of what was being conveyed by the testimony implicated in the errata sheets. The Committee also noted that "[w]e find nothing which would cause us to change anything we have done in deciding this case." Amended Hrg. Comm. Rpt., p. 2. The Committee found that Respondent violated the Rules as charged, along with an additional 1.7(b) violation as to Count II, and recommended that he be disbarred.[5]

[5] The Committee noted the only variations between the amended report and the Committee's original report issued on March 4, 2020, other than the "Procedural History" section, were the page number citations to the transcripts. The

Mr. Holliday filed a motion to withdraw as counsel on September 24, 2020. This motion was granted by Laura B. Hennen, then-chair of Panel "B," on September 28, 2020. ODC's Board Brief was filed on October 12, 2020. The Respondent's Board Brief was filed the same date. Oral argument of this matter via Zoom was held on November 12, 2020 before Panel "B."[6] Mr. Tweed appeared on behalf of ODC. Mr. Ciolino appeared on behalf of Respondent, who was also present.

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I – ODC File No. 0031570

> The ODC received a complaint from James M. White on behalf of his client Chadwick T. Walters. The matter was assigned investigative file no. 0031570.
>
> Mr. Walters and the Respondent are first cousins. Mr. Walters came into an inheritance of approximately $100,000. Knowing this, Respondent approached Mr. Walters about investing the money with him. In April of 2002, Mr. Walters invested the money with the Respondent by way of a debenture, in the amount of $80,000.00.
>
> In 2006, Mr. Walters purchased immovable property bearing the municipal address of 402 Mississippi Avenue, Bogalusa, Louisiana 70427, in Washington Parish (the "Property"). Mr. Walters was represented by Respondent and Respondent's business entities, Title2Land and Bennett Burns, L.L.C. (then known as the Bennett Law Firm, L.L.C.), of which Respondent is a member. Respondent conducted the closing of the act of sale. After Mr. Walters purchased the Property, he maintained a continuous attorney-client relationship with Respondent and the entities Title2Land and Bennett Burns LLC. For example, Respondent would, from time to time, provide legal consultation and services concerning real estate.
>
> Between March and April of 2009, Mr. Walters told Respondent that he received an offer from a third party to buy the Property; however, the offer was not high enough to allow Mr. Walters to pay in full the principal balances of the two mortgages encumbering the property. Mr. Walters needed to raise additional funds to pay the balances due at closing. He asked Respondent to repay a portion of the principal balance due under the debenture, dated April 3, 2002, executed by

corrected transcripts changed some of the page numbers of the transcript citations in the March 4th report. The page number citations in the amended report were corrected, where necessary, to match the corrected transcripts issued on July 27, 2020.

[6] Members of Panel "B" included Ms. Hennen (Chair), Linda G. Bizzarro (Lawyer Member), and Susan P. DesOrmeaux (Public Member).

RealVest (the "debenture"). At all relevant times, Respondent was the managing member of RealVest and the guarantor of the debenture. At that time, a return on the value of the debenture would have allowed Mr. Walters to proceed with the sale without having to secure additional funds to clear the two mortgages encumbering the property. However, Respondent told Mr. Walters that he could not repay. Respondent then dissuaded Mr. Walters from selling the property, proposing to instead purchase the property from Mr. Walters. Thereafter, Respondent failed to purchase the property because he did not have the funds to do so. Respondent then advised Mr. Walters that while he was either raising the funds or secured financing to purchase the Property, Mr. Walters should transfer the Property to a limited liability company, rent it out, and allow Respondent to manage the Property. Respondent advised Mr. Walters that transferring the Property into to a LLC would shield him from personal liability from any claims or lawsuits that might be brought by tenants or other third parties. Based on Respondent's legal advice, Mr. Walters agreed to transfer the Property to a limited liability company bearing his name, Chadwick Travis Walters, LLC ("Walters LLC"), and to allow Respondent to manage the Property until Respondent was able to purchase it at a later time. Respondent prepared and filed all the documents to organize and establish Walters LLC, and also prepared all the necessary legal documents to transfer the immovable property out of Mr. Walters name and into the name of Walters LLC. Respondent further advised Mr. Walters that, based on his design of the transaction, Mr. Walters would remain responsible for the payment of the two mortgages encumbering the Property, further assuring Mr. Walters that the payments would be made from rent proceeds.

On April 13, 2009, Mr. Walters executed a Cash Sale Subject to Mortgage prepared by the Respondent, and by which Mr. Walters unknowingly conveyed all of his right title and interest in the Property to Respondent, the sole member/manager of Chadwick Travis Walters, LLC. Under the terms of the Cash Sale Subject to Mortgage, the mortgages encumbering the Property were not satisfied and Mr. Walters remained personally liable for the repayment. Based on Respondent's representation and advice, Mr. Walters signed the Cash Sale Subject to Mortgage in the belief that he (not the Respondent) was the sole owner of Walters LLC. At Respondent's suggestion and urging, Mr. Walters agreed to allow Respondent to be the agent and manager of Walters LLC. Respondent's responsibilities were to include the handling of the company's day-to-day affairs, such as collecting rents, maintaining the Property, and paying the mortgage from the rent proceeds.

According to the records of the Louisiana Secretary of State, the Articles of Organization and Initial Report of Walters LLC were filed on April 8, 2009, only five (5) days before Mr. Walters signed the Cash Sale Subject to Mortgage on April 13, 2009. The Articles of Organization and Initial Report of Chadwick Travis Walters, LLC reveal that Louisiana Real Estate Portfolio, LLC (LREP), not Mr. Walters, is the sole member of Chadwick Travis Walters, LLC, and that Respondent is the manager of Chadwick Travis Walters, LLC.

LREP is a Louisiana limited liability company. LREP was organized and filed its initial report on April 8, 2009, the same day that Chadwick Travis Walters, LLC was organized. LREP shares the same address as Chadwick Travis Walters, LLC; Respondent; Title2Land; and Bennett Burns LLC. Respondent, and/or his firms Title2Land and/or Bennett Burns LLC, filed LREP's Articles of Organization and the Initial Report with the Louisiana Secretary of State. Respondent is LREP's registered agent. The members of LREP are Central Portfolio, LLC (CPLLC) and Bogalusa Portfolio, LLC (BPLLC).

BPLLC is a Louisiana limited liability company. The Articles of Organization and Initial Report of BPLLC were filed on April 8, 2009, the same day that Chadwick Travis Walters, LLC and LREP were organized. Respondent is the managing member of BPLLC. Respondent is also BPLLC's registered agent. BPLLC shares the same address as Chadwick Travis Walters, LLC; Respondent; Title2Land; Bennett Burns LLC; and LREP.

CPLLC is a Louisiana limited liability company. The Articles of Organization and Initial Report of CPLLC were filed on April 8, 2009, the same day that Chadwick Travis Walters, LLC; LREP; and BPLLC were organized. Harry O. Mills, III, is the managing member of CPLLC and its registered agent. CPLLC shares the same address as Chadwick Travis Walters, LLC; Respondent; Title2Land; Bennett Burns LLC; LREP; and BPLLC.

During their discussions concerning the Property, Respondent convinced Mr. Walters to allow him to manage the Property and the affairs of Chadwick Travis Walters, LLC after the sale. Because Mr. Walters trusted Respondent, he authorized Respondent to negotiate and prepare leases with tenants and collect rents, and to oversee maintenance and repairs. Mr. Walters also authorized Respondent to make payments from the rent proceeds to cover maintenance and repairs, and to satisfy monthly obligations relating to the Property, such as the mortgage payments and related escrow payments for insurance and taxes. From time to time, Mr. Walters asked Respondent about the condition and maintenance of the Property, leases with tenants, and the collection and amount of rents. Mr. Walters specifically asked Respondent to provide him with copies of the leases; however, Respondent repeatedly failed or refused to provide Mr. Walters with the information. For years, Respondent collected rents and paid the mortgage and expenses. However, Respondent never accounted to Mr. Walters for any revenues or expenses. Further, Respondent began paying the mortgage payments late, causing Mr. Walters' lenders to contact Mr. Walters and demand payment.

Respondent often would pay the mortgage payments after Mr. Walters complained of the calls from the lenders, but on more than one occasion, Mr. Walters had to make the mortgage payment himself. Respondent's habit of making late payments caused Mr. Walters to incur late fees and charges imposed by his lenders. During 2013, Mr. Walters made repeated requests to Respondent for an

accounting of rents derived from, and expenses attributable to, the Property, including Respondent's payments of insurance, taxes and the mortgages affecting the Property. Respondent did not provide the accounting or information requested by Mr. Walters. In August 2013, Mr. Walters e-mailed Respondent concerning hazard insurance on the Property and a possible refinancing of the mortgages in order to reduce the interest rates and payments due. In his e-mail, Mr. Walters directly asked Respondent whether there would be any problem in refinancing because of the transfer of the Property to the limited liability company:

> Do you foresee any problems with qualifying for a refinance due to the way we currently have this set up? Didn't you [Respondent] put the house in an LLC to protect us from liability? How does that affect my refinance chances? Any problem you foresee?
> I would like to do this soon, as I think interest rates may start going up by year's end.

Respondent did not respond to Walters' e-mail.

Mr. Walters made further requests to Respondent for information and advice concerning the Property so that he could refinance it, but Respondent did not respond. Thereafter, Mr. Walters made repeated requests to Respondent for an accounting of rents derived from and expenses attributable to, the Property, including Respondent's payment of insurance and the mortgages affecting the Property. Had Respondent responded honestly and fully to Mr. Walters' questions, Mr. Walters would have discovered that he had no ownership interest in Chadwick Travis Walters, LLC. Respondent did not provide the accounting requested by Mr. Walters. Accordingly, in November 2013, Mr. Walters told Respondent that he wanted to "wind down" or otherwise terminate Respondent's management of the Property, remove the Property from Chadwick Travis Walters, LLC, and place the Property back in his own name, so that he could refinance or sell the Property.

In November 2013, Mr. Walters and Respondent met in Hammond, Louisiana. During the meeting, Respondent agreed to terminate his management of the Property. However, Respondent told Mr. Walters that the Property would have to be "resold" to Mr. Walters and that Mr. Walters would be responsible for paying any equity losses and Respondent's expenses. During the same meeting, Respondent advised Mr. Walters that the Property would be reconveyed only if Mr. Walters would agree to certain conditions, including Walters' forgiveness of all or substantially all of the balance owed by DealVest Properties on the debenture. Respondent is the sole member and registered agent of DealVest. The debenture became fully due and payable on April 2, 2014. DealVest and the Respondent, as guarantor, failed to pay the balance due on the Debenture owed to Mr. Walters. At that time, Mr. Walters did not understand Respondent's statement that the Property would have to be resold to him, and began to investigate Chadwick Travis Walters, LLC.

In December 2013, Mr. Walters discovered that Respondent had created several limited liability companies and he, Mr. Walters, had no ownership interest in Chadwick Travis Walters, LLC or in any of those companies. Thereafter, Mr. Walters called Respondent and discussed Chadwick Travis Walters, LLC, and the April 2009 sale of the Property. Mr. Walters requested that the Property be reconveyed to him. It was at that point when Respondent admitted to Mr. Walters that he was not a member of Chadwick Travis Walters, LLC, and Mr. Walters had no ownership interest in Chadwick Travis Walters, LLC. Respondent then proposed to transfer the membership interest in Chadwick Travis Walters, LLC with the conditioned [*sic*] that Mr. Walters forgive DealVest's indebtedness under the debenture and that Mr. Walters pay Respondent's undisclosed and alleged losses and expenses in connection with the Property.

Respondent warned Mr. Walters that it would be unwise to pursue legal action against him and the limited liability companies because the legal fees associated with rescinding the April 13, 2009 transfer would cost Mr. Walters "a fortune." At no relevant time did the Respondent advise Mr. Walters to obtain the opinion or advice of independent legal counsel concerning the Cash Sale Subject to Mortgage or with respect to Respondent's management agreement or Respondent's demand for forgiveness of the debenture.

Accordingly, Complainant filed a *Petition to Rescind Sale of Immovable Property, for Accounting and Damages, and for Collections of Sums Due on Promissory Note,* in the Parish of St. Tammany, on or around April 17, 2014. Within the civil litigation, Respondent continuously refused to respond to lawful demands of Discovery and purposely increased the cost of litigation and attorney fees.

Respondent has represented a client when there exists a concurrent conflict of interest, in violation of Rule 1.7(a); Respondent has entered into a business transaction with a client or knowingly acquired an ownership, possessory, security or other pecuniary interest adverse to a client in violation 1.8(a); Respondent has violated or attempted to violate the Rules of Professional Conduct, in violation of Rule 8.4(a); and Respondent has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4 (c).

COUNT II – ODC File No. 0035265

On or around November 28, 2016, the ODC received a complaint from Ashton Vidrine, individually, and out of concern for his elderly mother Glenda Vidrine. The matter was assigned investigative file no. 0035265.

VIDRINE INSURANCE COMPANY, LLC

Vidrine Insurance Agency, LLC, was registered with the Louisiana Secretary of State Office on December 17, 2007. The company had one member,

Complainant Ashton Vidrine. Complainant was attending graduate school and did not bother to renew his insurance license. In June of 2015, the Complainant's brother, Kyle Vidrine, in person, and the Respondent, via speaker phone, asked Complainant to sign over ownership of Vidrine Insurance Agency, LLC, to them. Respondent stated that he had a form that he could give to Kyle for the Complainant to sign. Complainant told his brother and the Respondent that he had to think it over. Instead of starting a new insurance company, Respondent wanted to purchase Vidrine Insurance Agency, LLC, because of its 2007 inception. An older and established business is more desirable to new insurance carriers and clients.

The day following that conversation, Kyle Vidrine called Complainant again about signing the document. Again, Complainant told his brother that he would have to think about it. After the passing of a couple of weeks, Kyle Vidrine asked a third time. At that time Complainant stated that he would take $500.00 for the company. The topic was discussed no further until February of 2016. Kyle told Complainant that he and Respondent were considering paying the $500.00 for Complainant's interest in Vidrine Insurance Company, LLC; however, before completing the transactions, they wanted to see the list of the insurance carriers that Complainant wrote polices through in the past so that they could contact them to ensure there was no outstanding liability. Kyle and Complainant met and reviewed his file. At that time, Complainant again stated that he wanted $500.00 for the company. Complainant heard nothing further from his brother or from the Respondent. In April of 2016, Complainant heard through family that Kyle had passed the casualty insurance exam.

Out of curiosity, on April 21, 2016, Complainant checked the Secretary of State Website to see whether Kyle had started an insurance company of his own. Instead, Complainant discovered that his company, Vidrine Insurance Company, was reactivated, listing Kyle as the Manager and Respondent as the Member and Registered Agent. Respondent had reinstated Complainant's company without his permission. Complainant never dissolved the Vidrine Insurance Agency, LLC, nor did he assign his membership interest to the Respondent or to Kyle.

Complainant filed a complaint with the Louisiana Department of Insurance and with the Louisiana Secretary of State. Thereafter, and again without any authority or permission from Complainant, Respondent and Kyle filed an affidavit to dissolve Vidrine Insurance Agency, LLC on April 28, 2016, the day after they created and registered a company called Vidrine Insurance LLC, on April 27, 2016.

Respondent filed false public records, regarding the Vidrine Insurance Agency, LLC, with the Louisiana Secretary of State, no fewer than two occasions. Respondent has violated or attempted to violate the Rules of Professional Conduct, in violation of Rule 8.4(a); Respondent has committed a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4 (b); and Respondent has engaged

in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c).

GLENDA VIDRINE

Respondent has also engaged in misconduct as it relates the Complainant's mother, Glenda Vidrine. Respondent executed and drafted a will for Ms. Glenda Vidrine.

On April 15, 2015, Respondent filed the incorporation documents for a company called Glenda Beth, LLC (GB). The manager listed for the company is Glenda Vidrine, and the Bennett Law Firm, LLC (BLF) is listed as the Registered Agent. Respondent is the sole member/manager and Registered Agent for BLF. The domicile address for the LLC belongs to the Respondent, 11851 Wentling Ave., Baton Rouge, 70816. Also, Respondent persuaded Glenda Vidrine to mortgage her home situated at 555 Claiborne RD, Baton Rouge, LA 70810, in the amount of $150,000. Respondent used this money as a line of credit and to make improvements to his law office and other properties owned by (shell company) Bogalusa Real Estate Portfolio, LLC (BREP). Glenda Vidrine was never given a copy of the mortgage note. Central Portfolio, LLC (CP) is the sole member and manager of BREP, and Respondent is the Registered Agent. BREP is a member of REALVEST, LLC (RV). Respondent is the sole manager/member of RV, and the Registered Agent.

On April 16, 2015, Respondent filed the incorporation documents for a company called Storage Industrial, LLC. There are two members/managers listed for the company, Glenda Beth, LLC and Bogalusa Real Estate Portfolio, LLC. Bennett Law Firm, LLC is listed as the Registered Agent. The domicile address for the LLC belongs to the Respondent, 11851 Wentling Ave., Baton Rouge, 70816. Complainant reports that Respondent has been delinquent on property taxes, and as result, his mother's property affected by the mortgage is in jeopardy. Respondent has taken advantage of Complainant's elderly mother, who lives on a fixed income and is of poor health.

Respondent has represented a client when there exists a concurrent conflict of interest, in violation of Rule 1.7(a); Respondent has entered into a business transaction with a client or knowingly acquired an ownership, possessory, security or other pecuniary interest adverse to a client in violation 1.8(a); Respondent has violated or attempted to violate the Rules of Professional Conduct, in violation of Rule 8.4(a); and Respondent has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c).

THE HEARING COMMITTEE'S REPORT

As noted above, the Committee issued its amended report on September 4, 2020. The Committee initially made the following statements about the evidence presented at the hearing and gave a factual summary about the case. The Committee reported as follows:

EVIDENCE

The Committee heard the testimony regarding Count I on April 25, 2019. Those testifying as to Count I were Respondent, Harry O. Mills, Chadwick T. Walters, Hillary Walters, and James M. White. The Committee heard the testimony regarding Count II on June 26, 2019. Those testifying as to Count II were Ashton Vidrine, Kyle Vidrine, Glenda Vidrine, and Jeffrey Kincade Jackson. The Committee also received into evidence ODC Exhibits ODC 1-24, R-Walters, and R-White; and Respondent Exhibits R 16-17. ODC also made two proffers.

FINDINGS OF FACT & RULE VIOLATIONS COUNT I

[fn 4: The testimony on Count I was heard on April 25, 2019. Citations to the transcript refer to the April 25th transcript.]

Findings – Count I

1. At all pertinent times, Respondent and Chadwick Walters were first cousins and prior to the events occurring which gave rise to this complaint had a close relationship.

2. During the 1990's Walters came into approximately $100,000.00 in life insurance proceeds paid as the result of the death of his father.

3. In 2002, Walters lent $80,000.00 to Respondent. Whether Respondent asked Walters for the loan or Walters approached Respondent about investing the money with him is disputed. Nonetheless, Respondent gave Walters a debenture in the amount of $80,000.00 obligating RealVest, LLC, for the loan. The debenture was dated April 3, 2002 and bore interest at the rate of 12% per annum. It was renewable annually and obligated the debtor to pay interest only in monthly increments. Upon demand the principal would become due. (Ex. ODC-9A).

4. Respondent was the sole member and manager of RealVest. (Ex. ODC-6B).

5. Walters had previously invested money by means of a debenture with an unrelated party, Ray Brown, with satisfactory results. (T-299-300). The debenture was apparently supplied by Walters, being modeled after the debenture used in his investment with Ray Brown (T-32-33, 253, 299-300).

6. Respondent made monthly payments of interest per the terms of the debenture through sometime in 2009 without substantial problems. (T-136-137)

7. In 2006, Walters purchased a house (hereinafter variously referred to as "the house" or "the property") at 402 Mississippi Ave., Bogalusa, LA, for $102,000.00. Respondent was the closing attorney on the sale.

8. During 2005-2006, Walters began asking Respondent about "cashing out" the debenture. Respondent told Walters he would begin working on it. Walters, not hearing any response thereafter, asked Respondent to begin paying down the principal in "small chunks." Respondent would usually comply with these requests. (T-201-202).

9. In 2009, Walters received an offer to purchase the house for $90,000.00. However, the house was encumbered by two mortgages, and Walters owed around $97,000.00 on it. Thus, he estimated he would need approximately $10,000.00 in addition to the sale proceeds to pay off the mortgages and closing costs. Accordingly, Walters asked Respondent for a payment of $10,000.00 on the debenture. (T-205-6).

10. According to Respondent, Walters did not ask him for the money; only whether it was "available." Respondent testified that the amount involved was $13,000.00 to $20,000.00. Respondent testified that he told Walters that the money was available. (T-41). The Committee finds this testimony not to be credible. If Respondent had indicated to Walters that the funds he had asked for were available, Walters, we believe, would have taken the money.

11. Walters testified that Respondent told him he didn't have the money, but instead advised him that he should rent the property out for a few years. Walters told Respondent he did not want to be a landlord. According to Walters, Respondent offered to manage the property, advertise and rent it out, and take care of the repairs, with the intent of buying it at some point in the future. (T-205-209).

12. Respondent recommended to Walters that the property be placed into an LLC for liability protection (T-208). Walters believed that the property was being placed out of his personal ownership for protection from liability. (T-212).

13. Respondent thereafter prepared and filed incorporation documents with the Secretary of State creating "Chadwick Travis Walters, LLC" (CTWLLC) on April 8, 2009. (Ex. ODC 6-B, p.248; T-42-45). Respondent was the registered agent for the LLC; the sole member of the LLC was Louisiana Real Estate

Portfolio, LLC ("LREP"), which was created by Respondent on the same date. (T-44).

14. Also, on April 8, 2009, Respondent created and registered "Bogalusa Portfolio, LLC," ("BPLLC") and "Central Portfolio, LLC" ("CPLLC"). These two LLC's were the sole members of LREP. Respondent was the sole member and registered agent of BPLLC; Harry Mills was the registered agent and sole member of CPLLC. (T-44-45; Ex. ODC 6-B, pp. 248-256).

15. Walters had no ownership in CTWLLC (T-51-52); nor was he aware of the creation or existence of LREPLLC, BPLLC or CPLLC although they were all created on the same day, April 8,2009, for the purpose of the Bogalusa house being transferred into CTWLLC by Walters.

16. Five days later, on April 13, 2009, Walters sold the house to CTWLLC (Ex. ODC-9) by means of a document prepared by Respondent entitled "Cash Sale Subject to Mortgage." The price was stated as "the price of repairs of at least FIVE THOUSAND AND NO/100 ($5000.00) DOLLARS and subject to the payoff balances on two existing mortgages…" No cash was paid to Walters as a result of the sale. Respondent was the closing attorney for the sale. (T-47-49).

17. The effect of the foregoing was to place Respondent and Harry Mills into indirect ownership, as sole members of the LLC's which were in turn the owners of LREP, the sole member of CTWLLC, of the property. Walters unknowingly divested himself of all of his ownership but remained solely responsible for the two mortgages encumbering the property. (T-50, 98-104, 108, 144).

18. There is nothing in writing indicating that Walters was advised that he retained no ownership in CTWLLC, or that he would remain responsible for the two mortgages on the house transferred to CTWLLC in ODC-9. (T-104, 107-111). Walters did, however, realize at the time of the closing of ODC-9 that he would remain responsible for the two mortgages (T-312-314).

19. In closing the sale (ODC-9), Walters did not understand that he would retain no ownership in the property. He believed that he was the owner of CTWLLC. He testified that had he had an attorney to advise him that he did not retain ownership, directly or indirectly, in the property or CTWLLC, he would not have agreed to the sale. (T-313-316).

20. Respondent testified that, although the act of sale retained responsibility for the two mortgages in Walters, it was always his intent that he and Mills would keep up the mortgage payments, although that intent was never reduced to writing to Walters. (T-107-111). Respondent and Mills thereafter paid the mortgage notes for around 5 years, amounting approximately to $40,000.00. (T-78).

21. The property was placed into an LLC with the same name as Walters because Respondent wanted to avoid having the mortgage company discover the transfer. He told Walters that if the mortgagees became aware of the transfer, they might invoke the "due on sale" clauses in the mortgages and accelerate them, which would make Walters and/or Respondent and Mills liable for the entire balances of the mortgages at once. (T-79-80, 93-94, 103-105, 145-147, 295-296). Although he attempted to avoid directly answering questions about deceit, Respondent's testimony is clear in indicating that deceiving the mortgagees was one of his reasons for placing the property into an LLC with the same name as Walters, the named debtor on the mortgages. Respondent stated that he saw no problem with doing this. (T-104-105).

22. In transferring the property to CTWLLC, Walters believed that he was the owner of the LLC. He was aware that he retained responsibility for the mortgages but believed that Respondent and Mills would make the payments. He was not aware that the transferee LLC was named as it was for the purpose of preventing the mortgagees from discovering the transfer and invoking the "due on sale" clause. Had he known that he would not have agreed to the sale. (T295-296).

23. After the closing referred to above, Respondent and Mills made payments on the mortgages, but in 2013 Walters began getting calls and notices from the mortgage holders to the effect that payments were not being made, or not being made timely; or that appropriate insurance was not being maintained on the property, resulting in forced placement of hazard insurance by the mortgagees. In February of 2014, Walters had to begin making payments on occasion because Respondent had not made them. Walters became concerned that his credit might be impaired. (T-215-216; Ex. ODC-19).

24. Sometime during 2013, Hillary Walters, Chad Walters's wife, and Respondent had a falling out, and the relationship between Walters and Respondent began to sour. Respondent began to receive emails from Walters about refinancing the property. Respondent told Walters that he, Walters, could not refinance it because he didn't own it anymore. (T-82-85; Ex. ODC-19).

25. In August of 2013, Walters demanded in an email that the debenture be repaid. At that time, the balance remaining was approximately $32,000.00 to

$34,000.00. There was no response to the email until sometime in November, wherein Respondent indicated he could not repay Walters. Thereafter, Walters and Respondent engaged in a series of openly personal and hostile emails between November 27 and 30, 2013 (Ex. ODC-19).

26. In April of 2014, Walters filed a "Petition to Rescind Sale of Immovable Property, for Accounting and Damages, and for Collection of Sums Due on Promissory Note" against Bennett, Bennett Burns, L.L.C., Title2Land, L.L.C., Chadwick Travis Walters, L.L.C., Harry O. Mills, III, Louisiana Real Estate Portfolio, L.L.C., Central Portfolio, L.LC., RealVest, L.L.C., and Bogalusa Portfolio, L.L.C. The suit was filed in St. Tammany Parish, Louisiana in the 22nd Judicial District Court and bore suit number 2014-11557. (The date of the filing is not legible on the exhibit, but it appears that the suit was filed in early April of 2014. The exhibits also contain a Clerk's docket sheet from an action of the same name filed in Washington Parish, but that suit does not appear in the exhibits.) In the suit, Walters sought, among other things, repayment of the debenture and an accounting for all revenues from the property he transferred to Chadwick T. Walters, L.L.C., along with rescission of the sale, return of the property, damages and attorneys' fees. (Ex. ODC-1).

27. At or around the same time, Walters, through his attorney James White, filed the instant complaint with the Louisiana Attorney Disciplinary Board, and alleged that Respondent had conditioned rescission of the sale of the house on Walters' forgiving of the debt represented by the debenture (ODC-3). Respondent denied this, but testified that when asked by Walters for return of the house, Respondent had told Waters that "we will consider it if you just reimburse us our materials that we put into it." (T-86). Walters's recollection is that when he asked Respondent to remove the house from CTWLLC and reconvey it to him personally, Respondent "would just say that he hasn't gotten all of the money that he invested back out yet. So, it probably wouldn't be a good time." (T-215).

28. Regardless of whether Respondent conditioned the return of the house on forgiveness of the debenture or upon recovering the money he had invested in the house, it is clear and undisputed that Respondent placed a condition of some sort upon returning the house to Walters. Further, it is clear that, whether due to inability or unwillingness to repay the debenture when Walters demanded it, Respondent failed to pay money that was clearly due and owing to Walters.

29. After the suit was filed in St. Tammany Parish, Respondent filed a "Reconventional Demand" on behalf of Title2Land, L.L.C. and against Walters in the 19th Judicial District Court for the Parish of East Baton Rouge, which was ultimately dismissed (T-346-347). The demand itself was not submitted to the Committee as an exhibit.

30. While the suit against him by Walters was pending, Respondent unilaterally and without notice to Walters or his counsel executed a "Transfer of Property with Vendor's Lien" which purported to convey the Bogalusa house from Louisiana Real Estate Portfolio, LLC, back to Walters in return for payment of expenses such as repairs "of at least " $10,000.00; Mortgage payments on the two mortgages existing on the house since April of 2009 including reduction of the payoff balances of "at least" $10,000.00; and "any and all rights to dollar amounts for reimbursement paid and expended by Vendor on behalf of the property." The document was signed by Respondent as "Duly Authorized" on behalf of Louisiana Real Estate Portfolio, LLC. (N.B.: The Committee was presented with no evidence to explain why the property, which had been originally sold to CTWLLC, was being reconveyed by LREPLLC. The parties have offered no explanation as to how LREPLLC acquired title to the property to be able to transfer it back to Walters.) (Ex. ODC-5, p. 189; ODC-9B).

31. The conveyance set forth immediately above contained no signature of Walters. Indeed, Walters' attorney found it unacceptable, inasmuch as it was subject to the vendor's lien and "had all sorts of strings attached." (T-344).

32. As a result, Walters' original petition had to be amended (T-343-344).

33. The suit was settled in February of 2015 (Ex. R-16; T-66). According to James White, Walters's attorney, Walters paid legal fees for the representation of "around $24,000.00." (T-346).

Discussion – Count I

A. Attorney-Client Relationship

The Committee finds that an attorney-client relationship existed between Walters and Respondent. While Respondent contends that the mere closing of a real estate transaction does not create such a relationship, the Committee does not find that analysis to be dispositive of the issue. Walters clearly testified that he sought the assistance of Respondent because he was an attorney. While Respondent did not become Walters's attorney by the act of borrowing money from him, we believe that the evidence clearly shows that when payment on that debt became something of a problem, Respondent advised Walters on how to work the problem out in a facially legal way that would shield him from liability by the transfer of the Bogalusa house into an LLC. It is undisputed that Respondent advised Walters for the purpose of avoiding potential liability and to prevent acceleration of the mortgages on the property by invocation of the due on sale clauses. To accomplish these ends, Respondent caused Walters to agree to the transfer of the property into CTWLLC. We find that in so doing, Respondent acted as Walters's attorney.
Actions taken by Respondent to set up the corporate holding network and to implement these purposes were also done in the context of his position as attorney for Walters.

In finding an attorney-client relationship, the Committee is guided by LSA-R.S. 37:212 and *Louisiana State Bar Ass'n. V. Bosworth*, 481 So.2d 567(La., 1981). The statute establishes that activities done in connection with closings are in fact the "practice of law," and *Bosworth* holds that, "The existence of an attorney-client relationship turns largely on the client's subjective belief that it exists." Here, Walters testified repeatedly that he considered Respondent to be acting as his attorney, and while he freely admitted that he did not consider Respondent to be acting as his attorney when Respondent borrowed money from him, he did consider Respondent to be doing legal work for him when Respondent had him transfer the property to an LLC in his own name to avoid liability and to prevent the likelihood that the mortgage holders would invoke the due on sale clauses in the mortgages, triggering acceleration of the mortgage balance. Equally telling is the testimony of Hillary Walters, Chad Walters's wife, when asked whether Walters had ever specifically stated that Respondent was his attorney: "He handled—I was always under that assumption because of all the things that he handled in the past like when Chad had properties, Lane (Bennett) handled things. I don't remember Chad ever saying to me Lane is my attorney. It was always Lane is my cousin. He is an attorney. He is going to take care of it for us, and that type of thing." (T-332-333; parenthetical material supplied). The Committee is of the opinion that being a relative and one's attorney at the same time are not mutually exclusive, as Respondent's argument implies. Rather, it is clear that at all pertinent times, Walters considered Respondent to be, and Respondent acted as, his attorney.

The Committee notes that Respondent's counsel cross-examined Walters concerning a closing document which contained language indicating that the closing attorney, Respondent, was not acting as an attorney for Walters. However, examination of the document in question, ODC Ex. 8-A, shows that it was signed by Walters in connection with a completely different real estate closing, not at issue here, which took place in 2008, wherein he sold his deceased father's house in Baton Rouge to one Erin Dale.

Respondent testified that this document was used in many of his closings. However, no such document was introduced or presented in any way in connection with the April 13, 2009 transfer of the Bogalusa property from Chadwick Travis Walters to Chadwick Travis Walters, LLC. As such, the Committee is unwilling to infer, especially in view of the fact that the transaction was part of *a larger design specifically recommended by Respondent to accomplish liability and acceleration avoidance*, that Respondent was not acting as Walters's attorney in respect of that transaction and other actions taken thereafter in furtherance of the plan. Perhaps more importantly, even if Respondent and Walters did not have an attorney-client relationship in 2002 when Walters lent Respondent $80,000.00, that status was affected by subsequent events. When Respondent advised Walters to transfer the house to an LLC in 2009 and acted with him to carry out the plan he recommended, he became Walters's attorney. Later, when Walters wanted to unwind the transaction and have the debt paid, Respondent's actions in resisting payment of the debenture made the debt inextricably intertwined with the Bogalusa house

scheme such that his actions with respect to the debt were done as part of his role as Walters's attorney.

B. Rule Violations

1. Rule 1.7

The Committee finds that ODC has proven by clear and convincing evidence that Respondent violated Rule 1.7. The Rule prohibits representation of a client where "there is a significant risk that the representation will be materially limited by . . . a personal interest of the lawyer." Rule 1.7(a)(2).

The rule allows representation notwithstanding the existence of a concurrent conflict of interest if the lawyer reasonably believes that he will be able to "provide competent and diligent representation to each affected client," and if the client "gives informed consent, confirmed in writing."

Rule 1.0 defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Rule 1.0(e). "Confirmed in writing" as used relative to informed consent means consent "that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent." Rule 1.0(b).

The evidence adduced at the hearing and contained in the exhibits makes indisputable, in the view of the Committee, that Respondent advised Walters to enter into a transaction for the ostensible purpose of avoiding liability and mortgage acceleration. However, Respondent also structured the transaction for his own purposes such that Walters unknowingly gave up all ownership to the property. Walters testified that had he known that the transaction would leave him without any ownership in CTWLLC (and thus without indirect ownership of the property), he would not have agreed to the transaction; further, that he would not have agreed had he known that part of the Respondent's purpose was to deceive the mortgagee(s) in order to prevent it/them from exercising its/their rights under the mortgages. The Committee finds that Respondent's advice to Walters was limited by his own personal interest of which Walters was not informed, and that in acting against the interests of Walters without obtaining Walters's informed consent, Respondent violated Rule 1.7.

2. Rule 1.8

The foregoing discussion relative to Rule 1.7 is made part of the Committee's findings on the charged violation of Rule 1.8. Subsection (a) of that Rule prohibits the lawyer's entry into "a business transaction with a client," or a knowing acquisition by the lawyer, of "an ownership, possessory, or other pecuniary interest adverse to a client" unless "(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are duly disclosed and transmitted in writing in a manner that can be reasonably

understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction."

As discussed above, it is beyond dispute that Respondent set up an arrangement which had the net effect of depriving Walters of any ownership rights, direct or indirect, in his property. This was accomplished through legal advice given to Walters by Respondent, and had the ultimate effect of vesting ownership rights in Respondent to the detriment of, and without the consent or knowledge of Walters, his client. Further, the conduct by which Respondent accomplished this end was never explained to Walters, and there was no evidence that informed consent as required by the Rules was given. The Committee finds that none of the requirements of Rule 1.8(a) were met, and it is clear that Walters was unaware of what was taking place, and that he would not have agreed to the arrangement designed by Respondent had Respondent followed Rule 1.8.

ABA Model Rule 1.8(a) is identical to the Louisiana Rule. The comments to that rule include the following:

A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation . . . The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent.

See, also, *Bosworth*, *supra*, at 571, which notes that where the transaction is a loan, the interests of the parties are inherently adverse. The Committee notes that while Walters and Respondent did not have an attorney-client relationship at the time of the loan, one thereafter was created when Respondent placed Walters's property into an LLC in which Walters had no ownership for purported liability protection. Thereafter, and arising out of that legal relationship, Respondent's conduct deprived Walters of ownership in the property without his knowledge, and the interests of attorney and client became acutely adverse such that Respondent should have fully informed Walters of all of his actions, their risks and adverse considerations inherent in the "house" transaction and its later relation to the debenture funds, and should have advised him to seek independent outside counsel. This was never done. Again, we have no doubt that had that occurred, Walters would not have given up his ownership in the house. The evidence proves, clearly

and convincingly, that the debt created by the loan and debenture became inextricably intertwined in the relationship at that point so as to place Walters in a distinctly disadvantaged position. Walters believed that Respondent would ultimately buy the house, but trusted that up to that point, Respondent would apply rental profits from the house to repay the debt created by the loan and debenture. The evidence convinces us that Respondent's intentions, as manifested by his actions, were decidedly at odds with the expectations of Walters.

Louisiana State Bar Ass'n. v. Alker, 530 So.2d 1138 (La., 1988) deals with the requirements of informed consent in lawyers' business transactions with clients. The Court held there that "[W]hen charged with violating DR 5-104(A),(the predecessor to Rule 1.8), an attorney who wishes to avail himself of the exception (consent by the client after full disclosure) has the burden of proof by a preponderance of the evidence." (Parenthetical material supplied.)

Respondent maintains that there was no attorney-client relationship in the loan to him from Walters, evidenced by the debenture, and the Committee does not disagree. However, the Committee finds that such a relationship did exist when Respondent induced Walters to sell the house to CTWLLC and in actions taken thereafter when payment of the debenture and revendication of the house became a source of conflict between Respondent and Walters. When he set up the sale of the house to CTWLLC, Respondent violated the Rule in failing to obtain the informed consent of Walters to the full scope of the transaction, and thereafter in failing to return the funds owed under the debenture upon demand, or to account for the expenses, revenues and profits from the house he was managing and renting for Walters. Under the circumstances, we believe that the burden shifted to Respondent to show compliance with Rule 1.8(a). We find that he failed to carry that burden.

The Committee finds that the ODC has proven by clear and convincing evidence that Respondent violated Rule 1.8(a).

3. Rule 8.4

Rule 8.4(a) makes the violation of, or attempt to violate The Rules of Professional Conduct, professional misconduct in and of themselves. Rule 8.4(a) was clearly violated by the actions of Respondent set forth above. As discussed, Respondent violated the Rules in failing to obtain the full and informed consent of Walters to the ramifications of his structuring of the transfer of the house into CTWLLC; in failing to advise Walters to obtain the advice of independent counsel to review the proposed transaction; in structuring the transaction so as to deceive the creditors holding mortgages on the house, and in filing the instruments accomplishing that purpose in the public record, both in the mortgage records and Secretary of State's office; in failing to promptly return Walters's house and money when requested, or to give accounting for profits, revenues and expenses relative to the house when Walters requested it; and in resisting Walters's demands after they became the subject of a civil suit so as to discourage the exercise by Walters

of his unquestionable right to his property and money, and more importantly, to the satisfaction of the ethical and professional duties owed to Walters by Respondent as his lawyer. Although charges were not brought under all of the following rules, Respondent's conduct clearly violated, or attempted to violate, Rules 1.0, 1.2(a), 1.4(a) and (b), 1.7, 1.8(a), 2.1, 4.1(b), 8.4(a) and 8.4(c). As a result, Respondent's conduct violated Rule 8.4(a).

The ODC has proven by clear and convincing evidence that Respondent violated Rule 8.4(c). At pages 104 and 105 of the hearing transcript, Respondent makes clear that in transferring the house to CTWLLC, he used Walters's name for the LLC in order to prevent the mortgagees from discovering the transfer. This was done in order to deceive the mortgagees and thus to prevent them from invoking the "due on sale" clauses in the mortgages. Respondent even testified, when asked if he saw any problem with this, that he did not. The Respondent set up the LLC used for this purpose, registering it with the Secretary of State, and recorded the sale from Walters to the LLC which bore his name, but in which Walters had no ownership, unbeknownst to Walters. Irrespective of the issue of Respondent's intent for purposes of whether this conduct rose to the level of fraud, the Committee finds that the testimony of Respondent himself proves by clear and convincing evidence that he knowingly engaged in conduct involving dishonesty, deceit, and misrepresentation. All of these are prohibited by and violative of Rule 8.4(c).

FINDINGS OF FACT & RULE VIOLATIONS COUNT II

[fn 5: The testimony on Count II was heard on June 26, 2019. Citations to the transcript refer to the June 26th transcript.]

Findings & Discussion - Count II: Glenda Vidrine

1. Glenda Vidrine had been a client of Lane Bennett. Glenda Vidrine admits that Lane Bennett prepared her Will for her. Lane Bennett prepared the promissory note documents to evidence the transaction between Glenda Vidrine and Lane Bennett. Lane Bennett's name was found on Glenda Beth LLC formation and secretary of state filing. We find that Glenda Vidrine had been a past legal client of Lane Bennett and was a current client of his at the time of the transactions conducted with regard to the loan made to her son and Lane Bennett's benefit and that of Bogalusa Real Estate Portfolio LLC, an LLC operated by Lane Bennett. Pages 89-90 of the transcript provides testimony about how Glenda Vidrine first met Lane Bennett while he was providing legal services for her family business, Reliable Credit, handling finance company work. Lane Bennett handled closings for Reliable Credit, Ms. Vidrine's business.

2. Glenda Vidrine mortgaged her personal home to obtain loan proceeds to give to her son and Lane Bennett, through his LLC, Bogalusa Real Estate Portfolio LLC. A collateral mortgage note of $152,000 was written in favor of the mortgagee, and Bogalusa Real Estate Portfolio LLC on or about that same date issued a promissory note to Glenda Vidrine to promise to repay the actual funds loaned to Bogalusa

Real Estate Portfolio LLC and her son, Kyle Vidrine in the amount of $57,000. There was no promise to compensate Glenda Vidrine for loaning that money to Kyle Vidrine and Lane Bennett through his LLC. There was no personal promise made by Lane Bennett or Kyle Vidrine to repay the loan nor was there any protection provided to Glenda Vidrine against foreclosure upon her personal home, in the event that the LLC failed to continue to pay the mortgage note payments which Glenda Vidrine had obligated herself personally to pay as a result of the collateral mortgage written on her home in order to make the loan to them.

3. Despite Glenda Vidrine's testimony to the contrary, that she gave this money to her son to spend as he wanted. On page 125 of the transcript, Glenda Vidrine admitted that she gave money to Lane Bennett, as well, and the evidence establishes that this money was in fact given to both her son and Lane Bennett for their use and was paid to the benefit of Lane Bennett, through his company Bogalusa Real Estate [Portfolio] LLC. This was further evidenced by the promissory note Lane Bennett signed in repayment of that loan. On page 108 of the transcript, Glenda Vidrine testified that "they could do whatever they wanted with it (the money)." At pages 115-116, she admitted that she knew Lane Bennett was using part of the money. In a prior sworn statement given to the Office of Disciplinary Counsel she had provided a much more detailed description of her knowledge of the use of the money she loaned to them which was used to the benefit of Lane Bennett.

4. When the original promissory note was written, there was no referral to other counsel to review the terms and conditions of the agreement, even though Glenda Vidrine was executing a mortgage which included security in the way of her own home. In other words, failure to pay that mortgage could have led to foreclosure on her own home. Lane Bennett had full knowledge of these details. There was no protection provided to Glenda Vidrine in the event Lane Bennett through Bogalusa Real Estate [Portfolio] LLC failed to pay the mortgage notes on her home. Lane Bennett was personally benefitting from this loan from Ms. Vidrine as a portion of the money was being spent to benefit business operations being performed by Lane Bennett and the LLC he operated and controlled.

5. When borrowing money from a client, the relationship imposes a higher degree of care, warning, notice and referral requirements upon that attorney who is involved in the conflict of interest in the business transaction.

6. A second hand note was written in favor of Glenda Vidrine, this time involving a personal promise to repay the loan made by Lane Bennett, instead of Bogalusa Real Estate Portfolio LLC. Glenda Vidrine was provided with improved terms in her favor in the promissory note, but only after charges were filed against Lane Bennett. The terms of the repayment to Glenda Vidrine were more favorable to Ms. Vidrine than those afforded her in the original transaction. The Committee finds that this is clear and convincing proof that the original terms were not satisfactory for her and may have provided terms which took advantage of her. The original promissory note did not include any provision whereby Glenda Vidrine was compensated or

provided consideration for loaning the money to Bogalusa Real Estate Portfolio LLC, as she was not paid any interest on the loan to BREPLLC (although the original agreement required Bogalusa Real Estate Portfolio LLC to pay the interest on the loan given to Glenda Vidrine by the mortgage company, Glenda Vidrine was not personally compensated by them for loaning that money to them). The first hand note provided that the payor was Bogalusa Real Estate Portfolio LLC, a limited liability corporation which insulated Lane Bennett from any personal liability to repay the loan provided by Glenda Vidrine to them or for failure by Bogalusa Real Estate Portfolio LLC to repay the loan provided to Glenda Vidrine by the mortgagee for the mortgage she took out on her house to loan the money to her son and Bogalusa Real Estate Portfolio LLC. Although, Glenda Vidrine may not have wanted to earn interest on the loan of the money she gave them, she was never advised by Lane Bennett of the conflict of interest and the need for her to obtain advice of other counsel, who may very well have advised her of her right to such compensation, as well as, the added protection of a personal guaranty from Lane Bennett to repay the loan.

7. The new hand note provided more favorable financial terms to Glenda Vidrine and increased the repayment terms from $57,000 dollars (the amount of the original loan to her son and BREPLLC/Lane Bennett) to $85,000.

8. The new hand note written in favor of Glenda Vidrine without her knowledge or consent was prepared by Lane Bennett after charges were filed against Lane Bennett and the new hand note was not negotiated. It was a unilateral offer to improve the terms of the agreement which was originally signed, and we find that this behavior establishes proof that there was a deficiency or inequity in the original promissory note negotiated with Glenda Vidrine and that this was performed in an effort to influence a future review of the evidence and not to attempt to mitigate damages to Ms. Vidrine. An adverse impact was found to have occurred as a result of this attempted transaction, in that it revealed the inequities of the prior agreement made while there were no pending charges before the disciplinary board.

9. When it came time for Glenda Vidrine to analyze the replacement promissory note with new terms and conditions attached and with more favorable terms being written in favor of Glenda Vidrine, Glenda Vidrine sought legal counsel from another law firm in order to examine the promissory note to determine whether or not it was in her best interest to accept that promissory note in place of the previously executed promissory note. This referral to an independent counsel to review the terms was not performed for the first promissory note, nor was any evidence submitted that it had been recommended by Lane Bennett with regard to the initial promissory note executed in her favor by Bogalusa Real Estate Portfolio LLC and Lane Bennett. The Committee finds that this contrast in behaviors was directly related to the fact that the second promissory hand note was unilaterally written after charges were issued against Lane Bennett.

10. When the original promissory note was written, there was no referral to other counsel to review the terms and conditions of the agreement, even though Glenda Vidrine was executing a mortgage which included security in the way of her own home. In other words, failure to pay that mortgage could have led to foreclosure on her own home. Lane Bennett had full knowledge of these details. There was no protection provided to Glenda Vidrine in the event Lane Bennett through Bogalusa Real Estate Portfolio LLC failed to pay the mortgage notes on her home.

11. Lane Bennett never provided evidence in this case that he had supplied Glenda Vidrine with written notice of a conflict of interest or potential conflict of interest with his personal interests, nor did he provide any evidence of any oral warning or notice to Glenda Vidrine that he had a conflict of interest or potential conflict of interest in this matter. Yet, Lane Bennett entered into a business transaction with Glenda Vidrine with full knowledge that she had been a client of his and was relying upon his knowledge as a lawyer in preparing these legal documents. By her own admission, Glenda Vidrine fully trusted Lane Bennett and was completely unaware of anything Lane Bennett may have done which was not in her best interests or which may have been unethical.

Rule Violations - Count II: Glenda Vidrine

One of the primary reasons for disciplinary rules 1.7(a) and 1.8(a) is to protect the unknowing lay person client from themselves and to protect against their own ignorance of the law in matters of conflict of interest and their complete trust in their attorney when entering into a personal business relationship with that lawyer. The very purpose of requiring this written notice to Glenda Vidrine is evidenced by her total lack of understanding and ignorance of the fact that Lane Bennett had done something wrong or had taken advantage of her kindness. At trial she could not understand why Lane Bennett had been accused of doing anything wrong. The Committee finds that this is evidence of the fact that Lane Bennett had never informed her of this conflict of interest and the potential risk for his legal obligations to her as her counsel could be limited by her personal interest in the transaction. Her trust in Lane Bennett, which still exists today, is proof of why Rules 1.7(a) and 1.8(a) are necessary and are imposed as an obligation upon attorneys who become involved in business transactions with clients.

Lane Bennett received money from Glenda Vidrine and spent it for his own benefit, as evidenced by his actions of providing her with a promissory note and, subsequently, with a replacement promissory note with more favorable terms and conditions attached for Glenda Vidrine. Despite the fact that the burden shifted to Lane Bennett to prove that he did not fail to satisfy the requirements under Rules 1.7 and 1.8, Lane Bennett did not satisfy this burden and did not provide rebuttal evidence to the finding that the money loaned by Glenda Vidrine was spent in part to the benefit of Lane Bennett and inured to his personal interests. He did not provide any information to the Disciplinary Council [*sic*] to explain what he did with this money, why he took this money, or if there was any other explanation for providing a promissory note to Glenda Vidrine and to agree to pay towards Glenda

Vidrine's promissory note and mortgage with the bank. Lane Bennett limited Ms. Vidrine by how he failed to secure her loan with her best interests involved. The Committee found that there was no dispute of Rule 1.7(a) or (b) damage analysis and that it was undisputed the funds obtained through Ms. Vidrine's generosity were used in furtherance of the business interests of Lane Bennett.

There is no evidence of informed consent on the part of Glenda Vidrine with regard to entering into this business transaction with Lane Bennett. "Informed Consent" as defined, requires that she knowingly entered into the agreement despite knowledge that Lane Bennett had a conflict of interest. If Lane Bennett had failed to pay her mortgage, she was the one who would have suffered a loss.

Even though Lane Bennett received part of the money to use as he pleased, it was Glenda Vidrine who possessed the risk of loss for any failure on the part of Lane Bennett's LLC to pay her mortgage notes. Therein lies the essence of his conflict of interest and the risk of her reliance upon her legal relationship with him, not realizing that her personal interests may have been in conflict with his personal interests such that he would stand to benefit in the business transaction, to her detriment. The transaction was "limited by personal interest of the lawyer." Lane Bennett did not personally obligate himself to repay the loan and Ms. Vidrine was blind to the serious personal risk to her financial interests and the inequity of the agreement with Mr. Bennett's LLC. The inequality in this agreement is evidenced by the fact that Glenda Vidrine had to grant security to the bank to obtain the loan. Lane Bennett, on the other hand, and his limited liability corporations, did not provide any security for the transaction and would not have incurred an equally similar risk. Although, Lane Bennett, through his LLC, was paying a mortgage note of Glenda Vidrine which allegedly included interest payments, Lane Bennett and/or his LLC were not paying any interest to Glenda Vidrine personally for using her money. That is an inequity in this agreement which Glenda Vidrine waived unknowingly and without informed consent or legal counsel from a lawyer who did not possess a personal interest in the matter and who was not at risk for losing the opportunity for this loan of money. If Glenda Vidrine had received unbiased legal counsel about the terms of the agreement she was executing with Lane Bennett and his LLC she would have known that she was not being paid interest and that her assets were at risk. Of these things she was unaware.

Rule 1.7(a) provides that an attorney shall not represent a client concurrent with an interest directly in conflict with the client or where there is a significant risk that the attorney's own personal interest would be in conflict with that the client.

Rule 1.7(b) allows the representation of a client if a concurrent conflict exists if four criteria are met: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each

affected client gives informed consent, confirmed in writing. Rules 1.0(b), 1.0(c) 1.0(e) and the provisions of Rule 1.8(a)(3) require the client's written informed consent and require confirmation in writing to the client of any conflict of interest.

Rule 1.8(a) prohibits an attorney from entering into a business transaction with a client unless three criteria are met: (1) the transaction and terms under which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction. Lane Bennett did not comply with any of these provisions in this case.

Under Rule 1.7(b)(4) and 1.8(a) informed consent must be given when involved in business transaction with a client. We find that Lane Bennett's personal interest limited his abilities as a representative of the client. Once it is found that Lane Bennett was involved in a business transaction with a current client the burden shifts to Lane Bennett to prove by a preponderance of the evidence that he satisfied the requirements under Rule 1.8 for notifying the client of his conflict of interest in writing and obtained her informed consent. We find by clear and convincing evidence that Lane Bennett did not satisfy his burden of proof under Rules 1.7 and 1.8. See: *La. State Bar v. Alker, supra*. The Committee finds by clear and convincing evidence that, in failing to fully inform Glenda Vidrine of his conflict of interest and the possibility that, because of his own personal interests involved in the business transaction the transaction may not have been in her best interest, and in failing to obtain her informed consent in writing to proceed with the transaction regardless, Lane Bennett violated Rule 1.7(a), 1.7(b). and 1.8(a).

Glenda Vidrine believed that Lane Bennett was providing her with legal protection for the loan transaction wherein she mortgaged her home. Lane Bennett was not providing satisfactory and equitable protection to her at all. Glenda Vidrine trusted Lane Bennett, because he had been her attorney and had developed a trusting relationship with him prior to this transaction. Glenda Vidrine even went to Lane Bennett's law firm to have him assist in drafting her Affidavit supporting him in these proceedings. Again, this was a conflict of interest for Lane Bennett. Lane Bennett never provided any response or evidence to the Committee or to ODC to prove that he complied with Rules 1.7(a), 1.7(b) and 1.8(a) with regard to the execution of this Affidavit. The Affidavit was a legal document with the intention of providing a response to the complaint against Lane Bennett. That document subjected Glenda Vidrine to sworn testimony and cross-examination and the risk of perjury. Glenda Vidrine, therefore, should have been advised by Lane Bennett that his law firm could not prepare or execute this document on her behalf, or else, there should have been written evidence of the fact that she had been referred to independent counsel to review the document to make certain that it was in the best

interest of Glenda Vidrine to execute this legal document and there should have been a notification in writing of his conflict of interest in executing and/or preparing this legal document for her. It is further proof of the complete trust Glenda Vidrine had in Lane Bennett and how necessary compliance with those rules was in this situation, and this was a further violation of Rule 1.7.

Lane Bennett had further obligations under Rule 8.4 with regard to basic misconduct. An attorney who attempts to violate the rules of professional conduct or who commits fraud, dishonesty, deceit or misrepresentation is subject to a finding of a breach of the Rules of Professional Responsibility. Any attempt to violate the rules can subject the lawyer to sanctions as well. Based upon the foregoing, Lane Bennett violated Rules 8.4(a) and 8.4(c) in his dealings with Glenda Vidrine.

Findings & Discussion - Count II: Ashton Vidrine/Vidrine Insurance Company, LLC

Although it was not proven by clear and convincing evidence that Lane Bennett had knowledge that Kyle Vidrine was going to forge Bennett's name on legal documents to be filed with the Secretary of State's office, we find that Lane Bennett knew or should have known, based upon Kyle Vidrine's admission during his testimony that Kyle Vidrine obtained the subsequent approval of Lane Bennett to sign Lane Bennett's name electronically in the transaction with the Secretary of State's office, and that Lane Bennett knew of the transaction and knew that they were taking this business from Ashton Vidrine without compensating Ashton, and despite having knowledge that Ashton Vidrine either did not want to sell his business, or wanted to be compensated for selling the business, if he had decided to do so. Lane Bennett authorized the electronic signature of his name by Kyle Vidrine knowing that he was not compensating Ashton Vidrine for the transfer of ownership of Vidrine Insurance Agency, LLC to him. He thereby was involved in conduct which was possibly fraudulent and clearly deceptive, constituting a violation of Rule 8.4(c). Lane Bennett was required as an attorney to follow Rule 8.4 regardless of whether or not there was any attorney/client relationship between himself and Ashton Vidrine. Kyle and Bennett wanted the insurer list for the agency, according to Kyle Vidrine, but when Ashton would not sell that to them, they took his company name and LLC instead.

On pages 218-223 of the transcript, Kyle Vidrine provided testimony about whether or not he had obtained prior approval from Lane Bennett to electronically sign his name to documents he, Kyle, was going to file with the Secretary of State reinstating Vidrine Insurance Agency LLC. On page 222, Kyle Vidrine, a witness who clearly was trying to provide nothing but favorable testimony for Lane Bennett, his past and current business partner, testified that he had obtained prior approval from Lane Bennett to sign Bennett's name to the organization and renewal of the insurance agency that was owned by Ashton Vidrine, but which had been inactive for many years. The Committee finds by clear and convincing evidence

> considering the testimony of Aston Vidrine and Kyle Vidrine that Lane Bennett knew that the Ashton Vidrine wanted compensation for selling the name of his agency and neither Kyle Vidrine nor Lane Bennett had the proper license to establish a company in their own name or the client list, and that Lane Bennett knew that Kyle Vidrine had re-established the Vidrine Insurance Agency as an LLC with the Secretary of State's office and had done so without providing any compensation to Ashton Vidrine in doing so, and did not have the consent of Ashton Vidrine to do so. This was later validated by the actions of Lane Bennett and Kyle Vidrine in filing an affidavit of unilateral dissolution of the LLC. T-215, 217.
>
> **Rule Violations - Count II: Ashton Vidrine/Vidrine Insurance Company, LLC**
>
> We do not find that Ashton Vidrine had a client-attorney relationship with Lane Bennett. Therefore, we cannot find that there is any violation under the Rules specifically related to any conflict of interest issues which may have existed between Lane Bennett and Ashton Vidrine and any requirements for informed consent. However, the Committee does find by clear and convincing evidence that Lane Bennett was involved in activities and behavior to wrongfully acquire Ashton Vidrine's value in the company he owned, Vidrine Insurance Agency LLC. Based on the foregoing findings, the Committee finds that Lane Bennett violated Rules 8.4(a) (b) and (c) in his dealings with Ashton Vidrine and Vidrine Insurance Company, LLC.

After analyzing the Rule XIX, Section 10(C) factors, the Committee found that Respondent violated duties owed to his clients, Chad Walters and Glenda Vidrine, the public, and the profession. His actions were found to be intentional and knowing. The Committee also found that Respondent's misconduct caused actual and serious harm to Chad and Hillary Walters in requiring them to hire legal counsel at great expense to recover the Bogalusa property and force Respondent to pay the balance due on the debenture. The Committee further noted that Respondent's attempt to deceive the mortgagees in an effort to avoid their exercise of the "due on sale" clauses in the mortgage on the Bogalusa house was in violation of Rule 8.4 (conduct involving dishonesty, fraud, deceit, or misrepresentation) and presumably caused potential harm.

The Committee also opined that Respondent's intentional conduct caused potential harm to Glenda Vidrine by placing her in jeopardy of foreclosure on the mortgage of her home. As to the first hand note Bogalusa Real Estate Portfolio LLC ("BREPLLC") executed in favor of Ms.

Vidrine, the Committee found Respondent caused actual harm, although not serious, in structuring the indebtedness to Ms. Vidrine in such a way that she was deprived of fair interest on the loan. The Committee additionally noted that there was no real recourse for Ms. Vidrine, since the only obligor on the indebtedness was BREPLLC. According to the Committee, the loan structuring was done without Ms. Vidrine's informed consent as required by Rules 1.7 and 1.8; this directly benefited Respondent's personal interests, to the potential detriment of Ms. Vidrine.

Moreover, the Committee found Respondent's actions in dealing with Ashton Vidrine to be harmful to Mr. Vidrine. The Committee found that it was not clear whether Respondent knew in advance that Kyle Vidrine would improperly use Respondent's electronic signature to file a false reinstatement document concerning the Agency with the Secretary of State; however, Respondent later acquiesced in maintenance of that document with the Secretary of State's Office. This had the effect of furthering and aiding the attempt by Kyle to deprive Ashton of his LLC without notifying or compensating him, and as such involved deceit and dishonesty, if not fraud and misrepresentation.

Aggravating factors found by the Committee included: dishonest and selfish motive; a pattern of misconduct; multiple offenses; refusal to acknowledge the wrongful nature of his conduct; vulnerability of all of his victims; substantial experience in the practice of law; and indifference to making restitution. The only mitigating factor found by the Committee was the absence of a prior disciplinary record.

The Committee also relied on the ABA's *Standards for Imposing Lawyer Sanctions* in determining its baseline sanction of disbarment, including Standards 4.11, 4.31, 4.61 and 5.11. The Committee commented:

Standard 4.11 makes disbarment generally appropriate when the lawyer "knowingly converts client property and causes injury or potential injury to a client."

Standard 4.31 makes disbarment generally appropriate when the lawyer "engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client."

Standard 4.61 makes disbarment 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."

All of these are implicated in the case of Chad Walters. In discussing the theoretical framework in cases of conversion of client property, Art. II, the Standards give an example we find pertinent here:

> [I]n a conversion case, the injury is determined by examining the extent of the client's actual or potential loss……[A]ssume that the client gave the lawyer $100 as an advance against the costs of investigation. The lawyer took the money, deposited it in a personal checking account, and used it for personal expenses. In this case, where the lawyer acted intentionally and the client actually suffered an injury, the most severe sanction—disbarment—would be appropriate.

Standard 4.31 is applicable to the case of Glenda Vidrine as discussed above.

In the case of the charged Rule 8.4, the Committee found that Respondent had engaged in conduct involving, at a minimum, deceit, dishonesty and misrepresentation, if not outright fraud. This was so particularly in the case of Chad Walters, and to a lesser extent in the cases of Ashton and Glenda Vidrine. The Rule was also violated by Respondent's violations of Rules 1.7 and 1.8. Standard 5.11 is applicable, we believe, to this charge. It makes disbarment generally appropriate when a lawyer engages in "intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

The Committee is of the firm opinion that not only did Respondent engage in the conduct set forth above, but that he made a habit of using a web of LLC's as a means to benefit himself to the detriment of clients and to avoid responsibility for his debts to clients. For all of the foregoing, the Committee believes that disbarment is the appropriate baseline sanction.

The Committee additionally cited the case of *In re: Baggette,* 2009-B-1091 (La. S.Ct. 10/20/2009), 26 So.3d 98, in support of its recommended sanction of disbarment.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. The Standard of Review

The powers and duties of the Disciplinary Board are defined in Section 2 of the Louisiana Supreme Court Rule XIX. Rule XIX, Section 2(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges . . . and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So.2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So.2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

A. The Manifest Error Inquiry

The hearing committee's findings of fact are not manifestly erroneous, except for the following findings explained below.

In 2015, Ms. Vidrine lent $57,000 to an LLC owned by Respondent, BREPLLC. The loan was for her son, Kyle Vidrine, and Respondent to start a PODS storage business.[7] BREPLLC gave Ms. Vidrine a hand note to evidence the debt. ODC Exhibit 23. *The Committee found that no*

[7] ODC Exhibit 16(C), an unexecuted Limited Liability Agreement between BREPLLC and Glenda Beth LLC dated 2015, indicates that the loan was to be used for a business known as "Storage Industrial, LLC" and that the loan was for the maximum amount of $150,000 ("Glenda Beth, LLC is investing up to a maximum of $150,000 to start the business.") *See also* ODC Exhibit 23, Promissory Note and Loan Agreement, which indicates that, at the discretion of Ms. Vidrine, future advances up to the maximum limit of $152,000 could be made to BREPLLC.

security was given by Respondent or BREPLLC to Ms. Vidrine for this debt. Amended Hr. Comm. Rpt. pp. 21-26, 29, 31. The evidence shows, however, that BREPLLC did give Ms. Vidrine security for repayment of the debt in the form of a mortgage. On April 27, 2015, BREPLLC executed a collateral mortgage in the amount of $150,000 in favor Ms. Vidrine which gave her a security interest in property owned by BREPLLC bearing municipal address 11737 Wentling Ave., Units A, B, C, and D, Baton Rouge, LA 70816.[8] ODC Exhibit 16B. The collateral mortgage note, identified as ODC Exhibit 24 and dated April 17, 2015, was paraphed *ne varietur* with the loan. The language of the loan specifically states that the encumbrance on the Wentling property was made "in order to secure the full and final payment of said indebtedness in principal and interest" owed to Ms. Vidrine. ODC Exhibit 16B. Later on January 14, 2019, Respondent executed his "replacement" hand note, replacing the original $55,000 hand note with a hand note in the amount of $87,284, with interest at 7.0 percent per annum from date until paid, in favor of Ms. Vidrine. The mortgage on the Wentling Ave. property remained in place via this replacement hand note and an Act of Pledge of Mortgage Note and Security Agreement executed on March 28, 2019. The replacement hand note and Act of Pledge of Mortgage Note and Security Agreement was signed by Respondent, both as a member of BREPLLC and individually. ODC Exhibits 22, 23, 24.

Given the above, the Board will not adopt the Committee's finding that no security was given by Respondent or BREPLLC to Ms. Vidrine for the debts evidenced by the original and replacement hand notes.

[8] Interestingly, the unexecuted Limited Liability Agreement between BREPLLC and Glenda Beth LLC also indicates that BREPLLC granted a *second* mortgage on the Wentling Avenue property to Ms. Vidrine, behind the mortgage to First Guaranty Bank of Denham Springs, which at that time had a principal balance of approximately $608,000-625,000. ODC Exhibit 16(C).

Next, the Committee also found that "[a] second hand note was written in favor of Glenda Vidrine, this time involving a personal promise to repay the loan made by Lane Bennett, *instead of Bogalusa Real Estate Portfolio LLC.*" Amended Hr. Comm. Rpt. p. 21, para. 6. This finding is clearly erroneous in that the second hand note written in favor of Ms. Vidrine contained *both* a personal promise to repay the loan by Respondent, as well as a promise to pay by BREPLLC. ODC Exhibits 22 and 24.

As such, the Board declines to adopt the Committee's finding that the second hand note written in favor of Ms. Vidrine contained a personal promise to repay the loan only by Respondent. Instead, the Board finds that that both BREPLLC and the Respondent were makers of the note.

B. *De Novo* Review

Neither party disputes the Committee's findings that Respondent violated Rules 1.7(a), 1.8(a), and 8.4(a) and (c) in connection with the Chad Walters Matter (Count I); Rules 1.7(a), 1.7(b)[9], 1.8(a), 8.4(a) and (c) in connection with the Glenda Beth Vidrine Matter (Count II); and Rules 8.4(a)(b) and (c) in connection with the Ashton Vidrine/Vidrine Insurance Company, LLC Matter (also found in Count II). The Board adopts these findings of the Committee and its reasoning therefor, except for that part of the Committee's reasoning concerning the Rule 1.7(a) violation in the Glenda Beth Vidrine Matter (Count II) which is based on its incorrect finding that neither Respondent nor BREPLLC provided security for the debts evidenced by the original and replacement hand notes issued to Ms. Vidrine.

[9] A Rule 1.7(b) violation was not alleged by ODC. However, the Board finds that due to the rule's content which provides exceptions to situations involving a concurrent conflict of interest described in Rule 1.7(a), Respondent had fair and adequate notice that a violation of Rule 1.7(b) was at issue, as well as the opportunity to explain his conduct or defend against the charge of misconduct. *See Ruffalo*, 390 U.S. 544, 550, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968) (a lawyer facing discipline is "entitled to procedural due process, which includes fair notice of the charge"); *In re Keys*, 567 So.2d 588 (La. 1990) *citing Ruffalo*, 390 U.S. 544; *Selling v. Radford*, 243 U.S. 46, 37 S.Ct. 377, 61 L.Ed. 585 (1917) (in a bar disciplinary proceeding, due process requires that an attorney be given notice of the misconduct for which the disciplinary authority seeks to sanction him, as well as an opportunity to explain his conduct or defend against the charges of misconduct).

For clarity of the record, the Board notes that the rule violations (Rules 1.7(a), 1.7(b), 1.8(a), 8.4(a) and (c)) found by the Committee in connection with the Glenda Beth Vidrine Matter (Count II) remain established despite the Board's finding above that Respondent, through BREPLLC, and later, individually and through BREPLLC, provided security for the hand notes issued to Ms. Vidrine. Respondent clearly had a concurrent conflict of interest with his client, Ms. Vidrine, which was limited by his own personal interests. When borrowing money from Ms. Vidrine via the first hand note, Respondent failed to pay her interest personally on the loan and did not sign the loan documents in his individual capacity, which would have provided Ms. Vidrine an additional layer of security in the transaction. He also did not obtain Ms. Vidrine's informed consent concerning the loan transaction confirmed in writing. These actions violated Rule 1.7(a) and (b). Also, when he entered into this business transaction with Ms. Vidrine, he failed to fully disclose and transmit in writing to Ms. Vidrine the terms of the transaction prior to its execution, failed to advise her in writing of the desirability of seeking the advice of independent counsel concerning the transaction, and failed obtain her written informed consent concerning the transaction in accordance with Rule 1.8(a). Further, his actions were violative of Rules 8.4(c) and (a). His conduct was dishonest and deceitful, working to his advantage and to the detriment of Ms. Vidrine, in violation of Rule 8.4(c). By violating the above-cited rules, he also violated Rule 8.4(a), which provides that it is professional misconduct for a lawyer to violate or attempt the violate the Rules of Professional Conduct.

II. The Appropriate Sanction

A. Rule XIX, Section 10(C) Factors

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

(1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

(2) Whether the lawyer acted intentionally, knowingly, or negligently;

(3) The amount of the actual or potential injury caused by the lawyer's misconduct; and

(4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to his clients, the public, and the profession. His actions were intentional and knowing. Respondent's misconduct caused actual and serious harm to Chad Walters. Mr. Walters was forced to hire legal counsel to: 1) recover the Bogalusa property of which Respondent had deceptively deprived him; 2) recover damages related to the property; 3) obtain satisfaction of the debt Respondent had created to Mr. Walters by way of the debenture; and 4) recover attorney's fees associated with the litigation.

Respondent's conduct also caused actual harm to Glenda Vidrine. In the first hand note issued to Ms. Vidrine by BREPLLC, Respondent structured the indebtedness owed to her so that she personally was deprived of fair interest on the loan. Further, actual harm was caused to Ashton Vidrine, the owner of Vidrine Insurance Agency LLC, when Respondent aided in the attempt by Kyle Vidrine to deprive Ashton of the ownership of the LLC, without notifying or compensating Ashton. This was done via the filing of a false document with the Secretary of State which contained Respondent's electronic signature and listed him as a member and agent of the LLC.

Aggravating factors include: dishonest and selfish motive; a pattern of misconduct; multiple offenses; refusal to acknowledge the wrongful nature of his conduct; vulnerability of all of his victims; substantial experience in the practice of law; and indifference to making restitution. The sole mitigating factor is the absence of a prior disciplinary record.

B. The ABA Standards and Case Law

The Committee correctly applied Standards 4.11, 4.31, 4.61, and 5.11 of the ABA's *Standards for Imposing Lawyer Sanctions* in finding that disbarment is the baseline sanction in this matter. The Board adopts the Committee's analysis as to these standards and also finds that disbarment is the baseline sanction.

Disciplinary cases that involve similar misconduct also support the imposition of disbarment. The case cited by the Committee, *In re Baggette*, 2009-B-1091 (La. S.Ct. 10/20/2009), 26 So.3d 98, is particularly instructive. *Baggette* involved a Rule 1.8(a) violation. The respondent in *Baggette* purchased the assets of two consolidated successions ("the succession") from the heirs of the succession. The assets of the succession's estate were subject to an estate tax lien of approximately $8.5 million. Ms. Anderson, one of the heirs, was his elderly client in the succession matter. To make the purchase, the respondent borrowed $600,000 from Ms. Anderson, giving her a note drawn on his closely-held corporation for the loan. The Court found that the respondent failed to disclose the terms of the loan transaction in writing to Ms. Anderson, failed to afford her the opportunity to seek independent counsel to review the terms of the transaction, and failed to obtain her consent to the transaction in writing. Also, at the time the respondent, through his corporation, purchased Ms. Anderson's interest in the succession, he did not transmit the terms of the sale to her in writing and did not give her a reasonable opportunity to seek the advice of independent counsel. He further failed to obtain her written consent to the transaction. Significantly, the respondent did not believe that the estate tax lien of $8.5 million would actually be enforced by the IRS, and it ultimately was not enforced. In fact, the succession eventually collected a tax refund of $172,328.22. By that time, the succession assets were owned by the respondent's corporation, making his wife and him the parties ultimately entitled to the

refund. The heirs of Ms. Anderson sued the respondent to obtain return of the assets of the succession taken from her by the respondent without fully informing her of the likelihood (and eventual reality) that the taxes would be abated and a refund would be paid, all of which had redounded to the respondent's benefit. Ms. Anderson's heirs and the respondent later settled their disputes. The Supreme Court disbarred the respondent on finding a violation of Rule 1.8(a).

The case of *In re Cofield*, 2006-0577 (La. 9/1/06), 937 So.2d 330, also offers guidance. In *Cofield*, the respondent was charged with numerous violations of the Rules of Professional Conduct, but the Court primarily focused on the respondent's misconduct involving his business transactions with a client and her mentally disabled son ("the Davis Trust matter"). The Court determined that the respondent violated Rules 1.7 and 1.8, among others, in executing an irrevocable trust document that named himself as trustee over his client's son's funds, failing to communicate with the client, requesting and obtaining a loan from the client's son, and repeatedly contacting the client's son, even though he knew the client had contacted another lawyer to sue him on behalf of the client and her son. In imposing disbarment, the Court explained:

> Without diminishing the seriousness of respondent's actions in the [other counts of misconduct] we find the most egregious misconduct committed by respondent occurred in the Davis Trust matter. Respondent failed to completely discharge his fiduciary obligations as trustee. Respondent then engaged in a scheme intended to frustrate the beneficiary's attempts to remove him as trustee.
>
> Given the unique facts of respondent's misconduct in the Davis Trust matter, there are no cases directly on point. Nonetheless, we find some guidance from *In re Letellier*, 98-2646 (La. 9/8/99), 742 So.2d 544, in which we disbarred an attorney who entered into prohibited business transactions with an elderly client with a history of psychiatric problems. While we recognize that some of the misconduct at issue in *Letellier*, such as commingling of funds, is not present in the instant case, our opinion emphasized the egregious nature of the attorney's use of his legal skills to take advantage of "an obviously vulnerable victim." *In the same way, we find respondent intentionally used his legal skills to the disadvantage of Mr. Davis, a mentally-disabled client, by engaging in questionable transactions with him and by seeking to thwart attempts by Mr. Davis and his family to remove respondent as trustee. The baseline sanction for such misconduct is disbarment*.

Id., 2006-0577, p. 21; 937 So.3d at 343 (emphasis added).

Finally, in *In re Gross*, 2003-2268 (La. 11/21/03), 860 So.2d 1105, the respondent borrowed $25,000 from his client without complying with the safeguards afforded her by the Rules of Professional Conduct. In particular, he failed to reduce to writing the terms of the loan transaction and failed to advise the client that, prior to entering into the agreement, she was entitled to seek the advice of independent counsel in the transaction. The respondent did not repay the loan to the client, and as of the date of the formal charges--some fifteen years later--had not repaid one penny of the loan. The Court found that the respondent's conduct violated Rules of Professional Conduct 1.8(a) and 8.4(a) and (c). The respondent had a prior history of misconduct for similar behavior, including entering into improper business transactions with two clients and misleading a third party, among other things. The Court disbarred the respondent, noting:

> *Respondent has demonstrated a pattern and practice of entering into improper business transactions with his clients. The baseline sanction for this misconduct is clearly disbarment.* There are no mitigating factors present in this case; however, significant aggravating factors exist, the most serious of which are respondent's prior disciplinary offenses, substantial experience in the practice of law, and indifference to making restitution. Under these circumstances, there is no reason to deviate from the baseline sanction. Respondent must be disbarred.

Id., 2003-2268, p.5, 860 So.2d at 1108 (emphasis added).

Similar to the respondents in *Baggette* and *Gross*, Respondent failed to comply with the requirements of Rule 1.8(a) when he entered into business transactions with his clients, Mr. Walters and Ms. Vidrine. He failed to: 1) show the transactions were fair and reasonable to the clients, fully disclosed, and communicated to the clients in writing prior to the execution of the transactions; 2) afford the clients the opportunity to seek independent counsel to review the terms of the transactions; and 3) obtain the clients' consent to the transactions in writing. Like the respondent in *Cofield*, Respondent intentionally used his legal skills to the disadvantage of Mr.

Walters, Ms. Vidrine, and Ashton Vidrine, all of whom were vulnerable victims due to their familial or close personal or professional relationship with Respondent. Also, when sued by Mr. Walters, Respondent initially defended the lawsuit, instead of immediately making amends for his misconduct, causing Mr. Walters to incur approximately $24,000 in attorney's fees. Only after being sued did he settle his debts with Mr. Walters, approximately thirteen years after the debenture was executed and six years after the sale of the Bogalusa property to CTWLLC. Moreover, as noted by the Court in *Gross*, the fact that Respondent has demonstrated a pattern and practice of entering into improper business transactions with clients is significant. Although one mitigating factor is present in this matter (lack of prior disciplinary history), and Respondent has made restitution through a settlement of the underlying state court litigation with Mr. Walters, numerous aggravating factors still exist. Given the above, a similar sanction to that imposed in *Baggette*, *Cofield* and *Gross*, is appropriate in this matter. The Board adopts the Committee's recommended sanction of disbarment.

CONCLUSION

The Board adopts the Committee's findings of fact, with the two exceptions noted above concerning the loans Respondent procured from Ms. Vidrine. Further, the Board adopts the Committee's findings that Respondent violated Rules of Professional Conduct 1.7(a), 1.8(a), and 8.4(a) and (c) in connection with the Chad Walters Matter (Count I); Rules 1.7(a), 1.7(b), 1.8(a), 8.4(a) and (c) in connection with the Glenda Beth Vidrine Matter (Count II); and Rules 8.4(a)(b) and (c) in connection with the Ashton Vidrine/Vidrine Insurance Company, LLC Matter (also found in Count II). Finally, the Board adopts the Committee's recommendation that Respondent be disbarred from the practice of law and that he be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

RECOMMENDATION

The Board recommends that Respondent, Lane Norwood Bennett, be disbarred from the practice of law. The Board further recommends that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Susan P. DesOrmeaux
Alfreda Sellers Diamond
Laura B. Hennen
Brian D. Landry
M. Todd Richard
Erica J. Rose
Melissa L. Theriot
Charles H. Williamson, Jr.

By DocuSigned by: Linda G. Bizzarro

Linda G. Bizzarro
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
***

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:
(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
***