ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: W. JAMES SINGLETON

DOCKET NUMBER: 20-DB-036

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against W. James Singleton ("Respondent"), Louisiana Bar Roll Number 17801.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.5(c), 1.15, 8.l(a), 8.4(a), and 8.4(c).[2]

PROCEDURAL HISTORY

The formal charges were filed on August 6, 2020 in this matter. Supplemental and amending formal charges were filed on August 11, 2020. Respondent filed an answer to the charges on September 25, 2020. Second supplemental and amending formal charges were filed on October 5, 2020. Respondent filed an answer to the second supplemental and amending charges on November 17, 2020. The hearing of this matter was held on March 29 and 30, 2021 before Hearing Committee Number 4 ("the Committee").[3] Deputy Disciplinary Counsel Robert S. Kennedy appeared on behalf of ODC. Respondent appeared with counsel, S. P. Davis, Sr. and Leslie J. Schiff. Post-hearing briefs were filed by the parties on July 9, 2021.

On August 6, 2021, the Committee issued its report, finding that Respondent violated Rules of Professional Conduct 1.5(c), 1.15(a), 1.15(d), 8.1(a), 8.4(a), and 8.4(c). The Committee

1 Respondent was admitted to the practice of law on October 10, 1986. He is currently eligible to practice law.
2 See the attached Appendix for the text of the Rules.
3 Members of the Committee included Jeffrey L. Little (Chair), Mark A. Perkins (Lawyer Member), and Mark P. Vigen (Public Member).

recommended that Respondent be disbarred, make a full accounting and restitution to the complainant, Nicholas Johnson, and also be assessed with all costs and expenses of the proceeding pursuant to Rule XIX, Section 10.1.

The Respondent filed an objection to the Committee's report on August 25, 2021, and ODC filed its objection on September 20, 2021. Respondent's pre-argument brief was filed on October 8, 2021. ODC's reply brief was filed on October 26, 2021. Additionally, on October 8, 2021, Respondent filed a "Motion to Open Exhibit A and Consider the Deposition Testimony of Nicholas Johnson, Complainant." ODC responded and opposed this motion on October 12, 2021. Respondent filed a rebuttal to ODC's response/opposition on October 18, 2021. The Board issued an order on November 9, 2021 denying Respondent's Motion to Open Exhibit A. Oral argument via Zoom before Panel "B" of the Disciplinary Board was held on Wednesday, November 10, 2021. Mr. Kennedy appeared on behalf of ODC. Respondent appeared with counsel, Mr. Davis and Mr. Schiff.[4]

FORMAL CHARGES

The amended formal charges read, in pertinent part:

> The respondent, W. James Singleton, is a licensed Louisiana attorney, Bar Roll No. 17801 admitted to practice in 1986 with no history of prior discipline. The respondent was retained in 2011 to represent a client, Nicholas Johnson, who had been injured in an automobile accident in Shreveport, La. and in which he sustained severe and serious injuries. The representation was undertaken on a contingency fee basis. Thereafter, the respondent filed suit on the client's behalf in federal district court, and the case later proceeded to mediation, resulting in settlement of $750,000.
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> Following deposit of the settlement funds of $750,000 on June 7, 2012, into three different bank accounts--only one of which was a designated client trust account--the respondent thereafter failed to disburse the entirety of the client's portion of the settlement in a prompt and timely manner. Instead, on June 20, 2012, the respondent instructed his staff to tender a $90,000 check to the client and

[4] During oral argument, Mr. Schiff, on behalf of Respondent, made an oral motion requesting that the Board reconsider its order of November 9, 2021 denying Respondent's Motion to Open Exhibit A. Respondent's motion is denied, as Rule XIX provides no procedural mechanism for reconsideration of Board orders, rulings, or recommendations.

retained the balance of the funds due. At the time of the tender, the respondent did not contemporaneously provide the client with a disbursement sheet itemizing the deduction of fees and expenses, as required by rule. Although the contingency fee contract with the client called for the respondent to receive a $300,000 fee (representing forty percent of the gross settlement), the respondent's account records reflect that the respondent withdrew $428,700 in identifiable attorneys' fees from the gross settlement proceeds between June 14, 2012, and July 26, 2012.

When the client later called the respondent to inquire about receiving the balance of the settlement funds, the respondent advised him that he should allow the respondent to invest the funds for the client's benefit. The client did not agree to respondent's proposal and insisted on receiving the remainder of his funds. After some delay, the respondent relented, and agreed to meet with Mr. Johnson in his office on August 1, 2012. At that meeting, the respondent tendered a second check to the client in the amount of $148,000. Because the respondent again failed to provide the client with a disbursement sheet, the client remained entirely unaware about the expenses which had been paid and the precise amount due him from the settlement.

After discussing the matter with friends, the client ultimately concluded that he still had not received his entire settlement, particularly after he discovered that some expenses associated with the case remained unpaid. In one notable instance in 2014, well after the settlement, the client was contacted by an unpaid provider, Med-Trans, regarding a $15,000 expense incurred for helicopter transport of the client from the accident scene to a nearby hospital. Mr. Johnson immediately confronted the respondent about this bill, demanding that he be given the funds directly. The respondent told Mr. Johnson that he had not been made aware of this expense item, and needed to research whether it had been paid. Ultimately, beginning in December of 2014, respondent issued three separate checks to the client of $5,000, drawn on his personal account not from client trust funds.

When asked about this unpaid expense by the ODC during his 2017 sworn statement, the respondent--to explain his failure to pay this expense at settlement--insisted that his office was never provided with the $15,000 invoice prior to the client first bringing it to his attention in 2014. However, the documents at issue were provided to respondent by Med-Trans prior to the 2012 settlement in response to a specific request from the respondent's office. His statements to ODC that he had no prior knowledge of the expense were knowingly false and material in violation of RPC 8.l(a) and 8.4(c).

Despite being placed on notice of the expense, the respondent never paid the expense nor tendered the funds to the client at the time of settlement; he retained the funds in his client trust account, the balance of which in the interim, fell below the amount necessary to satisfy the expense on multiple occasions, resulting in the conversion of the client's funds.

During ODC's investigation, the respondent was asked to provide copies of financial documents associated with the settlement including, disbursement

sheet(s), cancelled checks and deposit slips from the client trust account, and source documents for claimed expenses. Although he did provide some documents, he failed to produce the necessary disbursement sheet(s), and complete trust account and financial records required to be maintained by Rule 1.15. ODC was ultimately compelled to subpoena the entirety of the trust account records directly from Capital One Bank.

The records which respondent did provide were thus woefully incomplete and, in many instances, outright deceptive. For example, the respondent offered as proof of a paid expense item a (front only) copy of a purported client trust account check (No. 3679) dated June 28, 2012, and made payable to Car Depot in the amount of $6,181, claiming that the check had otherwise been negotiated and paid. However, a review of his Capital One trust account reflects that the check in question was never deposited or negotiated by the payee, such that the funds involved should still have remained on deposit in his account. These funds have never been properly accounted for. His conduct constitutes a knowing violation of Rule 8.4(c) as well as RPC 1.15 (conversion).

Ultimately, ODC's financial auditor was required to reconstruct the settlement from the fragmentary records that Respondent did provide, supplemented with the records obtained directly from the bank. She has concluded that the Respondent still owes Mr. Johnson substantial sums in excess of $20,000 associated with his 2012 settlement.

By his acts and omissions, the Respondent has knowingly and intentionally violated the following Rules of Professional Conduct: 1.15 (conversion and commingling of client funds); Rule 1.15 (failure to maintain and produce required financial records to disciplinary authorities upon request); RPC 1.5(c) (failure to prepare, maintain and provide the client with a disbursement sheet); 8.1 (a) (testify falsely to disciplinary authorities); 8.4(a) (attempt to violate the Rules of Professional Conduct or do so through the acts of another); and 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation).

THE HEARING COMMITTEE'S REPORT

As noted above, the Committee issued its report on August 6, 2021. In its report, the Committee noted the exhibits submitted into evidence and discussed the witnesses' testimony at the hearing. The Committee also issued its findings of fact. The Committee reported as follows:

EVIDENCE AND ANALYSIS

Exhibits (ODC 1-38 and WS 1-6) were admitted into evidence. With few exceptions, the dates of deposits and payments are established by those exhibits and are not in dispute. ODC and Respondent dispute the existence of disbursement sheets, and the legitimacy, allocations, and total amounts of expenses for this client.

This Committee heard from Angelina Marcellino, employed as a forensic auditor with the Office of Disciplinary Counsel. Ms. Marcellino was brought in by ODC to reconstruct the financial records regarding this client. The Committee found Ms. Marcellino to be credible and adopts her findings, set forth in ODC 37 (a), (b), and (c), and in her testimony *in toto.*

Ms. Marcellino was asked to review Respondent's financial records for discrepancies and compliance with Rules of Professional Conduct. Her conclusion is that the Complainant is still, at a minimum, owed $6680.80. She found that some disbursements are not supported as paid, are non-allowable, or are a [*sic*] duplications. Her conclusions of charging excessive attorney fees, trust account balance for this client falling below zero, and conversion of client funds are supported by the documentation.

Respondent offered the testimony and reports of Jason Bruno, a former business partner with Respondent's son, who runs a tax service and does accounting work for Respondent. Bruno testified that Respondent had actually overpaid Mr. Johnson by $28,204.90, less approximately $2000.00 (Transcript 3/30/2021 morning, page 23).

This Committee rejects Mr. Bruno's testimony and exhibits as simply being a recapitulation of Respondent's contentions (Transcript 3/30/2021 morning, pages 45-46) without the "follow through" provided by Ms. Marcillano [*sic*]. The numerous errors in his assumptions and calculations were exposed in cross examination and will not be listed here. However, it should be noted that the numerous revisions and discoveries of expenses even up to the hearing date only highlights the shabby accounting procedures of the Respondent and strengthens the conclusion that there were never any disbursement sheets.

The [C]ommittee found the testimony of Nicholas Johnson, the Complainant, credible and supported by the rest of the evidence. Johnson testified he was referred to Respondent by his Pastor (Transcript 3/29/2021 afternoon, page[s] 65, 73). In contrast to the Respondent, Johnson recalled in detail the events following the settlement of his case in mediation. Respondent and his assistant drove to Ruston to have Johnson sign the draft of the settlement funds (Transcript 3/29/2021 afternoon, page 77). Johnson even recalled where he sat in the car, when signing the draft. Johnson later went to pick up the first $90.000.00, [*sic*] settlement proceeds check through the window at Respondent's office in Shreveport (Transcript 3/29/2021 afternoon, page 79). He did not meet with any lawyer or go over any disbursement sheet (Transcript 3/29/2021 afternoon, page 82).

Even though it was never discussed, Johnson felt it was understood he had more money coming to him. In August of 2012, he went back for [a]second check. He was given a check for $148,000 and was told that this was the rest of his money

(Transcript 3/29/2021 afternoon, page[s] 81-84) and the check indicated so in the memo portion. There was no disbursement itemization (Transcript 3/29/2021 afternoon, page 96). The evidence is clear that at the issuance of this second check, the client was in fact owed more money.

Later, there was an issue with an unpaid helicopter medical bill which resulted in three personal checks from Respondent to Johnson (Transcript 3/29/2021 afternoon, page[s] 89-84).

After discussions with others, Johnson felt he might be owed more and he contacted Respondent about looking at his file (Transcript 3/29/2021 afternoon, page 87). In lieu of seeing his file, he got yet another check from Respondent. Respondent characterized the $800.00, paid years later as "loan" (ODC 11, Bates page 170).

On or about September 6, 2016, Johnson went to a meeting where he saw an excel spreadsheet (Transcript 3/29/2021 afternoon, page[s] 100-107), and he received two more checks after signing a document indicating he was owed no further money. Thereafter, there were various text messages to see the file or documents and this resulted in the instant complaint being filed. After filing the complaint, he got his file (Transcript 3/29/2021 afternoon, page 99).

Respondent, W. James Singleton[,] testified the first day on cross, and on direct at the end of the hearing. This committee did not find his testimony consistent or credible. Respondent contends that his client asked him not to disburse all of his proceeds until the client could decide where to place the funds (Transcript 3/29/2021 morning, pages 19-20, 58), but there is no documentation of this request. Respondent claimed to have written a check for the whole amount, but then rewrote another check. This initial check was not offered into evidence. He claimed the initial settlement draft was signed in his office, but had no recollection of the split deposit into his various accounts (Transcript 3/29/2021 morning, page 23). He offered no real explanation for how he arrived at the amounts.

Respondent claimed he had disbursement sheets, and his handwritten contemporaneous notes on disbursements, but those documents, **and only those documents,** are missing from his file (Transcript 3/29/2021 morning, pages 34, 111). He further claimed his computer system "went blank" (Transcript 3/29/2021 morning, page 111), so he could not provide any backup. Respondent did not provide the committee with an example of a typical disbursement sheet nor any testimony of his staff to corroborate his assertions regarding this strange confluence of missing information. [fn 3: Respondent in his original answer to these charges, stated that his entire file had been taken by a former attorney/employee, Chris Sices, now disbarred (ODC 9a, Bates page 145.) At hearing he attempted to imply Sices would have had a motive to to [*sic*] take just this missing information (Transcript 3/29/2021 morning, page 115). The Committee rejects this contention as Sices left Respondent[']s employ in 2015,

well before the complaint was filed in this matter. Respondent testified that the disbursement sheets may have disappeared before Sices ever left his employ. (Transcript 3/30/21 morning, page 102.)]

Examination of some of the individual expenses and financial transaction[s] expose the unprofessional nature of Respondent's trust and other accounting practices. The split deposit, although not specifically prohibited by rule, is certainly not best practices, confuses the accounting, and serves in this matter to further the Committee's conclusion of selfish motive. [fn 4: Although Respondent was not charged with a violation, the subsequent split deposit of funds obtained from a third party loan would be in violation of Rule 1.5f(4) which requires that "When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances." There was a $10,000.00 loan to the client from a third party, of which only $4110 was placed in trust. The rest went to Respondent's non-trust accounts (Transcript 3/29/21 afternoon[,] page 54).]

Respondent attempted to improperly charge, as expenses to Mr. Johnson, "incentive payments" to Respondent's employees (Transcript 3/29/2021 morning, pages 75-76).

Besides the incentive payment to Sices, there were additional multiple payments to Chris Sices (Transcript 3/29/2021 morning, page 85), some characterized as [repayments for] loans. Johnson denied any loans from Chris Sices, and again there is no source documentation (Transcript 3/29/2021 afternoon[, page] 143).

ODC Exhibit 22 is a "donation" charged to Mr. Johnson, drawn on Respondent's account for Christ Center Church, Inc. Mr. Johnson denied authorizing a donation to the church pastored by the same individual who referred Mr. Johnson to Respondent (Transcript 3/29/2021 morning, page 86-88). Respondent seems to indicate that his authority for the disbursement was <u>before</u> the case settled, and also that this was listed on the first disbursement sheet, despite it being issued <u>after</u> the first disbursement. [fn 5: (Transcript 3/30/21 afternoon[,] page 108) Respondent states that Johnson told him "Look, when you get it resolved, I want you to take care of my Pastor and--take care of my Pastor, my Bishop, and to do it."] [fn 6: See (Transcript 3/30/21 afternoon[,] page 109) and ODC 7, 22.)] Again, Respondent was not charged by ODC with sharing fees with a non party.

A thorough discussion of many questionable accounting entries are included in ODC 37 (a), (b), and (c), including the following, for which Respondent was not formally charged.

Prior to any settlement funds reaching Respondent's trust account, disbursements were made out of trust for this client (Transcript 3/30/2021 afternoon, page 95), (Transcript 3/30/2021 morning, page 79)[.] There was a loan from a business owned by Respondent's son, without appropriate disclosures. Johnson testified he later found out later [*sic*] that MYCOM was owned by Respondent's son (Transcript 3/29/2021 afternoon, page 93)[.] The final "settlement" conference whereby Respondent procured a release from Johnson was done without appropriate disclosures (Transcript 3/30/2021 afternoon, page[s] 26-27) (Rule l.8(h))[.] Respondent bought furniture (Transcript 3/30/2021 morning, page 117) and paid for a myriad of things, like hotels and televisions (Transcript 3/30/2021 afternoon, page 92) without any inquiry into whether these were for "necessitous circumstances" (Rule l.8(e)).

Respondent failed to cooperate by providing his accounting records without subpoena.

FINDINGS OF FACT

Respondent represented Johnson and advanced sums of money to the client. Upon resolution of the case he deposited settlement funds of $750,000, on June 7, 2012, into three different bank accounts--only one of which was a designated client trust account. Thereafter Respondent paid [a] $90,000 check to the client, which was less than the client was owed. There was no contemporaneous disbursement sheet itemizing the deduction of fees and expenses, as required by the rule. A known medical provider was not paid.

The evidence establishes that in June and July of 2012, when Respondent was only entitled to receive a $300,000.00 fee, Respondent's accounting records reflect that the Respondent withdrew $428,700 in identifiable attorneys' fees from the gross settlement proceeds.

On August 1, 2012 the client was given a second check in the amount of $148,000. The client was not given a disbursement sheet and was falsely advised verbally by the Respondent, and in the memo of the check [,] that this was all the client was owed.

Additionally, Respondent admitted that when the client discovered an unpaid medical bill, he issued three separate checks to the client, totaling $15,000, drawn on his **personal** account.

The Respondent failed to disburse the entirety of the client's portion of the settlement in a prompt and timely manner, and converted the client's funds to his own use. The client is still owed money. The entire listing of disbursements not supported as paid with documentation or otherwise non-allowable, or duplications of other charges, are listed in detail in ODC 37 (a), (b), and (c). Even today, Respondent fails to recognize the sums owed to his client or the gravity of his misconduct.

> Respondent did not cooperate with ODC, forcing the latter to subpoena and reconcile bank records.

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Based on the foregoing, the Committee found that Respondent had violated Rules of Professional Conduct 1.5(c), 1.15(a), 1.15(d), 8.1(a), 8.4(a), and 8.4(c). As to the sanction, the Committee analyzed the Rule XIX, Section 10(C) factors and found that Respondent had violated duties owed to his client, Mr. Johnson, and to the profession. The Committee also found that Respondent had acted knowingly. The Committee further determined that Respondent's misconduct caused actual harm to Mr. Johnson and caused extensive resources to be expended to resolve the issues at hand.

Aggravating factors cited by the Committee included dishonest or selfish motive, submission of false evidence, false statements or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the misconduct, vulnerability of the victim, substantial experience in the practice of law (admitted in 1986), and indifference to making restitution. The sole mitigating factor found was absence of a prior disciplinary record.

Without citing specific standards of the ABA's *Standards for Imposing Lawyer Sanctions,* the Committee found that disbarment is the baseline sanction for Respondent's misconduct involving conversion of property and injury to a client. Relying on the case of *Louisiana State Bar Ass'n v. Hinrichs*, 486 So.2d 116 (3/31/86), the Committee determined that disbarment is the appropriate sanction in this matter and recommended that it be imposed upon Respondent. The Committee also recommended that Respondent make a full accounting and restitution to Mr. Johnson and be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in Section 2 of 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 factual findings of the Committee are not manifestly erroneous and are adopted by the Board. The Board also makes the additional findings of fact:

1. Respondent's conduct was both "knowing and intentional," not only "knowing" as found by the Committee.

2. Respondent knowingly and intentionally made a false statement of fact to Deputy Disciplinary Counsel Kennedy during his June 12, 2017 sworn statement. Respondent falsely stated that his office was never provided with the Med-Trans invoice prior to the May 2012 settlement with defendant, Fed Ex, in Mr. Johnson's matter.

3. Respondent presented a Capital One trust account check in the amount of $6,181 (check number 3679) in support of a "paid" expense to Car Depot on behalf of Mr. Johnson on Exhibit R-2. The check was never deposited or negotiated by Car Depot. The receipt presented by Respondent, in support of his assertion that the check was negotiated, is not supported by the evidence.

Further, the Board notes that Respondent's Exhibit W-5 was not admitted into evidence at the hearing, and the deposition of Nicholas Johnson was proffered by Respondent at the hearing. Transcript, 3/29/21 morning, p. 9; Transcript 3/30/21 morning, p. 136.

B. *De Novo* Review

The Committee correctly found that Rules of Professional Conduct 1.5(c), 1.15(a) and (d), 8.1(a), 8.4(c), and 8.4(a) had been violated by Respondent. Each rule violation is discussed below.

Rule 1.5(c): Rule 1.5(c) addresses contingency fee matters, and states, in pertinent part, that:

> Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

Respondent and Mr. Johnson entered into a contingency fee agreement on September 1, 2011, under which Respondent would represent Mr. Johnson in connection with his automobile accident. As Respondent did not provide Mr. Johnson with a disbursement sheet for any of the settlement funds he received, Respondent violated Rule 1.5(c).

Rule 1.15(a): Rule 1.15(a) addresses the safekeeping of client property. The rule sets forth that "a lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property." Under the rule, the client's funds generally must be kept in one or more separate interest-bearing client trust accounts, properly identified, and appropriately safeguarded. By initially depositing part of Mr. Johnson's settlement funds in Respondent's expense account ($80,000 of the funds) and his operating account ($30,000 of the funds), Respondent violated this rule by commingling Mr. Johnson's funds with his personal and/or other funds. Instead, the entire $750,000 settlement amount should have been deposited into his trust account for safekeeping, and following the issuance of the appropriate settlement funds and disbursement sheets to Mr. Johnson, Respondent should have moved his

attorney's fee to his operating account.

Moreover, as seen in Ms. Marcellino's March 21, 2021 Supplemental Report, it was ultimately determined that Respondent converted funds belonging to Mr. Johnson totaling $6,680.80. Interestingly, a review of Respondent's trust account balance and Mr. Johnson's running balance between June 7, 2012 and April 30, 2017, shows that for 402 days, Respondent's trust account balance was insufficient to honor Mr. Johnson's running balance. The highest shortage identified to honor Mr. Johnson's running balance was $125,255.47. The longest consecutive time frame that the trust account held an insufficient balance to honor Mr. Johnson's running balance was for 89 days during the time period of November 29, 2013 to February 25, 2014. ODC Exhibit 37c, Bates pp. 397-98. The first date on which a shortage was present was July 3, 2012, less than one month after the initial split deposit was entered into the trust account, and this shortage totaled $76,757.54. *Id.* at pp. 398, 400. Respondent clearly failed to safekeep Mr. Johnson's funds and converted the funds to his own use. ODC has established that Respondent violated Rule 1.15(a).

Rule 1.15(d): Rule 1.15(d) provides, in pertinent part, that "a lawyer shall promptly deliver to the client or third person any funds or other property that the client is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property." The $750,000 settlement check issued to Respondent and Mr. Johnson from the defendant, Fed Ex, is dated May 24, 2012. On June 7, 2012 the settlement funds were deposited into Respondent's trust, operating and expense accounts. Mr. Johnson received the following disbursements after receipt of his settlement proceeds:

Date:	**Amount**:
6/21/12	$ 90,000
7/17/12	$ 2,000
8/07/12	$148,000
10/29/12	$ 7,500
12/12/14	$ 5,000
1/30/15	$ 5,000
3/04/15	$ 5,000
8/09/16	$ 800
8/22/16	$ 500
9/06/16	$ 3,170
9/06/16	$ 6,830
9/23/16	$ 9,495.10
	$ 283,295.10

ODC Exhibit 37b, Bates p. 345.

Settlement funds in the amount of $247,500 were distributed to Mr. Johnson in 2012. Thereafter, in 2014, $5,000 in settlement funds were distributed to him, and in 2015, $10,000 in settlement funds were distributed to him. Over $20,000 in settlement funds were distributed to him in 2016. Transcript, March 29, 2021 afternoon, pp. 31-32. After 2012, Respondent slowly paid Mr. Johnson settlement funds that were due to him, and almost ten years after the settlement proceeds were received by Respondent, he still owes Mr. Johnson a significant amount of funds in the amount of $6,680.80. Clearly, Respondent has failed to promptly deliver to Mr. Johnson the funds he was entitled to receive. He has also failed to render a proper accounting to Mr. Johnson,

despite his requests. Mr. Johnson only received an Excel spreadsheet from Respondent on September 6, 2016, over four years after the settlement, apparently detailing purported settlement and cost disbursements. Mr. Johnson testified that he did not understand the spreadsheet and he did not know if the information contained therein was true. Transcript, March 29, 2021 afternoon, pp. 137-38; ODC Exhibit 1. ODC has proven that Respondent violated Rule 1.15(d).

Rule 8.1(a): Rule 8.1(a) provides that a lawyer in connection with a disciplinary matter shall not "knowingly make a false statement of material fact." When asked about the unpaid Med-Trans invoice during his June 12, 2017 sworn statement, Respondent, in order to explain his failure to pay this expense at settlement, insisted that he was never provided with the invoice *prior to* the settlement of Mr. Johnson's case. He stated that Mr. Johnson and Mr. Sices brought the invoice to his attention two to three years *after* Mr. Johnson's case had settled. ODC Exhibit 4, Bates pp. 79-82, 88-89, 91. However, a review of a copy of Mr. Johnson's file, produced by Respondent in response to an ODC subpoena, shows that the invoice was provided to Respondent by Med-Trans *prior to* the 2012 settlement of Mr. Johnson's case. Moreover, Respondent provided the pre-settlement Med-Trans invoice to ODC prior to his sworn statement. ODC Exhibit 18c, Bates pp. 200, 217, 222, 226.

At the hearing, Respondent's testimony about the Med-Trans invoice was inconsistent, which again showed that he was not being forthright about the invoice. Closely similar to his testimony given at his sworn statement, he first testified that he had neither *received* or seen the invoice until two to three years after the case settled. Transcript, March 29, 2021 morning, p. 40. When further questioned by ODC, Respondent insisted that his statements given to ODC at the sworn statement were correct. He then, however, changed his answer to only assert that he *did not know of* and *did not see* the invoice prior to the settlement, which was contrary to his prior

assertions that he *did not receive* the invoice until two to three years after the settlement. *Id*. at pp. 43-44. Respondent's changing and less than forthright testimony at the hearing, along with a review of ODC Exhibit 18c, establishes that Respondent's statement to ODC at his sworn statement that he did not receive the Med-Trans invoice until after the settlement, was knowingly and intentionally false in violation of Rule 8.1(a).

Rule 8.4(c): Rule 8.4(c) states that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent's conduct as detailed in the discussion of Rule 8.1(a) and the Med-Trans invoice above also includes conduct involving misrepresentation in violation of Rule 8.4(c).

Further, Respondent offered as proof of a paid expense for which he should be reimbursed a front-only copy of a purported Capital One trust account check (number 3679) payable to Car Depot and dated June 28, 2012. The check is in the amount of $6,181. Respondent claimed that the check had been negotiated and paid. However, a review of Respondent's trust account reflects that the check in question was never deposited or negotiated by Car Depot. In his further attempt to prove that the check was actually negotiated, Respondent provided a receipt, dated July 6, 2012, reflecting that the Car Depot balance was paid. The receipt discloses that the payment was from "Vanessa Adger -- Nicholas Johnson." ODC Exhibit 9(a).

Mr. Johnson testified at the hearing that he did not know if the funds for which the receipt was given were his funds from the settlement or Respondent's funds (which, according to Respondent's assertions, would have been in the form of check number 3679 to Car Depot). Transcript 3/29/21 afternoon, pp. 135-37. Respondent testified that he did not know where the receipt came from, but that he paid for the car. Transcript 3/30/21 afternoon, pp. 79-81.

Respondent's testimony that he paid for the car with his funds is unconvincing and will not

be accepted by the Board. Further, the receipt and unnegotiated check number 3679 constitute insufficient proof that Respondent paid the balance as described. As determined by Ms. Marcellino in her March 18, 2021 Supplemental Report, the $6,181 check is an unsupportable disbursement for which Respondent should not be reimbursed. ODC Exhibit 37c, Bates pp. 390, 392. By improperly listing this check as a supported disbursement in Exhibit R-2 and also providing an unsupportable receipt, Respondent engaged in misleading conduct. His actions in connection with the Med-Trans invoice and the Car Depot check constitute violations of Rule 8.4(c).[5]

Rule 8.4(a): Rule 8.4(a) provides that it is professional misconduct for a lawyer to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another. By violating Rules 1.5(c), 1.15(a), 1.15(d), 8.1(a), and 8.4(c), Respondent also violated Rule 8.4(a).

II. The Appropriate Sanction

A. The Rule XIX, Section 10(C) Factors

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

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

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

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

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

[5] *See also* Bates pp. 390-93 of ODC Exhibit 37c, which is the March 18, 2021 Supplemental Report of Ms. Marcellino. Delineated there are additional items listed Exhibit R-2 which are: (1) not supported as paid; (2) a duplication and/or (3) a non-allowable disbursement. The twelve transactions at issue, which include the Car Depot transaction, total $95,661.35, and also raise additional concerns as to further misrepresentations made by Respondent during these proceedings.

Here, Respondent has violated duties owed to his client and the profession. His actions were knowing and intentional. The amount of actual injury to Mr. Johnson was great; he still remains deprived of $6,680.80 owed to him from his accident settlement which was finalized in 2012. Moreover, harm to the profession and the disciplinary system has occurred in that ODC was forced to spend its limited resources and excessive amount of time unraveling Respondent's accounting related to Mr. Johnson's settlement. Aggravating factors present include dishonest or selfish motive, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (failure to meaningfully respond to ODC's subpoenas for bank account information, causing ODC to issue subpoenas to the bank); submission of false evidence, false statements or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution. The sole mitigating factor present is the absence of a prior disciplinary record.

B. The ABA Standards and Case Law

A review of the ABA's *Standards for Imposing Lawyer Sanctions* reveals that disbarment is the baseline sanction in this matter. Standard 4.11 provides that "[d]isbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." By knowingly converting a portion of Mr. Johnson's settlement funds, Respondent caused injury to Mr. Johnson in that he has and continues to experience delays in receiving the settlement funds due to him. Additionally, Standard 5.11 provides that "[d]isbarment is generally appropriate when a lawyer engages in any . . . intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice." Respondent's actions in connection with the Med-Trans invoice and Car Depot check are examples

of his intentional conduct involving misrepresentation and seriously reflect on his fitness to practice law. Standard 7.1 provides that "[d]isbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, with the intent to obtain a benefit for the lawyer or another, and cause[s] serious or potential serious injury to a client, the public, or the legal system." By failing to be forthright with ODC concerning the disbursements to Mr. Johnson, Respondent violated his duty owed as a professional, with the intent to obtain a benefit for himself. His actions have caused injury and potential serious injury to Mr. Johnson and ODC (the legal system) in that Mr. Johnson has been delayed in receiving the total amount of settlement proceeds due to him and ODC has spent its limited resources and an inordinate amount of time in unraveling Respondent's accounting relating to Mr. Johnson's settlement.

Case law also supports the sanction of disbarment. In the touchstone case of *Louisiana State Bar Ass'n v. Hinrichs*, 84-1459 (La. 3/31/86), 486 So.2d 116, the Court set forth an extensive discussion of the appropriate sanction for DR 9-102 violations (preserving identity of funds and property of others). *See* now Rule of Professional Conduct 1.15. In *Hinrichs*, the Court explained that DR 9-102 violations occur when an attorney fails to deposit funds wholly or partially belonging to his client in a separate client trust account, withdraws funds from the client trust account that are not due to him beyond any dispute, or fails to deliver to his client, as requested, funds that the client was entitled to receive. *Hinrichs*, 486 So.2d at 122.

The Court noted that in a typical case of disbarment for violation of DR-102, one or more of the following elements are usually present:

1. The lawyer acts in bad faith and intends a result inconsistent with his client's interest;

2. The lawyer commits forgery or other fraudulent acts in connection with the violation;

3. The magnitude or duration of the deprivation is extensive;

4. The magnitude of the damage or risk of damage, expense and inconvenience caused to the client is great; or

5. The lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings.

Id.

A three-year suspension from practice typically results in cases involving similar but less aggravated factors. In such cases, the lawyer is guilty of at least a high degree of negligence in causing his client's funds to be withdrawn or retained in violation of the disciplinary rule, but the lawyer usually does not commit other fraudulent acts in connection therewith. The lawyer usually benefits from the infraction, but in contrast with disbarment cases, the client may not be greatly harmed or exposed to great risk of harm. The lawyer fully reimburses or pays his client the funds due without the necessity of extensive disciplinary or legal proceedings. *Id*.

A suspension from practice of eighteen months or two years will typically result where the facts are appropriate for a three-year suspension, expect that there are significant mitigating circumstances; or where the facts are appropriate for a one-year suspension, except that there are significant aggravating factors. A suspension from practice for one year or less will typically result where the negligence in withdrawing or retaining client funds is not gross or of a high degree. No other fraudulent acts are committed in connection with the violation of the disciplinary rule. There is no serious harm or threat of harm to the client. Full restitution is made promptly, usually before any legal proceeding or disciplinary complaint is made. A reprimand may be appropriate in a case where there is a minor violation of DR 9-102, but there is no conversion or harm to the client. *Id*.

Here, Respondent's conversion of Mr. Johnson's funds warrants disbarment under the

Hinrichs analysis. Respondent acted knowingly, intentionally, and in bad faith in failing to timely deliver Mr. Johnson's settlement funds to him. In August of 2012 when he gave Mr. Johnson the second post-settlement check in the amount of $148,000, he falsely told Mr. Johnson that this was his "full/final disbursement" of his settlement amount, when much more was due to Mr. Johnson. Respondent thereafter slowly gave payments to Mr. Johnson, with the last payment in September 2016. Now, almost ten years after the settlement, Mr. Johnson is still owed $6,680.80 which has not been paid to him. Respondent also failed to be forthright with Mr. Johnson, declining to give Mr. Johnson disbursement sheets when he issued settlement checks to him. These disbursement sheets would have informed Mr. Johnson of the proper settlement amounts due and disbursements/payments made on his behalf. Mr. Johnson was greatly inconvenienced by being forced to file a complaint against Respondent and participate in this disciplinary proceeding in order to receive an accounting of the settlement funds.

Further, in *In re Bell*, 2019-1345 (La. 11/05/19), 281 So. 3d 650, the respondent settled a case without client authorization, charged interest on money he loaned to a client, converted client funds due from a $16,000 settlement, failed to cooperate with ODC in its investigation, and provided false statements to ODC. Such false statements included assertions that he had made a cash loan to his client and that he had paid his client's chiropractic invoice, both of which he did not do. *Id*., 2019-1345, pp. 4, 7, 281 So.3d 653, 655. Aggravating factors present included a prior disciplinary record, dishonest or selfish motive, vulnerability of the victim, substantial experience in the practice of law, indifference to making restitution, and illegal conduct. No mitigating factors were supported by the record. *Id.*, 2019-1345, p. 8, 281 So.3d at 655. Relying on *Hinrichs*, the Court disbarred the respondent, and also ordered the respondent to make restitution to his client and to the chiropractor. *Id.*, 2019-1345, p. 8, 281 So.3d at 655-56.

Finally, in *In re Dunn*, 2018-0340 (La. 5/9/18), 241 So.3d 984, the respondent converted third party funds in violation of Rules 1.15(a), 1.15(d), 8.4(a), and 8.4 (c). The Court found that the respondent acted knowingly, if not intentionally, violated duties owed to his clients and the public, and caused harm to the medical provider to whom the funds were owed and potential harm to his clients. Aggravating factors present included a prior disciplinary record, dishonest or selfish motive, pattern of misconduct, and substantial experience in the practice of law. Mitigating factors included personal or emotional problems, delay in the disciplinary proceedings, and remoteness of his prior offence. *Id.*, 2018-0340, pp. 10-12, 241 So.3d 990-91. Again relying on *Hinrichs*, the Court disbarred the respondent, finding that both the magnitude and the duration of the deprivation was extensive.[6] Further, although the respondent had begun making restitution to the medical provider in monthly payments, he had only entered into the compromise agreement after the extended pressure of disciplinary and legal proceedings. In disbarring the respondent, the Court also ordered him to make restitution to the medical provider. *Id.*, 2018-0340, pp. 12-13, 241 So.3d 991.

Similar to the respondents in *Bell* and *Dunn*, Respondent has improperly handled and converted funds in his trust account, causing harm. As did the respondent in *Bell*, Respondent also made false statements or submitted false information to ODC during the investigation of his disciplinary matter, particularly concerning the Med-Trans invoice and the Car Depot check and receipt. Further, he failed to properly cooperate with ODC its investigation, forcing ODC to subpoena his bank records. As in *Dunn*, Respondent also has failed to remit funds due to a client

[6] The actual amount of third party funds that the respondent converted is not apparent from the opinion. However, at one point, the respondent owed the medical provider as much as $74,058.50. The respondent and the provider later entered into a compromise agreement, indicating that the provider accepted $38,050 to settle all of the outstanding client accounts associated with the respondent. The respondent made an initial payment of $17,050 to the provider, leaving a $21,000 balance to be paid through monthly payments, unless the respondent was able to come up with more funds or the provider was aware of more funds available. Respondent did not actually sign the compromise agreement until approximately nineteen months after it was confected; however, he did make the monthly payments as scheduled.

or third party for an extended period of time.

Based on the above, the Board recommends that Respondent be disbarred from the practice of law and that he make restitution to Mr. Johnson in the amount of $6,680.80 as determined in Ms. Marcellino's March 18, 2021 Supplemental Report. The Board also recommends that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

CONCLUSION

The Board adopts the Committee's findings of fact, as supplemented above, and its findings that Respondent violated Rules 1.5(c), 1.15(a), 1.15(d), 8.1(a), 8.4(a), and 8.4(c). The Board also adopts the Committee's recommendation that Respondent be disbarred. Further, the Board recommends that Respondent make restitution to Mr. Johnson in the amount of $6,680.80 as determined in Ms. Marcellino's March 18, 2021 Supplemental Report. The Board also recommends that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

RECOMMENDATION

The Board recommends Respondent, W. James Singleton, be disbarred. Further, the Board recommends that Respondent make restitution to Mr. Johnson in the amount of $6,680.80.

The Board also 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

Paula H. Clayton
Todd S. Clemons
Susan P. DesOrmeaux M.
Todd Richard
Erica J. Rose
Lori A. Waters
Charles H. Williamson, Jr.

DocuSigned by:
By: Laura Hennen
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Laura B. Hennen
FOR THE ADJUDICATIVE COMMITTEE

Brian D. Landry – Recused.

APPENDIX

Rule 1.5. Fees

…

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

…

Rule 1.15. Safekeeping Property

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

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

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

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a

statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

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

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

(g)...

Rule 8.1. Bar Admission and Disciplinary Matters

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

(a) Knowingly make a false statement of material fact;
…

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

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

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

…