ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: TIM L. FIELDS

DOCKET NUMBER: 20-DB-031

Louisiana Attorney Disciplinary Board
FILED by: [signature]
Docket# 20-DB-031
Filed-On 3/9/2023

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 Tim L. Fields ("Respondent"), Louisiana Bar Roll Number 24794.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.1(c), 1.2, 1.8(e)(3), 1.8(k), 1.15(a) (d) (f) (g), 5.3, 8.1(a) (b), and 8.4(a) (c).[2]

PROCEDURAL HISTORY

Formal charges were filed on June 23, 2020. Respondent filed an answer to the charges on July 27, 2020. The hearing of this matter was held on April 15, 2021 before Hearing Committee No. 9 ("the Committee").[3] Deputy Disciplinary Counsel Robin K. Mitchell and Gregory L. Tweed appeared on behalf of ODC. Respondent appeared with counsel, Kevin R. Tully and H. Carter Marshall.

On January 5, 2022, the Committee issued its report, finding that ODC proved by clear and convincing evidence that Respondent violated Rules of Professional Conduct 1.1(c), 1.2(a), 1.8(e)(3), 1.8(k), 1.15(a) (d) (f) (g), 5.3, 8.1(a) (b), and 8.4(a) (c). After considering the scope of the violations, as well as the mitigating and aggravating factors present, the Committee recommended that Respondent be disbarred.

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[1] Respondent was admitted to the practice of law in Louisiana on April 18, 1997. Respondent is currently eligible to practice law.

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

[3] Members of the Committee included Michael J. Ecuyer (Chair), Beau P. Sagona (Lawyer Member), and Harry G. Barkerding (Public Member).

On January 21, 2022, Respondent filed a Notice of Objection to the Report of Hearing Committee No. 9, objecting to the Committee's findings of fact, legal determinations, and the sanction recommended. On January 24, 2022, ODC also filed its Objection to [the] Hearing Committee Recommendation, objecting only to the recommended sanction of the Committee and urging the Board to recommend permanent disbarment in this matter. ODC's Initial Pre-Argument Brief was filed on March 28, 2022. Respondent's Pre-Argument Brief was filed on March 29, 2022. ODC's Answering Pre-Argument Brief was filed on April 12, 2022.

Oral argument before Panel "C" of the Disciplinary Board was held on April 28, 2022.[4] Ms. Mitchell appeared on behalf of ODC. Mr. Tully and Mr. Marshall appeared on behalf of Respondent.

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I (ODC Investigative File No. 0037309)

> The Office of Disciplinary Counsel ("ODC") received a complaint from Dr. Van Wormer (Complainant), on December 13, 2018. Complainant is a chiropractor who maintained a longstanding arrangement with Respondent to provide medical treatment for Respondent's personal injury clients and receive payment upon settlement of the client's case. Complainant provided medical treatment to three of Respondent's clients from February of 2016 through August of 2016 (Edwin Brooks, Mathieu Fletcher, and Mateo Fletcher), but did not receive payment despite all three cases having been settled in early 2017. Complainant and his staff routinely contacted Respondent's office in attempts to collect the debts but were unable to do so.
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> The ODC forwarded Respondent notice of the complaint which Respondent received on January 1, 2019. On January 3, 2019, Respondent paid the three outstanding medical invoices to Complainant, totaling $6,916.00, by check from his trust account. The check was signed by Respondent's CPA, who is not a Louisiana licensed attorney. Pursuant to the ODC's request, Respondent provided copies of the settlement disbursement checks written to the three clients. These three checks written from Respondent's trust account in February and April of 2017, were signed by Respondent's former paralegal, who is not a Louisiana

[4] Members of Panel "C" included Paula H. Clayton (Chair), Aldric C. "Ric" Poirier, Jr. (Lawyer Member), and Valerie S. Fields (Public Member).

licensed attorney.

On June 19, 2019, Respondent appeared at the ODC with his counsel wherein he provided a sworn statement. During said sworn statement, Respondent testified that his CPA and his paralegal had signatory [authority] to his trust account. Respondent also testified that his prior secretary left the firm, and he was not aware the Complainant was not paid because the matter was never brought to his attention. Respondent further testified that he never had a problem with this type of issue before the current situation happened. Upon completion of the sworn statement, the ODC requested additional documentation pertaining to Respondent's trust account.

On August 14, 2019, Respondent appeared at the ODC with his counsel, wherein Respondent and his counsel participated in a recorded interview with Deputy Counsel and ODC's Forensic Auditor, Angelina Marcellino. During said interview Respondent acknowledged he "was not candid" during his sworn statement. Specifically, Respondent acknowledged that in approximately March of 2015, he discovered that his secretary had failed to pay third-party providers a combined total of approximately 4.2 million dollars between 2009 and 2015 by indiscriminately transferring client settlement funds from the Respondent's trust account to the Respondent's operating account. Respondent explained that these funds were then used for his personal and office expenses. Respondent further explained that he contacted the main medical providers to whom he owed the majority of the client settlement funds and those providers agreed to continue working with him and treating his current/future clients, but required Respondent pay the oldest client's accounts first. Respondent acknowledged that between 2015 and August of 2019, it was his pattern and practice to use not only his earned legal fees from his client settlements but also the third-party provider funds from settlements obtained for his current clients, to pay outstanding third-party provider invoices that were generated by his previous clients between 2009 and 2015. Respondent advised the ODC that he has ceased that pattern and practice.

The ODC obtained documentation from Respondent including bank statements and records from Respondent's trust account between January 1, 2017 through January 31, 2019. The ODC also obtained a sworn statement from Respondent's CPA, Jimmie Howell, as well as additional documentation compiled by Mr. Howell pertaining to the Respondent's trust account and client money owed to third-party providers. This documentation was reviewed by ODC's Forensic Auditor, Angelina Marcellino, CIA, who confirmed the Respondent's admitted conversion as of July 10, 2015, was $4,148,944.59, as well [as] the Respondent's "rolling conversion" between 2015 and August of 2019. According to Ms. Marcellino and the records provided to ODC by Respondent, the amount of conversion from the Respondent's trust account as of September 30, 2019, was $1,840,366.54. According to recent documentation provided to the ODC, Respondent has reduced the amount of conversion to $814,268.69 as of June 14,

2020.

Also, during Respondent's sworn statement, Respondent testified that his law practice has consisted of "almost exclusive personal injury" cases since 1999; however, Respondent later acknowledged to ODC that he did not maintain a client trust account between approximately 2006 and 2011. Respondent failed to provide accurate information and proper disclosure of the nature of his practice on the Annual Trust Disclosure & Overdraft Notification Authorization forms he filed with the Louisiana Attorney Disciplinary Board from November 10, 2006 through November 14, 2012, by certifying that he did not handle funds of clients or third persons.

The ODC also obtained copies of Respondent's standard *Contingency Fee Agreement* used in all personal injury claims. The agreement states "A standard file charge of One hundred twenty-five dollars ($125.00) shall be assessed at the time of distribution of any funds received in judgment or settlement." This $125.00 file fee appears on various *Disbursement Memorandums* provided by the Respondent and is not attributable to any costs or services undertaken for those specific clients. This provision, as well as others (referenced below) contained in Respondent's Contingency Fee Agreement, are expressly prohibited by the Rules of Professional Conduct and prior jurisprudence from the Louisiana Supreme Court.

There is clear and convincing evidence to establish the Respondent has violated Rules 1.1(c), 1.8(e)(3), 1.15(a)(d)(f)(g), 5.3, 8.l(a)(b), and 8.4(a)(c) of the Rules of Professional Conduct.

COUNT II (ODC Investigative File No. 0037931)

The ODC received a complaint from Complainant, Sam Montgomery, on August 29, 2019. Mr. Montgomery hired Respondent for representation in a personal injury claim and alleged that Respondent settled the case without his knowledge and authority.

The ODC forwarded notice of the complaint to Respondent. Respondent provided two written responses to the complaint. According to Respondent's response, Complainant was hard to reach but the Complainant had previously signed a Power of Attorney to a friend, Mr. Stewart. Mr. Stewart came by the Respondent's office "around June or July" to check on the Complainant's case when he learned the case was already settled. Mr. Stewart then questioned the amount of the settlement. According to Respondent's written response, the *Contingency Fee Agreement* signed by his clients "conveys full authority" to Respondent to settle a claim. Respondent acknowledged that he agreed to settle the Complainant's matter in late April because "its normal practice to accept the policy limits in a case as full and final settlement." Also, according to Respondent's response, someone from the Respondent's office signed the

Complainant's name to the settlement check.

The *Contingency Fee Agreement* utilized by Respondent contains provisions allowing Respondent "complete settlement authority" to settle a client's case and disburse settlement proceeds without [the] client's permission in various circumstances. These provisions, as well as others (referenced above) contained in Respondent's *Contingency Fee Agreement*, are expressly prohibited by the Rules of Professional Conduct and prior jurisprudence from the Louisiana Supreme Court.

The evidence obtained suggests that the Respondent has violated Rules 1.2 and 1.8(k) of the Rules of Professional Conduct.

THE HEARING COMMITTEE'S REPORT

As stated above, the Committee issued its report on January 5, 2022. In its report, the Committee detailed the exhibits submitted into evidence and listed the witnesses who testified at the hearing. The Committee reported as follows.[5]

EVIDENCE

ODC['s] Exhibits 1-26, 28-32 were admitted into evidence at the hearing. Respondent['s] Exhibits 1-11 (12 and 13 were withdrawn) were admitted into evidence at the hearing, and Respondent's Exhibits 14a-14j and 15 were admitted after the hearing at the instruction of the Hearing Committee. ODC and Respondent's Joint Exhibit-1containing stipulated testimony of the following witnesses and [*sic*] was read into the record and admitted into evidence as Joint Exhibit-1: (1) Dr. George Van Wormer; (2) Jennifer Joubert; (3) Edwin Brooks; (4) Mervin Fletcher; (5) Sam Montgomery; and (6) Calvin Stewart. ODC noticed and took the deposition of Respondent's former client, Lakeita Norman, which was proffered as ODC['s] Proffer-1. The Hearing Committee did not review or consider the proffered testimony in the matter as the Hearing Committee found that the witness was not timely disclosed to Respondent's counsel and her testimony would, under the circumstances, be prejudicial.

. . .

Testifying in person were Respondent, Tim Fields, Angelina Marcellino, Peter Henry (by phone), Mary Samuels, James Keel, Ron McDonald, Kevin Harvey, and John Sullivan.

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[5]The footnotes from the Committee's report have been omitted from this Recommendation.

The Committee then issued the following findings of facts and findings concerning the rule violations in this matter.

FINDINGS OF FACT

The testimony and exhibits introduced at the hearing establish by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. The evidence establishes that Respondent's actions caused actual harm to some of his clients, third parties, and the legal profession. In some instances, Respondent's actions were knowing as defined in the *ABA Standards for Imposing Lawyer Sanctions* as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result," intentional, and in others merely negligent. We address the charges by the Rules violated.

Rule 1.15(g) - Failure to create and maintain an IOLTA account; and Rule 1.1(c) -Failure to provide proper disclosure of trust account information

Respondent acknowledged in his Answer to the Formal Charges and at the hearing under oath that he failed to maintain an IOLTA account from some time in 2006 through January 10, 2011. Respondent asserts that his violations of Rules l.15(g) and l.1(c) were the result of negligence. However, as an attorney practicing personal injury almost exclusively since 1997, Respondent should have been aware of the requirement and need for a client trust account, and in fact he had one until 2006. Respondent claims that he received a call from an unknown person from the LSBA advising him that he did not need a trust account if he did not hold client funds in escrow. Respondent's testimony in this regard was not credible. During questioning he acknowledged that he made no attempt to find the name of the person from the LSBA who made the alleged phone call. The Hearing Committee also notes that Respondent's decision to close his client trust account (Respondent signed his 2006 Trust Account Disclosure statement on November 10, 2006 certifying he no longer maintained a trust account) coincided with the effective date of the overdraft notification procedure (November 1, 2006), pursuant to the Louisiana Supreme Court Order Amending Rule XIX, Section 28, Parts 1 and 2, effective April 15, 2006.

Similarly, Respondent's assertion that he misunderstood the Trust Account Disclosure & Overdraft Notification Authorization Form for the seven years he failed to maintain an IOLTA account are unconvincing, as the requirements of certification on the form are clear. The form states:

> I certify that because of the nature of my practice, I do not maintain a client trust **or** escrow account. I **further certify that I**

> **do not handle funds of clients or third persons, and that I do not expect to receive the funds of a client or third person within the next twelve (12) months.** Should these facts change, I am required to notify the Office of Disciplinary Counsel within 30 days and execute this form providing the required information.

Respondent acknowledged that when he signed and filed these forms each year, he knew that he was handling the funds of clients and third persons, and he also knew at that time that he expected to continue do so over the next year; therefore, Respondent knowingly provided inaccurate information on his annual Trust Account Disclosure Forms.

The testimony and evidence presented establishes by clear and convincing evidence that Respondent did knowingly violate Rules 1.1(c) and 1.15(g).

Rule 1.15(a), 1.15(d), and 1.15(f) - Safekeeping Property

Rule 1.15 governs an attorney's obligations concerning property that the lawyer has in his possession in connection with the representation of a client, such as funds remitted to the attorney for a settlement on behalf of his client. Rule 1.15(a) requires that such funds be kept separate in a trust account maintained by a properly authorized Louisiana bank or trust association unless the client or the third party consents to holding the funds elsewhere. Specifically, Rule l.15(a) provides:

> (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.
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> Rule 1.15(d) provides:

> (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.

Rule 1.15(f) provides:

> (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.

Respondent acknowledged that between 2009 and July of 2015, approximately $4,200,000 of settlement funds were withheld from his clients to pay those clients' respective third-party provider debts, but the funds were instead used for Respondent's personal and operating expenses. Respondent acknowledged that in July of 2015, he did not have $4,200,000 in his various accounts. Respondent's actions constitute conversion of client funds.

In mitigation Respondent asserted that the conversion of $4,200,000 was a result of his failure to supervise his non-lawyer staff, specifically his secretary/office manager Mary Samuels. Respondent hired Ms. Samuels who was working at an art gallery at the time she was hired. She had no prior legal or bookkeeping experience to manage a law firm, which processed millions of dollars in client settlements each year. Despite the lack of training or education in running a law office, Respondent authorized Ms. Samuels to sign his name on the firm's checks and to process bank transfers between accounts via computer. During Ms. Samuels' tenure, Respondent learned of numerous

operating account bank overdrafts, and he knew these overdraft notices and the associated charges stemmed from the only bank account he used at the time for client and third-party transactions, yet he failed to take any action to determine the cause of the repeated overdrafts on his operating account.

When Respondent eventually reopened his trust account, he continued to allow and rely on Ms. Samuels to handle disbursements by signing his name on trust account checks to third-party providers. Respondent testified, "Q…we talked about the disbursements and you said that you would write the check to the client and that you trusted Mary to write all of the remaining checks; is that correct? A. Right." Respondent also testified that he provided his trust account online banking information to Ms. Samuels so she could transfer money from his trust account to his operating account and his personal account, and that he did not oversee or direct each individual transfer.

Respondent also acknowledged granting authority to his accountant and paralegal to sign trust account checks. Respondent acknowledged allowing nonlawyers to sign trust account checks. Respondent claimed to have ceased this practice in 2019.

Ms. Samuels testified that she told respondent she was unable to pay bills from the operating account and was instructed by Respondent to pay the bills by transferring money from both the trust account and his personal account.

Through the above outlined clear and convincing evidence Respondent did knowingly violate Rules 1.15(a) and (f).

We now address Rule 1.15(d). Testimony was heard from several representatives from various third-party providers to whom Respondent, in 2015, owed approximately $4,200,000 in unreimbursed medical and other expenses on behalf of clients whose cases he had previously settled. The hearing committee viewed this testimony against the backdrop that these third-party providers had a vested interest in Respondent continuing to practice law; one, to ensure Respondent continued to pay the outstanding bills, and two, due to the lucrative nature of the relationship in ensuring that Respondent continued to send new clients to their respective businesses moving forward.

James Keel, part-owner of Magnolia Diagnostics testified Magnolia Diagnostics provides MRI's to Respondent's clients and agrees to be paid when the client's case settles. Mr. Keel testified Respondent would always fall behind and catch back up, meaning that he would fall behind paying Mr. Keel on cases that had settled and then he would catch up. Mr. Keel claims that if and when he "chased down" Respondent, Respondent would give him the true status of the cases, even if the case was settled. Mr. Keel recalled seeing Respondent for brunch on one occasion when Respondent was bragging

about purchasing an expensive bottle of wine at a time when the Respondent owed Magnolia Diagnostics approximately $100,000.00, which included fees on some cases that had already settled. Mr. Keel denied receiving a call from Respondent regarding the outstanding debt and acknowledged that he was the one that initiated the call with Respondent trying to collect and prod him into making some payments. Mr. Keel explained that the sign-in sheet used by his company requires patients, including Respondent's clients, to sign guaranteeing that they are responsible for payment. Mr. Keel was concerned about prescription on settled cases more than three years earlier so he made an agreement with Respondent to make large payments on the older cases first and some new cases simultaneously. Mr. Keel originally received large payments in bulk, such as $70,000 or $40,000, but later he started receiving one or two checks a month that paid off accounts in groups. ODC Exhibit 31 was one such example from a check dated October 13, 2020 to Magnolia [Diagnostics] for $12,350 for payment on ten different client accounts, some with dates from 2018.

Peter Henry, the Director of Risk Management and Counsel for Oasis Financial, testified that Oasis Financial provides non-recourse funding to individuals engaged in litigation by purchasing a portion of the client's future settlement proceeds from pending lawsuits. Oasis requires a contract which is signed by the client, and also requires the client and the client's lawyer (Respondent) to sign a letter of direction, which directs the attorney to pay Oasis out of the client's proceeds of the lawsuit. The amount of the settlement that Oasis owns under the contract and the various fees increase or accrue until Oasis is paid. Oasis occasionally submits accounts to collections and all attempts to collect are from [*sic*] [directed to] the consumer. As of March 31, 2021, Oasis had 55 cases open with Respondent's clients. Oasis was advised by Respondent's CPA, Mr. Howell, that 18 of those cases had settled without Oasis having been paid. Mr. Henry testified that two of those cases were in collection (Elijah Sorina and Jovita Davis). Mr. Henry also confirmed that of the 18 past due accounts, one belonged to Respondent's former client Lakeita Norman. Oasis had last been updated concerning Ms. Norman's settlement on September 3, 2019 by Respondent's CPA (Jimmie Howell). The Norman settlement disbursement memorandum submitted to the ODC by Respondent indicates that Ms. Norman signed her settlement Disbursement Memorandum over a year prior on May 23, 2018. Additionally, the disbursement memorandum indicated that at the time, Oasis had reduced the amount owed by Ms. Norman from $17,535.00 to $10,000.00. A stamp on the document indicates that the Disbursement Memorandum was provided to Mr. Howell (Respondent's CPA) on August 22, 2018. As of the date of the hearing, the account remained unpaid.

Kevin Harvey of Louisiana Medical Management Corporation and Louisiana MRI testified concerning his companies' interactions with Respondent. Mr. Harvey advised that his staff would send a narrative and final medical packet

with complete bills and records to Respondent at the conclusion of each client's treatment[;] his staff would also send Aging Reports to the Respondent's office several times a year.

Mr. Harvey explained his staff is trained to question patients about the status of their lawsuits if and when they return for additional treatment, and if the staff is told the case was settled, that raises a flag. Mr. Harvey cannot remember exactly how the matter came to his attention, but he ran an *"Aging Report"* on all of Respondent's clients' accounts and called Respondent's office. Mr. Harvey told Respondent they needed to talk[;] he had a problem. Mr. Harvey met with Respondent and advised that Respondent's aging report showed a debt of about $3,000,000. Respondent requested some time to meet with his CPA and figure this out. Mr. Harvey gave Respondent a short period of time to meet with his CPA and then Mr. Harvey met with both of them. Mr. Harvey agreed to allow Respondent to pay him on older cases and stay current with the other cases as they settled. Mr. Harvey acknowledged that it was in his best interest to wait for Respondent to pay him as opposed to try and collect from each individual client. Thereafter, Mr. Harvey and Respondent entered into an agreement whereby Respondent would pay $10,000 a week on the various accounts owed to Mr. Harvey's several businesses. Respondent abided by the agreement, sometimes paying more that [*sic*] the $10,000. The current debt owed by Respondent's clients to Mr. Harvey's businesses is about $800,000, which amount includes clients currently treating.

Ron McDonald, the Marketing Director for the Health Care Center, testified his company provided services to Respondent's clients with an unwritten agreement to accept payment from client settlements at the conclusion of their cases. Mr. McDonald stated his company relies on attorneys to pay bills upon settlement of the case and he has no way of knowing it is being paid timely unless a suit was filed. In 2015 the Health Care Center discovered outstanding client accounts for Respondent's clients in the amount of $440,000 or $430,000. Mr. McDonald initiated a meeting with Respondent during which Respondent acknowledged to him that there was a large outstanding debt on his client's cases that had settled. Respondent agreed to pay the Health Care Center $5,000.00 a week until he paid the outstanding amount due, which Respondent did. Further, it was Mr. McDonald's understanding that "as new cases were being settled, Tim (Respondent) was going to take that money to pay off old antecedent debts."

Respondent acknowledged that in addition to the approximately $4,200,000 withheld from client settlements between 2009 and July of 2015, he also withheld approximately $1,800,000 from separate clients' settlements between July of 2015 through August of 2019, using the monies to pay a portion of the $4,200,000 previously unpaid client debt, acknowledging that the cumulative amount of client settlement funds converted was approximately $6,000,000, even though the amount was never higher than $4,200,000 at any

one time because of the nature of the rolling conversion. Respondent's actions with regard to the conversion of the $1,800,000 was intentional, as Respondent consciously directed that money from current client settlements be used to pay unrelated bills associated with prior client settlements in order to cover the earlier conversion of funds.

The Hearing Committee also took notice that there was not a single instance of an unpaid Medicare or Medicaid lien among Respondent's unpaid third-party debts. These entities both have statutory rights of recovery and Respondent and/or his staff was obviously aware of this fact and appear to have repaid these debts in a timely manner, while choosing not to pay other third-party debts with no such statutory lien rights. The Hearing Committee viewed this fact as evidence of an intentional act, in picking and choosing which specific third-party debts to repay and which to convert.

The Hearing Committee also notes that each and every client settlement disbursement sheet, prepared by Respondent and signed by the client is a directive to the attorney (Respondent) as to how much and to whom the client's settlement funds are to be distributed. These disbursement sheets constitute a directive by the clients under Rule 1.15(d) for the Respondent to deliver to third parties the funds set forth in the disbursement sheet.

Finally, documents prepared by Respondent's CPA demonstrate that there were numerous clients and other third-party providers who were harmed in that their settlement funds and recovered costs were converted. Specifically, Respondent's Aging Summary and Aging Detail reports dated September 30, 2019, list approximately 75 third-party providers who were owed money stemming from current client settlements occurring between July of 2015 and August of 2019, but who were not paid upon settlement disbursement of the clients' cases. While Respondent had permission of his four largest medical providers to shift monies owed from current client settlements to aging client debt, there was no evidence presented that Respondent had permission from any of the remaining 71 providers or from a single client to act in the manner he did. One example of this is Dr. Van Wormer and his patients, Mathieu and Mateo Fletcher and Edwin Brooks. Respondent withheld these clients' settlement funds at the settlement disbursements which occurred in February and April of 2017 because the clients owed an unpaid medical debt to Dr. Van Wormer for treatment; however, Respondent did not pay Dr. Van Wormer, and instead used those monies to pay other providers for the earlier conversions. Neither the clients, nor Dr. Van Wormer, gave their consent for this course of action by Respondent. The clients did not know their bills were not paid or that their settlement funds were used for another purpose. Dr. Van Wormer was not paid until after he filed a Bar complaint despite attempts to collect the debt.

The testimony and evidence presented establishes by clear and convincing evidence that Respondent did knowingly violate Rules 1.15(a),

1.15(d), and 1.15(f), and in some instances did so intentionally. The evidence also establishes that the early conversions occurred through Respondent's negligence.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistance

> With respect to a nonlawyer employed or retained by or associated with a lawyer:
>
> (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
>
> (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and [(c)] a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Respondent acknowledges that he allowed nonlawyers in his office, namely Ms. Samuels and his paralegal, to sign checks from his trust account in violation of the Rules, and in violation of Rule 5.3. Respondent testified that he believed he took a more active role in managing his practice after 2015 and the discovery of the extensive, unpaid third-party debt; however, he also admitted that he continued to allow non-lawyers to write checks and transfer money from his trust account. In fact, Respondent provide[d] copies of his trust account bank statements and copies of checks issued from his trust account from January of 2017- December of 2018 [which] reveals [*sic*] that of the approximately 963 checks issued from his trust account, Respondent signed only one, his associate attorney signed approximately 70; Respondent's CPA (Jimmie Howell) signed 18; and Respondent's paralegal (Ms. King) signed approximately 875. Respondent's defense to his misconduct was "... when you have that many clients, it's almost impossible to write that many checks and practice law."

Respondent also acknowledged a failure to properly train and supervise Ms. Samuels his legal secretary/office manager as discussed more

fully earlier in this opinion.

Through Respondent's admissions and testimony, the ODC did by clear and convincing evidence establish a knowing violation of Rule 5.3.

Rule 1.2(a) Scope of Representation and Allocation of Authority Between Client and Lawyer;
Rule 1.8[e](3) Passing overhead costs of a lawyer[']s practice to the client; and
Rule 1.8(k) Including a power of attorney in the initial contingency fee agreement.

Respondent acknowledged that Mr. Montgomery's personal injury matter was settled without his permission or authority, a violation of Rule l.2(a) of the Rules of Professional Conduct. In doing so, Respondent acknowledged that it was not explained to Mr. Montgomery the option of pursuing the defendant individually for injuries and damages not covered by the policy. Respondent in mitigation claimed that he settled the client's case for policy limits and that he could tell the driver had no assets because of his age, location, type of vehicle and the type of policy. In settling the case, Respondent relied on the power of attorney provision in his client contingency agreement, which violates Rule 1.8(k).

Also contained in Respondent's contract is a provision allowing Respondent to pass overhead costs to his clients, which he has done by charging clients $125.00 on the settlement *Disbursement Memorandums* as "Office Expenses." Respondent acknowledged this occurred, stating "I don't know how it slipped in. Maybe somebody started - - a new person started at the office and started doing that." Once again, despite having substantial experience in the practice of law and the area of personal injury, Respondent allowed a provision into his client contracts in violation of the Rules of Professional Conduct.

Again, ODC through clear and convincing evidence established that Respondent violated Rules 1.2(a), 1.8[e](3), and 1.8(k). Given his years in practice these violations can only be viewed as knowing.

Rule 8.4(a) Violate or attempt to violate the Rules of Professional Conduct;
Rule 8.4(c) Conduct involving dishonest, fraud, deceit or misrepresentation;
Rule 8.l(a) Knowingly make a misstatement of material fact in connection with a disciplinary matter;
Rule 8.l(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

The ODC provided clear and convincing evidence that Respondent violated the Rules of Professional Conduct as set forth above in clear violation of Rule 8.4(a).

First, there is evidence and testimony of written agreements and guarantees. Respondent previously advised the ODC that his agreements with the third parties to treat his clients and be paid for that treatment upon settlement of [his] client's [*sic*] claim[s] were oral agreements and were not reduced to writing; however, testimony at the hearing indicates that is not true. Aside from the oral agreements, there were also written agreements or guarantees with at least Oasis Financial and Magnolia Diagnostics.

Respondent had knowledge that certain client settlement funds were due to third-party providers and he knew the specific amounts were withheld from clients to pay same. Upon conclusion of each client's settlement, the Respondent provided each client a written *Disbursement Memorandum* which detailed the amounts of money the Respondent was withholding from the client's settlement to pay the client's third-party providers. Respondent requires the client to sign the *Disbursement Memorandum* agreeing to the deductions and the settlement distribution, but Respondent appears to believe that only the client is bound by this action and agreement. At the hearing, the Respondent testified that the second page of his disbursement states "we're not responsible for medical bills we don't know of." This statement leads to the logical conclusion that Respondent <u>must</u> be responsible for using withheld client funds to pay all of the bills listed on the settlement disbursement (i.e., the bills the Respondent is aware of). This statement also allows clients to rely on Respondent to follow his clients' instructions and pay those bills listed on the Disbursement Memorandum upon disbursement. Respondent's actions in this regard were dishonest, and a clear misrepresentation to his clients when Respondent knew he intended to use a particular client's settlement funds to settle debts for other clients.

Respondent during both his recorded interview and his sworn statement was dishonest and knowingly made misstatements of fact to the ODC. Respondent's statements during the ODC investigation demonstrate dishonesty and the misstatement of material facts.

Respondent provided a sworn statement to ODC regarding the Dr. Van Wormer complaint in which Respondent knowingly made numerous misstatements of fact while under oath. During the sworn statement taken on June 19, 2019, Respondent testified the calls and emails from Dr. Van Wormer and his staff were never brought to his attention and "he'd never had a problem with this type of issue before" and this type of issue "just doesn't happen," referring to the failure to pay third-party providers. Respondent was not truthful and testified Dr. Van Wormer was not paid because Ms. Samuels

did not give him the check to process and put the file away accidentally. Respondent acknowledged during the hearing that he knowingly made misstatements of fact during his sworn statement at the ODC, which included blaming Ms. Samuels for the failure to pay Dr. Van Wormer, even though she was no longer employed at his firm during the time in question. These false statements include Respondent's stating that he didn't know why the doctor did not get paid. During the sworn statement, Respondent also attempted to mislead the ODC when he claimed he reconciled his trust account with settlement disbursement statements, but Respondent testified during the hearing that this statement was not correct. During the hearing, Respondent was questioned as to why Dr. Van Wormer was not paid at the time of the underlying client settlement which occurred in 2017, which was well after the period of time in which Respondent claims he was paying current third-party providers unless it was one of the main ones with whom he had an agreement. Respondent responded, "Other than they were just - - every - - every settlement was treated the same. It could have been in payables and paying the old stuff first." Respondent also acknowledged that sometimes his payments to third parties was [*sic*] prioritized as to which third party was demanding payment, as opposed to paying the oldest debt first." A review of reports rendered by Respondent's CPA Mr. Howell· demonstrate that Respondent was clearly failing to pay several third-party providers immediately upon settlement after 2015 (not just the ones he made agreements with). Respondent, when questioned by the Hearing Committee as to whether medical providers (other than the ones with agreements) were being paid immediately upon settlement after the 2015 time period, the Respondent untruthfully testified "Oh Yeah" and "yes."

It was only after Respondent's sworn statement and ODC's additional requests for trust account documentation that the Respondent came to the ODC for a recorded interview to voluntarily provide information. On August 14, 2019, Respondent advised the ODC of his conversion of $4,200,000 of client settlement funds and his failure to supervise his non lawyer staff. Respondent also provided trust account documentation requested by the ODC as well as various reports prepared by his CPA, Mr. Howell. Mr. Howell provided a report titled *"Tim Fields Old Accounts Payable, AIP Aging Detail, As of July 10 2015"*report [*sic*] which lists approximately 50 providers and 300 clients who had been impacted by the Respondent's conversion at that time. Despite providing this information and trust account documentation, Respondent denied knowledge of the conversion and blamed his secretary/office manager, Ms. Samuels. Respondent failed to advise ODC that he did not have a trust account for approximately four years during the years of conversion. Respondent also failed to disclose that he processed all client settlements through his operating account preceding Ms. Samuels' employment and for four years during her employment, or that there were numerous overdrafts on his operating account during that period of time.

> Respondent also advised the ODC during this recorded interview that for the last four years he was withholding his current client settlement funds to pay his former clients' third-party providers; but Respondent advised that he ceased that pattern and practice as of the day [*sic*] of that day. Respondent brought with him a "General Ledger, dated December 31, 2018" created by his CPA (Jimmie Howell) to demonstrate how he kept track of which of his current clients' settlement funds were used to pay former clients' third-party providers. These lists include approximately 75 third-party providers clearly belying his early statements to ODC that "he'd never had a problem like this before… it just doesn't happen."
>
> The ODC did prove by clear and convincing evidence, and through Respondent's own testimony, that Respondent did intentionally violate Rules 8.1(a)(b) and 8.4(a)(c) by violating the Rules of Professional Conduct involving dishonesty, knowingly making a misstatement of material fact, and failing to disclose facts to the ODC during its investigation of these matters.
>
> **RULES VIOLATED**
>
> The Hearing Committee finds that the Office of Disciplinary Counsel did prove by clear and convincing evidence that Respondent, Tim L. Fields, did violate the Rules of Professional Conduct including Rules 1.1(c), 1.2(a), 1.8(e)(3), 1.8(k), 1.15(a) (d) (f) (g), 5.3, 8.1(a) (b), and 8.4(a) (c) as charged in ODC Counts I and II.

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After analyzing the Rule XIX, Section 10(C) factors, the Committee found that Respondent violated duties owed to his clients, the public, and the legal system. The Committee also found that some of Respondent's actions in violating the Rules were intentional, others were knowing, and some were the result of his negligence. The Committee determined that Respondent's actions caused harm to two clients when their matters were sent to collection by Oasis Financial, and as of the date of the hearing, there remained approximately $229,550.59 of collected, but as yet, unpaid client third-party debts. Additionally, the Committee noted that the third-party providers suffered the loss of time value of money during the period of non-payment by Respondent, and that Dr. Van Wormer incurred the additional time, effort, and expense of trying to collect from Respondent before filing his bar complaint giving rise to this matter.

The Committee also noted the extensive efforts made by Respondent to pay down the third-party debts from a high of just over $4,200,000 to approximately $229,550.59 as of the hearing date. The Committee commented that "while admirable, Respondent's efforts do not spare him from the requisite discipline warranted by his prior actions." Hrg. Comm. Rpt., p. 28.

The Committee found the following aggravating factors to be present: Respondent's substantial experience in the practice of law; his failure to properly train and/or monitor his staff within his law office, despite having been put on notice of the irregularities in the form of overdrafts from his operating account; his failure to seek appropriate counsel and/or instruction upon learning of the several million dollars of unpaid third-party debt; the significant number of clients and third-party providers impacted; the duration of the conversions; the amount of the conversion; and most importantly, his lack of candor to the ODC during the initial phase of the investigation. The Committee further found the following mitigating factors to be present: no prior disciplinary history; Respondent's efforts to repay the millions in converted third-party debts by selling his personal assets; and Respondent's character and generosity as testified to by attorney John Sullivan. Mr. Sullivan described Respondent's humble background and the fact that he was a self-made man. He also described how Respondent was involved in several charities and gave freely of himself. The Committee determined, however, that the mitigating factors were outweighed by the aggravating factors, calling for a higher baseline sanction.

Relying on Standards 4.11,[6] 4.41,[7] and 7.1[8] of the ABA's *Standards for Imposing Lawyer Sanctions*, the Committee determined that disbarment is the baseline sanction for Respondent's

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[6] Standard 4.11 states that disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

[7] Standard 4.41 also calls for disbarment when a lawyer knowing fails to perform service for a client and causes serious or potentially serious injury to a client.

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

misconduct. Further relying on the cases of *In re Robinson*, 2013-1924 (La. 11/15/13), 129 So.3d 513 and *In re Judice*, 2009-18288 (La. 2/5/10), 26 So.3d 747, the Committee determined that the appropriate sanction in this matter is disbarment.[9]

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, except for one finding. In its findings of fact concerning the alleged Rule 1.15(g) violation, the Committee states:

> Respondent acknowledged in his Answer to the Formal Charges and at the hearing under oath that he failed to maintain an IOLTA account from some time [*sic*] in 2006 through January 10, 2011.

Hrg. Comm. Rpt., p. 10.

Respondent did acknowledge in his answer to the formal charges that he failed to

[9] See p. 27 of this Recommendation for a discussion of *Robinson* and *Judice*.

maintain an IOLTA trust account from sometime in 2006 through January 10, 2011. However, Respondent's testimony and the evidence presented at the hearing establishes that Respondent failed to maintain an IOLTA trust account from sometime in 2006 through sometime in November of 2012. Hr. Tr., pp. 64, 66, 70-71; ODC Exhibits 18a and 18b. Respondent's LADB Trust Account Registration Log shows that Respondent "added a new trust account" to his profile on November 14, 2012 and confirmed that he "personally handles trust accounts" on that date. ODC Exhibit 18b. He also admitted at the hearing that he had no documentation to show that he had a trust account in 2011. Hr. Tr., p. 64.[10]

B. *De Novo* Review

The Committee correctly found that Rules of Professional Conduct 1.1(c), 1.2(a), 1.8(e)(3), 1.8(k), 1.15(a) (d) (f) (g), 5.3, 8.1(a) (b), and 8.4(a) (c) were violated by Respondent. The Board adopts the Committee's findings and its reasons therefor as explained in its report, except for one finding of the Committee concerning the Rule 1.15(d) violation.

As to the Rule 1.15(d) violation, the Committee determined that Respondent had violated the rule by failing to notify and promptly deliver funds to third parties, based upon the following: (1) as to Magnolia Diagnostics, guarantees signed by Respondent's clients in favor of this health care provider, agreeing that the clients would be responsible for payment of their medical care; (2) as to Oasis Financial, contracts signed by Respondent's clients and letters of direction signed by Respondent's clients and acknowledged by Respondent, directing Respondent to pay Oasis Financial out of the proceeds of the clients' lawsuits; and (3) as to all other third parties at issue,

[10] Moreover, although technically not a factual finding, when discussing the evidence submitted at the hearing, the Committee incorrectly lists Respondent Exhibit 13 as being withdrawn. This exhibit is found in the record and includes: (1) an April 23, 2021 letter written by Mr. Tully to Amy D. Panepinto, Docket Clerk of the Board, concerning Respondent's Response to Comply with the Order of the Board to Submit Certain Records to be Filed into the Record Evidencing Funds Borrowed to Pay Third-Party Creditors ("Response to Comply with the Order of the Board") and (2) Respondent's actual Response to Comply with the Order of the Board (without attachments).

the disbursement sheets signed by Respondent's clients at the time of settlement.[11] The Committee opined that "these disbursement sheets constitute a directive by the clients under Rule 1.15(d) for the Respondent to deliver to third parties the funds set forth in the disbursement sheets." Hrg. Comm. Rpt., p. 19.

The version of Rule 1.15(d) in effect at the time of the misconduct recognizes that a lawyer is required to promptly notify a client or third person who has an *interest* in funds or other property received by the lawyer and promptly deliver the funds or the property to the client or third party. Such an interest is one of which the lawyer has actual knowledge and is limited to a statutory lien or privilege, a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out those funds or property.[12] While the various clients' guarantees with Magnolia Diagnostics and

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[11] Respondent asserts in his Pre-Argument Brief that there is nothing in the record that clearly and convincingly proves that Oasis Financial had a Rule 1.15(d) interest in any settlement proceeds. Respondent maintains while that the testimony of Mr. Henry referenced purchase agreements or letters of direction in his testimony, no such documents are contained in the record. The Committee found that a Rule 1.15(d) interest was present based upon the testimony of Mr. Henry. The Committee's finding is not manifestly erroneous and is adopted by the Board. Hr. Tr., pp. 228-230. Further, the Committee's finding that Mr. Keel's testimony established that Magnolia Diagnostics required Respondent's clients to sign a guarantee of payment also is not manifestly erroneous and is adopted by the Board. Mr. Keel is the manager and co-owner of this medical provider. *Id.* at pp. 316-17.

[12] By the Court's order issued on September 28, 2022, effective December 1, 2022, Rule 1.15(d) was deleted in its entirety, and amended to read as follows:

Rule 1.15 Safekeeping Property

> (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. Third parties may have lawful claims against specific funds or other property of the client that are in a lawyer's custody. A lawyer has a duty to protect such third-party claims against wrongful interference by the client. In such cases the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but when there is a dispute as to the person's claim to the funds, the lawyer shall advise the client and third party that the funds will remain in the lawyer's trust account until the dispute is resolved, or alternatively the lawyer may deposit the funds into the registry of the court and file an action to have the court resolve the dispute. The third person's interest which the lawyer must protect shall be one of which the lawyer has actual knowledge, and shall be limited to (i) a statutory lien or privilege, (ii) a final judgment addressing disposition of those funds or property, (iii) a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property, or (iv) an instruction by the client to the lawyer to use any remaining funds or property not otherwise protected under (i), (ii), or (iii) to pay another obligation of the client. In

agreements with Oasis Financial fall under the purview of Rule 1.15(b), the disbursement sheets signed by Respondent's clients at the time of settlement do not. The Board, therefore, declines to adopt this finding of the Committee as to the disbursement sheets, but still finds a violation of Rule 1.15(b) based upon the clients' guarantees and agreements with Magnolia Diagnostics and Oasis Financial. *See In re Schoenberger*, 2021-0191 (La. 6/30/21), 320 So.2d 1125 (proof of perfected liens or privileges, final judgments, or written guarantees is necessary for a finding that a respondent has violated Rule 1.15(d) by failing to promptly pay third-party providers).

II. The Appropriate Sanction

A. The 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, a committee shall consider the following factors:

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

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

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

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

Respondent violated duties owed to his clients, the public, the legal system, and the profession. As discussed by the Committee, Respondent's actions in violating the Rules were in some instances intentional, and in other instances knowing or negligent. Significantly, the Committee found that while Respondent negligently converted approximately 4.2 million dollars in client funds between 2009 and 2015, he also engaged in repeated and multiple instances of

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all instances except as stated in this rule or as 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.

As seen above, the Board will apply the version of Rule 1.15(d) in effect at the time of the misconduct in this matter, and not the new version of the rule which did not take effect until December 1, 2022.

intentional conversion of client funds totaling approximately $1.8 million between 2015 and 2019. The evidence at the hearing established that the first 4.2 million dollar amount negligently converted by Respondent between 2009 and 2015 was used for his own personal and office expenses; however, the 1.8 million dollar amount converted between 2015 and 2019 was *intentionally* converted from current clients and used to pay his former clients' medical bills and payments due to Oasis Financial.

Respondent's misconduct caused actual harm to two clients, Elijah Sorina and Jovita Davis, when their matters were sent to collection by Oasis Financial. Further, as of the date of the hearing, there remained $229,550.59 of collected, but unpaid, client third-party debts. The third parties owed this $229,550.59 amount include Magnolia Diagnostics ($44,850.00), Metropolitan Health Group ($70,930.09), and Oasis Financial ($113,770.50). Respondent Exhibit 15. Numerous other third-party providers incurred actual harm by suffering the loss of time value of money during the periods of non-payment by Respondent. *See* ODC Exhibit 13(a), List of 50 third-party providers on the 2015 Aging Summary and Detail Reports; and ODC Exhibit 14(a), List of 75 third-party providers on the 2019 Aging Summary and Detail Reports.[13]

Also, there is potential for harm to the third-party medical providers as the duration of Respondent's conversion has extended through the three-year prescription period for filing lawsuits against many of these clients.[14] On the other hand, the clients whose medical providers were not paid could also suffer harm in that their settlement funds were withheld to pay the providers, but the providers were not paid, and the clients remain liable for the fees if the provider's claim has not prescribed. Moreover, Dr. Van Wormer incurred the additional time, effort, and expense of trying to collect from Respondent before filing his complaint with ODC.

[13] Magnolia Diagnostics, Metropolitan Health Group, and Oasis Financial are included on these two lists.
[14] See La. Civ. Code Ann. art. 3494 (2022).

Additionally, Mr. Montgomery was potentially harmed by Respondent's failure to explain to him that he could have pursued another party for damages in relation to his accident. Mr. Montgomery was also harmed by Respondent's act of settling Mr. Montgomery's case without his permission or authorization. Respondent's misconduct has also caused harm to the reputation of the profession.

Aggravating factors in this matter include: Respondent's substantial experience in the practice of law; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; pattern of misconduct; and multiple offenses. Mitigating factors include: absence of a prior disciplinary history; timely good faith effort to make restitution or to rectify consequences of the misconduct; and character or reputation.

B. The ABA Standards and Case Law

The Committee correctly found that under Standards 4.11, 4.41, and 7.1 of the ABA's *Standards for Imposing Lawyer Sanctions*, disbarment is the baseline sanction for Respondent's misconduct. Standards 4.61 and 5.11 are also applicable. Standard 4.61 provides that "disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client." By representing in his disbursement settlement sheets to his clients that he would pay the medical providers, then failing to promptly do so or do so at all, Respondent knowingly and intentionally deceived his clients. This caused both serious and potentially serious injury to these individuals. Standard 5.11 provides that "disbarment is 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. Respondent's intentional conduct in failing to promptly pay the various third-party providers who held guarantees for payment was

dishonest to both the third-party providers and his clients and seriously adversely reflects on his fitness to practice. These third-party providers waited excessive amounts of time for payment, while the clients were led to believe that payment would be made following the settlement.

A review of case law involving similar violations of the Rules of Professional Conduct suggests that a sanction ranging from disbarment to permanent disbarment should be considered in this matter. In *Louisiana State Bar Ass'n v. Hinrichs*, 486 So.2d 116 (La. 1986), the Court explained that determining an appropriate sanction in conversion cases often turns on several factors, including a lawyer's state of mind. In a typical case of disbarment for violation of DR-9-102 (preserving identity of funds and property of others),[15] one or more of the following elements are usually present: the lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; and the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings.[16]

All but one of the *Hinrichs* factors supporting disbarment are present here. As to the conversion occurring between 2015 and 2019, Respondent acted in bad faith, intentionally directing the money from current client settlements to be used to pay unrelated bills associated with prior client settlements in order to cover the earlier conversion of funds. This action was inconsistent with his current clients' best interests. His conduct was fraudulent and deceitful in that he reported to his clients in disbursements sheets that settlement funds would be paid to their

[15] *See* now-Rule 1.15.
[16] As explained by ODC in its Board Pre-Argument Answering Brief, *Hinrichs* was decided in 1986, prior to the Court adopting rule changes in August of 2001 to codify the Court's authority to disbar lawyers permanently from the practice of law.

third-party providers, then the funds were not promptly paid or paid at all. He also failed to honor the clients' guarantees issued to Magnolia Diagnostics and agreements with Oasis Financial. Clearly, the magnitude of the deprivation here is staggering, with 4.2 million dollars converted between 2009 and July of 2015, and the rolling conversion of 1.8 million dollars occurring between July of 2015 and 2019. The magnitude of the risk of damage to third-parties Magnolia Diagnostics, Metropolitan Health Group, and Oasis Financial, remains great as these parties were still owed substantial sums at the time of the hearing. Other third parties affected by Respondent's misconduct, such as Dr. Van Wormer, were greatly inconvenienced as they had to wait inordinate periods of time to be paid,[17] and Mr. Sorina and Ms. Davis were greatly inconvenienced as they were placed in collection by Oasis Financial. Respondent did make significant restitution to the third-parties prior to the institution of the disciplinary proceeding, however. At the time of his August 14, 2019 recorded statement with ODC, Respondent had reduced the amount of restitution owed to approximately $1.8 million dollars. ODC Exhibit 11, p. 14. The formal charges also indicate that he had reduced the amount of restitution owed to $814,268.69 as of June 14, 2020, prior to the filing of the charges.

In *In re Dunn*, 2018-0340 (La. 5/11/18), 241 So.3d 983, the Court relied on the *Hinrichs* analysis when it ordered Mr. Dunn disbarred for conversion of third-party funds. In *Dunn*, the respondent withheld $74,000 of third-party funds due a medical provider which he converted for his personal use. A complaint was filed by the third-party medical provider. The Court found that Mr. Dunn knowingly, if not intentionally, violated duties owed to his clients and the public, causing actual harm to the third-party provider and potential harm to his clients. The Court

[17] For example, despite the settlement of the Edwin Brooks, Mathieu Fletcher, and Mateo Fletcher cases in early 2017, Dr. Van Wormer was not paid until January 3, 2019 for his services. Respondent also testified at his August 14, 2019 recorded statement that he discovered in 2015 that some third-party providers had not been paid in five or six years. ODC Exhibit 11, pp. 11-12.

determined the magnitude and duration of the deprivation of the conversion by Mr. Dunn to be extensive. The Court further noted that while the respondent was making restitution to the medical provider in monthly payments, he only entered into the compromise to do so after the extended pressure of disciplinary and legal proceedings.

In *In re Robinson*, 2013-1924 (La. 11/15/13), 129 So.3d 513, the respondent converted more than $22,000 owed to her clients' medical providers and comingled personal funds with client funds in her trust account. The Court noted that the respondent's conversion was prompted by her own personal financial difficulties and caused significant harm to her clients who were still liable for their unpaid medical expenses and to the medical providers who had been deprived of their funds for years. The respondent had also paid only $1,500 in restitution. Despite the fact that numerous mitigating factors were present, the Court ordered disbarment.

Further, in *In re Judice*, 2009-1828 (La. 2/5/10), 26 So.3d 747, the respondent neglected legal matters, failed to communicate with clients, failed to account for or refund unearned fees, failed to timely pay third-party medical providers, comingled clients' funds with his own, converted client and third-party funds to his own use.[18] He also failed to properly supervise his non-lawyer assistants, practiced law while ineligible to do so, forged clients' signatures on settlement checks, and engaged in other dishonest or fraudulent conduct. The Court noted that the respondent's conduct caused actual harm to his clients and third-party providers, and that the baseline sanction for such misconduct was disbarment. Noting numerous aggravating factors and two mitigating factors, the Court ordered that the respondent be disbarred.

Considering the case law and Respondent's conduct, it is clear than no lesser sanction than disbarment is warranted.

Turning to the issue of whether permanent disbarment should be imposed in this matter,

[18] The amount of third-party funds converted totaled more than $10,000.

Rule XIX, Appendix D, Guideline 1, provides that permanent disbarment may be warranted in instances of "repeated or multiple instances of *intentional* conversion of client funds with substantial harm."

As discussed above, Respondent negligently converted approximately 4.2 million dollars in client funds between 2009 and 2015, but he also engaged in repeated and multiple instances of *intentional* conversion of client funds totaling approximately $1.8 million between 2015 and 2019. The first 4.2 million dollar amount negligently converted by Respondent between 2009 and 2015 was used for his own personal and office expenses; however, the 1.8 million dollar amount converted between 2015 and 2019 was *intentionally* converted from current clients and used to pay his former clients' medical bills and payments owed Oasis Financial. His actions during the 2015-2019 time period caused actual and substantial harm, in that 74 third-party medical providers, as well as Oasis Financial, each on one or more occasion, did not receive their funds due from the current clients' settlements following the resolution of their cases. *See* ODC Exhibits 14(a) and 14(d). Further, as explained earlier, Respondent's actions also caused great potential harm to his clients and the third-party providers, as the clients often remained liable for the providers' fees and medical providers ran the risk of their claims prescribing. As of the date of the hearing, the amount of restitution still owed by Respondent totaled $229,550.59. Clearly, his conversion between 2015 and 2019 constitutes "repeated or multiple instances of *intentional* conversion of client funds with substantial harm."

Case law in which permanent disbarment has been imposed for similar instances of conversion includes *In re Morphis*, 2001-2803 (La. 12/4/02), 831 So.2d 934, *In re Miller*, 2014-0538 (La. 5/23/14), 139 So.3d 993, and *In re Conry*, 2014-1761 (La. 1/28/15), 158 So.3d 789. In *Morphis*, the respondent engaged in an ongoing pattern of commingling and

converting client funds to his own use. The court noted that while numerous violations of the Rules of Professional Conduct were present, the most serious violation was the respondent's blatant conversion of vast sums of clients' funds. During oral argument before the Court, the respondent candidly admitted that he had not properly segregated his clients' funds and used funds belonging to one client to pay another, always hoping for the next big settlement which he believed would balance out his accounts. Unfortunately for the respondent's clients, when this game of "musical chairs" stopped, the clients were left holding losses which were estimated to be in excess of 2.5 million dollars. The respondent made some token efforts at restitution after the disciplinary proceedings were commenced. The Court permanently disbarred the respondent based upon Guideline 1.

In *Miller*, the Court, pursuant to Guidelines 1 and 9,[19] permanently disbarred the respondent for commingling, converting, and misappropriating $208,260.83 in client and third-party funds from the proceeds of settlements in personal injury cases over a period of approximately three years. The Court found that the respondent acted knowingly and intentionally, causing significant actual harm to several clients and third parties. While the Court did not address restitution in the matter, the Board, in its review, found that several aggravating factors were present, including indifference to making restitution.

Additionally, in *Conroy*, the Court permanently disbarred the respondent for, among other things, the mismanagement of his client trust account that resulted in conversion of client funds in the amount of $188,000, as well as the failure to pay approximately $59,500 to third parties. The Court found that the respondent acted knowingly and intentionally, causing significant harm to his clients and third parties. The Court again relied on Guideline

[19] Guideline 9 was applicable as the respondent's misconduct constituted serious attorney misconduct and was preceded by his eighteen-month suspension in a previous disciplinary matter for serious attorney misconduct.

1 in permanently disbarring the respondent. The Court also ordered that restitution be made to the respondent's victims.[20] In his concurrence and assignment of additional reasons, Justice Crichton noted that the respondent over the years had continued to disburse settlement funds belonging to one client to other clients -- conduct that borders on a Ponzi scheme. *Conry*, 2014-1761, p. 21 (La. 1/28/15), 158 So.3d 789, 798, citing *Ponthier v. Manalla*, 2006-632 (La. App. 5 Cir. 1/30/07), 951 So.2d 1242, 1251 (defining "Ponzi scheme" as "a scheme in which a swindler uses money from later victims to pay earlier victims") (citing *Cunningham v. Brown*, 265 U.S. 1, 44 S.Ct. 424, 68 L.Ed. 873 (1924)).[21]

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[20] In its review, the Board had previously determined that the respondent had engaged in a series of trust account violations in which he repeatedly borrowed funds received on behalf of clients and used those funds to pay other clients still awaiting their settlement funds.

[21] At this juncture, the Board notes that Respondent relies heavily on the case of *In re Schoenberger*, 2021-0191 (La. 6/30/21), 320 So.3d 1125, in support of his argument that a fully or mostly deferred suspension is the appropriate sanction in this matter. In *Schoenberger*, an ODC audit of the respondent's trust account identified a total of $59,423.12 in net client proceeds, third-party liabilities, and IOLTA interest as collected but not paid. The respondent's trust account balance was $143.69, which was $59,279.43 short of the outstanding client proceeds, third-party liabilities and IOLTA interest. The audit further revealed that in four client matters, the sequence number on the checks did not agree with other checks issued at that time and the checks were apparently backdated. In the formal charges, ODC alleged that the respondent had violated Rules 1.15 and 8.4(c).

In finding a violation of Rule 1.15(a), the Court found that the balance of respondent's trust account dropped below the amount he was holding in trust for payment of his clients and third parties. He placed certain client and third-party funds in his operating account rather than in his trust account. In doing so, the respondent clearly commingled those funds with his own funds and *converted* them to his own use. The fact that the respondent's actions were *negligent* did not negate a finding of a violation of Rule 1.15(a).

The Court also found that no Rule 1.15(d) violation was present, based on findings of the hearing committee and the Board. The hearing committee and Board had both determined that no Rule 1.15(d) violation existed because this rule mandated that notice to and prompt delivery of funds received by the attorney was required only to those third parties who had an "interest" in the funds. An interest was defined in the rule as one of which the lawyer had actual knowledge, and was limited to a statutory lien or privilege, a final judgment addressing the disposition of those funds or property, or a written agreement by the client or lawyer on behalf of the client guaranteeing payment out of those funds or property. As the medical providers at issue had no such interests, the respondent's failure to make prompt payment to them did not constitute a violation of Rule 1.15(d).

The Court also found that the respondent's backdating of certain third-party checks revealed an intent to mislead ODC during its investigation of the matter and was a violation of Rule 8.4(c).

In addressing the sanction to be imposed, the Court noted that the respondent's failure to comply with Rule 1.15(a) and his mismanagement of the trust account created a clear potential for serious harm. However, the Court acknowledged that the respondent's shortcoming was the product of *negligence* rather than intent

After considering the above, the Board recommends the sanction of permanent disbarment in this matter. Respondent's actions fit squarely within the parameters of Permanent Disbarment Guideline 1, as did the respondents' actions in *Morphis*, *Miller*, and *Conry*. Moreover, very similar to the respondents in *Morphis and Conry*, Respondent converted large sums of client funds (which here are owed to third-party providers), using the funds belonging to one client to pay another client (or, as here, another client's third-party provider). The instant matter differs from the *Morphis*, *Miller* and *Conry* in that Respondent has made substantial restitution to the third-party providers; however, as of the date of the hearing, a significant amount of restitution was still owed, totaling $229,550.59.

Finally, the Court has stated that it shall only impose permanent disbarment upon an express finding of the presence of the following factors: (1) the lawyer's misconduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future. Rule XIX, Section 10(A). The record in this matter supports and the Board specifically finds that both of these factors are present. While it appears that Respondent's misconduct in mishandling client funds was initially negligent, the record establishes that after he learned that

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and no clients or third parties suffered actual harm. The Court noted that it has typically imposed fully-deferred suspensions of one year and a day coupled with supervised probation in cases involving *negligent* trust account mismanagement when there was little or no actual harm. *Id*., 2021-0191, p. 10 (La. 6/30/21), 320 So.3d at 1132, citing, e.g. *In re Alex*, 2016-1020 (La. 11/15/16), 205 So.3d 895; *In re Spears*, 2011-1135 (La. 9/2/11), 72 So.3d 819; *In re Cicardo*, 2004-0828 (La. 7/2/04), 877 So.2d 980. Considering the respondent's misconduct as a whole, however, the Court imposed a one-year and one-day suspension from the practice of law, with all but sixty days of the suspension deferred. The respondent was also placed on supervised probation for a period of two years.

The matter at hand differs significantly from *Schoenberger*. Respondent's mismanagement of his trust account in the instant matter, resulting in violations of numerous rules, including 1.15(a)(conversion), was negligent as to the 4.2 million dollar conversion, but *intentional* as to the approximate 1.8 million dollar conversion. Actual harm is also present. Given this, the Board finds that the sanction suggested by Respondent -- a fully or mostly deferred suspension -- is not an appropriate sanction for this misconduct.

he was operating his law practice in violation of the Rules of Professional Conduct, he intentionally went about a course of action designed to thwart the professional rules that were put in place for the protection of clients and the public. This conduct, along with the harm to third parties and potential harm to his clients, is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law. Moreover, when confronted with the complaint, he intentionally attempted to hide the truth from ODC during its investigation and made less than forthright statements to the hearing committee at the hearing. This demonstrates that there is no reasonable expectation of significant rehabilitation in Respondent's character in the future. Accordingly, the Board recommends permanent disbarment.

CONCLUSION

The Board adopts the Committee's findings of fact, with the one correction noted above. The Board further adopts the Committee's findings that Respondent violated Rules of Professional Conduct 1.1(c), 1.2(a), 1.8(e)(3), 1.8(k), 1.15(a) (d) (f) (g), 5.3, 8.1(a) (b), and 8.4(a) (c). As clarified above, the Board finds that Respondent violated Rule 1.15(d) based upon the clients' guarantees and agreements with Magnolia Diagnostics and Oasis Financial, and not based upon the disbursement sheets signed by Respondent's clients at the time of settlement. The Board declines to adopt the Committee's recommended sanction of disbarment, but instead recommends that Respondent be permanently disbarred. The Board also recommends that Respondent make complete restitution to the third-party providers to whom money is still owed[22] and that he be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

[22] As discussed above, Respondent Exhibit 15 indicates that these third-parties include Magnolia Diagnostics ($44,850.00), Metropolitan Health Group ($70,930.09), and Oasis Financial ($113,770.50).

RECOMMENDATION

The Disciplinary Board recommends that Respondent, Tim L. Fields, be permanently disbarred. The Board also recommends that Respondent make complete restitution to the third-party providers to whom money is still owed, Magnolia Diagnostics ($44,850.00), Metropolitan Health Group ($70,930.09), and Oasis Financial ($113,770.50), and that he be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

R. Alan Breithaupt
Todd S. Clemons
Susan P. DesOrmeaux
Valerie S. Fields
James B. Letten
Aldric C. Poirier, Jr.
M. Todd Richard
Lori A. Waters

DocuSigned by:

By Paula H. Clayton
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Paula H. Clayton
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 1.1. Competence

…
(c) A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

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

(a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, religious, economic, social or moral views or activities.
(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

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

…
(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows…(3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services. With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses. With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.
…

(k) A lawyer shall not solicit or obtain a power of attorney or mandate from a client which would authorize the attorney, without first obtaining the client's informed consent to settle, to enter into a binding settlement agreement on the client's behalf or to execute on behalf of the client any settlement or release documents. An attorney may obtain a client's authorization to endorse and negotiate an instrument given in settlement of the client's claim, but only after the client has approved the settlement.
…

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.
…
(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.
…
(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) A lawyer shall create and maintain an "IOLTA Account," which is a pooled interest bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
(1) IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by

the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions: (A) No earnings from such an account shall be made available to a lawyer or law firm. (B) Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income. (C) Funds in each interest-bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.
(2) To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.
(3) To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by: (A) Establishing the IOLTA Account as: (1) an interest-bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is “well-capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money-market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. (B) Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or (C) Paying a “benchmark”

amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of "allowable reasonable fees."

(4) Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution: (A) To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.; (B) To transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and (C) To transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5) "Allowable reasonable fees" for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not "allowable reasonable fees" include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6) A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an "eligible" financial institution.

(7) "Unidentified Funds" are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(8) "Unclaimed Funds" are client or third person funds on deposit in an IOLTA account for at least two years that after reasonable due diligence the owner cannot be located or the owner refused to accept the funds.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistance

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

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

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

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the

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

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
(a) Knowingly make a false statement of material fact;
(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or
…

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;
…