

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MARK JEFFREY NEAL

DOCKET NUMBER: 21-DB-035

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 Mark Jeffrey Neal (“Respondent”), Louisiana Bar Roll Number 24580.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 8.4(a), (b), and (c).²

PROCEDURAL HISTORY

The formal charges were filed on June 15, 2021. Respondent filed an answer to the charges on October 26, 2021. The hearing of this matter was held on February 7, 2022 before Hearing Committee No. 3 (“the Committee”).³ Chief Disciplinary Counsel Charles B. Plattsmier appeared on behalf of ODC. Respondent appeared with counsel, Dane S. Ciolino.

On March 14, 2022, the Committee issued its report, with the majority of the Committee⁴ finding the actions of Respondent violated Rules 8.4(a) and 8.4(b), but not Rule 8.4(c). The majority recommended that Respondent be suspended from the practice of law for one year and one day, with all but sixty (60) days deferred, and that Respondent be placed on probation for a

¹ Respondent was admitted to the practice of law in Louisiana on October 11, 1996. Respondent is currently eligible to practice law.

² Rule 8.4 states, in pertinent part: “It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

³ Members of the Committee included Walter D. White (Chair), Jeffrey L. Little (Lawyer Member), and Gina C. Craft (Public Member).

⁴ The majority of the Committee consisted of the lawyer member, Mr. Little, and the public member, Ms. Craft.

period of two years with various conditions designed to determine, and if necessary, treat, any underlying mental and/or emotional condition that may cause violent conduct. The Committee also recommended that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

The dissenting member of the Committee⁵ opined that while he agreed with a vast majority of the findings and conclusions of the majority, he dissented on two points. First, he believed that a violation of Rule 8.4(c) had been proven by ODC by clear and convincing evidence. Second, he would recommend that Respondent be suspended from the practice of law for one year and one day, with no period of the suspension deferred. Such a sanction would require Respondent to file a petition and application for reinstatement pursuant to Rule XIX, Section 24.

The lawyer member of the Committee, while in the majority, also filed a concurrence in part and dissent in part. He concurred with the recommended sanction and imposed conditions. However, he disagreed with some of the language of the Committee's report and "the derived implications of [the Committee's] findings." Hrg. Comm. Rpt., p. 18.

ODC filed its Objection to the Hearing Committee Recommendation on March 14, 2022. Respondent filed his Notice of No Objection to Hearing Committee Report and Recommendation on March 17, 2022. This matter was originally set for oral argument before Panel "A" of the Disciplinary Board on May 26, 2022. On March 28, 2022, Respondent filed an unopposed Motion to Continue Board Argument, which was granted by the Chair of Panel "A," Lori A. Waters, on April 8, 2022. Oral argument before Panel "B"⁶ of the Disciplinary Board was held on June 23,

⁵ Mr. White, the Committee's Chair, was the dissenting member of the Committee.

⁶ Members of Panel "B" included Brian D. Landry (Chair), Aldric C. "Ric" Poirier, Jr. (Lawyer Member), and M. Todd Richard (Public Member).

2022. Mr. Plattsmier appeared on behalf of ODC. Mr. Ciolino appeared on behalf of Respondent, who was also present.

FORMAL CHARGES

The formal charges read, in pertinent part:

On September 24, 2020 the Respondent's attorney Dane Ciolino emailed the Office of Disciplinary Counsel to advise that Respondent had been arrested in connection with a battery upon another individual in Monroe, Louisiana. An online internet inquiry produced a news report of the Respondent's attack upon an individual by the name of Frederick Cascio, the owner of a restaurant in Monroe. The matter was opened under investigative file number 0038788. Thereafter on October 15, 2020, a written complaint regarding the same incident from the identified victim, Frederick Cascio[,] was received and opened under investigative file number 0038852.

The evidence reflects that the Respondent's father and family were friends of Frederick Cascio, the owner and operator of a local restaurant in Monroe. By all accounts, the Respondent along with his wife and children visited the Cascio restaurant regularly.

During the fall of 2020 the Respondent reportedly asked Cascio to provide a part-time job to his minor son. Cascio agreed and hired him as a part-time bus boy to work only when needed owing [to] his high school commitments and to a reduced occupancy stemming from Covid-19 restrictions. On Saturday September 19, 2020 Cascio believed that the son was scheduled to work and was to have arrived at the restaurant between 4:00 and 5:00 that afternoon, the time typically allotted for work staff to arrive so as to prepare for opening at 5:30. By 5:15, the son had not arrived so Cascio texted Respondent asking for his son's cell phone number indicating that he had not as yet shown up for work. Respondent replied with an abusive, insulting and racially improper text to Cascio including a threat to "beat your ass."

Cascio chose not to engage with Respondent, ended the texting and he and his staff completed preparation for the restaurant's evening patrons. Following completion of the preparations, Cascio was seated on a preparation counter near the rear of the bar area with his legs propped on a bar railing facing the front of the restaurant while conversing with his staff. Suddenly the rear door into the restaurant from the kitchen area burst open and Respondent came through. Respondent grabbed Cascio's ankles, swiveled him to his right and pulled him the length of the preparation counter, off the counter, and causing Cascio to fall on his back and head to the concrete floor below. From there Respondent dragged Cascio into the back kitchen area of the restaurant where he knelt on his upper chest and neck area while grabbing Cascio's head which he pounded into the floor several times while he was

heard to say “I will kill you.” The attack on Cascio by the Respondent ended when a female employee reached out and grabbed Cascio as he lay on the kitchen floor in an effort to pull him free of Respondent. Other employees who witnessed the attack called 911 and summoned police. Respondent disengaged and fled the premises.

During the course of the investigation of this matter the Office of Disciplinary Counsel obtained text messages from the Respondent sent to Cascio the day after the event where he asked Cascio to provide false information to police and to suggest to them that the attack was all a big misunderstanding. Cascio declined to offer false information to law enforcement.

The Respondent’s conduct reflects the commission of criminal acts in violation of 8.4(b); the engaging in dishonest conduct in violation of Rule 8.4(c); and violating or attempting to violate the Rules of Professional Conduct in violation of Rule 8.4(a).

THE HEARING COMMITTEE’S REPORT

As noted above, the Committee issued its report on March 14, 2022. In its report, the Committee noted that ODC Exhibits 1-10, Respondent Exhibits 1-9, and Joint Exhibit 1 had been admitted into evidence at the hearing. The Committee also described the testimony of the witnesses at the hearing, noting as follows:

The [C]ommittee heard from the Complainant [,] Frederick A. Cascio, who filed the Ethical Conduct Complaint (ODC 1), and who wrote, through counsel, a response (ODC 6) to Respondent’s letter (ODC 5). Mr. Cascio, verified the facts, and discussed his relationship with the family of Respondent. He detailed the incident, his medical treatment, and his actions to resolve the civil claim against Respondent. The civil claim was settled prior to the filing of a civil action by payment of medical expenses (\$6,186.00) and general damages (\$50,000.00). Mr. Cascio stated that the actions of Respondent were “out of character” but said Respondent “gets like that when he drinks.” Mr. Cascio stated his physical issues from the incident have resolved, but he takes “some pills” prescribed by a psychiatrist.

The Committee heard the testimony of Karen Brownfield, a waitress at the restaurant who testified she witnessed the encounter, and was speaking with Cascio immediately following the receipt of the texts to and from Respondent (ODC 3, Bates 011-013 inclusive). She personally observed Respondent come in the back door of the restaurant and saw him grab the ankles of Cascio and pull him off of the table. She said his head hitting the floor sounded like a thump of a melon on the floor. She observed Respondent with his knee on the chest of Cascio, pushing his

head into the floor. She heard him say to Cascio “I will kill you.” She directed others to call to 911 immediately. The attack then stopped and Respondent left the premises.

The Committee heard the testimony of Ouachita Parish Sheriff Deputy James Honey that following his interview of Cascio, (Narrative in ODC 7) in the early evening of September 19[,] Deputy Honey tried to contact Respondent for a response before asking for a warrant. He was unable to contact Respondent but did not know if Respondent was being elusive. A warrant was issued on [sic] for Respondent at 23:10:49 by Judge Larry Jefferson on the evening of September 19, 2022 [sic].

The Committee heard the testimony of Mr. Michael Dubos, the attorney hired by Mr. Cascio to pursue a civil claim against Respondent for damages. He pursued the matter as an intentional act, and was able to obtain a settlement figure that was satisfactory to Mr. Cascio, albeit without Mr. Cascio being released from his treating physician.

The Committee heard the testimony of Mr. John Wayley, who offered testimony regarding the character and professional abilities of Respondent. Letters of good character and professional standing were stipulated to by ODC, and are contained in Respondent Exhibit 9, and 9A.

The Committee heard the testimony of Mr. Bill Baldwin, an attorney and [p]artner at Hudson, Potts, and Bernstein, who served as counsel for Respondent in resolving the civil claim of Mr. Cascio. Mr. Baldwin recounted his actions in dealing with counsel for Mr. Cascio, Mr. Dubos, and the generous settlement sum that was agreed upon to “buy the peace” without a lawsuit being filed. He further testified regarding his personal knowledge of the personal and professional character qualities of Respondent. Mr. Baldwin stated that based upon his experience with Respondent as an associate of the firm, and as an attorney in the Monroe area, that the incident is “totally out of character” for Respondent.

The Committee heard the testimony of Respondent who stated he has known Mr. Cascio for a long time, and has tried to help him by notarizing documents periodically, and helping Mr. Cascio with “technical matters” such as email, texting, saving telephone numbers in his cell phone, and helping him apply for “PPP money.” Respondent expressed some exasperation to (in Respondent’s opinion) Mr. Cascio’s disorganization and failure to follow instructions. He said the incident happened about three weeks following the powerful remnants of Hurricane Laura going through Monroe. The text from Mr. Cascio about Respondent’s son, Noah, “irritated” Respondent, and resulted in “the most disproportionate behavior of my adult life.” He admitted taking [t]estosterone shots from a Dr. Woods (now deceased) but did not claim they were the cause of his actions. Respondent claimed he did not recall some of the actions detailed by Mr. Cascio, and Karen Barnhill. He said he thought that “Cognitive Dissonance”

(“Google” defined as “the state of having inconsistent thoughts, beliefs or attitudes, especially as relating to behavioral decisions and attitude change.”) [*sic*]. It should be noted those were the words of Respondent, and were not diagnosed or testified to by any medical professional. Respondent stated [that in] his texts to Mr. Cascio after the encounter (ODC 3, Bates (bottom of pages 013-017)[]) he was trying to apologize and he was not trying to change the facts.

The Committee heard the testimony of Respondent’s paralegal, Kelly Williams who said Mr. Cascio was best described as a friend of Respondent, but not a client. She remembered hearing Respondent and Mr. Cascio talking in Respondent’s office the Thursday prior to the incident. She remembered that when Mr. Cascio was leaving, Respondent said something to the effect “Noah is your employee.” She added that Noah has “ADHD” and Respondent is protective of him.

The Committee has no medical evidence to explain any physical, mental or emotional illnesses of Respondent which may have caused the texts and the threatening and violent behavior of Respondent. Nor does the Committee have any medical evidence to answer the critical question as to whether such a violent outburst can occur again, despite the assurances of Respondent.

The Committee then issued the following findings of fact, which restated the parties’ stipulations found in Joint Exhibit 1. The Committee reported as follows:

The Findings of Fact are stated in Joint Exhibit 1, which are restated here, in full:

1. The Respondent Mark Jeffrey Neal is fifty (50) years old.⁷ He is a Louisiana licensed attorney admitted to the practice of law in Louisiana October 11, 1996 after graduation from the LSU Law Center.
2. Frederick Cascio was at all times relevant the owner and operator of a restaurant in Monroe, Louisiana known as *Freddie Cascio’s Italian and Cajun Ristorante*.
3. Respondent’s father was a close friend of Cascio who attended him as a pallbearer at his funeral.
4. Respondent, his wife and children routinely visited and dined at Cascio’s restaurant.
5. On occasion Respondent provided notarial services for Cascio.
6. During the year 2020, Cascio employed Respondent’s high school age minor son as a part-time bus boy to work only when needed owing to his high school

⁷ The Board’s records indicate that Respondent will turn 52 years old in January of 2023.

commitments and to a reduced occupancy stemming from the Covid-19 pandemic restrictions.

7. On Saturday September 19, 2020 Cascio believed that Respondent's son was scheduled to work and was to have arrived at the restaurant between 4:00 and 5:00 that afternoon, the time typically allotted for work staff to arrive so as to prepare for opening at 5:30.

8. By 5:15, Respondent's son had not arrived as expected and Cascio texted Respondent asking for his son's cell phone number indicating that he had not as yet shown up for work. Respondent replied with an abusive, insulting and improper text to Cascio including a threat to "beat your ass."

9. Cascio chose not to engage with Respondent, ended the texting and he and his staff completed preparation for the restaurant's evening patrons. Respondent apparently called Cascio after ending the text message conversation but before arriving at Mr. Cascio's restaurant.

10. After completing the pre-opening preparations, Cascio was seated on a preparation counter neat [*sic*] the rear of the bar area with his legs propped on a bar railing facing the front of the restaurant while conversing with his staff. Suddenly the rear door into the restaurant from [*sic*] the kitchen area burst open and Respondent came through. Respondent grabbed Cascio's ankles and pulled him off the counter to the floor, through the restaurant into the kitchen and back washroom area. Respondent mounted Mr. Cascio with his full body bearing down on Mr. Cascio. He was heard by witnesses to say to Cascio "I will kill you." The attack on Cascio by the Respondent ended when a female employee reached out and grabbed Cascio as he lay on the kitchen floor in an effort to pull him free of Respondent. Other employees who witnessed the attack called 911 and summoned police. Respondent disengaged and left the premises.

11. On September 24, 2020 the Respondent's attorney Dane Ciolino emailed the Office of Disciplinary Counsel to advise that Respondent had been arrested in connection with a battery upon another individual in Monroe, Louisiana. An online internet inquiry produced a news report of the Respondent's attack upon an individual by the name of Frederick Cascio, the owner of a restaurant in Monroe. The matter was opened under investigative file number 0038788. Thereafter on October 15, 2020, a written complaint regarding the same incident from the identified victim, Frederick Cascio[,] was received an opened under investigative file number 0038852.

12. During the course of the investigation of this matter the Office of Disciplinary Counsel obtained text messages sent from [*sic*] the Respondent to Cascio the day after the attack wherein he asked Cascio to provide information to police that the attack was a a [*sic*] big misunderstanding. Cascio declined to offer what he believed to be inaccurate information to law enforcement. The text messages speak for themselves.

13. At the time of the incident Cascio was a 68-year-old polio-victim survivor, who sustained injuries stemming from the encounter with Respondent including medical expenses. The Respondent agreed to consent to a restraining order. Through retained counsel, Cascio initiated a civil claim against Respondent which was recently resolved to Cascio's satisfaction with the payment of damages and reimbursement to him of his out-of-pocket medical expenses.

14. Respondent admits that his conduct reflects the criminal act of simple battery and a violation of Rue 8.4(b) and 8.4(a).

15. Respondent's actions reflect violations of duties owed to the public; his conduct were [*sic*] at all times knowing if not intentional; he caused actual harm and injury to Cascio as well as harm to the profession when his conduct and subsequent arrest was published in the local newspaper and media. Pursuant to ABA Standard 5.12 the baseline sanction for the Respondent's violations is a suspension from the practice of law.

16. Aggravating factors are present and include: [v]ulnerability of the victim and [e]xperience in the practice of law. Mitigating factors are present and include: [a]bsence of a prior disciplinary record; [i]mposition of other penalties in the nature of payment of a civil settlement to Cascio; and [r]emorse.

As to the rules violated by Respondent, the Committee determined that Respondent had violated Rules 8.4(a) and (b), which violations were stipulated to by the parties. The majority of the Committee found, however, that ODC had not proven by clear and convincing evidence that Respondent violated Rule 8.4(c). The Committee explained its findings as follows:

Based on the stipulation of facts, the Committee concludes that Respondent violated the provisions of Rule 8.4(b) (Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness [as] a lawyer in other respects.) Based on the stipulation of facts, the Committee concludes that Respondent violated the provisions of Rule 8.4(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.)

In the initial account Respondent tendered to ODC (ODC 5, Bates 022), he characterized the encounter as an accidental fall. His veracity is brought into question when that document is compared to the sworn statement of Respondent, taken five months later in ODC 10, where Respondent said he "cannot dispute" that he "reached down and grabbed him by his ankle and pulled him off of where he was perched such that he was pulled off of this counter or preparation counter of sorts, down onto the floor where he hit his back and his head and then you then drug him into the back part of the restaurant." Respondent later stated he "had no

memory” of having a knee on the chest of Cascio. (ODC 10, pages 40-41 (Bates 142-143). The testimony of witnesses in close proximity to the attack (Karen Brownfield) leave [*sic*] no doubt that the attack was initiated wholly by Respondent, and was of such a nature that his look, language, actions, and violent actions were of such a nature as to place all concerned in great apprehension of great bodily harm, or death, to Mr. Cascio. A majority of the committee concludes (2-1) that Respondent did not violate the provisions of Rule 8.4(c). (Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.)

As to the sanction, the Committee analyzed the Rule XIX, Section 10(C) factors and found that Respondent violated duties owed to Mr. Cascio, personally, the public, the Monroe Bar, and the legal profession. The Committee also found that Respondent acted knowingly and intentionally, and that his misconduct caused personal physical and emotional harm to Mr. Cascio, an innocent citizen. The Committee noted that Respondent intimidated, embarrassed, threatened, and dominated Mr. Cascio, on Mr. Cascio’s own property, and the in the very presence of his employees. Other harm was caused to the legal profession and the Monroe Bar, in particular, when the incident was publicized, and the Committee noted “that such a thing was committed by a member of the Louisiana Bar is stunning.” Hr. Comm. Rpt., p. 10. The Committee accepted the parties’ stipulated aggravating factors (vulnerability of victim and experience in the practice of law) and mitigating factors (absence of a prior disciplinary record, imposition of other penalties, and remorse).

In determining that suspension is the baseline sanction in this matter, the Committee relied upon Standard 5.12 of the ABA’s *Standards for Imposing Lawyer Sanctions*. This baseline sanction was also stipulated to by the parties. Standard 5.12 reads, “[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the

elements listed in Standard 5.11⁸ and that seriously adversely reflects on the lawyer's fitness to practice." After a thorough examination of applicable case law, the majority of the Committee recommended that Respondent be suspended from the practice of law for a period of one year and a day, with all but sixty (60) days deferred, with the following special conditions:

- 1) That Respondent be on probation for a period of two years;
 - 2) Prior to reinstatement, Respondent shall be evaluated by a mental health professional, to determine any underlying mental and/or emotional condition that may cause violent conduct. This evaluation shall include a drug/alcohol use assessment and the need for further anger management;
 - 1) Within thirty (30) days of the finality of the court's judgment, Respondent shall submit to an examination by a licensed mental health care professional, approved by the ODC, and comply with any plan of treatment prescribed by that professional, at Respondent's cost;
 - 2) Respondent shall further advise the ODC of the results of the examination as well as the recommended treatment, if treatment is ordered by the mental health care professional, and shall provide his medical records to the ODC upon its request;
- and

⁸ ABA Standard 5.11 suggests that disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

- 3) If treatment is ordered, respondent shall provide the ODC with monthly reports from the mental health care professional to ensure he complies with treatment. In the event Respondent fails to comply with these conditions, or if he engages in any misconduct during the period of probation, the deferred suspension may become executory, or additional discipline may be imposed, as appropriate.

The majority of the Committee also recommended that Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, Section 10.1.

THE DISSENT OF THE COMMITTEE CHAIR

The Chair's dissent in this matter states as follows:

While I agree with a vast majority of the findings and conclusions of the majority, I dissent on the following two points. First, I believe there is clear and convincing evidence that Respondent violated Rule 8.4(c). Second, I would recommend that Respondent be suspended from the practice of law for one year and one day with NO period of deferral, which would require a petition and application for reinstatement pursuant to the Louisiana Supreme Court Rule XIX, Section 24.

THE LAWYER MEMBER'S CONCURRENCE IN PART/DISSENT IN PART

As mentioned above, in the lawyer member's concurrence in part and dissent in part, he concurs with the recommended sanction and imposed conditions. However, he disagrees with some of the language of the Committee's report and "the derived implications in [the Committee's] findings." Hrg. Comm. Rpt., p. 18. His comments read as follows:

This committee reaches a recommendation on sanctions by compromise. Without our doing so, no decision would be reached, which would cause a remand and prolongation of these proceedings. [fn 1: Rule XIX, Sec. 3(C) – "Quorum. Three members shall constitute a quorum. The committee shall act only with the concurrence of two. The chair of the board may appoint alternate members to a hearing committee as necessary to meet the requirements of this subsection.] I concur with the recommended sanctions and imposed conditions. However, I disagree with some of the language of the Committee Opinion and the derived implications for our findings.

First, I was impressed that Respondent stipulated to the facts, self reported, cooperated with ODC, and takes responsibility for his actions. He did not contest compensation for the victim, which was paid from his own funds, promptly and, in my and some of the witnesses' opinions, was very generous based on the injuries.

I found the Respondent to be remorseful and credible. He admits this was a horrible outburst, explained in part by COVID-19, Hurricane Ida's recent foray through Northeast Louisiana, Respondent's concerns for his son's developmental and education issues, frustration with Mr. Cascio and a testosterone injection. [fn 2: At the time of the incident, the Delta variant was rising and causing new restrictions, event cancellations and business shut downs.] [fn 3: This incident was also a couple of weeks post Hurricane Ida. Although downgraded to a Tropical Storm as it passed through Monroe, it still caused unprecedented flooding and wind damage.] [fn 4: One of Respondent's doctors passed away before the hearing and was thus unavailable to further enlighten the Committee on this [the testosterone] issue.] Respondent acknowledged the contribution of these factors, but was careful to assert that he was not attempting to blame these circumstances or excuse his responsibility for his actions. The undersigned is convinced that Respondent truly regrets the damage this one 10 second lapse did to a multi-generational family relationship.

Further, although there was arguable indicia of an attorney-client relationship between Mr. Neal and Mr. Cascio, this one isolated incident occurred between friends, on a weekend, and unrelated to the practice of law. [fn 5: Except to the extent that Mr. Cascio frustrated Respondent's attempts to help him.] There is no evidence that it has ever happen before in Respondent's 25 year legal career or his adult life. The numerous colleagues which have written on Respondent's behalf (Respondent's Exhibit 9), and the witnesses which have attested to Respondent's competency as a lawyer, all indicate that this incident is "out of character." This emotional outburst was not made worse by the fact that Respondent is a member of the bar and it didn't effect [*sic*] the administration of justice. It does, however, highlight the high standard to which we wish to hold ourselves and our legal brethren while exposing, that at the end of the day, we are all human and flawed.

This panel member does not think that our sanction is a "slap on the wrist." Any period of actual suspension means Respondent cannot earn as an attorney. It means that he has to contact his colleagues, courts, and current clients and cannot take on any new matters. This, with the sums already expended for restitution and legal counsel (and yet more to come), does not make our sanction lenient by any means. The conditions are placed to prevent a future occurrence, to the extent it is within our power. "The purpose of lawyer disciplinary proceedings is not so much to punish the attorney as it is to maintain appropriate standards of professional conduct in order to protect the public and the administration of justice." Louisiana State Bar Ass'n v. Causey, 393 So.2d 88 (La. 1980).

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 manifestly erroneous in only three minor instances. First, the Committee finds that Ms. Brownfield, a waitress at Mr. Cascio’s restaurant, saw Respondent grab the ankles of Mr. Cascio and pull him off of a table. Hrg. Comm. Rpt., p. 3. Instead, Ms. Brownfield testified that Respondent grabbed the ankles of Mr. Cascio and pulled him off of a counter. Hr. Tr., pp. 82-84. Second, the Committee finds that Respondent admitted taking testosterone shots from Dr. Ronnie Woods, who the Committee noted was deceased at the time of the hearing. The record instead shows that Dr. Zuckerman, the Respondent’s treating physician who had given him earlier testosterone treatments, had passed away by the time of the hearing; there was no evidence presented that Dr. Woods had passed away. Dr. Woods had given Respondent a testosterone injection three days prior to the incident at issue, as Dr. Zuckerman was

out of state and recommended that Respondent go see Dr. Woods. *Id.* at pp. 164-67. Third, in his concurrence in part and dissent in part, the lawyer member lists “Hurricane Ida’s recent foray through Northeast Louisiana” as an explanation for Respondent’s misconduct and notes that the incident at issue occurred a couple of weeks after Hurricane Ida. Hr. Comm. Rpt. p. 18. The transcript indicates that Hurricane Laura was the hurricane to which the Respondent referred at the hearing, not Hurricane Ida. Hr. Tr., pp. 162-63. All other factual findings of the Committee are not manifestly erroneous and are adopted by the Board.

The Board also makes the additional findings of fact:

1. Respondent was arrested on one count of simple battery on September 22, 2020. ODC Exhibits 7 and 8.
2. On January 6, 2021, the State deferred the prosecution of the simple battery charges in exchange for Respondent entering into the pre-trial diversion program in Ouachita Parish. ODC Exhibit 9. Respondent successfully completed anger management classes as a part of the pre-trial diversion program. *Id.*, *see also* Resp. Exhibit 8. The program was a three-hour online course. The district attorney then dropped all prosecution of Respondent and agreed not to pursue criminal charges. Hr. Tr., pp. 195-96.
3. Respondent was never convicted of a crime. *Id.* at pp. 181; 196. He admits, however, that that he is guilty of the crime of simple battery by his actions. *Id.* at p. 196.
3. Mr. Cascio sustained physical damages which included primarily neck and back injuries (soft tissue injuries) and emotional trauma. *Id.* at p. 138; Resp. Exhibit 1. Respondent has paid Mr. Cascio’s medical damages (\$6,186.00) as well as settled Mr. Cascio’s civil claim brought against Respondent (\$50,000). Resp. Exhibits 4 and 5.

B. *De Novo* Review

The Committee correctly found that Respondent stipulated to violations of Rules of Professional Conduct 8.4(a) and (b). In a disciplinary proceeding, the parties are free to enter into stipulations concerning rule violations, and effect must be given to them unless they are withdrawn. *In re Torry*, 2010-0837, pp. 6-7 (La. 10/19/10), 48 So.3d 1038, 1041. Therefore, Respondent's violations of Rules 8.4(a) and (b) have been established.

The majority of the Committee found that ODC had not proven a violation of Rule 8.4(c) by clear and convincing evidence. The Committee based its analysis of the alleged Rule 8.4(c) violation on Respondent's change in his account of Mr. Cascio's fall. In his dissent, the Chair determined that this rule violation was present. The Chair did not provide his reasoning for this determination.

Rule 8.4(c) states that it is "[i]t is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. In Respondent's response to Mr. Cascio's complaint, Respondent characterizes the fall as being accidental, while in his sworn statement, he admits to the fall to being caused by his (Respondent's) intentional actions. ODC did not allege that this change in Respondent's account of Mr. Cascio's fall constituted a violation of Rule 8.4(c) in the formal charges. Moreover, while ODC's Pre-Hearing Memorandum describes this change in Respondent's account of the fall in detail, it does not specifically allege that it constitutes a violation of Rule 8.4(c). Nevertheless, Respondent addressed the change in his account at the hearing. In response to questioning by his counsel, he testified as follows:

Mr. Ciolino: What is your explanation behind that [Respondent's initial account that Mr. Cascio's fall was accidental, and that Mr. Cascio's own actions caused him to fall after Respondent reached for him]?

Respondent: That was in a statement and – or that was in a letter, right? That was in that initial letter? That was my recollection. And, apparently, that is not what

other people saw. And I'm not in a position to dispute that. No matter what, I pulled him from the table or reached for him. I am the reason that he fell. My behavior caused him to fall. And I'm the one that pulled him by the legs, by his ankles approximately ten feet to a resting spot.

Mr. Ciolino: All right. So you don't dispute that you committed simple battery on Mr. Cascio?

Respondent: I never have. I do not.

Hrg. Tr., pp. 173-74.

The Committee's finding that ODC did not prove a Rule 8.4(c) violation, based upon Respondent's change in his account of Mr. Cascio's fall, is not erroneous and is adopted by the Board. The Committee's finding is apparently based on Respondent's testimony that his initial recollection was that Mr. Cascio's fall was accidental; however, he later, without reservation, recanted his story based upon the observations of other people who were present. The Board agrees with the Committee that this conduct does not involve dishonesty, fraud, deceit, or misrepresentation.

Next, the Board points out that in the formal charges, ODC alleges that Respondent violated Rule 8.4(c) in a different manner. The charges allege as follows:

During the course of the investigation of this matter the Office of Disciplinary Counsel obtained text messages from the Respondent sent to Cascio the day after the event where he asked Cascio to provide false information to police and to suggest to them that the attack was all a big misunderstanding. Cascio declined to offer false information to law enforcement.

As to this alleged violation, the parties stipulated that:

During the course of the investigation of this matter the Office of Disciplinary Counsel obtained text messages sent from the Respondent to Cascio the day after the attack wherein he asked Cascio to provide information to police that the attack was all a big misunderstanding. Cascio declined to offer what he believed to be inaccurate information to law enforcement. The text messages speak for themselves.

Joint Exhibit 1, para. 12.

The text messages at issue, which are attached to Mr. Cascio's complaint, read as follows:

From Respondent to Mr. Cascio ("Text Message #1"):

I'm terribly sorry for yesterday and sincerely apologize from the bottom of my heart. My behavior was out of line and I honestly can't understand what caused me to snap. I'm a very aggressive person, but not violent. In any case, please know I love you and cherish our friendship. I will make amends to you and your staff in any way necessary. You just tell me what you to do [sic]. Let's do what we can to keep this between ourselves. I've told no one.

If the police come to me, I'll tell them it was a misunderstanding and a mistake, that you accepted my apology. Please do not press charges. Nobody would win.

If you would like some place to stay you're welcome to stay here or I can get a hotel room for you.

From Respondent to Rosie Cascio, Respondent's sister ("Text Message #2"):

Fwd: Rosie, I sent you the deputy's name and file number. I've been told that a warrant for my arrest is scheduled to be processed in the morning and that I will be arrested tomorrow before noon. Freddie [sic] can stop this by calling the sheriff's department ASAP. He can't wait. I don't understand this because he and I spoke this morning and he told me this was not what he wanted. This could derail my family and my career.

ODC Exhibit 3, attached Exhibit 1 (emphasis added).

Also, in Mr. Cascio's complaint, he states as follows:

Following the attack, Mr. Neal showed up unannounced at my residence and continued to try to communicate with me and my family members, including my sister and my daughter. Mr. Neal also sent unsolicited and unwanted text messages to me seeking to dissuade me from reporting the matter to law enforcement and seeking to have me fabricate the event that unfolded. I refused and an arrest warrant was issued. Mr. Neal was arrested on charges of simple battery on September 22, 2020.

ODC Exhibit 3.

At the hearing, Mr. Cascio confirmed in his testimony that he received Text Message #1 from Respondent. Hr. Tr., pp. 42, 48. On direct examination, Mr. Cascio also confirmed that in this text message Respondent suggested that he (Mr. Cascio) tell the police that the attack was just

a misunderstanding. *Id.* at 42. Mr. Cascio also testified on direct examination that at the time he filed his complaint, he believed that it was Respondent's intent to ask him to tell law enforcement something other than what was true. *Id.* at 42-43. Later, while under cross-examination, Mr. Cascio's testimony on this issue wavered. He then testified that in Text Message #1 Respondent was stating what he (Respondent) would tell the police about the attack, and not suggesting what Mr. Cascio should tell the police. Mr. Cascio responded to Mr. Ciolino's questioning concerning Text Message #1, in pertinent part, as follows:

Mr. Ciolino: Mr. Neal was talking about what he was going to tell the police [about the attack], not what you should tell the police. Correct?

Mr. Cascio: Right.

Mr. Ciolino: Because you had already talked with the police?

Mr. Cascio: I had already talked to the police.

Id. at p. 49.

Despite Mr. Cascio's changing testimony on cross-examination, the parties' stipulation on this issue has not been withdrawn, remains in place, and must be given effect by the Board. *In re Griffing*, 2017-B-0874, pp. 10, 13 (La. 10/18/17), 236 So.3d 1213, 1219, 1221 *citing In re Torry*, 10-0837 (La. 10/19/10), 48 So.3d 1038 (stipulations of fact and rules violations must be given effect unless they are withdrawn). Accordingly, the parties' stipulation that: (1) ODC obtained text messages from Respondent sent to Mr. Cascio the day after the attack wherein he asked Mr. Cascio to provide information to police that the attack was all a big misunderstanding; and (2) Mr. Cascio declined to offer what he believe to be inaccurate information to law enforcement, remains in effect. Joint Exhibit 1, para. 12. Nevertheless, the Board finds that Respondent's conduct does not constitute a Rule 8.4(c) violation. While Respondent's suggestion to Mr. Cascio in Text Message #1 that he characterize the incident as a "misunderstanding" and "mistake" to the police

was perhaps self-serving, it did not rise to level of conduct involving dishonesty, fraud, deceit, or misrepresentation. The incident, at a minimum, did involve a misunderstanding over Respondent's son's work schedule and, no doubt, constituted an egregious mistake on the part of Respondent.

II. The Appropriate Sanction

A. Rule XIX Section 10(C) Factors

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

As explained by the Committee, Respondent violated duties owed to Mr. Cascio, personally, the public, the Monroe Bar, and the legal profession. He acted knowingly and intentionally. Respondent's misconduct caused personal physical and emotional harm to Mr. Cascio, an innocent citizen. His conduct also caused harm to the reputation of the legal profession. Aggravating factors include vulnerability of victim, experience in the practice of law, and illegal conduct. Mitigating factors include absence of a prior disciplinary record, imposition of other penalties, timely good faith effort to make restitution or to rectify consequences of misconduct, and remorse.

B. The ABA Standards and Case Law

The parties' stipulations found in Joint Exhibit 1 appropriately provide that under ABA Standard 5.12, the baseline sanction for Respondent's misconduct is suspension from the practice of law.

Louisiana jurisprudence addressing similar matters reflects a range of discipline from suspension to disbarment, sometimes modified depending on whether the act was in the course of legal representation. In *In re Dejean*, 2018-1333 (La. 01/30/2019), 264 So.3d 424, the respondent, while in a judge’s chambers, engaged in a “chest bump” with the District Attorney, and was later convicted of simple battery. Noting a history of anger management issues and prior discipline, the Supreme Court stated:

By its very nature, respondent’s criminal conduct was intentional. He violated duties owed to the public, the legal system, and the legal profession, causing actual harm to the profession and potential harm to [opposing counsel].

The sanctions in our jurisprudence in prior cases concerning attorneys who have engaged in violent conduct range from a period of suspension to disbarment. By their nature, the cases in this area tend to be very fact specific, making it difficult to synthesize any broad precepts. **However, it may be said that in general, the severity of the sanctions depend[s] upon the intent of the perpetrator, the harm resulting from the actions and the context in which the conduct occurs. . . .**

Considering respondent’s disciplinary history, we find it appropriate to fashion a sanction which is both responsive to respondent’s current misconduct and which will protect the public in the future by requiring him to demonstrate fitness prior to being reinstated to the practice of law. *See* Supreme Court Rule XIX, Section 24(E)(3). Accordingly, we will adopt the disciplinary board’s recommendation and suspend respondent from the practice of law for one year and one day, thereby necessitating a formal application for reinstatement.

Id., 2018-1333, pp. 9-10, 264 So.3d at 429-30 (emphasis added).

In the instant matter, the intent of Respondent was to harm Mr. Cascio. In fact, Respondent has stipulated that on September 19, 2020, the day of the incident, he texted an abusive, insulting, and improper text to Mr. Cascio including a threat to “beat your ass.” He carried through with his threat, physically attacking Mr. Cascio later that evening and threatening during the attack to kill Mr. Cascio. The harm resulting from Respondent’s actions included physical and emotional harm to Mr. Cascio. The reputation of the legal profession was also tarnished by Respondent’s actions. The context in which Respondent’s conduct occurred was a situation in which Respondent was

frustrated with both Mr. Cascio's lack of cell phone technology skills and his failure to directly contact Respondent's son concerning his work schedule. Hr. Tr., pp. 162-63. Respondent also claims that he had received a testosterone shot three days prior to the incident; however, he maintains that the testosterone did not cause him to attack Mr. Cascio. *Id.* at pp. 164-73.⁹

Against this backdrop, the Board will now consider other case law involving similar violent misconduct.

Respondent suggests the cases of *In re Bowman*, 2012-2410 (La. 3/19/13), 111 So.3d 317 and *In re Greenburg and Lewis*, 2008-2878 (La. 5/5/09), 9 So.3d 802, which both resulted in six-month suspensions, with all but 30 days deferred, are suggestive of the appropriate remedy in this matter. In *Bowman*, the respondent and his ex-wife were very recently divorced, and, under court order, they shared joint custody of their children on a rotating weekly schedule. The respondent went to the former matrimonial domicile to pick up his two daughters for visitation. He and his ex-wife still owned the house, and it was not subject to any use or occupancy judgment. His former wife informed the respondent that he could pick up his twelve-year-old daughter, but that his eight-year-old daughter did not want to go and his ex-wife would not make her go. The respondent then pushed past his ex-wife to attempt to enter the house. As his ex-wife closed the door to prevent him from entering, the respondent pushed her with his arm, causing her to stumble backwards against the door. He then pinned her against the door by placing his forearm against her throat and

⁹ The lawyer member states in his concurrence in part and dissent in part, that Respondent's outburst was explained in part by Covid-19, Hurricane [Laura's] recent foray through Northeast Louisiana, Respondent's concerns for his son's developmental and education issues, frustration with Mr. Cascio, and a testosterone injection. In its Pre-Argument Memorandum, ODC agrees only with the lawyer member's determination that Respondent's frustration with Mr. Cascio was the cause for his outburst, and objects to the other reasons as not being supported by the evidence and manifestly erroneous. ODC is correct. As explained above, the Board finds that Respondent's conduct occurred as a result of his frustration with both Mr. Cascio's lack of cell phone technology skills and his failure to directly contact Respondent's son concerning his work schedule.

chest and drew back his left hand in a fist as if he was going to punch her, but he did not actually strike her with his fist. He then yelled into the house for his two daughters to come with him.

At that point, his ex-wife's boyfriend, a state trooper who was at the house, came to the door and physically maneuvered the respondent outside. They exchanged words on the porch and the respondent went home. In response to a 911 call from the twelve-year-old daughter, the police investigated and found that the ex-wife had visible red marks and abrasion on her neck and chest from being pushed into the door. The daughter told police she witnessed the respondent pin her mother against the door.

The respondent was arrested and charged with domestic abuse battery. His ex-wife later requested the criminal charges be dismissed, but the district attorney's office declined to forego prosecution. Following a trial, the respondent was found guilty as charged. The judge in the criminal proceeding found that while the respondent's ex-wife had willfully disobeyed a custody order, which actually triggered the heated exchange and ultimate incident, she was not the aggressor or instigator of the incident. The respondent was ordered to pay a fine and court costs and was given a suspended sentence of sixty days in jail. He was placed on probation for six months with conditions including community service and completion of a domestic abuse prevention program. The conviction was subsequently set aside upon the respondent's satisfactory completion of his probation.

In the disciplinary matter, the Board recommended that the respondent be suspended for one year, with six months deferred, followed by a two-year period of probation. However, the Court suspended the respondent for six months, with all but thirty days deferred. In imposing the sanction, the Court observed that "there is a considerable range of sanctions imposed upon attorneys who have been found to engage in conduct involving physical violence" and that "[t]his

divergence suggests that the determination of an appropriate sanction in the area may turn on the unique facts and circumstances of each case, making it difficult to draw much guidance from prior jurisprudence.” *Id.*, 2012-2410, pp. 10-11, 111 So.3d at 323.

In *Greenburg and Lewis*, Mr. Lewis and Mrs. Greenburg represented opposing parties in a bitterly contested succession matter pending in Terrebonne Parish. While appearing in open court for a motion hearing, Messrs. Lewis and Greenburg exchanged vulgarities, following which Mr. Greenburg grabbed Mr. Lewis’ suit jacket, and both men fell to the floor. Mr. Greenburg was subsequently convicted of the misdemeanor offense of simple battery arising out of this altercation. In response to the formal charges filed against both lawyers, the Court suspended Mr. Greenburg from the practice of law for a period of six months, with all but thirty days deferred, subject to the condition that he complete an anger management counseling program. The Court publicly reprimanded Mr. Lewis.

The Court has also imposed significantly harsher suspensions when a lawyer engages in violent conduct. In *In re Cardenas*, 2011-0031 (La. 05/06/11), 60 So.3d 609, the Court suspended Mr. Cardenas for one year with six months deferred, followed by a two-year probationary period with conditions. The basis of the suspension was Mr. Cardenas’ conviction for domestic abuse battery pursuant to La. R.S. 14:35.3. Mr. Cardenas committed battery upon his wife at their home while a minor child was in the residence. The Court recognized the following aggravating factors: prior disciplinary offenses, vulnerability of the victim, substantial experience in the practice of law, and illegal conduct. The Court recognized the following mitigating factors: a cooperative attitude toward the proceedings, character or reputation, and the imposition of other penalties or sanctions.

Next, in *In re deBlieux*, 2019-1515 (La. 1/29/20), 340 So.3d 587, *reh'g denied*, 2019-1515 (La. 4/9/20), 347 So.3d 743, the respondent was suspended for one year for his misconduct involving violent actions. In *deBlieux*, the respondent and his wife, S.D., had separated, and S.D. was living in a rental home which was her exclusive residence. The respondent did not have a key or access to the home. Believing that S.D. was in her rental home with a male guest, the respondent kicked in the locked front door of the home, causing the frame to splinter. He then entered the inhabited dwelling without permission to do so. He encountered S.D., who attempted to prevent him from making contact with her male guest, and pushed her aside. The respondent next encountered the male guest and engaged in a physical altercation, striking the male guest and wrestling him to the floor and continuing to strike him while fully on top of him. S.D. attempted to intervene to stop the altercation by climbing onto the respondent's back in an effort to pull him off the male guest, but respondent stood up, causing S.D. to fall. Respondent then walked out of S.D.'s residence, got into his car where his two daughters were sleeping, and returned to the marital residence.

At the marital residence, the respondent retrieved his wife's clothing. He returned to S.D.'s home with the minor children still in the vehicle, tossed her clothes onto the driveway, and left. Within a few minutes, the respondent again returned to S.D.'s residence, and sought to retrieve his son's soccer equipment and uniform from S.D.'s locked vehicle. S.D. declined to give the respondent access to the vehicle and attempted to step between the respondent and her vehicle. The respondent pushed S.D. out of the way, picked up a nearby concrete cinder block, and smashed it through the window of S.D.'s vehicle. At the point in time when the respondent and S.D. were arguing and he struck her vehicle window with the concrete cinder block, their two minor daughters were awake in his vehicle and crying.

The respondent admitted that his conduct satisfied the elements of the felony offense of unauthorized entry of an inhabited dwelling, as well as three misdemeanor offenses of domestic abuse battery, simple battery, and simple criminal damage to property. He also stipulated to violations of Rules of Professional Conduct 8.4(a) and 8.4(b). The Court found that the aggravating factors of a selfish motive, deceptive practices during the disciplinary process, substantial experience in the practice of law, and illegal conduct were present. The mitigating factors of absence of a prior disciplinary record, personal or emotional problems, timely good faith effort to make restitution or to rectify the consequences of the misconduct, a cooperative attitude toward the disciplinary proceedings, and remorse were also present.

In *In re Estiverne*, 1999–0949 (La.9/24/99), 741 So.2d 649, Mr. Estiverne became involved in an altercation with opposing counsel during a deposition. At some point, opposing counsel suggested to Mr. Estiverne that the two of them “step outside” and settle the dispute “man to man.” Mr. Estiverne left the office and reappeared a few minutes later with an unloaded gun, allegedly threatening to kill opposing counsel. Finding Mr. Estiverne's use of a dangerous weapon created a clear potential for harm and noting the respondent’s prior misconduct involving harassing and unprofessional behavior, the Court suspended him from the practice of law for one year and one day.

In *In re Crabson*, 2013-0312, 3, 8-9 (La. 4/12/13), 115 So.3d 452, 454-57, a deemed admitted matter, the Court suspended Mr. Crabson for one year and one day based upon his conviction for simple battery.¹⁰ The conviction was based on the following facts:

In June 2011, Alfonso Belloso was backing his car out of a parking space at a Walmart store in Pompano Beach, Florida when he heard a car horn behind him. Unsure whether he had hit another vehicle, Mr. Belloso got out of his car and walked around to check for damage. As he did so, a man later identified as

¹⁰ Although a deemed admitted matter, both ODC and the respondent filed submissions for the hearing committee’s consideration.

respondent exited his own vehicle and began screaming profanities at Mr. Belloso. Respondent then approached Mr. Belloso and threw several punches at him, striking him once and leaving a bruise on his cheek. When Mr. Belloso's wife tried to separate the two men, respondent pushed her away. Mr. Belloso's wife called the police, at which time respondent fled the scene. Mr. Belloso pursued respondent until law enforcement officers were able to detain him. Respondent was arrested and charged with simple battery, a misdemeanor.

When considering the respondent's misconduct, the Board noted that his violent act did not occur within the context of practicing law. The Board concluded:

. . . Mr. Crabson's seemingly unprovoked act of violence occurred in a public place against an unsuspecting member of the public. Mr. Crabson's extreme reaction to what appears to be a relatively minor incident calls into question his fitness to practice law. Unfortunately, the practice of law is often contentious and requires that members of the Bar remain calm and professional as they contend daily with trying and challenging circumstances. Mr. Crabson's exhibited violence in this matter is a likely indicator of his inability to handle himself professionally in stressful or difficult circumstances while practicing law. Therefore, Mr. Crabson must go through the reinstatement process to ensure that he is fit to practice law.

The Board recommended that the respondent be suspended from the practice of law for one year and one day.

The Court determined that the aggravating factors of prior disciplinary record, refusal to acknowledge the wrongful nature of the misconduct, substantial experience in the practice of law, and illegal conduct were present. The sole mitigating factor present was imposition of other penalties or sanctions in connection with the respondent's criminal proceedings. As noted above, the Court agreed with the Board's recommendation and imposed a one-year and one-day suspension upon the respondent.

In *In re Sterling*, 2008–2399 (La. 1/30/09), 2 So.3d 408, Mr. Sterling kicked in the door of his girlfriend's apartment and then pushed and shoved her around the apartment. He was subsequently convicted of unauthorized entry of an inhabited dwelling, a felony, and placed on probation. Mr. Sterling was also charged with other professional misconduct, including failure to

properly notify his clients of the interim suspension that followed his criminal conviction, failure to return a client's file after he was placed on interim suspension, and transferring a client matter to another attorney without the consent of the client. The Court determined several mitigating factors to be present, including absence of a prior disciplinary record, inexperience in the practice of law, character and reputation, imposition of other penalties or sanctions, and remorse. The only aggravating factor present was multiple offenses. For this misconduct, the Court imposed a two-year suspension from the practice of law.

In *In re Willis*, 09–0211 (La. 5/13/09), 8 So.3d 548, a deemed admitted matter, the respondent was waiting with his girlfriend in a vehicle at the drive-up window of a fast-food restaurant. Before their food arrived, Mr. Willis and his girlfriend began arguing. This led to a physical altercation between them wherein Mr. Willis hit and grabbed his girlfriend. He also poured beer on her and hit her over the head with the empty beer bottle. Mr. Willis was ultimately charged with two counts of simple battery, which charges were still pending at the time of the disciplinary matter. He was also charged with other professional misconduct, including neglecting a client's bankruptcy matter, failing to refund an unearned fee and unused costs, failing to return the client's documents upon the termination of the representation, and practicing law while ineligible to do so. The Court noted that there were numerous aggravating factors present and a relative lack of mitigating factors. For this misconduct, Mr. Willis was disbarred.

Similar to the respondents in the above cases, Respondent has engaged in either a physical confrontation with another person or violently threatened to harm another person. Importantly, this matter differs from *Sterling* and *Willis* in that no additional counts are charged which involve misconduct based upon Respondent's representation of his clients; the incident with Mr. Cascio is the only misconduct with which Respondent is charged.

This matter is most in line with *Crabson*. In *Crabson*, the respondent also committed simple battery -- an unexpected attack-- on a member of the public. Similar to the instant matter, the attack did not occur within the context of practicing law. Further like Mr. Crabson, Respondent's extreme reaction to a relatively minor incident calls into question his fitness to practice law and could well be an indicator of his inability to handle himself professionally in stressful or difficult circumstances while practicing law.

Notably, while Respondent testified that he went to therapy after the attack on Mr. Cascio, he failed to produce any records of this therapy. Hrg. Tr., p. 199. He additionally failed to produce any medical evidence that, following the incident, he participated in a mental/emotional or substance use disorder evaluation and received any treatment, if recommended. Failure to undergo such an evaluation or treatment and produce evidence thereof is surprising, given the fact that Respondent describes his attack on Mr. Cascio as "the most disproportionate behavior of my grown adult life" and "aberrant behavior." He also describes his experience prior to the attack as "cognitive dissonance" in that his "body was driving down the road to the restaurant, and [his] mind was saying don't do this." *Id.* at pp. 164, 171-72. Further, he produced no evidence that he actually had received the testosterone shot three days before his attack on Mr. Cascio.¹¹ He also failed to produce testimony from Dr. Woods or any other health professional concerning the effects the testosterone, if taken, may have had on his mental status on the day of the incident.¹²

The sanction of a one-year and one-day suspension as imposed in *Crabson* is appropriate in this matter. However, given the significant mitigating factors present, most of which were not

¹¹ At the hearing, the Committee Chair stated that "I admit he got the shot," but no medical evidence was presented by Respondent to substantiate this fact. Hr. Tr., pp. 165-68.

¹² At the hearing, Respondent's counsel stated that Dr. Zuckerman had written a letter saying that he believed that the testosterone perhaps caused Respondent to be more aggressive and angry the day of the attack. However, as Dr. Zuckerman had passed away, he could not testify at the hearing. Hr. Tr., pp. 166-67. Dr. Woods, who gave Respondent the testosterone shot three days before the attack, was not called to testify, as apparently the parties agreed not to present medical evidence on this issue. *Id.* at 165-68.

present in *Crabson*,¹³ the Board will recommend that six months of the suspension be deferred. The Board will also recommend that Respondent be placed on probation for a period of two years and be referred to the Judges and Lawyers Assistance Program (“JLAP”) to be assessed, and if necessary, treated by a licensed mental health care professional. In the event Respondent fails to comply with these conditions, or if he engages in any misconduct during the period of probation, the deferred suspension may become executory, or additional discipline may be imposed, as appropriate. The Board will further recommend that Respondent must be in compliance with the above conditions prior to his reinstatement to the practice of law. The Board will additionally recommend that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

CONCLUSION

The Board adopts the findings of fact of the Committee, with the minor corrections and additions as explained above. The Board also adopts the Committee’s findings that ODC has proven that Respondent violated Rules 8.4(a) and (b). For the reasons stated above, the Board also finds that ODC has not proven that Respondent violated Rule 8.4(c). Accordingly, the Board recommends that the sanction of a one-year and one-day suspension, with six months deferred, be imposed upon Respondent. The Board also recommends that Respondent be placed on probation for a period of two years and be referred to JLAP to be assessed, and if necessary, treated by a licensed mental health care professional. In the event Respondent fails to comply with these conditions, or if he engages in any misconduct during the period of probation, the deferred suspension may become executory, or additional discipline may be imposed, as appropriate. The

¹³ As discussed above, the mitigating factor of imposition of other penalties or sanctions is present in this matter and in *Crabson*. Additional mitigating factors found in this matter include absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify consequences of misconduct, and remorse.

Board further recommends that Respondent must be in compliance with the above conditions prior to his reinstatement to the practice of law. The Board additionally recommends that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

RECOMMENDATION

The Disciplinary Board recommends that Respondent, Mark Jeffrey Neal, be suspended from the practice of law for one year and one day, with six months of the suspension deferred. The Board also recommends the following conditions:

- (1) Respondent shall be placed on probation for a period of two years;
- (2) Upon finality of the Court's judgment, Respondent shall be ordered to consult with JLAP in order to be evaluated by a JLAP-designated licensed mental health care professional to determine any underlying mental and/or emotional condition that may cause violent conduct. This evaluation shall include a drug/alcohol assessment and the need for further anger management counseling. Respondent shall also be subject to the following conditions concerning this evaluation and any recommended treatment:
 - (a) Within thirty (30) days of the finality of the Court's judgment, Respondent shall submit to the evaluation by the JLAP-designated licensed mental health care professional and begin compliance with any plan of treatment prescribed by that professional, at Respondent's cost;
 - (b) Respondent shall further advise JLAP and ODC of the results of the evaluation as well as any recommended treatment, and shall provide his medical records to JLAP and ODC upon their request;
 - (c) If treatment is ordered, Respondent shall provide JLAP and ODC with monthly reports from the licensed mental health care professional to ensure he complies with treatment;

(3) In the event Respondent fails to comply with these conditions, or if he engages in any misconduct during the period of probation, the deferred suspension may become executory, or additional discipline may be imposed, as appropriate; and

(4) Respondent must be in compliance with the above conditions prior to his reinstatement to the practice of law.

The Board further recommends that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**Paula H. Clayton
Brian D. Landry
Aldric C. Poirier, Jr.**

DocuSigned by:
By M. Todd Richard
M. Todd Richard
FOR THE ADJUDICATIVE COMMITTEE

**Albert R. Dennis III - Concurs with reason.
Todd S. Clemons - Dissents with reason.
Susan P. DesOrmeaux - Dissents with reason.
Lori A. Waters - Dissents with reason.
R. Alan Breithaupt - Recused.**

LOUISIANA ATTORNEY DISCIPLINARY BOARD

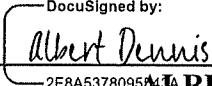
IN RE: MARK JEFFREY NEAL

DOCKET NO. 21-DB-035

CONCURRENCE

While I concur with the Board's Recommendation, emphasis should be made that the respondent "must" comply with all of the conditions, prior to being allowed to practice law again.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By:  **ALBERT DENNIS III**
Adjudicative Committee Member

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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MARK JEFFREY NEAL

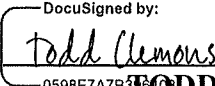
DOCKET NO. 21-DB-035

DISSENT

I agree fully with the findings and opinion of the dissenting member of the committee,
Mr. White.

Accordingly, I respectfully dissent.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By:  **TODD S. CLEMONS**
Adjudicative Committee Member

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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MARK JEFFREY NEAL

NO. 21-DB-035

DISSENT

I agree with the dissenting opinion of the Hearing Committee chair, that Respondent clearly violated Rule 8.4 (c) and there should be no deferred period associated with the suspension.

Accordingly, I respectfully dissent.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: 
B3891CCE
SUSAN P. DESORMEAUX
Adjudicative Committee Member

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MARK JEFFREY NEAL

NO. 21-DB-035

DISSENT

I agree with the Hearing Committee chair's dissenting opinion. The Respondent violated Rule 8.4 (c), and therefore, should be suspended for one year and a day without the 6-month deferred period.

Accordingly, I respectfully dissent.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

By: DocuSigned by:
Lori Waters
186E1EC4292448 **LORI A. WATERS**
Adjudicative Committee Member