ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: WILLIAM M. MAGEE

DOCKET NUMBER: 21-DB-047

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

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INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against William M. Magee ("Respondent" or " Magee"), Louisiana Bar Roll Number 08859.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 5.5(a), 5.5(e)(3)(v), and 8.4(a).[2]

PROCEDURAL HISTORY

The formal charges were filed on August 3, 2021. Respondent filed an answer to the charges on October 18, 2021. The hearing of this matter was held on February 22, 2022 before Hearing Committee No. 62 ("the Committee").[3] Deputy Disciplinary Counsel Robert S. Kennedy appeared on behalf of ODC. Robert W. Maxwell appeared on behalf of Respondent.

On March 28, 2022, the Committee issued its report, finding that Respondent violated Rules of Professional Conduct 5.5(a), 5.5(e)(3)(v), and 8.4(a). The Committee recommended that Respondent be publicly reprimanded, attend the LSBA's Ethics School, and be assessed all costs

[1] Respondent was admitted to the practice of law in Louisiana on October 6, 1978. Respondent is currently suspended. *In re Magee*, 2018-0383 (1/30/19), 263 So.3d 845 ("*Magee I*").
[2] See the attached Appendix for the text of these Rules.
[3] Members of the Committee included Henry G. Terhoeve (Chair), Arlene D. Knighten (Lawyer Member), and Paul F. DeLaup (Public Member). Prior to the hearing, ODC suggested that Respondent be adjudged guilty of the charged rule violations, but that no additional suspension be imposed upon Respondent. ODC pointed out that Respondent has a pending reinstatement petition and the proceeding in that matter has been stayed pending the outcome of this formal charge action.

and expenses of these proceedings in accordance with Rule XIX, Section 10.1. Respondent filed his Objections to the Hearing Committee's Report on April 14, 2022. He later filed his Brief in Support of Objections to the Hearing Committee's Report on May 23, 2022. ODC filed a Motion for Extension [of Time] to File [ODC's] Board Brief on June 3, 2022, seeking until June 14, 2022 to file its brief in response to Respondent's objections. This motion was unopposed, and Brian D. Landry, Chair of Panel "B," granted the motion on June 6, 2022. ODC's Board Brief was subsequently filed on June 14, 2022. Oral argument before Panel "B"[4] of the Disciplinary Board was held on June 23, 2022. Mr. Kennedy appeared on behalf of ODC. Mr. Maxwell appeared on behalf of Respondent, who was also present.

FORMAL CHARGES

The formal charges read, in pertinent part:

> Respondent William M. Magee (Bar Roll No. 08859) is a licensed Louisiana practitioner, admitted to practice in Louisiana in 1978. He was suspended for two years by the Louisiana Supreme Court in *In re: William Magee* 2018-0383 (La. 1/30/19). The Court found the respondent guilty of fraudulently inducing a trial court to grant him title to three parcels of real estate owned by third parties in St. Tammany Parish during the early 2000's.
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> Following the Court's January 30, 2019 order of suspension, the Respondent engaged in the unauthorized practice of law by continuing to negotiate settlement of a client's case with opposing counsel after his suspension from practice had become effective. The salient facts are these:
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> When the Court imposed the suspension, the respondent was representing a defendant, Jerry Dupont, in civil litigation pending in St. Tammany Parish. *State Farm Fire and Casualty Ins. Co. v. Dupont Air Conditioning and Heat Inc.* No. 2018-12767, Div. "A", 22nd JDC. The plaintiff, State Farm, was represented by attorney Thomas Lutkewitte of the Favret Demarest firm in New Orleans.
>
> Respondent filed a motion to withdraw as counsel of record with the St. Tammany court on February 7, 2019, and notified opposing counsel of his withdrawal and pending suspension by letter dated the same day. In the letter, he

[4] Members of Panel "B" included Brian D. Landry (Chair), R. Alan Breithaupt (Lawyer Member), and M. Todd Richard (Public Member).

advised Mr. Lutkewitte that his suspension would become effective on February 13, 2019.

However, four days later on February 11, 2019, the respondent continued to negotiate settlement with Mr. Lutkewitte by forwarding (via e-mail) a letter to him containing a settlement offer of $4000. Another lawyer at the plaintiff's firm, Conor Lutkewitte, responded on February 13, 2019 (the final day on which respondent was permitted to practice) by tendering a counter-offer of $7000 "in full settlement of this matter."

After February 13, 2019, although the respondent's law office remained operational, his firm employed no lawyer ethically permitted to negotiate settlement on the client's behalf. Nonetheless, the respondent directed his non-lawyer paralegal, Marie Clairain-Savell, to respond to State Farm's offer of settlement which she did by e-mail dated February 18, 2019 at 2:36 pm. The e-mail contained a counter-offer of $5,500. The signature line on the email identifies the respondent as the author of the email and the corresponding address is listed as the respondent's former law office. Opposing counsel did not respond to the February 18 e-mail.

Receiving no response, Ms. Clairain-Savell forwarded a second e-mail to Conor Lutkewitte on February 26, 2019 asking for a reply to the counter-offer made on February 18, 2019. Again, there was no response to this inquiry.

By failing to discontinue his law office operations and instead continuing to negotiate a case settlement with opposing counsel, through a non-lawyer subordinate, all after being expressly prohibited from doing so; the respondent has engaged in the unauthorized practice of law, as well as facilitated the unauthorized practice of law by a non-lawyer subordinate. Through his acts and omissions, he has knowingly and intentionally violated Rules 5.5(a), 5.5(e)(3)(v), and 8.4(a) of the Rules of Professional Conduct.

THE HEARING COMMITTEE'S REPORT

As noted above, the Committee issued its report on March 28, 2022. In its report, the Committee noted that ODC Exhibits 1-7 and 9-10 and Respondent's Exhibits 1-13 were admitted into evidence without objection. ODC Exhibit 8, the sworn statement of Respondent, was proffered by ODC. The Committee also noted that the following witnesses testified at the hearing:

1. Thomas Lutkewitte, co-counsel for plaintiff State Farm in the Dupont matter;
2. Sarah Taylor Bradley, attorney who leased space in the Magee law office;
3. Conor Lutkewitte, co-counsel for plaintiff State Farm in the Dupont matter;

4. William Magee, Respondent;

5. Marie Clairain-Savell, legal assistant to Magee; and

6. James Dupont, owner of defendant Dupont Air Conditioning and Heating Services, LLC, in the State Farm suit.

The Committee then issued the following findings of fact and findings concerning the alleged rule violations.

FINDINGS OF FACT[5] and APPLICATION OF THE FINDINGS TO THE RULES OF PROFESSIONAL CONDUCT

> This was a meticulously presented and zealously defended action directed toward the ultimate factual and legal determination of whether William Magee acted as an attorney while under suspension, in violation of the order of the Louisiana Supreme Court and the Rules of Professional Responsibility. Despite protestations to the fact and timing of the proceeding by Magee, inferring that the ODC acted in bad faith, this was an appropriate and necessary proceeding.
>
> Arguments made by Magee that the proceeding was unconstitutional and that this was an improper effort by the ODC to seek a declaratory judgment were not the subject of any pleading by Respondent and are deemed waived. This argument seems rooted in the ODC stated position that it was not seeking a sanction; only a finding to be considered in a pending reinstatement request by Magee. Nevertheless, the Committee considered all evidence as well as the need for a sanction. The Committee also understands the potential consequential effect of its conclusions on the request for readmission by Magee, however this potential effect did not influence its decision.
>
> On January 30, 2018 the Louisiana Supreme Court issued a per curiam decision[6] finding that undisputed facts led to the inescapable conclusion that actions by Magee in filing forged quitclaim deeds into the public record contravened Rules of Professional Conduct 3.3(a)(1), 3.3(a)(3) and 8.4(c). The Court ordered as follows:

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[5] Footnotes 5-15 of this Recommendation correspond with footnotes 5-15 of the Committee's report.

Footnote 5: This is not intended to be a recitation of all of the testimony and exhibits. These are the factual **findings** of the Committee after considering all testimony and exhibits presented. While it may be suggested that there was some information presented that is contrary to the findings listed here, the Committee did not find such proven, found it implausible or unfounded and rejected such.

[6] Exhibit ODC 9.

> **Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that William Magee, Louisiana Bar Roll number 8859, be and is hereby suspended from the practice of law for a period of two years.**

Based on the date of this conclusion of the Supreme Court[,] the Respondent and the ODC agreed on the record that February 13, 2019 was the last day that William Magee could practice law.

Upon issuance of the Supreme Court order, Magee, along with the help of his legal assistant Marie Clairain-Savell, began the yeoman's job of closing an active legal practice that spanned several decades. This included providing notices to clients and notice to the Courts via Motions to Withdraw.

At the time of the Supreme Court order [,] Magee was representing Dupont Air Conditioning & Heating Services, LLC in a suit filed by the State Farm Fire & Casualty Company ("State Farm') in the 22nd Judicial District Court for the Parish of St. Tammany. The suit was filed to recover of [*sic*] certain insurance premiums. Attorneys Thomas Lutkewitte and Conor Lutkewitte represented State Farm. Attorney Adrianne Baumgartner represented a third-party defendant.

The first actions in the Committee hearing record directed to the State Farm-Dupont matter occurred on February 7, 2019. On that date Magee:

1. Sent a letter to all counsel advising of the Supreme Court order and that he was withdrawing as counsel. He requested professional courtesy to allow his client to obtain new counsel;[7]

2. Filed an EX-PARTE MOTION AND ORDER TO WITHDRAW AS COUNSEL OF RECORD in the State Farm v. Dupont record;[8]

3. Sent a letter to the Clerk of Court of St. Tammany Parish, enclosing the motion to withdraw;[9] and

4. Sent a letter to Melissa and Jerry Dupont advising of his suspension.[10]

The letter to Melissa and Jerry Dupont was actually handed by Magee to Jerry Dupont, who signed for it on February 7, 2019.

Jerry Dupont, also a friend of Magee, tried to bring some closure to the matter while Magee was still able to practice and sought the assistance of Magee to do so. While technically a Motion to Withdraw has no legal effect until the Order is signed by the Judge, given the clear notices provided by Magee to his client, the

[7] ODC 3a.
[8] See ODC 3b, though the copy is already signed by the Court on a later date.
[9] See ODC Exhibit 4a.
[10] See ODC Exhibit 5.

clerk, and two attorneys in the litigation, the Committee is miffed that Magee took any action in the State Farm – Dupont matter after February 7, 2019. The judge was going to sign the order to withdraw.[11] The judge really had no choice on a discretionary ground to deny the motion to withdraw. In general, the delay of time between filing a Motion to Withdraw and the signing of the order allowing withdrawal is probably best utilized to take minimal steps to *protect* the client, not take steps that are contrary to the effort to withdraw. Nevertheless, evaluation of actions taken after February 7 and before February 14 are not before the Committee. Judge Raymond Childress signed the *ex parte* motion on February 12, 2019.

Magee dictated a letter on February 7 or shortly thereafter for his legal assistant to prepare. On February 11, 2019 Magee sent the typed letter to Thomas Lutkewitte offering to settle the State Farm litigation for a $4,000 payment "within one week."[12] The transmittal of this letter was on February 11, 2019 at 3:12 PM through Marie Clairain-Savell.[13]

On February 13, 2019, the last day Magee could practice law, at 11:35 am, Conor Lutkewitte send [*sic*] Magee an email advising that the $4000 offer was rejected and that State Farm would settle for $7,000.[14]

The next chronological event on "paper" in the record is an email of February 18, 2019:[15]

Marie Clairain-Savell

From: Marie Clairain-Savell [marie@wmageelaw.com]
Sent: Monday, February 18, 2019 2:36 PM
To: 'Conor Lutkewitte'
Cc: 'William Magee-Business'
Subject: RE: State Farm v. Dupont

Mr. Dupont asked that I send this over to you...let's split the difference, settling at $5,500.00. Please pass this along to your client and advise further.

William M. Magee, J.D.

Mediator/Arbitrator
207 East Gibson Street
Covington, LA 70433

[11] The facts here do not fit nicely within Rule 9.13 of the Uniform District Court Rules, however, it is implausible to suggest the judge would have denied withdrawal with an order of the Louisiana Supreme Court as the foundation for the Ex Parte Motion.
[12] Magee only had 2 days left to practice.
[13] See ODC Exhibit 6b.
[14] See ODC Exhibit 7 (bates stamp 35).
[15] The email is reproduced to try and depict the actual email, though there may be some variations as to type face, etc. It is part of ODC 7 and other exhibits.

Phone: 985-893-7550
Facsimile: 985-893-7596
Email: bill@wmageelaw.com
Website: www.wrnageelaw.com [*sic*]

CONFIDENTIALITY NOTICE

This message and any documents accompanying it are intended for the use of the individual or entity named above in this message and may contain information from the Law Offices of Magee & Associates, Attorneys which is confidential, privileged and exempt from disclosure, copying, distribution or use of the contents of this message and any reliance on the information contained in this message is strictly prohibited. If you have received this message in error, please notify us by return e-mail of this error and delete immediately.

The chronological events after the February 13, 2019 11:35 am email of Conor Lutkewitte and [before] the February 18, 2019 email 2:36 pm email, considering the Mr. Magee could not practice after February 13, 2019 at 11:59:59 PM are at issue.

Mr. Dupont was unable to recall the chronology and detail of the events in this timeframe. This is understandable. It is not anticipated he would have a record of these events from his perspective since they would not have been particularly memorable.

Mr. Magee suggested he met with Mr. Dupont on February 13 after the email from Conor Lutkewitte and dictated the above email to Ms. Clairain-Savell on February 13. This is not plausible when Magee knew his deadline was the same day. No documents, notes, or other emails were supplied in support of this position. His account was in the nature of a finessed narrative instead of simply telling the truth.

Ms. Clairain-Savell appeared to be a very diligent and longtime assistant to Mr. Magee who would promptly attend to her work. She worked as an office administrator and legal assistant and is also a notary public. She understood she had to follow the lead of the attorney, she could not negotiate, and that there had to be an attorney present for any of her actions. She testified that the substance of the email of February 18, 2019 was **captured by her from an email** from Mr. Magee and that she forwarded it as she did to Mr. Lutkewitte at the direction of Magee. She had concerns about doing this, but Magee said it was okay since it was coming from her.

A rationale [*sic*] evaluation of these facts leads to the conclusion that Magee was in contact with Dupont **after** February 13, 2019 to discuss a counter-offer and that Magee sent Ms. Clairain-Savell an email on February 18, 2019 which she

diligently captured in the email that then followed to Lutkewitte. If Mr. Magee had been in contact with Mr. Dupont on February 13, 2019, in the face of his impending deadline, he would have called Lutkewitte or sent Lutkewitte an email immediately. These actions by Magee were an effort to circumvent the Supreme Court order of suspension.

An effort to assist a friend can be understood, but here Magee needed to STOP on February 13, 2019 at midnight, whether Dupont was his friend or not. Mistakes can be understood, actual efforts to thwart the Order cannot. Efforts to put Ms. Clairain-Savell in the middle of violation by having her forward the email do not help Magee. To the contrary[,] involving her makes this action more egregious. A lawyer under suspension cannot label a client a friend to avoid the suspension, even if the person is a true friend.

It is also noted that the email address tag change to "William Magee-Business", the insertion of "J.D." after his name, and the insertion of "Mediator/Arbitrator" below his name are all subtle efforts to circumvent the suspension to suggest he was not acting as a licensed lawyer. It is also contrary to the noted email address at "wmageelaw.com", noted website of www.wmageelaw.com and the confidentiality notice that references "Law Offices of Magee & Associates." This is noted for discussion only as it was not before the Committee for a Rule violation.

There were options. Mr. Dupont could have contacted Mr. Lutkewitte directly, though Mr. Magee could not even give him advice to do so. At the time Mr. Dupont could have been referred to Ms. Sarah Bradley, a licensed attorney and former associate of Magee until December 2018, who while not a part of Mr. Magee's firm, was housed in the same physical office.

There was another email of February 26, 2019 to Lutkewitte. The evidence supports that this was sent by Ms. Clairain-Savell without direction from Mr. Magee.

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As to the alleged rule violations, the Committee opined:

Rule 5.5 is clear:

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, ***or assist another in doing so***.
…
(e) …
(3) For purposes of this Rule, the practice of law shall include the following activities: … (v) ***negotiating*** or transacting ***any matter for or on behalf of a client with third parties***; …

(emphasis supplied).

Rule 8.4 is equally clear:

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;***
…
(emphasis supplied).

These Rules have been violated. This has been proven with clear and convincing evidence by the ODC as required by *In re: Quaid,* 94-1316 (La.11/30/94), 646 So.2d 343 and *Louisiana State Bar Ass'n v. Boutall,* 597 So.2d 444 (La.1992).

As the Court stated in the matter of *In re Eddie G. Crawford,* 2002-B-2680 (La. 4/21/03), 843 So.2d 1091, when discussing actions by a suspended attorney: "The serious nature of such actions are underscored by La. R.S. 37:213, in which our legislature has made it a felony to engage in the unauthorized practice of law. It was against this backdrop that we included unauthorized practice of law as one of the types of conduct that might warrant permanent disbarment."

Magee argues that his actions do not fit the letter of La. R.S. 37:213. Notably however section A(4) of this statute prohibits a unlicensed lawyer from rendering or furnishing legal services or advice. His actions factually fit the letter of Rule 5.5, which is the issue before the Committee.

Magee also argues that the email of February 18, 2019 was not sent on behalf of a client, since Magee had withdrawn and Dupont was no longer a client at that time. At the point Magee took actions on behalf of Dupont, despite his withdrawal and return of the file, Dupont was once again his client.

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As to the sanction, the Committee analyzed the Rule XIX, Section 10(C) factors and found that by taking actions that constitute the practice of law in contravention of his suspension order, Respondent violated duties owed to the public and the profession. The Committee noted that Respondent led a client and an employee to believe that it is "okay to do something circuitously that could not be done directly." Hrg. Comm. Rpt., p. 12. The Committee commented that a lawyer with Respondent's years of experience knows that such conduct is not acceptable. The Committee also determined that Respondent actions were knowing and intentional. The

Committee found that there was no evidence that Respondent's misconduct caused actual harm to his client; however, there was injury to the profession and legal system in that Respondent flouted the rules of the profession in the face of a Supreme Court suspension.

Aggravating factors found by the Committee included prior disciplinary offenses,[16] submission of deceptive practices during the disciplinary process,[17] refusal to acknowledge the wrongful nature of his conduct,[18] and substantial experience in the practice of law.[19] The sole mitigating factor found by the Committee was absence of dishonest or selfish motive.

After reviewing the ABA's *Standards for Imposing Lawyer Sanctions*, including Standards 7.1, 7.2, and 7.3, the Committee determined that the baseline sanction for Respondent's conduct fell between suspension and reprimand. After also reviewing case law, the Committee found that suspension was supported by the ABA Standards and the jurisprudence. However, after describing Respondent's misconduct as "a single incident which was undertaken with incredibly poor judgment," and considering the aggravating and mitigating factors present, the Committee recommended that Respondent be publicly reprimanded, attend the LSBA's Ethics School, and be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

[16] The Committee noted that Respondent was under suspension at the time of his inappropriate actions in this matter.
[17] The Committee commented that the veracity of Respondent's explanation of events surrounding the email at issue is suspect. Rather than accept what he had done, Respondent appeared to craft a narrative to create an untrue factual scenario.
[18] The Committee commented that despite any good intentions on his part, Respondent did not seem to appreciate the serious nature of what he did. The Committee also found troubling Respondent's testimony as to ways he felt he could still perform the actions of a lawyer through mediation or through a power of attorney. While mediators need not be lawyers and recipients of a mandate through a power of attorney need not be an attorney, these are not tools to practice law without a license.
[19] As noted above, Respondent was admitted to the practice of law in 1978.

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, with three minor clarifications. First, the Committee finds that Respondent "suggested he *met* with Mr. Dupont on February 13 after the email from Conor Lutkewitte and dictated [what became the February 18, 2019] email to Ms. Clairain-Savell on February 13." Hrg. Comm. Rpt., p. 9 (emphasis added). The Board clarifies that Respondent testified that he *telephoned* Mr. Dupont on February 13, 2019 after receiving the email from Conor Lutkewitte; Respondent did not indicate in his testimony that he actually met person-to-person with Mr. Dupont on that date. Hrg. Tr., pp. 219-21, 243; ODC Proffered Exhibit 8, p. 26.[20]

[20] This proffered exhibit offered by ODC has been admitted into evidence by the Board. *See In re Huddleston*, 595 So.2d 1141, 1148 (Dennis, J., concurring) (evidence should be excluded by the Board only if it is wholly irrelevant or rank hearsay or pure conjecture). *In re Quaid*, 646 So.2d 343, 348, n.2 (La. 1994) (Court retains power to determine the ultimate question of admissibility under its original jurisdiction; disciplinary proceedings should be guided but not confined by strict application of the Code of Evidence).

Further, at the hearing Respondent changed his testimony from his sworn statement concerning how he asked Ms. Clairain-Savell to relay Mr. Dupont's settlement counter-offer to Conor Lutkewitte. At his sworn statement, Respondent testified that on February 13, 2019, he *dictated* instructions to Ms. Clairain-Savell to send what later became the February 18, 2019 email to Conor Lutkewitte. Hrg. Tr., p. 197; ODC Proffered Exhibit 8, pp. 27-28. At the hearing, he instead asserted that he personally *told* Ms. Clairain-Savell to send the counter-offer by email, and he assumed this happened on February 13, 2019, but was not sure of this date. Hrg. Tr., p. 197.

Neither of these clarifications affects the Committee's subsequent findings that: (1) it was not plausible that Respondent was in contact with Mr. Dupont on February 13, 2019; and (2) it was not plausible that Respondent relayed Mr. Dupont's settlement counter-offer to Ms. Clairain-Savell on February 13, 2019, in order for her to forward it by email it to Conor Lutkewitte. As determined by the Committee, had Respondent been in contact with Mr. Dupont on February 13th, in the face of his impending suspension, he would have immediately called Conor Lutkewitte or made certain that an email was sent to him that day.

Moreover, the Board notes that while Respondent asserted at the hearing that he *told* Ms. Clairain-Savell what information to include in the February 18, 2019 email sent to Mr. Lutkewitte, Ms. Clairain-Savell testified that she captured the substance of the February 18, 2019 email *from an email* sent to her by Respondent, and she then sent it to Mr. Lutkewitte. The Board finds that while the evidence could support a conclusion that anytime between February 14 through February 18, 2019 Respondent sent Ms. Clairain-Savell the email containing Mr. Dupont's settlement counter-offer, the conclusion drawn from the Committee that Respondent sent the email to Ms. Clairain-Savell on February 18, 2019 is also a permissible view of the evidence. Ms. Clairain-Savell testified that the email could have been sent to her between February 13 and February 18,

2019. *Id.* at 273-74. However, given the Committee's prior determination that Respondent did not relay Mr. Dupont's settlement counter-offer to Ms. Clairain-Savell on February 13, 2019, along with its finding that Ms. Clairain-Savell was very diligent and promptly attended to her work, the Committee's determination that "Magee sent Ms. Clairain-Savell an email on February 18, 2019 which she diligently captured in the email that followed to Lutkewitte [on the same date]" is a reasonable view of the evidence. *Id*. at pp. 270-71, 273-74; Hrg. Comm. Rpt., p. 9. In a civil context where the fact finder is presented with two permissible views of the evidence, the fact finder's choice between them is not clearly wrong. *In re Bolton*, 2002-0257 (La. 6/21/02), 820 So.2d 548, *citing Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). Accordingly, the Board specifically adopts the Committee's finding that on February 18, 2019, Respondent sent Ms. Clairain-Savell the email containing Mr. Dupont's settlement counter-offer, which she was directed to forward to Conor Lutkewitte.

B. *De Novo* Review

The Committee correctly found that Respondent violated Rules of Professional Conduct 5.5(a), 5.5(e)(3)(v), and 8.4(a). A discussion of each rule violation follows below.

Rule 5.5(a): Rule 5.5(a) provides that a lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. The record supports the Committee's finding that Respondent was in contact in Mr. Dupont after February 13, 2019 in order to discuss the settlement counter-offer. Respondent then authorized and directed Ms. Clairain-Savell to send Mr. Dupont's settlement counter-offer to Conor Lutkewitte. Hrg. Tr., p. 197, 271. Respondent sent Ms. Clairain-Savell an email containing Mr. Dupont's counter-offer on February 18, 2019. Hrg. Comm. Rpt., p. 9. She then captured the counter-offer in a subsequent email that was forwarded to Conor Lutkewitte on the same date. Hrg. Tr., pp. 273-74; *see* ODC

Exhibit 7, Bates p. 34. This was five days after Respondent's suspension had begun. The email clearly indicated that the counter-offer was sent on behalf of Mr. Dupont by Respondent who was working from his law office. The email was signed "William M. Magee, J.D.," and his email and website addresses following his signature both referenced "wmageelaw.com." Additionally, the confidentiality notice in the email references the "Law Offices of Magee & Associates, Attorneys." ODC Exhibit 7. Accordingly, Respondent violated Rule 5.5(a) by engaging in the unauthorized practice of law following his suspension and assisting another in the unauthorized practice of law.

Rule 5.5(e)(3)(v): Rule 5.5(e)(3)(v) provides that "[f]or purposes of this Rule, the practice of law shall include the following activities: . . . (v) negotiating or transacting any matter for or on behalf of a client with third parties . . . ." Through Ms. Clairain-Savell and via the February 18, 2019 email, Respondent, while suspended, sent a settlement counter-offer on behalf of Mr. Dupont and attempted to negotiate a settlement with State Farm through its attorney, Conor Lutkewitte. As the Committee logically concluded, at the point Respondent took this action on behalf of Mr. Dupont, Mr. Dupont was once again Respondent's client, despite Respondent's previous withdrawal and return of Mr. Dupont's file.[21] Again, Respondent's actions constitute the unauthorized practice of law and assisting another in the unauthorized practice of law.

[21] Respondent relies on *Louisiana State Bar Ass'n v. Edwins*, 540 So.2d 294 (La. 1989) in contending that the February 18, 2019 email sent by Ms. Clairain-Savell to Conor Lutkewitte did not constitute the practice of law. *Edwins* defines the practice of law, consistent with La. R.S. 37:212, as: the appearance as an advocate, the drawing of papers, pleadings or documents, or *the performance of any act* in connection with pending or prospective proceedings before any court of record*;* as well as the following, if done for consideration: the advising or counseling of another as to secular law, the drawing or procuring of a paper, document or instrument affecting or relating to the secular rights on behalf of another, and the doing of any act, on behalf of another, tending to obtain or secure for the other the prevention of a redress of a wrong or the enforcement or establishment of a right. *Edwins*, 540 So.2d at 300. Respondent's argument that the sending of the email does not fall within one of the categories described in *Edwins* is without merit. The sending of the email clearly constituted "the performance of any act" in connection with the then-pending proceeding in St. Tammany Parish, *State Farm Fire and Casualty Ins. Co. v. Dupont Air Conditioning and Heat Inc.* No. 2018-12767, Div. "A", 22nd JDC. The Board notes that some of the provisions of La. R.S. 37:212 have changed since the Court's issuance of *Edwins*, but the pertinent provision (the performance of any act in connection with pending or prospective proceedings before any court of record) has not changed.

Rule 8.4(a): Rule 8.4(a) provides that it is professional misconduct for a lawyer to: (a) [v]iolate 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. By violating Rules 5.5(a) and 5.5(e)(3)(v), the Respondent also violated Rule 8.4(a).

II. The Appropriate Sanction

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

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

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

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

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

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

Here, Respondent has violated duties owed to his client, Mr. Dupont, and to the profession by taking actions that constitute the practice of law in contravention to his suspension order. His actions were knowing and intentional. There is no evidence that Respondent's misconduct caused actual harm to Mr. Dupont; however, potential harm to Mr. Dupont was present in that had Mr. Lutkewitte negotiated a settlement with Respondent not knowing he was suspended, the settlement could later have been questioned. The profession has been harmed, as Respondent has flouted the authority of the Court by practicing while suspended. Aggravating factors include prior disciplinary offenses, submission of deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law. The sole mitigating factor is absence of dishonest or selfish motive.

B. The ABA Standards and Case Law

After ruling out disbarment as the baseline sanction under Standard 7.1 of the *ABA's Standards for Imposing Sanctions*,[22] the Committee found that the appropriate baseline sanction in this matter "teeters between suspension under Section 7.2 and reprimand under 7.3." Hrg. Comm. Rpt., p. 14. Standard 7.2 provides that "[s]uspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system." Standard 7.3 provides that a "reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." In the matter at hand, Respondent's conduct was knowing and intentional, not negligent. His conduct also caused potential injury to his client, Mr. Dupont, and actual harm to the profession. Therefore, suspension, and not a reprimand, is the baseline sanction in this matter.

Respondent's misconduct should be analyzed as a whole, taking into consideration his actions of both engaging in the unauthorized practice of law and assisting Ms. Clairain-Savell in the unauthorized practice of law, each a violation of Rule 5.5(a).

First, when analyzing the sanction in terms of Respondent, as a suspended lawyer, engaging in the unauthorized practice of law, the Court's guidelines in *In re Jackson*, 2002-3062 (La. 4/9/03), 843 So.2d 1079 should be considered. In *Jackson*, the respondent, while suspended, attended two depositions as a paralegal. In both matters, the respondent implied he was authorized to practice law, and at no time informed the court reporter or opposing counsel that he was

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

suspended from the practice of law. Moreover, at one deposition, the respondent asked questions of the person being deposed. The Court found that there was no indication from the record that the respondent consciously attempted to practice law in blatant disregard of orders of the Court. The Court noted, however, that his actions were more deliberate and far-reaching than the actions of the respondent in *In re Ellis*, 99-12483 (La. 9/15/99), 742 So.2d 869, who failed to remove the "attorney at law" designation from his office following his suspension. In determining the appropriate sanction, the Court stated:

> The unauthorized practice of law by a suspended for disbarred attorney is very serious misconduct. Our legislature has made it a felony to engage in such conduct. La. R.S. 37:213. Likewise, we have listed the unauthorized practice of law by a suspended or disbarred attorney as a possible ground for permanent disbarment under the Guidelines Depicting Conduct Which Might Warrant Permanent Disbarment contained in Appendix E[23] to Supreme Court Rule XIX.
>
> In general, when the attorney has manifested a conscious intent to flout the authority of this court by practicing after being prohibited from doing so, we have not hesitated to impose disbarment. *See, e.g., In re Jones*, 99-1036 (La. 10/19/99), 747 So.2d 1081 (attorney disbarred for engaging in the unauthorized practice of law on four occasions, after being suspended in the past for similar misconduct). However, not all instances of the unauthorized practice of law warrant the most severe sanction. For example, in *In re Ellis*, 99-12483 (La. 9/15/99), 742 So.2d 869, we imposed a ninety-day suspension on a previously suspended attorney who failed to remove the "attorney at law" designation from his office. *See also In re Withers*, 99-2951 (La. 11/19/99), 747 So.2d 514 (attorney suspended for six months, followed by an eighteen-month period of probation, for representing a client while ineligible to do so).

Jackson, 2022-3062, pp. 5-6, 843 So.2d 1082-83.

The Court suspended the respondent for two years, with all but one year one day of the suspension deferred, with conditions. *Id*., 2022-3062, p. 6, 843 So.2d at 1083.

[23] The Board notes that the permanent disbarment guidelines are now found in Appendix D to Supreme Court Rule XIX.

Further, in *In re Dowell*, 2009-1419 (La. 12/18/09), 24 So.3d 203, the Court found that the respondent, a disbarred attorney, acted as a notary in violation of La. R.S. 35:14,[24] failed to cooperate with ODC in its investigation, and failed to comply with the notice requirements set forth in Supreme Court Rule XIX, Section 26, following his disbarment. Although the respondent arguably gave a minor piece of legal advice to a woman seeking his notarial services, the Court found that "any violation of by respondent in his regard was *de minimis*, as there is certainly no indication that [the respondent] was intentionally attempting to maintain an ongoing practice of law." The Court imposed a one-year suspension upon the respondent for the entirety of his misconduct, noting that a ninety-day suspension was appropriate for the respondent's notarial misconduct alone.

In *In re Smothers*, 2020-00244, p. 8 (La. 6/22/20), 297 So.3d 743, 748, the respondent, during a period of ineligibility, provided 5.7 hours of legal services to a client over a period of approximately six weeks. The respondent also had a lengthy history of ineligibility, demonstrating a pattern of failing to complete his professional obligations in a timely manner. The Court explained that in cases involving the practice of law by attorneys who are *ineligible* to do so, it has imposed sanctions ranging from suspension to disbarment, with the baseline sanction for such misconduct generally being a suspension of one year and one day. However, depending upon the circumstances of the lawyer's violation and the applicable aggravating and mitigating factors, a significant portion of the suspension imposed by the Court is often deferred in whole or in part. The Court suspended the respondent for six months, with all but thirty days deferred, subject to two years of probation with conditions. Based on *Smothers*, the Board must conclude that the baseline sanction for a suspended or disbarred lawyer who engages in the unauthorized practice of

[24] Respondent, as a disbarred attorney, was prohibited from exercising notarial functions under La. R.S. 35:14.

law should be at least as great as that imposed upon an ineligible lawyer who engages in similar misconduct.

In the instant matter, Respondent's misconduct solely involving his unauthorized practice of law is more in line with the respondents' actions in *Dowell* (regarding the respondent's notarial misconduct) and *Smothers* than *Jackson*. As in *Dowell and Smothers*, Respondent has engaged in limited actions associated with the unauthorized practice of law. The more recent case of *Smothers* indicates that the baseline sanction for this misconduct would be a one-year and one-day suspension, perhaps with all or a portion of the suspension deferred, resulting in a ninety-day to six-month suspension.

Next, Respondent's actions of assisting Ms. Clairain-Savell in the unauthorized practice of law must also be examined. In cases in which respondents facilitate a pattern and practice of the unauthorized practice of law by non-lawyers, including the negotiation of settlements, the respondents have been disbarred. *See In re Guirard*, 2008-2621 (La. 5/5/09), 11 So.3d 1017; *In re Garrett*, 2008-2513 (La. 5/5/09), 12 So.3d 332; *In re Sledge*, 2003-1148 (La. 10/21/03), 859 So.2d 671; *In re Brown*, 2001-2863 (La. 3/22/02), 813 So.2d 325; *LSBA v. Edwins*, 540 So.2d 294 (La. 1989). These cases often involve systematic delegation of professional responsibilities to non-lawyer staff. However, the circumstances presented in those cases are distinguishable from the facts presented here. This matter involves only one instance in which the Respondent facilitated the unauthorized practice of law by his legal assistant, Ms. Clairain-Savell. This occurred when, at Respondent's direction, she attempted to negotiate Mr. Dupont's settlement.

In cases in which the respondents have engaged in isolated instances of assisting a non-lawyer in the unauthorized practice of law, the Court has imposed periods of suspension ranging from sixty days to eighteen months, with all but one year deferred. *See In re Mopsik*, 2004-2395

(La. 5/24/05), 902 So.2d 991, *In re Burns*, 2017-2153 (La. 5/1/18), 249 So.3d 811, and *In re Butler*, 2018-1812 (La. 5/08/19), 283 So.3d 455. In *Mopsik,* the respondent was suspended for sixty days for abdicating his professional responsibilities in a client matter to his paralegal and failing to exercise any supervision over the paralegal's activities in the matter. The respondent never spoke to or met with his client. The paralegal wrote letters and met with opposing counsel, leading him to believe that he was an attorney. The paralegal also appeared before a judge, presenting him with a temporary petition for joint custody. The Court concluded that the respondent violated Rules 5.3 (responsibilities regarding non-lawyer assistance) and 5.5. Further, the Court found that the respondent's conduct was negligent and relied on ABA Standard 7.3 which addresses negligent conduct in finding that the baseline sanction was a reprimand. The Court imposed the increased sanction of suspension due to the following aggravating factors: prior disciplinary record, refusal to acknowledge wrongful conduct, vulnerability of the victim, and substantial experience in the practice of law.

In *Burns,* due to a conflict with another case, the respondent sent a paralegal to participate in a pre-trial conference and the paralegal did not inform the court or the other lawyers that he was not a lawyer. The respondent facilitated and assisted the paralegal in the unauthorized practice of law. The Board found that the respondent violated Rules 5.5(a) and 8.4(a). The Board concluded that a sixty-day suspension would be the baseline sanction in that matter. However, because the respondent had given false testimony during the disciplinary proceeding, the Board found that an upward deviation was warranted and recommended that the respondent be suspended for one year and one day. *In re Burns*, Disciplinary Board Ruling, 16-DB-067 (12/28/17).

The Supreme Court concurred in the finding of the rule violations and imposed a one-year suspension, stating:

> We find that respondent acted knowingly. He violated duties owed to the legal profession, causing actual harm. The baseline sanction for this type of misconduct is suspension. The aggravating and mitigating factors found by the board are supported by the record.
>
> Considering all the circumstances of this case, we find that the appropriate sanction in this matter is a one-year suspension from the practice of law. We will further order that respondent attend and successfully complete the next available session of Ethics School.

Burns, 2017-2153, p. 11 (La. 5/1/18), 249 So.3d at 817. Several aggravating factors were present in *Burns* including: prior disciplinary record (admonitions in 2006 and 2007), dishonest or selfish motive (with respect to the misrepresentation), submission of false evidence, false statements, or other deceptive practices during the disciplinary process, and substantial experience in the practice of law. Mitigating factors present were imposition of other penalties or sanctions and the remoteness of the prior offenses.

Finally, in *Butler*, the Court suspended the respondent for eighteen months, with all but one year deferred, subject to a one-year period of unsupervised probation and Ethics School, for improperly assisting two "*pro se* paralegals," who were the principals of an organization known as Knowledge Center Temple, in the unauthorized practice of law. The Respondent also improperly shared legal fees with the paralegals. The respondent knew the paralegals were not lawyers, yet he willingly assisted them in the preparation of legal pleadings and shared in fees for those services. The Court found the respondent's conduct to be knowing, causing actual harm to two clients. The aggravating factor of vulnerability of the victims was present, along with the mitigating factors of absence of a prior disciplinary record, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, inexperience in the practice

of law, and character or reputation. The Court also suggested that when a lawyer knowingly engages in the unauthorized practice of law, an actual period of suspension is warranted.[25]

Respondent's conduct does not involve a pattern and practice of the facilitation of the unauthorized practice of law by non-lawyers, and it does not warrant disbarment. The circumstances of this matter are more in line with those in *Burns* which involved knowing misconduct in the handling of one case. Further, Respondent's testimony concerning the circumstances surrounding the February 18, 2019 email was described by the Committee as "in the nature of finessed narrative instead of simply telling the truth." Hrg. Comm. Rpt., p. 9. Similarly in *Burns*, the respondent's testimony at his disciplinary hearing was described as "deceptive and dishonest." *Burns*, 2017-2153, p. 8 (La. 5/1/18), 249 So.3d at 816.

Based on the above, and considering the totality of Respondent's misconduct, the Board will recommend that Respondent be suspended from the practice of law for a period of one year, with this suspension to run consecutively to Respondent's suspension imposed in *Magee I*.[26] The Board also recommends Respondent attend and successfully complete the next available session of the LSBA's Ethics School and that he be assessed with all costs and expenses of these proceedings pursuant to Rule XIX, Section 10.1. Respondent's conduct, although an isolated event, was intentional, and he unjustifiably involved his client and legal assistant in his attempt to circumvent the Court's suspension order. Moreover, Respondent consciously flouted the authority

[25] Subsequently, in *In re Butler*, 2021-01129 (La. 10/1/21), 324 So.3d 1049, the respondent engaged in the unauthorized practice of law during his period of suspension. The Court disbarred the respondent pursuant to the parties' consent discipline petition.

[26] *See In re Peters*, 2008-2423 (La. 2/20/09), 2 So.3d 420 (the Court suspended the respondent based upon misconduct which occurred *after* the misconduct forming the basis of his prior suspension; the Court applied the second suspension consecutively to the prior suspension); *In re Engum*, 2011-2006 (La. 11/18/11), 74 So.3d 703 (along with other discipline, the Court suspended the respondent based upon misconduct which occurred *after* the misconduct forming the basis of her prior suspension; the court applied the second suspension consecutively to the prior suspension).

of the Supreme Court by practicing law after being prohibited from doing so and by assisting another in doing so. Numerous aggravating factors are also present.

CONCLUSION

The Board adopts the Committee's findings of fact, with the clarifications noted above. The Board further adopts the Committee's findings that Respondent violated Rules of Professional Conduct 5.5(a), 5.5(e)(3)(v), and 8.4(a). The Board declines to adopt the Committee's recommended sanction of a public reprimand, but instead recommends that Respondent be suspended from the practice of law for one year, with this suspension to run consecutively to Respondent's suspension imposed in *Magee I*. The Board also recommends that Respondent attend and successfully complete the next available session of the LSBA's Ethics School. The Board further recommends that Respondent be assessed with all costs and expenses of these proceedings pursuant to Rule XIX, Section 10.1.

RECOMMENDATION

The Board recommends that Respondent, William M. Magee, be suspended from the practice of law for one year, with this suspension to run consecutively to Respondent's suspension imposed in *Magee I*. The Board also recommends that Respondent attend and successfully complete the next available session of the LSBA's Ethics School. The Board further recommends

that Respondent be assessed with all costs and expenses of these proceedings pursuant to Rule XIX, Section 10.1.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

R. Alan Breithaupt
Paula H. Clayton
Todd S. Clemons
Albert R. Dennis III
Susan P. DesOrmeaux
M. Todd Richard
Lori A. Waters

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By Brian Landry
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Brian D. Landry
FOR THE ADJUDICATIVE COMMITTEE

Aldric C. Poirier, Jr.-Recused.

APPENDIX

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
…
(e) …
(3) For purposes of this Rule, the practice of law shall include the following activities: … (v) negotiating or transacting any matter for or on behalf of a client with third parties; …

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;
…