

Recent Developments in Lawyer Discipline

Presented by Gregory L. Tweed, First Assistant Disciplinary Counsel

Criminal Conduct

[In re James D. Mecca, 2016-B-1116 \(1/20/17\), 214 So.3d 827.](#)

In December of 2013, the St. Tammy Narcotics Division of the Parish Sheriff's Office obtained information that Mr. Mecca was receiving drugs for payment of his legal services through a cooperating individual (CI). The CI advised the Narcotics Division that she had come into contact with Mr. Mecca while attending court and that Mr. Mecca had offered his legal services in exchange for marijuana. Further, the CI reported that she had used Mr. Mecca in the past for legal counsel and had paid him with marijuana on three separate occasions. Narcotics officers arranged for the CI to speak to Mr. Mecca by telephone concerning the details of the transaction. The officers then set up a controlled "exchange" which occurred on December 20, 2013. The marijuana provided to the CI by law enforcement was approximately one-half pound in weight and had an approximate street value of \$2,500. After departing the area with the marijuana, Mr. Mecca was stopped for a traffic violation and arrested.

On January 15, 2014, Mr. Mecca self-reported his arrest to the ODC as well as his intent to cooperate with the Judges and Lawyers Assistance Program ("JLAP"). Following an evaluation, respondent was diagnosed with alcohol and cannabis dependence as well as unresolved grief and depression stemming from the death of his father in 2011. Mr. Mecca then entered and completed a ninety-day inpatient treatment program at Palmetto. On May 2, 2014, Mr. Mecca executed a five-year recovery agreement with JLAP.

On August 8, 2014, Mr. Mecca pled guilty to possession of marijuana (first offense), a misdemeanor, and was sentenced to serve six months in the parish jail, suspended, and placed on probation for one year under the supervision of JLAP. He was also required to pay a \$200 fine and court cost.

The Office of Disciplinary Counsel ("ODC") charged Mr. Mecca with violating Rule 8.4(b) (criminal conduct), to which he stipulated. The hearing committee recommended that Mr. Mecca be suspended for one year and one day, fully deferred, with conditions. The Board modified this recommendation to two-year suspension, fully deferred. The Louisiana Supreme Court ("the Court") disagreed with the committee and the Board on the appropriate sanction. "Considering that respondent bartered his legal services for illegal drugs, directly implicating the practice of law and causing harm to the legal profession, we will not defer any portion of the suspension." *Mecca* at 831. Accordingly, the Court held that the appropriate sanction for Mr. Mecca's criminal conduct was a one-year suspension from the practice of law with no portion of that time deferred.

[In re Francis C. Broussard, 2016-B-1441 \(1/25/17\), 219 So.3d 290.](#)

In September 2012, a federal grand jury in the Western District of Louisiana returned an indictment charging Mr. Broussard with four counts of making false, fictitious or fraudulent claims to the IRS, in violation of 18 U.S.C. §§287 & 2. Each count related to a tax return filed by Mr. Broussard for the years 2005, 2006, 2007, and 2008. In April 2013, Mr. Broussard plead guilty to Count Four of the indictment for the false return filed for the year 2007. Pursuant to his guilty plea, he agreed that the Government could prove the following beyond a reasonable doubt:

Mr. Broussard had his regular CPA prepare accurate tax returns for 2005, 2006, and 2007. He never filed these returns with the IRS but did present them to various financial institutions in an effort to obtain financing. He also used them to calculate his tax liability for purposes of a community property partition agreement as part of his divorce in 2008.

In 2009, Mr. Broussard went to a different tax preparer in Monroe to have his personal tax returns prepared for 2005, 2006, 2007, and 2008. Respondent brought the tax preparer numbers on a piece of paper and the previously prepared federal income tax returns. Mr. Broussard told the tax preparer that he had significant original issue discount interest income (OID), which would result in a tax refund of several million dollars. This claim was false. Nonetheless, the tax returns were prepared as directed by Mr. Broussard and submitted to the IRS.

In 2009, Mr. Broussard was interviewed by agents with IRS Criminal Investigations regarding the tax returns he had submitted for 2005, 2006, and 2008. Mr. Broussard did not receive the requested refunds and he knowingly and intentionally presented false claims to the IRS. In February 2014, Mr. Broussard was sentenced to serve 28 months in a federal penitentiary, followed by three years of supervised release.

Mr. Broussard admitted to violating Rules 8.4(b) (criminal conduct) and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The Court disbarred Mr. Broussard, retroactive to the date of his interim suspension.

[In re James Louis Fahrenholtz, 2017-B-0261 \(4/7/17\), 215 So.3d 204.](#)

In April of 2015, a lobbyist working at the Louisiana State Capitol in Baton Rouge reported that his briefcase and Apple iPad, keyboard, and case were stolen from the Capitol building. The Louisiana State Police traced the electronic signal from the iPad to Mr. Fahrenholtz's home in New Orleans. Mr. Fahrenholtz initially denied any knowledge of the theft, but the officers saw the stolen briefcase in Mr. Fahrenholtz's kitchen. After the officers obtained a search warrant, they found the stolen goods in a pond on Mr. Fahrenholtz's property. Mr. Fahrenholtz was then arrested and charged with illegal possession of stolen things and the obstruction of justice. He was also charged in East Baton Rouge Parish with felony theft. In July 2015, Mr. Fahrenholtz entered into a pretrial diversion program where he was permitted to plead guilty to a misdemeanor charge of illegal possession of stolen things.

In May 2015, the ODC opened and sent notice of an investigation of this matter. Mr. Fahrenholtz failed to cooperate with the ODC in its investigation. In November 2015, the ODC filed formal charges against Mr. Fahrenholtz alleging violations of Rules 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (criminal conduct), and 8.4 (c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Mr. Fahrenholtz did not answer the formal charges, which became deemed admitted.

The Court found Mr. Fahrenholtz had violated the Rules as charged by the ODC. The Court also found the following as aggravating factors: a prior disciplinary record, a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and illegal conduct. The only mitigating factor was the imposition of other penalties or sanctions in connection with the criminal proceeding. The court offered the following commentary regarding the nature of Mr. Fahrenholtz's misconduct: "We have not hesitated to disbar lawyers who have engaged in serious crimes, including theft. In the instant case, respondent was convicted of illegal possession of stolen things." The Court disbarred Mr. Fahrenholtz.

[In re Trisha Ann Ward, 2017-B-1047 \(9/29/17\), 227 So.3d 251.](#)

Trisha Ann Ward was engaged in a relationship with J.H. After J.H. terminated the relationship, Ms. Ward entered J.H.'s home without permission. Ultimately, Ms. Ward pled guilty to stalking and to a violation of a protective order in October of 2015. ODC filed formal charges against Ms. Ward alleging violations of Rules 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(b) (criminal conduct).

The Court found that Ms. Ward has violated rules 8.4(a) and 8.4(b). The Court concluded that the sanction recommended by the Board was reasonable under the circumstances. Ms. Ward was suspended from the practice of law in the State of Louisiana for one year and one day retroactive to her interim suspension.

[In re Elise Marybeth LaMartina, 2017-B-0430 \(12/6/17\), --- So.3d ---.](#)

In January 2015, Elise Marybeth LaMartina was arrested for shoplifting hair dye, which was valued at \$7.29, from a Rouses Supermarket in Mandeville, Louisiana. Ms. LaMartina was ultimately charged with misdemeanor theft of goods, to which she pled guilty. When the ODC received notice of her 2015 arrest, it sent Ms. LaMartina three separate letters requesting she provide a written explanation of her conduct. Two of the letters were sent via certified mail, and one letter was sent via regular mail. Only one of the letters was returned, unclaimed. Ms. LaMartina never filed a written response to the ODC's letters.

ODC charged Ms. LaMartina with violating Rules 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(b) (criminal conduct). She did not file an answer to the charges, which became deemed admitted.

Ms. LaMartina had prior disciplinary offenses, which included a sanction for stealing \$166.87 in merchandise from a Target.

The Court suspended Ms. LaMartina for three-years.

[In re Peggy M. Hairston Robinson, 2017-B-1290 \(12/6/17\), --- So.3d ---.](#)

Peggy Robinson was a mortgage loan originator and mortgage broker duly licensed by the Louisiana Office of Financial Institutions (“OFI”). After several of Ms. Robinson’s former loan customers filed complaints against her with the OFI, her mortgage originator and mortgage broker licenses were revoked. Ms. Robinson was also a real estate agent duly licensed by the Louisiana Real Estate Commission. The misconduct in this matter stemmed from Ms. Robinson’s role as an attorney misconduct as well as from her roles as a mortgage loan originator, mortgage broker, and real estate agent.

In twelve separate matters, Ms. Robinson engaged in a variety of misconduct, including the following: neglecting legal matters, charging and retaining fees to which she was not entitled, filing frivolous pleadings, failing to comply with orders of a court, engaging in conflicts of interest, and engaging in the unauthorized practice of law while suspended. Additionally, Ms. Robinson pled guilty to felony theft related to three real estate schemes.

The Court permanently disbarred Ms. Robinson.

Dishonest Conduct

[In re Greta L. Wilson, 2017-B-0622 \(6/5/17\), 221 So.3d 40.](#)

In May 2013, Ms. Wilson filed suit on behalf of Lawrence Gates, Jr., without his consent or authorization, regarding funds recovered from the sale of property located in New Orleans. After the suit was filed, Ms. Wilson received a check in the amount of \$20,141. On May 21, 2013, Ms. Wilson forged Mr. Gate’s signature to the check and deposited it into her client trust account. Mr. Gates’ attorney, Mr. Cade, sent Ms. Wilson a demand letter requesting that he issue a cashier’s check made payable to Mr. Gates. Ms. Wilson complied with the demand letter in February 2014. In January 2014, Mr. Cade filed a disciplinary complaint against Ms. Wilson regarding these events. Ms. Wilson responded to the claim. In August of 2014, Ms. Wilson gave a sworn statement to the ODC which she acknowledged receiving the funds from the court registry and depositing the funds in the trust account. Ms. Wilson argued that she was entitled to one third of the amount, however the funds in her account dipped below the two thirds mark on numerous occasions between the date of the deposit and the date she issued the check to Mr. Gates. Ms. Wilson was also unable to provide a copy of her contract with Mr. Gates and the trust account records reflect that the refund did not come from her trust account. The ODC alleged that Ms. Wilson violated the following Rules: 1.15 (safekeeping property of clients or third persons), 1.16 (obligations upon termination of the representation), 3.3 (false statement of material fact or law to a tribunal), 8.4 (a) violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonestly, fraud, deceit, or misrepresentation) and 8.4 (d) (engaging in conduct prejudicial to the administration of justice).

On January 8, 2014, Ms. Wilson filed a motion to enroll as counsel of record in a matter *New Orleans Redevelopment Authority v. Harry Lee Pittman, et al.*, No. 20019-2899, Div. “M,” Civil District Court, Parish of Orleans. In the pleading, Ms. Wilson indicated that she was retained as counsel by Mr. Pittman for the sole purpose of withdrawing funds deposited in connection with the matter. Ms. Wilson then filed an *ex parte motion* for order to withdraw funds from the registry of the court. In the pleading, Ms. Wilson identified herself as counsel for Mr. Pittman. The court ordered the disbursement of a check in the amount of \$32, 959.14 (together with interest) payable to Mr. Pittman and respondent. On February, 18, 2014, the clerk issues a check in the amount of \$33, 220.81 payable to Mr. Pittman and Ms. Wilson. On March 11, 2014 the check was negotiated and was endorsed by Mr. Pittman and Ms. Wilson. In reality, Mr. Pittman had never hired or even met Ms. Wilson before. Mr. Pittman would have not been physically able to sign his name to endorse the check, due to physical limitations. Mr. Pittman sought the help of Mr. Murrery to obtain information from Ms. Wilson about the matter. Ms. Wilson provided Mr. Pittman a contract for services that was executed by his brother, Zealous Pittman. The contract identified Zealous as having power of attorney over Mr. Pittman; however, no power of attorney was in effect or existed at that time. No proceeds from the money obtained by Ms. Wilson through her actions were distributed to Mr. Pittman or to any other party on his behalf. The ODC alleged respondent’s action violated Rules: 8.4 (a), 8.4(c), and 8.4(d).

Ms. Wilson failed to answer the formal charges, which became deemed admitted. The Court examined *Louisiana State Bar Ass’n v. Hinrichs*, noting that specifically relevant to Ms. Wilson’s matter was the Court’s determination that disbarment is warranted when

One or more of the following elements are present: the lawyer acts in bad faith and intends a result inconsistent with his client’s interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; the lawyer either fails to make full restitution or does not tardily after extended pressure or legal proceedings.

486 So. 2d 116, 122-123 (La. 1986). The Court found Ms. Wilson’s misconduct fit within this category. After considering *Hinrichs* and other numerous aggravating factors present, the Court disbarred Ms. Wilson and ordered her to pay restitution to Mr. Pittman.

[In re Kenneth Todd Wallace, 2017-B-0525 \(9/22/17\), --- So.3d ---.](#)

Mr. Wallace joined the law firm Liskow & Lewis (“the firm”) as an associate attorney in 1998. In 2005, Mr. Wallace was promoted to shareholder and served as the firm’s hiring partner and head of recruiting. In 2012, Mr. Wallace was elected the firm’s board of directors and served as the board’s junior director through April 2015.

As a member of the firm, Mr. Wallace billed on an hourly basis as well as sometimes working on cases on a contingency basis. In November 2015, the firm’s compensation committee noted that respondent’s “fee bill credit,” which is a measure of collections attributable to an attorney’s recorded billable time, seemed low. The committee decided to examine certain

files in which Mr. Wallace had recorded significant billable time. It was found that between 2012 and 2015 Mr. Wallace had recorded billing entries on a contingency fee case that had been dismissed in October 2012. Since this case was an unsuccessful contingency fee matter, the falsely billed hours were not billed to the client or submitted to any court for approval. The committee then found two other files containing entries that not been billed to clients.

The firm held a meeting with Mr. Wallace in the beginning of November of 2015. Mr. Wallace informed the firm about other files in which he had recorded false or inflated times in which he created false receivables that were never billed to clients. The firm was then able to identify seven files containing false entries or receivables. At the end of November of 2015, Mr. Wallace voluntarily submitted his letter of resignation to the firm as well as renouncing his entire termination bonus of \$85,0000. The firm determined that this renunciation likely exceeded any losses the firm incurred as a result of Mr. Wallace's conduct. Mr. Wallace then self-reported his misconduct to the ODC. In March 2016, the ODC filed formal charges against Mr. Wallace alleging that his conduct violated Rules 8.4 (a) (violation of the Rules of Professional Conduct) and 8.4 (c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The court suspended Mr. Wallace from the practice of law for thirty months, with all but twelve months deferred retroaction to the date of Mr. Wallace's interim suspension.

Turning to the issue of an appropriate sanction, we find that respondent's conduct involved a long and repetitive pattern of dishonesty. As such, the lengthy thirty-month suspension sought by the ODC is clearly appropriate. However, there are significant mitigating circumstances present, including respondent's voluntary resignation from the firm and his renunciation his entire termination bonus. These factors, coupled with the lack of harm to respondent's clients and the firm, justify the deferral of all but twelve months of suspension.

Wallace at 8.

[In re Charles L. Dirks III, 2017-B-0067 \(6/29/17\), 224 So.3d 346.](#)

In 2009, Ms. Sharon Landrum retained Mr. Dirks to represent her in a claim for wrongful termination. Mr. Dirks initiated a complaint on Ms. Landrum's behalf and obtained a right to sue letter from the Equal Employment Opportunity Commission ("EEOC"). During discovery, Mr. Dirks learned that Ms. Landrum had not provided Mr. Dirks with all the facts surrounding the case. Mr. Dirks advised Ms. Landrum that the case would most likely be dismissed. Ms. Landrum's employer filed a motion for summary judgement in the case and Mr. Dirks did not file an opposition to the motion because he did not believe he had any evidence to contradict the admissions Ms. Landrum had made during discovery. The motion was granted and the case was dismissed in August 2013.

For one year after the court dismissed her case, Ms. Landrum contacted Mr. Dirks on numerous occasions to check on the status of her case. Mr. Dirks told Ms. Landrum that he had not heard anything from the court about the case and that he would check on it. In August 2014, Ms. Landrum learned that her case had been dismissed a year earlier. Ms. Landrum filed a complaint against Mr. Dirks with the ODC. During the investigation of the complaint, Mr. Dirks

initially misled ODC regarding his awareness of the dismissal of the case. He eventually admitted that he received the order of dismissal within a week of its rendering. Mr. Dirks explained to ODC that he was upset with Ms. Landrum because she misled him regarding the facts of the case and he just “didn’t want to deal with it.” Dirks at 347.

ODC filed formal charges against Mr. Dirks, alleging that he violated Rules 1.4 (failure to communicate with a client) and 8.4(c) (engaging in conduct involving dishonestly, fraud, deceit, or misrepresentation). Mr. Dirks admitted his misconduct.

Both the committee and the Board agreed that a sixty day suspension was warranted. Upon reviewing the matter, the Court agreed with the committee and the Board. The Court reasoned that since Mr. Dirks knowingly violated the duties owed to his client and the legal profession, the baseline for the misconduct was suspension. Further considering Mr. Dirks’ dishonesty for nearly a year regarding the status of the case and his dishonesty with ODC, the Court agreed an actual period of suspension for the sixty days was warranted.

Neglect, Unearned Fees

[In re James E. Moorman III, 2017-B-0431 \(4/24/17\), 217 So.3d 316.](#)

Mr. Moorman neglected ten client matters, failed to refund unearned fees, and failed to properly supervise his non-lawyer staff. The misconduct occurred during a three to four month period while Mr. Moorman was suffering from a major episode of depression. There was no indication that Mr. Moorman acted in bad faith or that he intended a result that was inconsistent with his client’s interests. As soon as he was confronted by friends and colleagues about his behavior, Mr. Moorman sought treatment and self-reported his misconduct to the ODC. ODC filed eleven counts of formal charges. Mr. Moorman stipulated to ten counts and that he violated Rules: 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.15 (safekeeping property of clients or third persons), 1.16 (obligations upon termination of the representation), 5.3 (failure to properly supervise a non-lawyer assistant), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). The Court applied the guidelines of *Hinrichs*, 486 So. 2d at 122-123, and found that the appropriate sanction in this case was a three-year suspension retroactive to the date of his interim suspension.

[In re Toby James Aucoin, 2017-B-0451 \(5/26/17\), 220 So.3d 710.](#)

On July 22, 2014, April Lewis hired and paid Mr. Aucoin an \$800 flat fee to handle the expungement of her criminal record. Thereafter, Ms. Lewis made several attempts to contact Mr. Aucoin about her case. When Ms. Lewis was able to talk with Mr. Aucoin, he promised he would complete the expungement paperwork and forward it to her within one week. Mr. Aucoin failed to forward the paperwork to Ms. Lewis. In December 2014, Ms. Lewis filed a disciplinary complaint against Mr. Aucoin and in his response, Mr. Aucoin included copies of expungement documents he had prepared on Ms. Lewis’ behalf. However, there is no evidence that he took any other action or completed the matter for Ms. Lewis or that he had refunded her fee.

ODC filed formal charges against Mr. Aucoin alleging that his conduct violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5 (fee arrangements), 1.16(d) (obligations upon termination of the representation) and 8.4(a) (violation of the Rules of Professional Conduct). Mr. Aucoin failed to respond to the formal charges, which became deemed admitted.

The Court noted that “in cases of misconduct involving one count of neglect, failure to communicate, and failure to cooperate with the ODC, we have typically imposed one year and one day suspension.” The Court suspended Mr. Aucoin for one year and one day as well as ordered Mr. Aucoin to make restitution, plus legal interest, to his client or repay the Client Assistance Fund, as appropriate.

Conversion

[In re Adam Anthony Abdalla, 2017 B-0453 \(10/18/17\), --- So.3d ---.](#)

Mr. Abdalla was employed by a law firm. In September of 2014, the ODC received a complaint from the law firm alleging that Mr. Abdalla had converted funds from the firm. Mr. Abdalla stipulated to the following acts of conversion:

- He wrote three unauthorized checks to himself out of the client escrow account. The checks were made payable to Orange Ocean, LLC, a single member LLC with Mr. Abdalla listed as the sole member.
- He wrote two unauthorized checks to himself out the client escrow account. The checks were made payable to Adballa Enterprises, LLC, a single member LLC with Mr. Abdalla listed as the sole member. Although the fees were due to the firm, no check was made payable to the firm.
- He wrote an unauthorized \$5,910.86 check to Belle Realty of Lafayette, LLC, from the firm’s operating account. Mr. Abdalla did not have the signing authority on the operating account. Also, Belle is a commercial real estate company owned by Mr. Abdalla’s parents. Mr. Abdalla claimed the check was for rent and was written on behalf of a firm client and that the firm would have been reimbursed by the client through a corresponding invoice. Mr. Abdalla had never billed a client for the amount paid to Belle.
- A client wrote a \$1000 check to “Adam-Boudreaux” as a retainer for legal services. Mr. Abdalla endorsed the check and then deposited it into his personal account. Mr. Abdalla never tendered the funds to the firm and the firm still continued to provide legal services to the client.
- He created fraudulent invoices on fictitious firm letterhead for two clients for legal services rendered. One client paid Mr. Abdalla \$11,500 by check that was made payable to Mr. Abdalla. Mr. Abdalla never tendered these funds to the firm and the firm continued to provide legal services to the client.
- Mr. Abdalla performed legal services for three clients and instructed the clients to pay him in cash for those services. The clients paid Mr. Abdalla \$1,250 and Mr. Abdalla never tendered the money to the firm.

- A client paid cash to Mr. Abdalla for legal services rendered through the firm. Mr. Abdalla created a \$3,5000 invoice which he then voided. The firm did not receive the funds for the legal work performed by Mr. Abdalla.
- A client paid \$500 in cash for legal services. Mr. Abdalla marked a \$500 invoice to the client as paid in full but Mr. Abdalla never turned over these funds to the firm.

ODC filed formal charges against Mr. Abdalla alleging that his conduct violated Rules 8.1 (a) (violation of the Rules of Professional Conduct), 8.4(b) (criminal conduct), and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). Mr. Abdalla stipulated that he had stolen the money to support a drug habit. He routinely used and was addicted to hydrocodone. The Court held that disbarment was the appropriate sanction.

While respondent did offer evidence of a causal connection between his addiction and the misconduct, the weight to be given to this mitigating factor depends upon the extent to which the addiction contributed to the misconduct, and that determination cannot be made from the record before the court. Moreover, respondent admitted that he first converted funds from his law firm before he became addicted to Oxycontin. Nevertheless, even assuming that “very great weight” is assigned to respondent’s addiction as a mitigating factor, we agree with the board that the aggravating factors carry as much weight as the mitigating factors and that the downward deviation from the baseline sanction of disbarment is not warranted.

Abdalla at 6.

[In re Peter Brian Derouen, 2017-B-1289 \(10/16/17\), 226 So.3d 1096.](#)

In August 2014, Danielle Garner retained Mr. Derouen to represent her in a personal injury matter. After, Mr. Derouen failed to communicate with Ms. Garner and had failed to coordinate necessary medical treatment for her injuries. In March 2015, Ms. Garner hired Gabe Duhon to assume the representation in her matter. Mr. Duhon asked Mr. Derouen to hand over her files including an accounting of settlement proceeds and an itemization of expenses. Mr. Derouen promised he would but failed to do so. Mr. Duhon sent respondent two e-mails requesting the files and spoke to Mr. Derouen on the phone. Again, Mr. Derouen did not deliver the file as promised. Mr. Duhon finally got in contact with Mr. Derouen who then sent over one disc. The disc did not contain any of the settlement documentation, processed checks, settlement disbursement sheet, or an accounting. Mr. Duhon asked Mr. Derouen several times for this information but did not receive a response. Mr. Duhon later learned that Ms. Garner’s UM insurance provider had tendered a \$13,746.44 check, which Ms. Garner had endorsed and Mr. Derouen had deposited into his client trust account. Mr. Derouen also had settled a claim against the defendant insurer for \$15,000 and had two checks delivered in February 2015. The first was a \$9,118.76 check to pay the medical liens, which were never paid. Mr. Derouen had Ms. Garner endorse the second check and deposited the funds into his trust account. The only sums Mr. Derouen paid were a \$1000 loan to Ms. Garner, \$19.46 to Acadian Ambulance, and \$8.50 to

Louisiana State Police. Mr. Duhon and Ms. Garner filed complaints against Mr. Derouen with ODC. The day before the sworn statement was scheduled, Mr. Derouen called ODC asking for new copies of the complaint claiming he had never received them. The statement was then canceled. The ODC then discovered that Mr. Derouen had personally signed for the original complaint and asked Mr. Derouen to provide a reason why he never received the complaints. Mr. Derouen did not respond and the ODC issued another subpoena which was unable to be served on Mr. Derouen. A review of Mr. Derouen's trust account records indicated that the balance of his account dropped well below the amount of funds he was to be holding for Ms. Garner.

ODC filed formal charges against Mr. Derouen, alleging that he violated Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4(a)(3) (failure to keep a client reasonably informed about the status of the matter), 1.15(a) (a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property), 1.16(d) (obligations upon termination of the representation), 8.1(a) (a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter), 8.1 (b) (knowing failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) failure to cooperate with the ODC in its investigation), 8.4(a) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). These charges were deemed admitted.

Like the Board, the Court examined *In Re Weber*, 15-0982 (La. 8/28/15), 177 So. 3d 106, to determine the appropriate sanction. In *Weber*, the attorney represented a homeowner in an insurance claim. The insurance company issued both a check to the attorney and the client. The attorney accepted the check and told his client he would hold the funds in the client's trust account until the client needed them. Thereafter, the client was unable to reach the attorney nor did the client receive the check. The attorney did not deposit the funds into his trust account, made no attempts to return the money to the client, did not cooperate with the ODC's investigation, and allowed the formal charges to become deemed admitted. In *Weber*, the Court relied on *Hinrichs* to determine the appropriate sanction was disbarment. *Hinrichs* holds that disbarment is warranted when:

one or more of the following elements are present: the lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commit forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense or inconvenience caused the client is great; the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings.

Hinrichs at 122. The Court determined that Mr. Derouen's conduct, like *Weber*, fell into this category. The Court accepted the Board's recommendation to disbar Mr. Derouen.

[In re Timmy James Fontenot, 2017-B-1661 \(11/28/17\), --- So.3d ---.](#)

Francis and Ellen Ortego were involved in a motorcycle accident on June 26, 2006. The other driver involved in the accident, Calvin Guillory, was insured by Progressive Security Insurance Company (“Progressive”) with policy limits of \$100,000. The Ortegos attempted to negotiate a settlement with Progressive, but they were unsuccessful as they were interested in receiving policy limits and Progressive’s settlement offer was only \$51,000. They then retained Mr. Fontenot, a close family friend, to represent them in the matter. The Ortegos agreed to pay Mr. Fontenot a contingency fee of one-third of any settlement they received in excess of \$51,000. This agreement was not reduced to writing.

In 2007, Mr. Fontenot filed a lawsuit on behalf of the Ortegos. Attorney Ian Macdonald represented the defendants.

Mr. Fontenot negotiated a settlement with Progressive in the amount of \$52,500. The Ortegos were not aware of the settlement and did not consent to it. On April 24, 2008, Mr. Macdonald sent Mr. Fontenot a settlement check along with a release and a joint motion to dismiss. Mr. Fontenot signed his clients’ names on the release and executed the motion to dismiss, then returned the documents to Mr. Macdonald. He deposited the settlement check into his client trust account on May 6, 2008. Unbeknownst to the Ortegos, their lawsuit was dismissed on November 3, 2008.

By late 2012 or early 2013, Mr. Ortego had begun to question Mr. Fontenot about the status of the case. He falsely informed Mr. Ortego that Progressive was willing to settle the matter for the policy limits of \$100,000, but wanted to pay the settlement over a period of time in four payments. Mr. Ortego rejected a four-installment payment plan, but he did inform Mr. Fontenot that he was willing to accept one-half of the settlement as long as he was paid the remainder by the end of 2013. On February 28, 2013, Mr. Fontenot issued a check drawn on his client trust account payable to Mr. Ortego in the amount of \$50,000. Mr. Ortego asked whether he would be required to sign anything for the insurance company, and Mr. Fontenot told him that he would not. On December 20, 2013, Mr. Fontenot issued a trust account check in the amount of \$33,333.33 to Mr. Ortego and wrote “Full and Final Settlement” on the memo line of the check.

In January 2014, Mr. Ortego consulted Attorney Kathy Fontenot-Meyers regarding the settlement. Ms. Fontenot-Meyers contacted Mr. Macdonald and requested copies of the settlement documents. After reviewing the documents, Ms. Fontenot-Meyers informed Mr. Macdonald that the settlement proceeds that were paid to the Ortegos were not disbursed until five years after the settlement. She also indicated that Mr. Fontenot told the Ortegos that Progressive was paying the settlement quarterly, and that the Ortegos could not confirm that the signatures on the settlement release were their own.

In February 2014, Mr. Macdonald filed a complaint against respondent with the ODC. In response to the complaint, Mr. Fontenot claimed that he signed the settlement documents with the implied permission of the Ortegos. ODC’s investigation of the complaint revealed several

checks written to “cash” from Mr. Fontenot’s trust account, which is contrary to the rules governing trust accounts.

The committee found that Mr. Fontenot engaged in the conduct as alleged in the formal charges, including that he forged his client’s signatures. Ultimately, the Court adopted the recommendations of the committee and the Board, disbaring Mr. Fontenot.

[In re Kenneth Michael Waguespack, Jr., 2017-B-1468 \(11/13/17\), --- So.3d ---.](#)

ODC filed formal charges against Mr. Waguespack, which consisted of seven counts, alleging multiple instances of converting client and third party funds and overdrawing his trust account on several occasions. The charges became deemed admitted.

Mr. Waguespack converted approximately \$70,000 from multiple clients and a third party. In one case, the conversion was effectuated by forging a client’s signature on a check. The Court adopted the committee’s and Board’s recommendations that Mr. Waguespack be permanently disbarred pursuant to Guideline 1 of the guidelines for permanent disbarment. Guideline 1 states that permanent disbarment may be warranted in instances of “[r]epeated or multiple instances of intentional conversion of client funds with substantial harm.”

[In re Robert B. Purser, 2017-B-1170 \(10/9/17\), 227 So.3d 264.](#)

ODC filed formal charges against Mr. Purser alleging multiple acts of conversion and the unauthorized practice of law. Mr. Purser converted \$100,000 owed to a corporate client. He converted over \$100,000 owed to an elderly and vulnerable client. He also failed to return several unearned fees for work that was not performed. The total amount of conversion was almost \$300,000. Additionally, after the Court placed him on interim suspension, Mr. Purser continued to engage in the practice of law. Although he filed an answer to the charges, Mr. Purser did not appear at the hearing of this matter.

The Court agreed with the committee’s and Board’s recommendations that Mr. Purser be permanently disbarred. In addition to relying on Guideline 1 of the guidelines for permanent disbarment, the Court also relied on Guideline 8, which states that permanent disbarment may be warranted in instances of “...engaging in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer is suspended from the practice of law or disbarred.”

Trust Account Violations

[In re Mark G. Simmons, 2017-B-1043 \(10/16/17\), 226 So.3d 1102.](#)

On September 6, 2012, ODC received notice from Mr. Simmons’ bank that his client trust account was overdrawn. Mr. Simmons failed to respond to ODC’s request for an explanation and copies of records related to the account. ODC was able to audit the account for the period from May 2012 to June 2013. There were indications in the account that Mr. Simmons had converted \$3,599.98 in funds belonging to clients or third parties. In the formal charges, ODC alleged Mr. Simmons’ conduct violated Rules 1.5 (safekeeping property of clients or third persons), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a) (violation of

the Rules of Professional Conduct). The charges also contained a second count alleging neglect of a client matter.

The Court found that Mr. Simmons had mismanaged his client trust account, neglected legal matters, failed to communicate with a client, and failed to cooperate with the ODC in two investigations. The Court agreed with the committee and the Board that the baseline sanction was suspension. The Court adopted the Board's recommendation and suspended Mr. Simmons from the practice of law for one year and one day, with all but sixty days deferred, followed by two years of supervised probation with the conditions that Mr. Simmons successfully complete the LSBA's Trust Accounting School and LSBA's Ethics School and Mr. Simmons' trust account be audited on a quarterly basis.

[In re Michael Louis Martin, 2017-B-1228 \(10/16/17\), 226 So.3d 1108.](#)

ODC received notice from Regions Bank that Mr. Martin's client trust account was overdrawn on eight occasions during the period of December 4, 2012 through January 18, 2013. Notice of the overdraft was forwarded to Mr. Martin along with instructions to provide the ODC with copies of bank statements, canceled checks, and disbursement sheets as well as a written explanation of the circumstances relating to the overdraft and any steps that have been taken to resolve the matter. Mr. Martin failed to respond to ODC's requests for information. ODC subpoenaed Mr. Martin's trust account records from June 2012 through August 2013. After reviewing these records, the ODC staff auditor concluded that Mr. Martin had converted and commingled client trust funds and had misused his trust account on numerous occasions by writing checks payable to cash and by paying personal bills from the account.

ODC filed formal charges, alleging that Mr. Martin violated Rules 1.15(a) (safekeeping property of clients or third persons), 1.15(f) (cash withdrawals and checks made payable to "Cash" are prohibited on client trust accounts), and 8.4(a) (violation of the Rules of Professional Conduct). The charges became deemed admitted.

In deciding this case, the Court applied the guidelines of *Hinrichs* and noted that Mr. Martin is guilty of at least a high degree of negligence in mismanaging his trust account. However, since Mr. Martin did not directly benefit from the infraction and he resolved the overdraft issues, the Court decided that under *Hinrichs*, the factors supported a sanction that was similar to the one recommended by the Board. The Court adopted the Board's recommendation and suspended Mr. Martin from the practice of law for two years.

Contact with a Represented Party

[In re Lance Hac Nguyen, 2017-B-0214 \(4/13/17\), 215 So.3d 668.](#)

On August 12, 2013, Mr. Nguyen was admitted *pro hac vice* in the United States District Court for the Western District of Louisiana specifically to defend Tyrone Thibeaux in *United States of America v. Rodriguez, et al.* One of the co-defendants was Glenn Charles. On December 12, 2013, during Mr. Charles' sentencing hearing, the judge learned that Mr. Nguyen had improperly contacted Mr. Charles outside of the presence and without the approval of Mr. Charles' counsel. During the show cause hearing, Mr. Nguyen admitted that he had improperly

contacted Mr. Charles. The judge then sanctioned Mr. Nguyen and referred the matter to attorney disciplinary authorities in Texas and Louisiana. On July 23, 2014, the chief judge suspended respondent from the *pro hac vice* practice in the Western District of Louisiana for eight months. During the investigation ODC made several attempts to contact Mr. Nguyen. Mr. Nguyen failed to respond to all ODC's attempts to contact him. ODC alleged that Mr. Nguyen's conduct violated Rules 4.2(a) (unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order, a lawyer in representing a client shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter) and 8.1(c) (failure to cooperate with the ODC in its investigation).

The Board decided the appropriate sanction for Mr. Nguyen's misconduct was a one-year suspension. Since Mr. Nguyen did not have a Louisiana license to suspend, the Board cited *In re Cortigene*, 13-2022 (La. 2/14/14), 144 So. 3d 915, where the Court held "when an attorney is not a member of the Louisiana bar, it has the power to enjoin the attorney from 'seeking the benefits of a full or limited admission to practice in this state'."

Upon reviewing this matter, the Court agreed with the Board that the appropriate sanction would be suspension for one year if Mr. Nguyen was a member of the Louisiana bar. However, since Mr. Nguyen was not a member, the Court ordered that Mr. Nguyen shall be enjoined for a period of one year from the date of the order from seeking admission to the Louisiana bar or seeking admission to practice in Louisiana on any temporary or limited basis, including, but not limited to, seeking *pro hac vice* admission before a Louisiana court.

Unauthorized Practice of Law

[In re Edward Hebert II, 2016-B-2278 \(3/31/17\), 214 So.3d 836.](#)

Mr. Hebert was certified as ineligible to practice law in 2006 for failure to maintain his annual professional obligations. In 2009, he was suspended from the practice of law for misconduct. He never sought reinstatement from the suspension. On May 11, 2015, Mr. Herbert appeared as counsel for Ivan Prevost. The court rendered a judgement, which Mr. Herbert was to prepare. Unable to reach Mr. Herbert, Mr. Prevost went to the court's chambers to get a copy. The office staff informed Mr. Prevost that they had not yet received the circulated judgement. Two days later, Mr. Prevost returned to the court's chambers to get a copy of the judgement. Mr. Prevost then informed the office staff that he had not heard from Mr. Herbert and had in fact learned that Mr. Herbert had been disbarred.

The judge attempted to call Mr. Herbert but was unsuccessful in reaching him. Then, the judge searched the court's management system and the information confirmed Mr. Herbert was ineligible to practice law. The judge had found that Mr. Herbert had incorrectly listed his bar number on the judgment Mr. Herbert had submitted to the court and that the number that had been submitted belonged to an attorney with a similar name.

Mr. Prevost indicated that Mr. Herbert had never advised him that he was suspended from the practice of law. Mr. Prevost confirmed that he had paid Mr. Herbert \$500 in cash to represent him and Mr. Herbert did not refund any of the money. The judge filed a complaint

against Mr. Herbert with ODC and notice of the complaint was sent to Mr. Herbert. Mr. Hebert failed to respond to notice of the complaint.

ODC filed formal charges against Mr. Herbert, alleging that his conduct violated Rules 5.5(a) (engaging in the unauthorized practice of law), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The Court decided to adopt the Board's recommendation and permanently disbar Mr. Herbert. The Court found that Mr. Herbert's conduct fell squarely within Guideline 8 and 9 of the permanent disbarment guidelines. Guideline 9 states that permanent disbarment is warranted in

Instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime. Serious crime is defined in Rule XIX, Section 19. Serious attorney misconduct is defined for purposes of these guidelines as any misconduct which results in a suspension of more than one year.

[In re Janinne Latrell Gilbert, 2017-B-0524 \(9/22/17\), --- So.3d ---.](#)

The Court disbarred Ms. Gilbert, which became effective on March 18, 2016. On March 28, 2016, Ms. Gilbert appeared before a hearing officer for the 15th Judicial District Court, Parish of Vermilion, for the purpose of a conference in the matter of *Angeles v. Angeles*. Respondent appeared as counsel for the plaintiff and the matter proceeded to a hearing. Upon learning of Ms. Gilbert's disbarment, the hearing officer filed a complaint with ODC.

ODC filed formal charges, which became deemed admitted. The charges also included another client matter that Ms. Gilbert neglected. The Court permanently disbarred Ms. Gilbert based upon Guideline 9.

Conflicts of Interest

[In re C. Mignonne Griffing, 2017-B-0874 \(10/18/17\), --- So.3d ---.](#)

Since 1990, Ms. Griffing has been employed as an Assistant United States Attorney ("AUSA") for the Western District of Louisiana, Shreveport Division. While employed as an AUSA, Ms. Griffing commenced and maintained a personal, intimate relationship with an FBI agent. The FBI agent was typically the lead investigating law enforcement agent on many of the criminal prosecutions advanced by Ms. Griffing. While there was no indication that the agent's testimony was influenced by their personal relationship, Ms. Griffing admitted she failed to disclose the relationship during her prosecution of two Monroe city councilmen and the Ouachita Parish Sheriff, Royce Toney. The FBI agent was the lead investigative agent in both matters. After Mr. Stroud, the sheriff's counsel, raised the possibility of the relationship, Ms. Griffing was questioned by the United States Attorney and was not immediately and fully forthcoming regarding the relationship.

Sheriff Toney filed a complaint against Ms. Griffing with ODC, which led to formal charges. ODC alleged that Ms. Griffing violated Rules 1.7 (a lawyer shall not represent a client if the representation involved a concurrent conflict of interest), 3.8(d) (the prosecutor in a criminal case shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal) 8.4(a) (violate or attempt to violate the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

The Hearing Committee determined that Ms. Griffing violated Rules 1.7(a)(2), 8.4(c), and 8.4(d) of the Rules of Professional Conduct. The Board agreed with the committee's findings, but also concluded that Ms. Griffing violated Rule 3.8(d) as well.

With regard to the sanction, the Court noted there had been no previous cases that directly addressed the misconduct of a government prosecutor who maintained an intimate or romantic relationship with a law enforcement agent called as a witness. The Court, however, reiterated their stance that public officials, especially prosecutors, are held to a higher standard than ordinary attorneys. The Court imposed a one year and one day suspension with all but six months deferred. The Court also ordered Ms. Griffing serve a one year period of unsupervised probation, obtain forty additional hours of CLE, with twenty hours each in the areas of ethics and professionalism.

Obligations of a Prosecutor

[In re Ronald Seastrunk, 2017-B-0178 \(10/18/17\), --- So.3d ---.](#)

Mr. Seastrunk failed to disclose information to the defense that had been omitted from a detective's report during a murder trial.

ODC filed formal charges, alleging a violation of Rule 3.8(d) (the prosecutor in a criminal case shall make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or should reasonably know, either tends to negate the guilt of the accused or mitigates the offense).

The central issue in the case became a legal issue – whether a prosecutor's obligations pursuant to Rule 3.8(d) are the same as or broader than a prosecutor's obligations pursuant to the U.S. Supreme Court case *Brady v. Maryland*, 373 U.S. 83 (1963). The Court held that the disclosure obligations found in Rule 3.8(d) and in *Brady v. Maryland* are coextensive. In this case, the Court rejected ODC's argument that the disclosure obligations required by Rule 3.8(d) are broader than the disclosure obligations required by *Brady* and its progeny.

[U]nder conflicting standards, prosecutors would face uncertainty as to how to proceed, as they could find themselves in compliance with the standard enumerated in *Brady*, but in potential violation of the obligation set forth in Rule 3.8(d). In finding the obligations coextensive in Rule 3.8(d) and *Brady*, we

decline to impose inconsistent disclosure obligations upon prosecutors, thereby eliminating confusion.

Seastrunk at 18. Based upon this holding, the Court dismissed the charges against Mr. Seastrunk.

Reinstatement/Readmission

[In re J. Michael Cutshaw, 2017-B-1435 \(11/13/17\), --- So.3d ---. \(Board Recommendation\)](#)

On April 2, 2012, Petitioner pled guilty to one count of simple possession of cocaine. He received a suspended sentence of two years, during which he was placed on supervised probation with the conditions that he remain arrest and conviction free, alcohol and drug free, submit to alcohol and drug testing, and pay certain fees and fines. On February 20, 2013, based upon this conviction, the Louisiana Supreme Court placed Petitioner on interim suspension pursuant to a joint petition filed by Petitioner and the Office of Disciplinary Counsel (“ODC”). In re Cutshaw, 2013-B-0348 (La. 2/20/13), 109 So.3d 343. On January 25, 2016, the Court suspended Petitioner for thirty months pursuant to a petition for consent discipline. In re Cutshaw, 2015-B-2310 (La. 1/25/16), 183 So.3d 1284. The suspension was made retroactive to the date of his interim suspension, February 20, 2013.

Mr. Cutshaw filed his petition and application for reinstatement on June 10, 2016. ODC took “no position” regarding the petition. Given that the underlying misconduct was related to Mr. Cutshaw’s possession and use of drugs, the focus of the reinstatement hearing was the adequacy of rehabilitative treatment received by Mr. Cutshaw. There was competing evidence on this issue, which is summarized as follows: Mr. Cutshaw obtained two substance abuse evaluations at facilities approved by JLAP. Both facilities recommended further treatment with several conditions, including abstaining from intoxicating substances and executing a JLAP recovery contract. Mr. Cutshaw declined to pursue the recommendations of these facilities. Mr. Cutshaw introduced the testimony of his treating physician and psychologists, who were both of the opinion that Mr. Cutshaw did not need all of the treatment recommended by the JLAP-approved facilities and that he did not have a substance abuse problem. (However, Mr. Cutshaw’s psychologist agreed that most of the treatment would be beneficial.)

After weighing all of the evidence, including the fact that Mr. Cutshaw continued to consume alcohol, the Court denied Mr. Cutshaw’s petition for reinstatement. The Court held that Mr. Cutshaw may reapply for reinstatement upon a showing that he has complied with any and all recommendations of JLAP.

Everything but the Kitchen Sink

[In re Heather M. Murphy, 2017-B-0068 \(6/29/17\), 224 So.3d 947.](#)

Ms. Murphy engaged in numerous acts of misconduct, which included: neglecting legal matters, failing to communicate with clients, failing to refund unearned fees, attempting to solicit clients from other attorneys, engaging in dishonest conduct, making misrepresentations to a court, practicing law while ineligible to do so, engaging in the unauthorized practice of law after

being placed on interim suspension, engaging in criminal conduct (obtaining a controlled dangerous substance by fraud and deceit and altering a prescription), and failing to cooperate with the ODC in its investigations. The Court imposed permanent disbarment based upon Guidelines 1 & 8 of the guidelines for permanent disbarment.

[In re Randal Alandre Toastson, 2017-B-0702 \(9/6/17\), 225 So.3d 1066.](#)

Mr. Toastson engaged in numerous acts of misconduct (twenty-seven counts in the formal charges), which included: failing to provide competent representation to clients, providing services outside of the scope of the representations, neglecting legal matters, failing to communicate with clients, failing to refund unearned fees, withdrawing cash from his client trust account in excess of \$50,000, overdrawing his client trust account, failing to maintain records of his client trust account, failing to fulfill his obligations upon termination of the representations, failing to make reasonable efforts to expedite litigation, submitting duplicative or untimely pleadings to the courts, allowing a client's lawsuit to be dismissed as abandoned, practicing law while ineligible to do so, engaging in dishonest conduct, engaging in criminal conduct (DWI and resisting an officer), and failing to cooperate with the ODC in several investigations. The Court imposed permanent disbarment based upon Guideline 1 of the guidelines for permanent disbarment.