



# Discipline in Review

Gregory L. Tweed  
First Assistant Disciplinary Counsel

*NATCHITOCHEs LIGHTS CLE*



# CRIMINAL CONDUCT

# Criminal Conduct

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



# Criminal Conduct

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



# Criminal Conduct

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



# Criminal Conduct

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



# Criminal Conduct

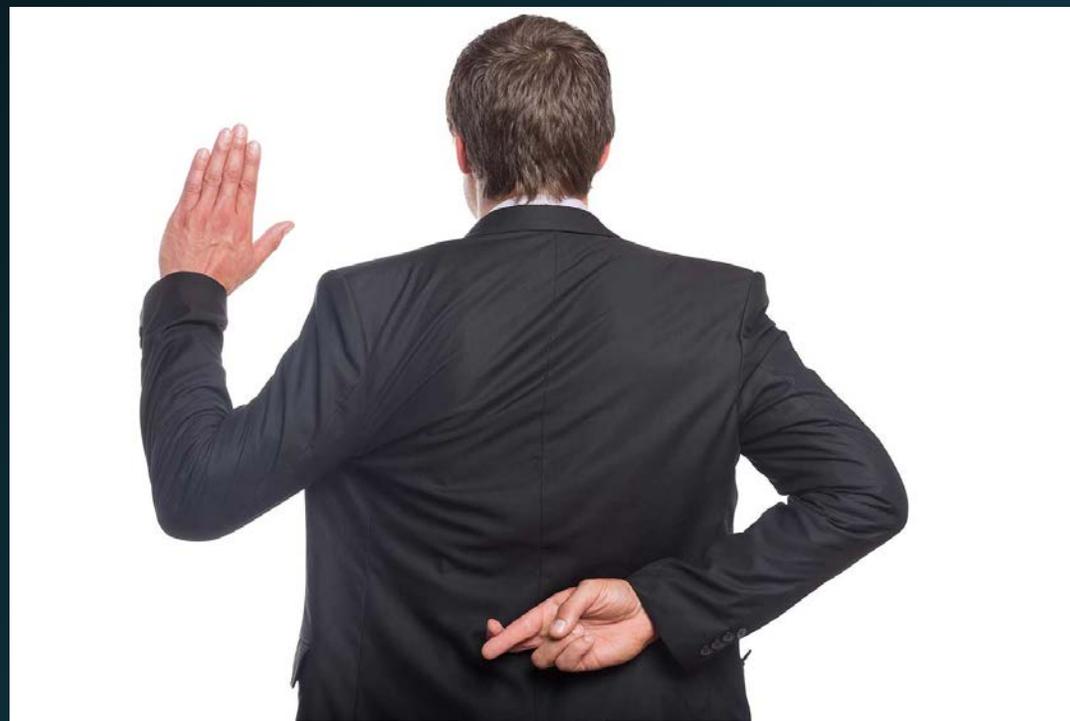
- [In re Elise Marybeth LaMartina, 2017-B-0430 \(12/6/17\), 235 So.3d 1061.](#)



# Criminal Conduct

- [In re Peggy M. Hairston Robinson, 2017-B-1290 \(12/6/17\), 232 So.3d 1232.](#)





# DISHONEST CONDUCT

# Dishonest Conduct

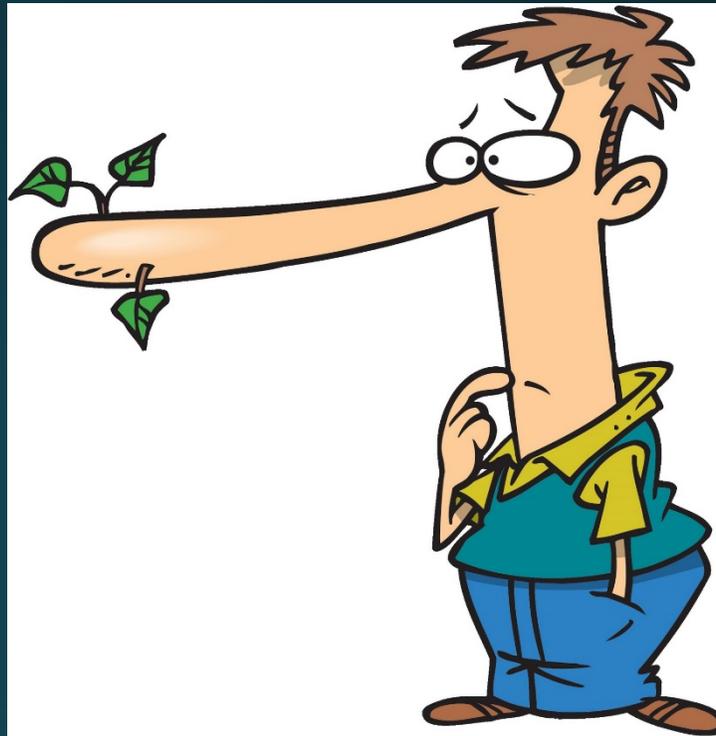
- [In re Greta L. Wilson, 2017-B-0622 \(6/5/17\), 221 So.3d 40.](#)





# Dishonest Conduct

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





# NEGLECT, UNEARNED FEES

# Neglect, Unearned Fees- (Moorman)

- [In re James E. Moorman III, 2017-B-0431 \(4/24/17\), 217 So.3d 316.](#)
- Respondent 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 respondent was suffering from a major episode of depression. There was no indication that respondent acted in bad faith or that he intended a result that was inconsistent with his clients' interests.
- As soon as he was confronted by friends and colleagues about his behavior, respondent sought treatment and self-reported his misconduct to the ODC. ODC filed an eleven count formal charge petition.

# Neglect, Unearned Fees- (Moorman)

- Respondent 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.

# Neglect, Unearned Fees- (Aucoin)

- [In re Toby James Aucoin, 2017-B-0451 \(5/26/17\), 220 So.3d 710.](#)
- On July 22, 2014, April Lewis hired and paid respondent an \$800 flat fee to handle the expungement of her criminal record. When Ms. Lewis was able to talk with respondent, he promised he would complete the expungement paperwork within one week.
- Respondent failed to forward the paperwork and in December 2014, Ms. Lewis filed a complaint against respondent. In his response, respondent included copies of expungement documents he had prepared but there is no evidence that he took any other action to complete the matter or that he had refunded her fee.

# Neglect, Unearned Fees- (Aucoin)

- ODC filed formal charges alleging that respondent's 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). Respondent failed to respond and the charges were 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 suspensions." Respondent was suspended for one year and one day, as well as ordered to make restitution, plus legal interest, to his client or repay the Client Assistance Fund, as appropriate



**CONVERSION**

# CONVERSION - (Abdalla)

- [In re Adam Anthony Abdalla, 2017 B-0453 \(10/18/17\), 236 So.3d 1223.](#)
- In September of 2014, the ODC received a complaint from a law firm alleging that respondent had converted funds from the firm. Respondent stipulated to the following acts of conversion:
  - (1) 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 respondent listed as the sole member.
  - (2) He wrote two unauthorized checks to himself out of the client escrow account. The checks were made payable to Adballa Enterprises, LLC, a single member LLC with respondent listed as the sole member. Although the fees were due to the firm, no check was made payable to the firm.

## CONVERSION - (Abdalla)

- (3) A client wrote a \$1000 check to “Adam-Boudreaux” as a retainer for legal services. Respondent endorsed and then deposited the check into his personal account. Respondent never tendered the funds to the firm and the firm still continued to provide legal services to the client.
- (4) Respondent created fraudulent invoices on fictitious firm letterhead for two clients. One client paid respondent \$11,500 by a check made payable to respondent. Respondent never tendered the funds to the firm and the firm continued to provide legal services to the client.
- (5) Respondent performed legal services for three clients and instructed the clients to pay him in cash. The clients paid respondent \$1,250 but he never tendered the money to the firm.

## CONVERSION - (Abdalla)

- (6) A client paid cash to respondent for legal services rendered through the firm. Respondent created a \$3,500 invoice which he then voided. The firm did not receive the funds for the legal work performed by respondent.
- (7) A client paid \$500 in cash for legal services. Respondent marked a \$500 invoice to the client as paid in full but respondent never turned over these funds to the firm.
- ODC filed formal charges against respondent alleging that his conduct violated Rules 8.1 (a); 8.4(b); and 8.4(c). Respondent 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.

## CONVERSION - (Abdalla)

- 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 a downward deviation from the baseline sanction of disbarment is not warranted.

# CONVERSION - (Derouen)

- [In re Peter Brian Derouen, 2017-B-1289 \(10/16/17\), 226 So.3d 1096.](#)
- In August 2014, Danielle Garner retained respondent to represent her in a personal injury matter. After, respondent failed to communicate with Ms. Garner and failed to coordinate necessary medical treatment for her injuries, Ms. Garner hired Gabe Duhon to assume the representation. Mr. Duhon asked respondent to hand over Ms. Garner's files including an accounting of settlement proceeds and an itemization of expenses.
- After several requests, respondent sent over one disc. The disc did not contain any of the settlement documentation, processed checks, settlement disbursement sheet, or an accounting.

## CONVERSION - (Derouen)

- Mr. Duhon later learned that Ms. Garner's UM insurance provider had tendered a \$13,746.44 check, which Ms. Garner had endorsed and respondent had deposited into his client trust account.
- Respondent 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.
- Respondent had Ms. Garner endorse the second check and deposited the funds into his trust account. The only sums respondent paid were a \$1000 loan to Ms. Garner, \$19.46 to Acadian Ambulance, and \$8.50 to Louisiana State Police.

# CONVERSION - (Derouen)

- Mr. Duhon and Ms. Garner filed complaints against respondent. The day before the sworn statement, Respondent called asking for new copies of the complaint claiming he had never received them. The statement was then canceled.
- The ODC then discovered that respondent had personally signed for the original complaint. A review of respondent's trust account records indicated that the balance of his account dropped well below the amount of funds he should be holding for Ms. Garner.
- ODC filed formal charges against respondent, alleging that he violated Rules 1.3; 1.4(a)(3), 1.15(a), 1.16(d), 8.1(a), 8.1 (b), 8.1(c), 8.4(a), and 8.4(d). These charges were deemed admitted.

## CONVERSION - (Derouen)

- 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 a check payable both to the attorney and the client. The attorney told his client he would hold the funds in the client's trust account. Thereafter, the client was unable to reach the attorney nor did he receive a 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.

# CONVERSION - (Derouen)

- *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 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 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.
- The Court determined that respondent's conduct, like *Weber*, fell into this category. The Court accepted the Board's recommendation to disbar respondent.

# CONVERSION - (Fontenot)

- [In re Timmy James Fontenot, 2017-B-1661 \(11/28/17\), 230 So.3d 185.](#)
- Francis and Ellen Ortego were involved in a motorcycle accident on June 26, 2006. The other driver 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 retained Respondent, a close family friend, to represent them. 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.

## CONVERSION - (Fontenot)

- Respondent 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 respondent a settlement check along with a release and a joint motion to dismiss. Respondent 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.

## CONVERSION - (Fontenot)

- By late 2012 or early 2013, Mr. Ortego had begun to question respondent 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 the payment plan, but he did inform respondent that he was willing to accept one-half of the settlement as long as he was paid the remainder by the end of 2013.

## CONVERSION - (Fontenot)

- On February 28, 2013, Respondent issued a check drawn on his client trust account payable to Mr. Ortego in the amount of \$50,000. On December 20, 2013, Respondent 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 another attorney regarding the settlement. The new attorney requested copies of the settlement documents. After reviewing the documents, the new attorney informed Mr. Macdonald that the settlement proceeds paid to the Ortegos were not disbursed until five years after the settlement and that respondent told the Ortegos that Progressive was paying the settlement quarterly.

# CONVERSION - (Fontenot)

- In February 2014, Mr. Macdonald filed a complaint against respondent. In response to the complaint, respondent claimed that he signed the settlement documents with the implied permission of the Ortegos. ODC's investigation revealed several checks written to "cash" from respondent's trust account, which is contrary to the rules governing trust accounts.
- The committee found that respondent 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 Respondent.

# CONVERSION - (Waguespack)

- [In re Kenneth Michael Waguespack, Jr., 2017-B-1468 \(11/13/17\), 229 So.3d 459.](#)
- 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.

# CONVERSION - (Waguespack)

- 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."

# CONVERSION - (Purser)

- [In re Robert B. Purser, 2017-B-1170 \(10/9/17\), 227 So.3d 264.](#)
- ODC filed formal charges against respondent alleging multiple acts of conversion and the unauthorized practice of law. Respondent converted \$100,000 owed to a corporate client. He converted over \$100,000 owed to an elderly and vulnerable client. He also failed in several instances to return 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, respondent continued to engage in the practice of law. Although he filed an answer to the charges, respondent did not appear at the hearing of this matter.

# CONVERSION - (Purser)

- The Court agreed with the committee's and board's recommendations that respondent 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

# TRUST ACCOUNT VIOLATIONS - (Simmons)

- [In re Mark G. Simmons, 2017-B-1043 \(10/16/17\), 226 So.3d 1102.](#)
- On September 6, 2012, ODC received notice from respondent's bank that his client trust account was overdrawn. Respondent failed to respond to ODC's request for information.
- ODC was able to audit the account for the period from May 2012 to June 2013. There were indications in the account that respondent had converted \$3,599.98 in funds belonging to clients or third parties.
- In the formal charges, ODC alleged Respondent's 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.

# TRUST ACCOUNT VIOLATIONS - (Simmons)

- The Court found that respondent 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 respondent for one year and one day, with all but sixty days deferred, followed by two years of supervised probation with the conditions that respondent successfully complete the LSBA's Trust Accounting School and LSBA's Ethics School and respondent's trust account be audited on a quarterly basis.

# TRUST ACCOUNT VIOLATIONS - (Martin)

- [In re Michael Louis Martin, 2017-B-1228 \(10/16/17\), 226 So.3d 1108.](#)
- ODC received notice from Regions Bank that Respondent'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 Respondent 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.

# TRUST ACCOUNT VIOLATIONS - (Martin)

- Respondent failed to provide the requested documentation. ODC subpoenaed respondent's trust account records from June 2012 through August 2013. After reviewing these records, the ODC staff auditor concluded that respondent 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 respondent 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.

# TRUST ACCOUNT VIOLATIONS - (Martin)

- In deciding this case, the Court applied the guidelines of *Hinrichs* and noted that respondent is guilty of at least a high degree of negligence in mismanaging his trust account. However, since respondent 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 respondent for two years.



# CONTACT WITH A REPRESENTED PARTY

# CONTACT WITH A REPRESENTED PARTY- (Nguyen)

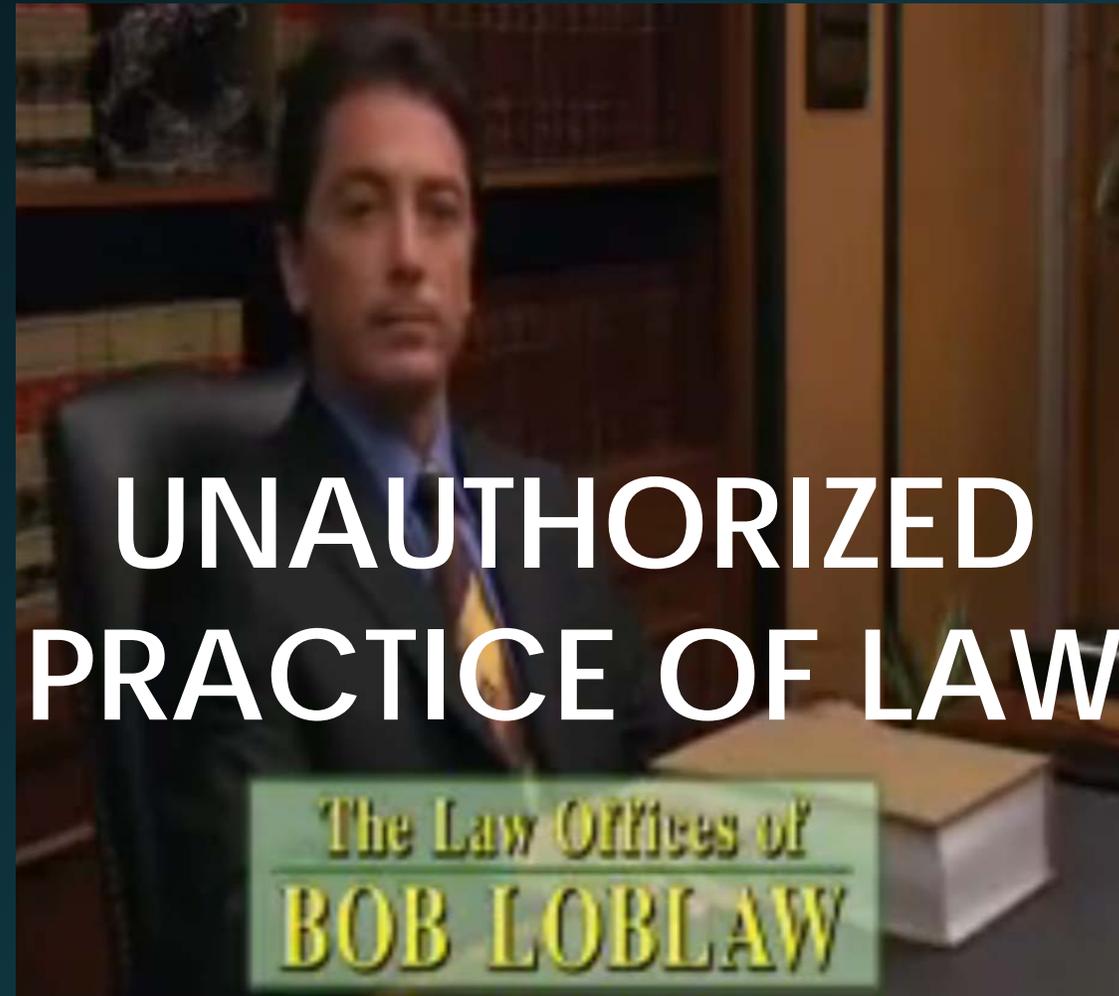
- [In re Lance Hac Nguyen, 2017-B-0214 \(4/13/17\), 215 So.3d 668.](#)
- Respondent was admitted to practice *pro hac vice* in the Western District of Louisiana to defend Tyrone Thibeaux in *U.S. v. Rodriguez, et al.* One of the co-defendants was Glenn Charles. During a sentencing hearing, the judge learned that respondent had improperly contacted Mr. Charles outside of the presence and without the approval of Mr. Charles' counsel. Respondent admitted the improper contact.
- The judge sanctioned respondent and referred the matter to the chief judge and the attorney disciplinary authorities in Texas and Louisiana.

# CONTACT WITH A REPRESENTED PARTY- (Nguyen)

- The chief judge suspended respondent from *pro hac vice* practice in the Western District for eight months. During the investigation ODC made several attempts to contact respondent. Respondent failed to respond to all ODC's attempts to contact him. ODC alleged that respondent's conduct violated Rules 4.2(a) and 8.1(c).
- The board decided the appropriate sanction for respondent's misconduct was a one-year suspension. Since respondent 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'."

# CONTACT WITH A REPRESENTED PARTY- (Nguyen)

- The Court agreed that the appropriate sanction would be suspension for one year if respondent was a member of the Louisiana bar. However, since respondent was not a member, the Court ordered that Respondent 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

# UNAUTHORIZED PRACTICE OF LAW

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



# UNAUTHORIZED PRACTICE OF LAW

- [In re Janinne Latrell Gilbert, 2017-B-0524 \(9/22/17\), 232 So.3d 1221.](#)





*“So, I’m the only one who sees a conflict of interest here?”*

# CONFLICTS OF INTEREST

# CONFLICTS OF INTEREST

- [In re C. Mignonne Griffing, 2017-B-0874 \(10/18/17\), 236 So.3d 1213.](#)





# OBLIGATIONS OF A PROSECUTOR

# OBLIGATIONS OF A PROSECUTOR

- [In re Ronald Seastrunk, 2017-B-0178 \(10/18/17\), 236 So.3d 509.](#)





# REINSTATEMENT/ READMISSION

# REINSTATEMENT/READMISSION

- [In re J. Michael Cutshaw, 2017-B-1435 \(11/13/17\), 229 So.3d 478.](#)  
(See, Board Recommendation)





# EVERYTHING BUT THE KITCHEN SINK

# EVERYTHING BUT THE KITCHEN SINK (Murphy)

- [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.

# EVERYTHING BUT THE KITCHEN SINK (Toaston)

- [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:
  - (1) failing to provide competent representation to clients,
  - (2) providing services outside of the scope of the representations,
  - (3) neglecting legal matters,
  - (4) failing to communicate with clients,



# EVERYTHING BUT THE KITCHEN SINK (Toaston)

- (5) failing to refund unearned fees,
- (6) withdrawing cash from his client trust account in excess of \$50,000,
- (7) overdrawing his client trust account,
- (8) failing to maintain records of his client trust account,



# EVERYTHING BUT THE KITCHEN SINK (Toaston)

- (9) failing to fulfill his obligations upon termination of the representations,
- (10) failing to make reasonable efforts to expedite litigation,
- (11) submitting duplicative or untimely pleadings to the courts,
- (12) allowing a client's lawsuit to be dismissed as abandoned,



# EVERYTHING BUT THE KITCHEN SINK (Toaston)

- (13) practicing law while ineligible to do so,
- (14) engaging in dishonest conduct,
- (15) engaging in criminal conduct (DWI and resisting an officer), and
- (16) failing to cooperate with the ODC in several investigations.
- The Court imposed permanent disbarment based upon Guideline 1 of the guidelines for permanent disbarment.