

BATON ROUGE BAR ASSOCIATION EXPO

SEPTEMBER 2016

2015-2016 Disciplinary Cases In Review:

Gross Conversion and Commingling With Harm:

In Re: Conry, 2014-1761 (La.01/28/2015) 158 So.3d 786 The Respondent repeatedly over-drafted his client trust account, used the account to pay car notes, phone bills, and to pay his online legal research account. When the account reached an overdraft status of over \$14,000 the bank sued to recover the funds it paid in honor of the overdraft amount, which the Respondent eventually paid. After changing banks to service his client trust account, the Respondent again began over drafting the account. Upon audit by ODC, it was discovered that in a year's time, the Respondent had deposited a total of \$651,820.60 for thirty-eight clients into his client trust account but eighteen of those clients received no funds whatsoever. The auditor concluded Respondent had converted nearly \$188,000 of client funds to his own use. In yet another matter, the Respondent settled a client's case without consultation or authority prompting the client to lodge a complaint with ODC that she had not ever seen the settlement check, and had no knowledge if the funds he tendered to her were appropriate. In multiple other complaints, the Respondent was alleged to have settled Katrina claims and other personal injury claims without disbursing funds to clients or third party health care providers, and instead converting funds to his own use. Indeed, the Louisiana Division of Administration noted that Respondent had converted \$43,464 of funds due the state from eight different settlement checks. When confronted, the Respondent ultimately acknowledged that he maintained a 'rolling conversion' in his client trust account, using newly deposited funds to address prior conversions. However, he attempted to mitigate his conduct by suggesting that his ADHD condition was causally related to his conversions. The Court rejected that notion finding that the medical evidence fell far short of the causal connection required to constitute a viable mitigating factor. The Supreme Court noted that the Respondent's conduct violated duties owed to clients, was intentional, and caused substantial financial harm to dozens of clients and third parties. While the baseline sanction of disbarment was established, the Court found that the multiple instances of conversion of client funds with substantial harm satisfied guideline 1 of the Guidelines for Imposing Permanent Disbarment and that no other sanction would be appropriate.

Neglect, Dishonesty, Failure to Refund Unearned Fee:

In Re: Shields, 2014-2473, (La. 02/27/2015) So.3d Respondent was hired to represent a client to file for a divorce and was paid an advance fee of \$1500. The Respondent ultimately drafted the petition, but forwarded the document to the client via email and instructed her to print it out, sign the attorney's name not only as counsel but also a Notary on the verification, and then file it with the clerk of court. The client declined and later terminated the Respondent demanding the return of her file and the advance fee paid. The Respondent failed to respond. In another matter, parents hired Respondent to

represent their son in a criminal case paying her a fee of \$6,000. The respondent failed to enroll, failed to appear at the arraignment, failed to return the parent's calls or communicate with the client, and ultimately refused to refund the fee paid, but not earned. The Court determined that the facts supported a finding that the Respondent violated rules 1.15 (failure to account), 1.16 (failure to return client files) and 8.4(c) (dishonesty when asking the client to sign her name as both a lawyer and a notary). A one year and one day actual suspension was imposed with a requirement that Respondent make full restitution to her clients as a condition to filing for reinstatement.

Failed Readmission Effort:

In Re: Burnham, 2014-2716, (La. 03/05/2015) So.3d In this matter, the Respondent sought readmission to the practice of law following his disbarment imposed following his federal felony conviction for involvement in a fraudulent investment scam. At the hearing, the Respondent failed to convince the hearing committee that he had made any meaningful efforts towards restitution to the victims of his fraud (including many of his fellow church members) or that he yet accepted responsibility for the conduct giving rise to his conviction and disbarment. The Court denied his petition for readmission and imposed a three (3) year wait before permitting him to reapply. One justice concurred in part and dissented in part, indicating that she could envision no circumstance where she would find that the Respondent should ever be readmitted; and that he should be permanently prohibited from filing another application for readmission.

Lack of Communication, Neglect, Failure to Refund Unearned Fees:

In Re: Gray, 2014-2085, (La. 03/17/2015) So.3d In the first matter, Respondent was hired in 2004 to pursue a medical malpractice action, but by 2009 the client was unaware of any actions taken to move the case forward as her calls were rarely if ever returned. Despite his termination, Respondent refused to release her file to her new attorney. In the second matter, Respondent was hired to pursue a wrongful death claim where an inmate died in jail. Although he filed suit timely, for lack of action the case was dismissed as abandoned. The Respondent failed to communicate the dismissal to his client who in fact reported it to him when she discovered the order of dismissal when checking the record herself. In a third matter, Respondent was hired and paid \$18,750 to file a motion to allow his client to withdraw his guilty plea in a criminal matter, but never filed the motion (although the client had previously filed his own pro se motion to withdraw his plea). When the matter came on for hearing, the Respondent did not appear nor had he notified the client of the pending hearing, and the pro se motion was denied. In the final matter, Respondent was hired and paid \$3900 to file a succession proceeding on behalf of his client, but failed to do so. The client ceased making payments when the Respondent failed to communicate with her and failed to refund the unearned fee upon demand. When faced with a Board recommendation of a 2 year suspension, the Respondent asked the Court to remand the matter to the hearing committee so as to allow him to submit mitigating evidence which he suggested he did not do, choosing instead to merely defend on the merits. The Court denied that request noting that

under Rule XIX, there is no basis for a bifurcated hearing. Finding that Respondent's misconduct was proven by clear and convincing evidence, the Court accepted the Board's recommendation, suspended the Respondent for 2 years and ordered him to make restitution and participate in fee arbitration where the extent of the unearned fee was undetermined.

Trust Account Mismanagement, Conversion:

In Re: Southall, 2014-2441 (La. 03/17/2015) So.3d Respondent faced 5 counts of misconduct stemming from 5 complaints filed against her. Noteworthy was that Respondent had previously been suspended by the Court in 1998 and placed on probation, the terms of which included attendance at the LSBA Ethics School. Several of the matter involved domestic cases where she lacked diligence in filing and completing the divorce, failing to comprehend the workings of the Long Arm Statute resulting in an invalid divorce judgment; in a succession case, Respondent was discharged by her initial client and then agreed to accept the representation of another heir whose claims were adverse to the original client (in the same succession proceeding) resulting in a conflict with her former client; accepted an advance deposit of fees and costs from another client without depositing same to her trust account—claiming that she kept the funds in an envelope in the glove box of her car, then failing to return the client file upon discharge until nearly 7 months later; and mismanaged her client trust account resulting in repeated instances of conversion and commingling of funds with a failure to maintain records of financial dealings with clients for the required 5 years as mandated by the Court's rules; and failing to cooperate with the disciplinary investigation. Applying the guidelines announced in the Court's *Hinrichs* decision from 1986, the majority concluded that a 3 year suspension was the appropriate sanction. One justice dissented as to sanction and would have imposed disbarment.

Post Termination Conduct, Dishonesty in Disciplinary Investigation:

In Re: Bercier, 2014-2352 (La. 03/27/2015), So.3d Here the Respondent initially represented the complainant in an auto accident case, but was soon discharged by a written termination letter signed for by his staff (now ex-wife). Nonetheless, Respondent filed suit on behalf of his former client without his knowledge or authority. When confronted with the complaint, Respondent claimed not to have received the termination letter and presented what was later determined to be an altered envelope purportedly reflecting notations made by the postal delivery person; a claim the postal worker testified was false. In another count, Respondent was named as a legatee in a will and was to receive real estate that he knew to be encumbered by a mortgage. When he arranged to sell the property, he failed to disclose the existence of the mortgage to the buyer's attorney who, relying upon a fellow attorney's representations that the property title was 'free and clear', bypassed performing a title exam to reduce the costs to his clients. The Court determined that the Respondent's conduct in both matters reflected dishonesty with harm to others, and imposed a 2 year suspension.

Multiple Conversions of Funds:

In Re: Kerri Glenn Armstrong, 2015-0283 (La. 04/10/2015) So.3d Two counts of misconduct were lodged against this Respondent, both of which involved bankruptcy matters. In the first, she accepted an advance deposit for fees and costs to handle a bankruptcy for her client but later advised that she converted the adversary matter to a Chapter 7 indicating that a New York tax liability was eligible for discharge. When the Respondent's advice was called into question, she was discharged by the client who requested a refund of the unearned fee. When she could not reach the Respondent, the complaint was filed. Investigation revealed that the Respondent had not placed the advance fees in trust, but rather converted the fees and costs to her own use. During the investigation, the ODC discovered that her bar registration address was a vacant house. In the second matter, she worked at a law firm handling bankruptcy cases. Upon discharge by her firm they discovered that she had accepted a number of bankruptcy fee and cost payments which she did not deposit with the firm, but rather converted to her own use totaling over \$6,000 including a payment owed to the trustee. Respondent disappeared, never responded or cooperated with the disciplinary investigation, and failed to answer the formal charges. The Court found that her conversion of funds reflected repeated instances of dishonesty warranting the imposition of disbarment and an order of restitution to her victims.

Felony Malfeasance in Office:

In Re: Jefferson, 2015—0508 (La. 05/01/2015) So.3d The Respondent was a former U.S. Congressman convicted in federal criminal proceedings of accepting bribes in exchange for promoting business deals in Africa. His conviction included counts of conspiracy, wire fraud, bribery, money laundering and racketeering resulting in a sentence of 156 months of incarceration followed by 3 years supervised probation upon release. The Court found that his conduct fit the Guidelines for Imposing Permanent Disbarment inasmuch as he engaged in malfeasance in office resulting in a felony conviction involving fraud.

Conversion of Funds, Violation of Court Order:

In Re: Rejohnna Mitchell, 2014-2544 (La. 05/05 2015), So.3d Respondent represented a client in a domestic case who was ordered to pay \$20,000 to a bank to satisfy the mortgage indebtedness. The client was able to produce \$7,000 which the judge ordered the Respondent to deposit to her trust account and then disburse to the bank. Shortly thereafter, the client thru other counsel filed for bankruptcy and the domestic judge amended his order directing the Respondent to forward the funds to the trustee. After defying 4 orders of the judge to disburse the funds, the Respondent removed them and converted the funds to her own use "seizing the funds to satisfy my attorney fee and costs." In another count, Respondent entered into a real estate business transaction with a client without advising that they seek out independent counsel to address the conflict. Finally, Respondent was paid an advance deposit fee to represent a third client in an insurance dispute. Soon thereafter the client discharged Respondent and thru new counsel requested in writing her file and an accounting of the fee paid, seeking a refund of any unearned portion. Respondent did neither and was held in contempt by

the trial court. In the process, the Respondent became ineligible to practice law and did not remedy the administrative deficiencies. The Respondent failed to answer the formal charges which went 'deemed admitted' under Rule XIX. At the Board level, however, she appeared and asked to have the matter remanded to the hearing committee alleging she had a medical episode that prevented her earlier participation. The Board Chair granted her request and the matter returned to the committee where she once again failed to appear. She later asked for a continuance in the matter which the chair denied but agreed to leave the record open for the receipt of evidence and/or argument in the matter. The Respondent submitted nothing. The Court ultimately found that the allegations of misconduct lodged against her were proven by clear and convincing evidence and that her actions were intentional, particularly the conversion of the \$7,000. Rather than the 3 year suspension recommended by the hearing committee and board, however, the Court imposed disbarment with an order of restitution. Justice Crichton dissented and would have imposed permanent disbarment.

Communication, Neglect:

In Re: Cade, 2015-0803 (La. 06/19/2015), So.3d Following an auto accident, the client hired Respondent to represent her and suit was filed. However, because he failed to comply with the discovery orders set by the Court, the trial date was upset and the matter continued. He thereafter failed to communicate with his client or return her calls, take any actions to move the lawsuit towards resolution and the case was ultimately dismissed on grounds of abandonment. The client later learned of the dismissal and after determining that there was no basis for reinstating her cause of action, filed a complaint and a legal malpractice action against him. The Court found that the allegations of misconduct were proven and imposed a 1 year and 1 day suspension with 6 months deferred subject to a 2 year period of unsupervised probation on such terms as ODC may impose.

Unauthorized Practice of Law:

In Re: Stampley, 2015-1142 (La. 06/30/2015) So.3d The Court accepted the Respondent's permanent resignation in lieu of discipline for engaging in the unauthorized practice of law—including providing legal advice, charging and collecting attorney fees, and failing to advise clients that he had been earlier suspended from the practice of law by an earlier order of the Court.

Using Social Media to Prejudice Proceedings:

In Re: McCool, 2015-0284 (La. 06/30/2015) So.3d ; rehearing denied Respondent and a woman in domestic proceedings ongoing in Mississippi were friends. Wife accused her husband in those proceedings of molesting their two young daughters thus seeking to terminate his contact with them and his parental rights. In response the Mississippi judge placed the allegations and related video/audio statements of the minors under seal while the allegations were investigated. Though not licensed in Mississippi, Respondent provided advice and guidance to her friend. When the wife and her new husband sought to bring an intra-family adoption proceeding in Louisiana using Respondent as her attorney, the Louisiana judge became aware of the ongoing proceedings in Mississippi and entered an

order staying the Louisiana proceedings pending the outcome in Mississippi. The Respondent together with her friend took to the internet and began recruiting others to make contact with the Mississippi judge to ‘persuade’ her to rule in the wife’s favor; launched an online petition accusing both the Mississippi and Louisiana judges of ignoring the law and failing to protect the children; claimed the Mississippi judge possessed evidence of the abuse, but “refused to hear it”; and posted photos of the two young girls online and provided a link in her blog to both the video and audio files placed under seal in the still pending Mississippi proceedings. People across the country were invited to write or call the two judges to express their support for the children and warn the judges of the consequences of their failure to ‘protect’ them. Respondent also attempted to recruit celebrities and news outlets across the country including *Dateline* and *Oprah* to join the cause. Claims by Respondent that the Mississippi judge have refused to consider the audio evidence were proven false when she had to acknowledge that they were not ever offered as evidence in those proceedings. The online campaign waged by Respondent eventually forced both judges to recuse themselves in the respective cases to avoid the ‘appearance of impropriety’. After investigation, ODC filed formal charges against Respondent alleging that her online assault upon the two judges violated multiple Rules of Professional Conduct including 3.5(a)—seeking to influence a judge by means prohibited by law; Rule 3.5(b)—engaging in ex-parte communications with a judge thru the actions of another (8.4(a)); Rule 8.4(c)—conduct involving dishonesty, fraud, deceit, or misrepresentation; and Rule 8.4(d)—conduct prejudicial to the administration of justice. Respondent answered the formal charges denying that her actions violated any rule of professional conduct, and that in all events her actions and statements were protected free speech under the First Amendment to the U.S. Constitution.

The Court noted the evidence which supported the allegations of misconduct regarding efforts to engage, thru others, in ex parte communications with the judges in a pending, sealed matter:

“• Please sign the petition, circulate it to all of your friends and families and call Judge Amacker and Judge Gambrell during the hours of 8:30 to 5:00 starting Monday, August 15 to ask why they won’t follow the law and protect these children. Let them know you’re watching and expect them to do their job and most of all, make sure these precious little girls are safe!

• Call the Louisiana Supreme Court and tell them you want the law to protect these girls? [phone number] [A]sk about the writ pending that was filed by attorney Nanine McCool on Friday, August 12, 2011.)

• Let’s turn this around and be [H’s] hero. Please sign the Care2 petition and continue to call Judge Gambrell to ask her why she is unwilling to afford [H] and [Z] simple justice.

• You can sign the petition and lend your voice to this cause here. Or, you can contact directly. Contact information is: [provided contact information for the judges and their staff].

• Sign our petition telling the judges that there can be no justice for [H] and [Z], or any child, if the law and evidence is ignored. Tell them they must look at the evidence before they make a decision that will affect the rest of [H] and [Z’s] lives. Ask yourself, what if these were your daughters?... Horrified? Call the judges and let them know.”

The Court also noted that at least one of Respondent’s online ‘recruits’ called the Mississippi judge at home accusing her of being in support of child predators. On these allegations the Court stated:

“Coupled with her social media postings, we further conclude respondent’s online activity amounted to a viral campaign to influence and intimidate the judiciary, including this Court, in pending, sealed domestic litigations by means prohibited by law and through the actions of others. Accordingly, we find the evidence clearly and convincingly shows respondent’s conduct in this regard violated Rules 3.5(a) and (b) and Rule 8.4(a) of the Rules of Professional Conduct.”

The Court went on to find that the Respondent’s internet and social media campaign contained factual inaccuracies and charges against the judges that rose to the level of intentional dissemination of false information such that her behavior was dishonest and deceitful in violation of Rule 8.4(c). Finally, the Court noted that Respondent’s actions taken cumulatively were designed to prejudice the fair and impartial administration of justice and therefore violated Rule 8.4(d). In doing so, the Court majority considered and dismissed the Respondent’s argument that her conduct and claims were protected free speech, noting that the U.S. Supreme Court in *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S.Ct. 2720 (1991) held that “...lawyers in pending cases were subject to ethical restrictions on speech to which an ordinary citizen would not be.” The opinion states:

“Rather than protected speech, the evidence clearly and convincingly shows respondent’s online and social media campaign was nothing more than an orchestrated effort to inflame the public sensibility for the sole purpose of influencing this Court and the judges presiding over the pending litigation. As such it most assuredly threatened the independence and integrity of the courts in the underlying sealed domestic matters. Moreover, the testimony irrefutably establishes both presiding judges perceived the campaign as a threat to their personal security and as an attempt to intimidate and harass them into ruling as the petitioners wanted.”

As the Court addressed the appropriate sanction in the matter, they made the following observation:

“It is this utter lack of remorse that astonished this Court when she appeared before us for oral argument. Her defiant attitude as to the rules of our profession vis-à-vis her First Amendment, rights was clearly evident in her response to questions posed by several members of the Court. Completely unapologetic for her misconduct, respondent made it abundantly clear she would continue to use social media and blogs to effect her agenda to bring about the changes she sought in the underlying cases. Respondent will not admit to any wrong doing whatsoever.”

The majority determined that the baseline sanction for Respondent’s conduct was disbarment and after weighing the aggravating and mitigating factors—and particularly the “utter lack of remorse”, Respondent was ordered disbarred. Justice Guidry concurred in the finding of misconduct, but would have imposed a 3 year suspension.

Justice Weimer, however, concurred in part and dissented in part finding that at least some of the Respondent’s conduct and comments were indeed protected free speech. Specifically, he believed that some of the Respondent’s criticism of the two judges were indeed protected speech and offered that if she had not crossed the line by including false statements in her comments and by sponsoring ex parte communication efforts, all of her comments would have been fully protected. He would have imposed a suspension of 1 year and 1 day with six months deferred.

Neglect, Failure to Refund Unearned Fee, Failure to Cooperate:

In Re: Fradella, 2015-0981 (La. 08/28/2015) So.3d The Respondent faced a complaint of misconduct, presented after an earlier disciplinary proceeding was concluded. In an earlier disciplinary

matter (which the Court referred to as *Fradella I*), he represented a client in foreclosure proceeding accepting \$17,500 in advance fees and costs which he placed in his operating account rather than his client trust. Upon discharge while the matter was pending, he failed to refund the unearned fees or account for them. The court suspended him for 2 years. It was against this prior disciplinary history that the Court considered the current allegations against him.

Though hired and paid \$3000 as an advance fee to file a civil action, Respondent failed to do so. Over a year later he still had not filed suit or returned the unearned fee. Following the complaint, he failed to respond necessitating the issuance of an investigative subpoena by ODC to obtain his response. He was unable and unwilling to demonstrate that he placed the funds into his trust account. Formal charges were filed and he failed to answer the charges causing the factual allegations to be deemed admitted and proven. In analyzing the appropriate discipline, the Court noted that because ODC cannot control the timing of when a complaint is filed, it is appropriate for the Court to determine whether the newest matter occurred during the same time frame as prior disciplinary matters such that if it had been known to the Court (and ODC) at that time, a different sanction may have been appropriate. Here, the Court noted that the conduct was consistent with Respondent's prior violations and reflected a pattern of actions that, had it been known to the Court when *Fradella I* was decided would have likely resulted in disbarment.

Conversion, Dishonesty, Failure to Cooperate:

In Re: Webre, 2015-0982 (La. 8/28/2015) So.3d Respondent represented a client on a homeowner's damage claim and during that representation, came into possession of a payment for the benefit of the client in the amount of \$3,448.78 payable to he and his client. Upon his endorsement, he promised to deposit the funds into his trust account "until he needed the money". Subsequently the client's attempts to contact the Respondent failed until nearly two years later when he put her off saying he was working on a 'million dollar case.' When she hired new counsel to assist her in the retrieval of her money and take over her claim, a complaint was filed with ODC whose investigation showed that Respondent had converted the money to his own use, never having deposited the funds to his trust. Moreover, the Respondent consistently failed to cooperate in the disciplinary investigation. Formal charges were filed, but the Respondent failed to file an answer resulting in the factual allegations being deemed admitted. Finding that Respondent had failed to communicate, exercise reasonable diligence and had converted client funds with significant harm, the Court followed the recommendations of both the hearing committee and the Board and disbarred the Respondent.

Bribing a Prosecution Witness:

In Re: Pryor, 2015-0243 (La. 09/01/2015) So.2d A defendant charged with burglary of an inhabited dwelling and theft of a gun was represented by the Respondent in Orleans Criminal District Court. The homeowner was a prosecution witness but was approached by the Respondent who offered to pay him \$300 to drop the charges against the defendant, but he declined. Later, Respondent upped the offer to \$500, but once again the witness declined. When the matter was reported to ODC and following investigation, formal charges were filed alleging an 8.4(b) violation (criminal act) and an 8.4(c) Violation (conduct involving dishonesty, etc.). Respondent acknowledged approaching the witness with a 'drop charges' affidavit he wanted him to execute, but claimed that the offered payments was as restitution for the stolen gun. He acknowledged that when the witness refused to sign the affidavit, he did not transfer the \$300 to compensate for the stolen gun.

The Court noted that in cases where lawyers attempted to bribe witnesses or victims to dismiss charges against clients, the range of sanctions varied from an 18 month suspension to disbarment. Clearly giving the Respondent the benefit of the doubt, the majority imposed a 1 year and 1 day suspension. Two justices agreed with the finding of misconduct, but would have imposed a greater sanction with Justice Crichton suggesting that disbarment was appropriate.

Lack of Communication, Neglect, Dishonesty, Impeding Access to Evidence:

In Re: Hall, 2015-1208 (La. 09/18/2015) So.3d Multiple counts of misconduct were set forth in formal charges which the Respondent failed to answer. He accepted \$2,000 to represent a grandmother seeking custody of her grandchildren, but failed to communicate, perform any meaningful work, then refused to account for the fee or return any unearned portion. In a separate matter, he represented the mother in a hotly contested custody battle when he received word from opposing counsel that he intended to file an emergency change of custody and visitation predicated on a strong belief that the mother was abusing illegal drugs. Respondent purchased a 'purifying' shampoo advertised to remove drug buildup in hair, and deliver it to his client. He adamantly argued to the Judge that his client was not using illegal drugs, but cuticle testing was positive for several illegal drugs. In yet another domestic case, he accepted a \$1,000 flat fee but performed no work and refused to refund the clearly unearned fee. He was convicted of theft of utility services and throughout the process failed to cooperate with the disciplinary investigation, including ignoring a subpoena for his attendance at an investigative sworn statement. The Court found that his conduct was 'knowing' if not intentional, caused harm to clients and the profession and he was disbarred.

Neglect, Failure to Refund an Unearned Fee, UPL During Ineligibility:

In Re: Polk, 2015-1408 (La. 09/25/2015) So.3d Respondent received an advance deposit of \$700 towards legal fees from the client to handle a relatively simple succession issue. He never filed the necessary pleadings although he misled his client into believing that he would do so shortly. During the interim, he became ineligible to practice law, but nonetheless failed to disclose this to his client. After a year of no progress, the client asked to terminate the representation and sought return of his funds, but the Respondent failed to do so. The client hired another lawyer who completed the task in less than six months. At the hearing on formal charges, the Respondent admitted his misconduct and asked only to be heard in mitigation. The Court followed its actions in other similar cases and suspended the Respondent for one year and one day, and ordered him to pay restitution to his client with interest.

Lack of Communication, Neglect, Failure to Refund Unearned Fee:

In Re: Godwin 2015-1610 (La. 10/02/2015) So.3d Respondent on multiple occasions accepted fixed/flat fees from clients to represent them, but would perform no work, refused to communicate with them, and failed to refund the unearned fees or provide an accounting. He chose to permanently resign from the practice of law in lieu of discipline.

Conversion, Dishonesty:

In Re: Brasseaux 2015-1654 (La. 10/02/2015) So.3d Respondent went on a conversion spree involving hundreds of thousands of dollars stolen from successions, client settlements and including money due to a client who was a Catholic priest. With claims mounting with the LSBA Client Assistance Fund, the Respondent (who is still incarcerated in Vermillion Parish) chose to permanently resign from the practice of law in lieu of discipline.

Lack of Communication, Neglect, Dishonesty, Failure to Refund Unearned Fee:

In Re: Jones-Joseph 2015-1549 (La. 10/09/2015) So.3d This Respondent was previously disbarred by the Court for consistently failing to communicate with clients, lack of diligence, refusing to refund unearned fees, and failing to cooperate with the disciplinary investigation of complaints filed against her. In a family law case and in a criminal law case, she once again collected fees from her clients but did not work, lied to one client about the work done (expungement) that was untrue, failed to communicate, failed to refund clearly unearned fees, and failed to respond or cooperate with the disciplinary investigation. Respondent failed to answer the formal charges resulting in the factual allegations lodged against her to be 'deemed admitted'. The Court determined that for this already disbarred attorney the appropriate sanction would be to extend by five (5) years the time frame before which she would be permitted to seek readmission—effectively running two disbarments consecutively.

DWI:

In Re: Gill 2015-1373 (La. 10/23/2015) So.3d Respondent was arrested twice in 2008 for DWI and then again in February of 2009 for yet another DWI. After notification to ODC from the Division of Administration, an investigation was launched into his conduct. Following a referral to LAP and an independent evaluation, Respondent was referred to an intensive outpatient program in New Orleans, but chose to attend a facility of his own choosing. He was administratively discharged for non-compliance. By August of 2012, Respondent was arrested yet again for attempting to board a plane at the Louis Armstrong International Airport in New Orleans while in a highly intoxicated state, unable to stand or walk without assistance. While there, he threatened the airport law enforcement officers telling them he was an attorney, his mother was a retired member of the judiciary, and that they would all be sued for detaining him. He refused to respond to the ODC investigative inquiry and when subpoenaed, he advised ODC under oath that he was not intoxicated while at the airport, claiming he had nothing alcoholic to drink. Despite repeated efforts by LAP to arrange appropriate treatment, Respondent was resistant. He eventually entered a treatment facility but left before completion of treatment. On June 20, 2014 he was arrested yet again and charged with DWI. The Court agreed that the Respondent was guilty of violations of the Rules of Professional Conduct, noting that his failure to cooperate with LAP—though not a rule violation—would be considered a factor when designing appropriate discipline. Quoting from its decision in the *Baer* case, the Court stated:

We have imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, we tend to impose an actual suspension in those instances in which

multiple DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved. Both of these concerns are implicated in the instant case. Therefore, we find it is appropriate to impose a one year and one day suspension, with no portion of the suspension deferred. [Internal footnote omitted.]

The Court imposed a one year and one day suspension such that he must apply for reinstatement.

Failing to Endorse Client's Settlement Check:

In Re: Williams-Bensaadat 2015-1535 (La. 11/06/2015) So.3d Respondent was previously publicly reprimanded by the Court on consent for failure to communicate, neglect and conflicts of interest. In this instance, she faced formal charges which alleged that she was hired in a personal injury case, signing the client to a standard contingency fee contract. Although she was able to secure a \$15,000 offer, the client discharged her and hired new counsel. Respondent recorded her fee contract and withdrew in the matter. Successor counsel was able to negotiate a somewhat higher settlement and contacted the Respondent to see if she was willing to reduce her share of the contingency fee on the theory that she had been terminated for cause. She refused so successor counsel sent her the settlement draft for her endorsement, expressly advising her that he intended to deposit the full sum to his trust account, disburse to the client her share, and place the disputed amount of the fee into the registry of the court and provoke a concursus proceeding. Respondent refused to endorse the settlement draft or return it to successor counsel. After nearly six months and the filing of a disciplinary complaint against her, Respondent endorsed the check and returned it to counsel causing the client to suffer a nearly 6 month delay in receiving the funds to which she was entitled. In the interim Respondent sent a demand letter to her former client, thus communicating with a party known to be represented by counsel. She later denied at the hearing having ever done so. While the Board recommended only a public reprimand, the Court disagreed noting that the hearing committee's factual findings were supported by the evidence in the record; and that a 1 year and 1 day suspension with all but 6 months deferred, subject to a 2 year period of probation was the appropriate sanction.

Failed Readmission:

In Re: Bernstein 2015-1769 (La. 11/16.2015) So.3d Respondent was previously disbarred after intercepting and stealing attorney fees to which he was not entitled at two separate law firms. During his disbarment he continued to work as a CPA, but under an order of their oversight board that he not be allowed access to invoicing or funds within the CPA firm. During his readmission hearing, Respondent noted that during the 5 year period since his order of disbarment he had stolen nothing further, and hence demonstrated that he now possessed the requisite honesty and integrity to return to the practice of law. The two lawyer members of the hearing committee agreed, but the public member dissented indicating that because he had been closely monitored while working as a CPA, the absence of additional thefts was not proof of his current honesty and integrity to return to the practice of law. The Board split 6-3 on the same issue with the majority voting to return him to the practice of law. The Court summarily denied his readmission with two justices dissenting noting that they would **permanently** prohibit him from ever seeking readmission. One stated:

Respondent lacks the strength of character to represent his clients and his employers with trustworthiness. He has a flawed propensity for stealing and for dishonesty. While he may have performed well in his capacity as a C.P.A., his authorities, up until recently, were significantly curtailed and "structured" to guard against his dishonesties. The public and the legal profession cannot countenance respondent's lack of fundamental moral character.

Successful Reinstatement:

In Re: Hardy 2015-2098 (La. 12/07/2015) So.3d The Respondent sought reinstatement following an 18 month suspension order following a consent discipline submission. At the reinstatement, Respondent presented clear and convincing evidence of his eligibility to practice law offering the explanation that his prior conduct was a byproduct of a difficult marriage which ended in divorce; and that thru his substantial parental efforts, he was designated as the custodial parent of his minor daughter who was doing well. The Court found that the evidence supported his reinstatement to the practice of law without conditions.

Failed/Successful Reinstatement:

In Re: Booth 2015-2008 (La. 12/09/2015) So.3d Respondent was suspended by the Court for 2 years in 2009 for failure to communicate with clients, neglect of client matters, charging a clearly excessive fee which he failed to return, failing to withdraw and return a client's file promptly. He was ordered to pay restitution and disciplinary costs. By the time he filed for reinstatement, he had made only limited payments toward the outstanding balance on the disciplinary costs owed; and still owed substantial sums to the LSBA Client Assistance Fund who had reimbursed the affected client from his earlier disciplinary proceeding. The Court followed the recommendation of the hearing committee and initially denied his reinstatement. *After the expiration of the time for filing for rehearing*, Respondent nevertheless did so. The Court in a 5-2 decision reversed their 'final judgment' and ordered his conditional reinstatement subject to 2 years of probation during which he is required to only practice as a salaried employee under the supervision of another attorney and that he have no access to the client trust account or the operating account.

Bankruptcy Fraud Conviction:

In Re: Collier 2015-2181 (La. 01/15/2016) So.3d The Respondent was a bankruptcy attorney advertising 'No Money Down' bankruptcy case representation in north Louisiana. Evidence emerged that the Respondent was failing to secure written fee agreements (mandated in bankruptcy matters), taking post-petition fees without disclosure to the court, withholding credit counseling reports from filings to force clients to make post-petition payments, and failing to properly supervise employees which allowed them to engage in UPL. After entering a plea to Bankruptcy fraud, the Respondent tendered and the Court accepted his permanent resignation from the practice of law in lieu of discipline.

Gross Trust Account Mismanagement, Conversion and Commingling:

In Re: Dumas 2015-1570 (La. 02/04/2016) So.3d Respondent was disciplined by the Court on three prior occasions, the last being a 1 year and 1 day suspension with all but 6 months deferred for failure to properly manage his trust account resulting in commingling of third party funds. Against that disciplinary history, the instant charges reflected that his firm deposited over \$18,000 of succession funds into his trust account at one bank, but when the time came to disburse to the two heirs, he only paid one heir and then from an account at another bank. The second heir was not paid until May of 2012, some three years later. The investigation showed that his trust accounting was abysmal and that the trust account balance at the original bank where the succession funds were deposited fell below the amount necessary to cover the deposit resulting in a conversion of funds. The Court found that:

“Respondent routinely deposited and maintained large undifferentiated sums of personal and client funds in the account for extended periods of time.

On May 11, 2011, respondent made a cash deposit to the account without identifying the source of the funds.

Respondent withdrew large sums from the account by checks made payable to himself or by presenting “counter checks” made payable to cash, none of which describe or identify the reason or purpose of the payment.

Respondent frequently and routinely paid office expenses and other law office operating charges from the account.

Respondent failed to perform routine and regular inspections and/or reconciliations of the account to ensure the integrity of client funds.”

While the Board would have once again imposed a year suspension with all but six months deferred, the Court noted that it had imposed that sanction earlier, and nonetheless the same misconduct reoccurred.

“The board suggested we impose a sanction similar to the one we imposed in Dumas I – namely, a one-year suspension with six months deferred, followed by probation with conditions. When we imposed a relatively lenient sanction in Dumas I, it was our intention that respondent be given an opportunity to address his deficiencies. However, the record reveals that since his prior suspension, respondent’s accounting practices have only deteriorated further. The continuation of respondent’s misconduct following our judgment in Dumas I makes it clear no useful purpose would be served by deferring any portion of respondent’s suspension.”

Finding gross mismanagement of the trust account with both conversion and commingling of client funds, the Court imposed a 2 year suspension from the practice of law. Note: When additional complaints reflecting conversion of funds were received by ODC, the Respondent chose to permanently resign from the practice of law in lieu of further discipline.

Criticism of Judiciary Using False Allegations or With Reckless Disregard:

In Re: Mire 2015-1453 (La. 02/19/2016), So.3d ; rehearing denied 2015-1453 (La. 05/02/2016, So.3d . In one family law matter, Respondent’s client harbored the belief that the trial judge was biased and incompetent. Against her recommendation, the client filed a pro se motion to recuse the judge who stepped down, but not before handing down rulings on matters pending before her. In a separate family case, the same trial judge disclosed on the record the nature of her and her family’s relationship with members of one of the party’s family. Based upon her disclosure, neither party believed recusal was necessary. When Respondent’s client received an adverse ruling, he perceived that the trial judge was biased and prejudiced against him, a view that was reinforced when he discovered information regarding additional connections between the trial judge’s family and the other party. Upon instructions from her client, Respondent filed a motion to recuse relying, in part, upon the allegation that the judge failed to fully disclose her possible conflicts, a position the judge disputed. Intent on reviewing the original disclosures made by the judge on the record, Respondent sought a transcript of the discussion and believed that the transcript contained information not

reflected in the disclosures. After obtaining a copy of the court reporter's tapes, the Respondent accused the judge of splicing and altering the audio to include a disclosure not originally made.

In the original case, Respondent appealed a ruling of the trial court to the Court of Appeal, a seat on which the trial judge was seeking by running for that office. When the Court of Appeal denied relief, Respondent filed a writ with the Supreme Court alleging that both the trial judge and the Court of Appeal panel members were either incompetent and/or corrupt. The Respondent stated in one segment of her pleading to the Supreme Court that the Court of Appeal was covering up the actions of the trial judge to enhance her election to the Court of Appeal. Her writ to the Court was denied as untimely. After being alerted by ODC that the content of her writ to the Court was of concern under the Rules of Professional Conduct, she nonetheless disseminated it amongst members of the local bar. She was charged with violating Rule 3.1 (filing meritless claims); 3.2 (failing to expedite litigation); 3.5(d) (disrupting a tribunal); 8.2(a) (making false allegations against a member of the judiciary or with reckless disregard).

In a separate matter, Respondent did not seek or obtain permission of a bankruptcy court to accept the representation of a debtor in a family law case, and before receiving \$6,839.50 in advance fees and costs. Despite being ordered to disgorge the fee to the trustee, she refused and was eventually held in contempt by the Bankruptcy judge, a ruling which was affirmed by the Federal District Court judge. She was ultimately sanctioned and forced to pay \$35,639.50. She was charged with violating Rule 1.15(d)(failing to remit third party funds); 3.(filing meritless claims); 3.4(c)(knowingly disobedience of a rule of a tribunal); and 8.4(d)(conduct prejudicial to the administration of justice).

The Court found that the evidence in the bankruptcy matter was clear and convincing as to the rule violations alleged. As regards to the language used by Respondent in the writ application, the majority found that 8.2(a) was violated. In doing so, the Court once again spoke to the scope of 1st Amendment protection afforded lawyers and its use as a defense to misconduct allegations such as presented here:

“Because this rule proscribes only statements which the lawyer knows to be false or which the lawyer makes with reckless disregard for the truth, it comports with the First Amendment's guarantee of free speech. *See Garrison v. Louisiana*, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964).”

The majority went on to find that based upon the clear and convincing evidence in the record, Respondent either knew the allegations made were false or she made her assertions with reckless disregard for the truth. They noted that there was no evidence that the court reporter's tape was altered to insert additional comments as alleged by the Respondent. Moreover, they found that the comments directed to the actions and motives of the Court of Appeal panel had no basis in any fact, and were false or made with reckless disregard for the truth. The majority found that Respondent's conduct merited a 1 year and 1 day suspension

with all but 6 months deferred subject to a 2 year period of probation with Ethics School. One justice concurred but would have imposed a suspension of less than the year.

Justice Weimer dissented and would have imposed no discipline. In his dissent, the Justice found that the Bankruptcy Court had adequately addressed Respondent's behavior and that further discipline on that count was unnecessary and inappropriate. As to her comments regarding the trial judge and appellate court panel, he wrote that while Respondent's questioning of the various judges was not always done in a respectful manner, they were protected free speech noting the following:

"The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect."

Bridges v. State of California, 314 U.S. 252, 270-71 (1941) (footnote omitted).

Justice Hughes also dissented, clearly bothered by the transcript issue. He stated:

"Alteration of the transcript of a recorded judicial proceeding is a serious, perhaps criminal, matter. This court does justice no favor by punishing the whistle-blower. As pointed out by Justice Weimer, the majority manages to avoid the hard evidence that the alteration in this case was no accident or "malfunction". I concur with Justice Weimer's dissent."

The Court denied rehearing in the matter. In a concurring opinion, Justice Knoll reaffirmed the Court's jurisprudence reflected in the matter of *In Re: Simon*, 428 So.2d 406 (La. 1983) noting that an attorney's action, conduct and statements directed to a member of the judiciary are judged on an 'objective standard', not by a 'subjective' standard. The concurrence went on to detail the evidence contained in the record to demonstrate that the Respondent's allegations directed to both the trial judge, as well as the judges on the panel at the 3rd Circuit Court of Appeal were false as judged on an objective basis. Once again, Justice Weimer dissented and would have granted rehearing. While acknowledging the majority's "claim" to have applied the objective standard in judging the comments by the Respondent, he believed that they nonetheless inserted a subjective element into the evidentiary evaluation when they resorted to their 'ordinary experience' in evaluating the so called 'tape splicing' evidence. In essence, Justice Weimer found from his review of the evidentiary record ample evidence upon which the Respondent's comment were reasonable when judged on by the 'objective standard'.

"In conclusion, after reviewing the attorney's application for rehearing, I reiterate that "ordinary experience" establishes there was an objective, factual basis for the attorney to have made allegations of irregularity in the judicial proceedings. The original opinion in this matter has created a dilemma that can only be resolved by an

having an attorney surrender constitutionally protected rights to free speech and compromise a client's representation."

Failure to Refund Unearned Fees, Neglect, Dishonesty and Failure to Cooperate:

In Re: Janine Gilbert, 2016-0044 (La.03/04/2016) So.3d The Respondent faced multiple counts (4) of misconduct including lack of communication with clients, neglect of legal matters, failure to refund unearned fees, conversion of co-counsel's fees, and repeated failure to cooperate in the disciplinary investigation. The formal charges went unanswered and resulted in the factual allegations contained within them being deemed admitted under Rule XIX. The Court found that the Respondent's conduct was intention in all respects, and considering the utter lack of cooperation with the disciplinary investigation and her refusal to participate in the disciplinary proceedings brought against her, the appropriate sanction was disbarment with restitution to her victims.

Another Failure to Refund Unearned Fees, Neglect, Lack of Communciation and Failure to Cooperate:

In Re: Carla Brown-Manning, 2015-2341 (La. 03/04/2016), So.3d In this instance, the Respondent in two counts was charged with neglect of client legal matters, lack of meaningful communications, failure to refund unearned fees and a failure to cooperate. The fact finding by the committee in this 'deemed admitted' proceeding concluded that her violations were 'knowing' as opposed to intentional. The Court agreed and imposed a one year and one day suspension from the practice of law with restitution to her client and/or the LSBA client assistance fund. {Note: Compare this outcome wit Gilbert decided the same day. While there were two less counts, the misconduct was nearly identical. The distinction appears to be that the failure to refund the unearned fee in Gilbert persisted for such a period so as to be classified as a 'conversion'; and her conduct was determined to be intentional.}

Failure to Refund Unearned Fees: Part III

In Re: Katherine Guste, 2016-0077 (La. 03/04/2016), So.3d Here, the Respondent faced formal charges of misconduct for a third time. In Guste I she neglected legal matters and upon discharge, failed to refund the unearned fees and was suspended for six months, fully deferred, and ordered to make restitution to the client. She did not. In Guste II she again neglected legal matters, failed to refund the unearned fees and costs received and was again suspended by the Court, this time for two years with restitution ordered. She did not. In this matter, she took on a representation and received \$7500 fixed fee before being subject to an actual suspension in Guste II. She was unable to complete any work by the time of her actual suspension and should have immediately refunded the clearly unearned fee, but did not. In this instance, and considering her prior disciplinary record, the Court suspended her for an additional two (2) years—and again ordered restitution to her client.

Neglect Coupled with Dishonesty:

In Re: Jalila Bullock, 2016-0075 (La. 03/24/2016) So.3d The Respondent undertook the representation of a mother whose three year old daughter was tragically killed when struck by a motorcycle driver. While hired long before the running of prescription, she did not file suit nor perform any meaningful investigation of the matter before the case prescribed. In response to inquiries by the client, she mislead her into believing that she and the insurance company were working out the final details of a settlement, but that the insurer was being 'difficult'. In fact, there was no insurance coverage as it had lapsed prior to the accident. In an effort to perpetuate the misinformation, the respondent actually paid some money (\$7500) to the client/mother out of her own funds and indicated that the final settlement funds (another \$7500) would be paid later in the year. When it did not materialize and the client could not receive a copy of her file materials, a complaint was filed. ODC discovered that no suit had ever been filed and that the representations made by the Respondent were false. The Court found that neglect and dishonesty had been proved by clear and convincing evidence and imposed a suspension for one year and one day, with all but six months deferred. {Note: The Court's jurisprudence in this area has evolved over time such that simply neglect where a case prescribes is not typically to be pursued as a discipline matter, but rather as a legal malpractice case. However, the Court does expect disciplinary action to be initiated where dishonesty or deceit is also present.}

Multiple Instances of Conversion of Client/Third Party Funds:

In Re: Kerry Brown, 2016-0396 (La. 05/02/2016) So.3d This Respondent's activities earned an 11 count formal charges characterized by repeated instances of failing to refund clearly unearned fees; settling personal injury cases without the knowledge, permission or authority of the client, forging endorsements on checks and settlement documents, and converting the proceeds; failing to pay third party medical providers; sharing legal fees with a non-lawyer; failing to return files upon discharge; fail to cooperate in the disciplinary investigation; and in the most egregious instance, forged the name of an elderly client to settle the matter for \$99,000 converting the entirety of the funds to his own use. This latter charge resulted in criminal charges and his guilty plea to forger, theft of assets of the elderly and monetary instrument abuse. The Court found that his conduct was so severe that it warranted the imposition of permanent disbarment coupled with an order of restitution to his victims.

Civil Cases Which Impact Lawyer Regulation

1. **Saucier vs Haynes Dairy Products (1978)** –Regarding the division of attorney fees where there is a successor lawyer; highest ethical contingency fee will be honored; only one fee can be pursued; the fee is split between the lawyers in accordance with the proportionate work each performed.
2. **O'Rourke vs Cairns (1996)**—Where the contingency fee is to be divided between original successor lawyers, Saucier applies to the initial evaluation. However, where the

original lawyer was discharged for cause, the original lawyer's share of the fee is to be reduced by a percentage or 'penalty' for that misconduct.

3. **Hodges vs Reasonover (2012)**—Binding arbitration clause in an attorney's fee contract is permissible, but must be preceded by a number of specific disclosures to ensure fairness.
4. **Lamont vs Bennett (2015)**—Where a lawyer hides legal malpractice from client and fails to communicate that fact in compliance with Rule 1.4, the conduct is 'fraud' within the meaning of R.S. 9:5605(E) such that preemption does not apply.

5. **Third Party Reductions and the Collateral Source Rule:**

Hoffman vs 21st Century North American Insurance Company, 14-2279 (La. 10/2/15), ___ So.3rd ___

Framed as a question of first impression, the Supreme Court in this civil (non-discipline) case addressed whether a write-off from a medical provider, negotiated by the plaintiff's attorney, may be considered a *collateral source* from which the tortfeasor receives no set-off. Holding that the *collateral source* rule did not apply, the tortfeasor was entitled to the set-off represented by the reduced medical bill.

For those who do personal injury litigation, one of the most common elements of the plaintiff's case is the presentation of medical expenses incurred for injuries causally related to the incident or accident. While some do not, many health care providers will await the outcome of the litigation to be paid allowing the attorney to disburse the provider's invoiced medical fees out of the recovery. (See Rule 1.15(d) regarding the attorney's duty to promptly disburse funds to third parties who have an 'interest' in the funds held by the lawyer.)

It is also not uncommon for the plaintiff's attorney to approach a health care provider for consideration of a reduced payment of such medical fees, particularly when the hoped for recovery turns out to be less than expected. When the medical provider agrees to the reduction, the result is to allow greater recovery for the client. But what about when there exists "an arrangement" between the attorney and the medical provider whereby there exists an agreement to reduce the invoiced medical fee in all instances—regardless of full or appropriate recovery? Is the full bill to be paid by the tortfeasor and insurer, or is the standing "arrangement" for a discounted bill owed? The Court determined that the *collateral source* rule did not serve to benefit the plaintiff and that only the 'discounted' invoiced sum was recoverable as damages.

In doing so, the Court's opinion noted the potential ethical problem that may exist for the plaintiff's attorney under Rule 4.1 (truthfulness in statement to others) where the full undiscounted bill to be used as evidence of the plaintiff's accident related expense

when in fact, because of the standing “arrangement”, a lesser sum reflects the true expense expected to be borne by the plaintiff.

This civil case provides a limited glimpse into the ethical issues that abound when discounted medical and third party expenses occur in a personal injury case.