

**CUTTING EDGE ENTERTAINMENT LAW CONFERENCE
August 22-24th, 2019**

**Attorney Ethics and Professionalism-CLE OUTLINE:
Professionalism and the Ornerly Opponent:**

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With Judith A. DeFraitess and David A. Dalia

Dedicated to Vernon P. Thomas, Esq., a truly great man.

OUTLINE

- I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019**
- II. Pertinent Disciplinary Rules**
- III. Professional Rules Governing Escrow Accounts**

TEXT

- I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019**

"IN RE: M G. S
NO. 2019-B-0908
SUPREME COURT OF LOUISIANA
June 26, 2019..." In re S (La., 2019)

Motion filed by the Office of Disciplinary Counsel ("ODC") against respondent, M G. S. The motion seeks to revoke respondent's probation and make the previously-deferred portion of his suspension executory based on allegations that respondent failed to comply with the conditions of probation imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102 ("S I").

The record in S I demonstrated that respondent mismanaged his client trust account, neglected a legal matter, failed to communicate with a client, and failed to cooperate with the ODC in two

investigations. For this misconduct, the court suspended respondent from the practice of law for one year and one day, with all but sixty days deferred, followed by a two-year period of supervised probation with the following conditions: (1) respondent shall successfully complete Trust Accounting School; (2) respondent shall successfully complete Ethics School; and:

(3) respondent shall provide the ODC with quarterly audits of his client trust account.

The ODC alleged that respondent failed to submit quarterly audits of his client trust account, as required by his probation agreement.

After a hearing, at which respondent failed to appear, the disciplinary board concluded that respondent failed to comply with the terms and conditions of his probation by failing to provide the ODC with the name of a CPA for approval and by failing to provide any quarterly audits of his client trust account as required by the court's order in S I a.

"DECREE

For the reasons assigned, respondent's probation is revoked and the previously-deferred portion of the one year and one day suspension imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102, is hereby made immediately executory." In re S (La., 2019)

"IN RE: P. G.
NO. 2018-B-1646
SUPREME COURT OF LOUISIANA
June 26, 2019
ATTORNEY DISCIPLINARY PROCEEDING..." In re G (La., 2019)

"On February 3, 2016, the ODC received an overdraft notice regarding a November 23, 2015 overdraft in respondent's client trust account. The overdraft resulted from respondent's attempt to pay a third-party medical provider for services rendered to a client who had no funds in the trust account." In re G (La., 2019)

Thereafter, the ODC's forensic auditor conducted an audit of respondent's trust account for the period of August 1, 2015 through January 31, 2016. The audit revealed that respondent regularly paid non-client expenses and made cash withdrawals from his trust account; these non-client expenses and cash withdrawals totaled \$33,219.33 during the audit period. The audit also revealed that, on January 31, 2016, the trust account balance to satisfy pending client expenditures should have been at least \$16,345.62. Instead, the balance on that date was \$3,235.61, resulting in a deficit of \$13,110.01.

On March 17, 2016, respondent informed the ODC that he was addicted to OxyContin, explaining that "the cost of the medication coupled with its effects on me overwhelmed my finances and I eventually began to take money from my Trust account." He also informed the

ODC that he had contacted the Judges and Lawyers Assistance Program ("JLAP") and was preparing to enter inpatient treatment. He further informed the ODC that "I have also gone through my files and paid all outstanding debts that had been previously withheld from client settlements." This last statement was confirmed by the ODC's audit of respondent's trust account. Finally, during his October 26, 2016 sworn statement to the ODC, respondent admitted that he regularly used his trust account as a second operating account in 2015.

On July 7, 2016, respondent completed a ninety-day inpatient treatment program at Palmetto Addiction Recovery Center. Palmetto's medical director diagnosed respondent with severe opioid use disorder, among other diagnoses. On July 12, 2016, respondent signed a five-year JLAP recovery agreement.

Regarding mitigating factors, the committee noted that the ODC had stipulated to the following: absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

In light of the above findings, the committee recommended respondent be suspended from the practice of law for one year and one day, fully deferred, subject to the following conditions:...

1. Respondent shall continue to be bound by the terms of his JLAP recovery agreement for at least two years;

2. Respondent shall obtain regular audits of his trust account, to be performed by a CPA approved by the ODC;

3. Respondent shall submit the findings of the audits on a quarterly basis to the ODC for two years;

4. Respondent shall take at least six hours of continuing legal education in the area of law office practice/client trust account management; and

5. Respondent shall successfully complete the Louisiana State Bar Association's Trust Accounting School within one year.

The ODC objected to the leniency of the committee's recommended sanction, arguing that the period of deferment is not supported by the record.

"The board recognized the sole aggravating factor of multiple offenses." In re Giraud (La., 2019) "Based on this reasoning, we will suspend respondent from the practice of law for one year and one day, with all but six months deferred, subject to two years of probation with the conditions set forth in the board's report,..."

IN RE: J F. O, JR.
NO. 2019-OB-0985
SUPREME COURT OF LOUISIANA
June 26, 2019

ORDER

The Office of Disciplinary Counsel ("ODC") filed formal charges against respondent, alleging that he failed to file federal tax returns on behalf of his law firm and failed to remit funds withheld from his employees' paychecks to the federal government. Respondent now seeks to permanently resign from the practice of law in lieu of discipline. The ODC has concurred in respondent's petition.

IT IS FURTHER ORDERED that J F. O. Jr. shall be permanently prohibited from practicing law in Louisiana or in any other jurisdiction in which he is admitted to the practice of law; shall be permanently prohibited from seeking readmission to the practice of law in this state or in any other jurisdiction in which he is admitted; and shall be permanently prohibited from seeking admission to the practice of law in any jurisdiction.

IN RE: T A. H
NO. 2019-B-0827
SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, T A. H, was arrested for alcohol-related misconduct on four occasions, three of which involved driving while intoxicated. For this misconduct, we accepted a joint petition for consent discipline filed by respondent and the Office of Disciplinary Counsel ("ODC") and suspended respondent for a period of one year and one day, with all but six months deferred, subject to a period of probation to coincide with respondent's recovery agreement with the Judges and Lawyers Assistance Program ("JLAP").¹ In re: H, 17-0726 (La. 9/15/17), 224 So. 3d 963

IN RE: A D P
NO. 2019-B-0901
SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent neglected a legal matter, failed to communicate with a client, and engaged in a personal relationship with a current client. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline in which respondent admitted that his conduct violated Rules 1.3, 1.4(a)(3), 1.7, and 8.4(a) of the Rules of Professional Conduct. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that A D P, Louisiana Bar Roll number 25815, be and he hereby is suspended from the practice of law for a period of one year.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

IN RE: K L J
No. 2019-B-0653
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

Crichton, J., would reject the petition for consent discipline.

I dissent from the per curiam, because, in my view, the discipline of one year and one day, with only thirty days deferred, is too lenient. Respondent herself stipulated that she as grossly negligent in the mismanagement of her client trust account. Further, I find respondent's failures to respond the Office of Disciplinary Counsel in its investigations of that mismanagement to be egregious.

With respect to Count I, Respondent initially failed to respond to the ODC's notice of a June 2017 overdraft of her client trust account. After ODC issued a formal complaint, respondent submitted a request for an extension of time to respond, but the account was again overdrawn. She was then sent notice of the second overdraft, but failed to respond to that notice, requiring the ODC to send a second request for a response. At that point, by now months later in October 2017, respondent again requested another extension of time. The ODC granted her that courtesy, but she again failed to respond. After a third request for a response from the ODC, respondent provided some materials, but it was incomplete. Thus, ODC had to request additional documentation, leading to a similar circle of events in which respondent again requested additional time, which was granted by ODC, but did not submit the supplemental materials.

IN RE: G C
NO. 2019-B-0406
SUPREME COURT OF LOUISIANA

June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, G C, engaged in a conflict of interest. For this misconduct, we suspended respondent for a period of six months, with all but thirty days deferred, subject to one year of unsupervised probation. In re: C, 18-1076 (La. 12/5/18), 2018 WL 6390368 ("C I"). Respondent did not file a request for a rehearing, and the order of suspension became final and effective on December 20, 2018. In the instant matter, the Office of Disciplinary Counsel ("ODC") seeks to make the deferred suspension executory, based upon allegations that respondent engaged in the unauthorized practice of law during his suspension and made false representations in his affidavit for reinstatement.

UNDERLYING FACTS AND PROCEDURAL HISTORY

On February 8, 2019, respondent telephoned the ODC to discuss his probation. Both during this telephone call and thereafter in writing, respondent admitted that he regularly engaged in the practice of law after the effective date of his suspension.

The ODC has verified numerous actions taken by respondent during his suspension which constitute the practice of law:...

We agree that these circumstances constitute misconduct. Although the ODC has requested that the previously-deferred portion of the suspension be made executory, we find no evidence that respondent has served any part of the active portion of his suspension. To the contrary, the record reveals respondent continued to practice law between the finality of our decree on December 20, 2018 through January 31, 2019. Accordingly, we will make the entire six-month suspension imposed in C I immediately executory, to commence from the date of this decree.

WHAT WAS THE CONFLICT OF INTEREST?:

IN RE: G C
NO. 2018-B-1076
SUPREME COURT OF LOUISIANA
December 5, 2018
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, G C, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

In February 2016, Cedric Duncan and his sisters, Pamelian Norwood and Angela Freeman, hired respondent to handle the succession of their mother, Ethel Duncan, who died intestate on February 11, 2016. Respondent charged a flat fee of \$1,800, and the siblings agreed to split the fee three ways. Respondent was paid the entire \$1,800 and provided Cedric with a receipt for \$600. Nevertheless, respondent claimed he never received any money directly from Cedric, asserting that Angela paid Cedric's portion of the fee.

The petition for possession respondent prepared and filed excluded Cedric as an heir to Ethel's estate. Respondent claimed Pamelian and Angela told him Cedric no longer wished to be a part of the succession. However, respondent never verified this with Cedric. In June 2016, the judge signed the judgment of possession splitting Ethel's property equally between Pamelian and Angela.

When Cedric received a copy of the judgment of possession, he hired attorney Kristina Shapiro to reopen the succession, paying her \$3,000 for the representation.

Ms. Shapiro filed a petition to annul the judgment of possession and for damages, naming Pamelian, Angela, and respondent as defendants. Ms. Shapiro also filed a motion to reopen the succession.

Respondent filed an answer to the petition to annul the judgment of possession and for damages on behalf of Pamelian, Angela, and himself. Respondent also appeared at the December 1, 2016 hearing to reopen the succession and argued on behalf of Pamelian and Angela. The judge reopened the succession and named Cedric as the administrator. Shortly thereafter, respondent withdrew from the representation of Pamelian and Angela.

[See Disciplinary Proceedings in this case above]

IN RE: C J. W
NO. 2019-B-0663
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent committed serious attorney misconduct, including neglect of his clients' legal matters, failure to communicate with his clients, failure to refund unearned fees, failure to place advanced deposits for costs and expenses into his client trust account, and failure to return his clients' files upon the termination of the representation. Respondent also practiced law while he was ineligible to do so, failed to cooperate with the ODC in its investigation, and was charged with issuing worthless checks. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that C J. W, Louisiana Bar Roll number 29017, be suspended from the practice of law for a period of three years, which suspension commences from the effective date of this order.

IT IS FURTHER ORDERED that respondent shall make full restitution to all clients to whom refunds are owed.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent..

IN RE: M. F
NO. 2018-B-1483
SUPREME COURT OF LOUISIANA
May 28, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Pursuant to Supreme Court Rule XIX, § 21, the Office of Disciplinary Counsel ("ODC") has filed a petition seeking the imposition of reciprocal discipline against respondent, M R. F, an attorney licensed to practice law in Louisiana, Tennessee, and Colorado, based upon discipline imposed by the Supreme Court of Colorado.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In 1987, respondent maintained a law office in Denver, Colorado, wherein he accepted new legal cases and collected retainers until October 21, 1987. On October 23, 1987, respondent essentially abandoned his law practice when he moved to Ireland without notice to most of his clients. Thereafter, respondent failed to file his 1988 annual registration statement or pay the \$90 registration fee.

Seven of respondent's clients filed grievances with the Colorado Disciplinary Counsel. Respondent failed to appear and answer a multiple count disciplinary complaint. The Supreme Court of Colorado ultimately found that respondent abandoned his law practice, converted his clients' funds to his own use, and failed to cooperate in the disciplinary proceedings. For this misconduct, the Supreme Court of Colorado disbarred¹ respondent and ordered him to make restitution to the seven clients in the total amount of \$14,750.36.

After receiving notice of the Colorado order of discipline on January 27, 2017, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. A copy of the Final Judgment and Order issued by the Supreme Court of Colorado was attached to the motion.

On September 7, 2018, this court rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline in this state would be unwarranted. Respondent did not file a response to the court's order.

DISCUSSION

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline ... unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(4) The misconduct established warrants substantially different discipline in this state;

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In the instant case, respondent has made no showing of infirmities in the Colorado proceeding, nor do we discern any from our review of the record. Furthermore, we find there is no reason to deviate from the sanction imposed in Colorado as only under extraordinary circumstances should there be a significant variance from the sanction imposed by the other jurisdiction. In re: Aulston, 05-1546 (La. 1/13/06), 918 So. 2d 461. See also In re Zdravkovich, 831 A.2d 964, 968-69 (D.C. 2003) ("there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority").

Under these circumstances, it is appropriate to defer to the Colorado judgment imposing discipline upon respondent. Accordingly, we will impose reciprocal discipline in the form of disbarment.

Footnotes:

1. According to the Colorado Rules of Civil Procedure, Rule 251.6(a), disbarment is the revocation of an attorney's license to practice law in the state for at least eight years, subject to readmission as provided by Rule 251.29(a), which provides in pertinent part that "[a] disbarred attorney may not apply for readmission until at least eight years after the effective date of the

order of disbarment."...
In re Franks (La., 2019)

BAR FORGIVENESS IS POSSIBLE:

IN RE: S J. H
NO. 2019-OB-0459
SUPREME COURT OF LOUISIANA
May 20, 2019
ON APPLICATION FOR REINSTATEMENT

PER CURIAM

This proceeding arises out of an application for reinstatement to the practice of law filed by petitioner, S J. H, a suspended attorney.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In May 2001, petitioner was arrested and charged with driving while intoxicated ("DWI"), speeding, and improper lane usage. Ultimately, the DWI charge was dismissed, and petitioner pleaded guilty to the traffic charges.

In September 2001, petitioner vandalized a truck belonging to his ex-wife's boyfriend while it was parked at his ex-wife's home. He was arrested and charged with simple criminal damage to property and violation of a restraining order. He was also cited for failure to yield to an emergency vehicle for refusing to stop his car when the police ordered him to do so.

In December 2002, petitioner was arrested and charged with DWI second offense, hit and run, disobeying a red light, reckless driving, and failing to maintain proof of insurance. In February 2005, petitioner pleaded guilty to failing to report an accident, disobeying a red light, and reckless driving. In June 2005, the record of petitioner's arrest was expunged.

In June 2005, petitioner gave a sworn statement to the Office of Disciplinary Counsel ("ODC") regarding the three matters set forth above. In response to the ODC's questions, petitioner asserted his Fifth Amendment privilege against self-incrimination. The ODC insisted that he answer on the ground that all criminal charges against him had either been declined or resolved via plea agreement. Nevertheless, petitioner continued to refuse to answer, thereby failing to cooperate with the ODC's investigation.

For the above misconduct, we suspended petitioner from the practice of law for three years. In re: H, 09-0116 (La. 6/26/09), 15 So. 3d 82.

In June 2015, petitioner pleaded no contest to domestic abuse battery. In May 2016, we

accepted a joint petition for consent discipline filed by petitioner and the ODC and suspended petitioner from the practice of law for one year. In re: H, 16-0686 (La. 5/27/16), 193 So. 3d 124.

In August 2018, petitioner filed an application for reinstatement with the disciplinary board, alleging he has complied with the reinstatement criteria set forth in Supreme Court Rule XIX, § 24(E). The ODC took no position regarding the application for reinstatement. Accordingly, the matter was referred for a formal hearing before a hearing committee.

Following the hearing, the hearing committee recommended that petitioner be reinstated to the practice of law on a conditional basis for one year, subject to the following conditions:

1. Petitioner shall continue diagnostic monitoring with JLAP during the one-year probationary period. If his JLAP diagnostic monitoring agreement terminates by its own terms during the probationary period, then he shall execute a new agreement to satisfy this condition;
2. Petitioner shall maintain good standing pursuant to his JLAP agreement;
3. Petitioner shall maintain compliance with the Rules of Professional Conduct;
4. Petitioner shall cooperate with the ODC in the event of an inquiry as to his fitness to practice law; and
5. Petitioner shall satisfy all requirements to practice law pursuant to the rules governing attorneys in the State of Louisiana.

Neither petitioner nor the ODC objected to the hearing committee's recommendation.

DISCUSSION

After considering the record in its entirety, we find petitioner has met his burden of proving that he is entitled to be reinstated to the practice of law on a conditional basis. Accordingly, we will order that petitioner be reinstated to the practice of law, subject to a one-year period of probation governed by all of the conditions recommended by the hearing committee. In re H (La., 2019)

IN RE: Y J K
NO. 2019-B-0356
SUPREME COURT OF LOUISIANA
May 20, 2019
ATTORNEY DISCIPLINARY PROCEEDING

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Y J K, an attorney licensed to practice law in Louisiana

but currently on interim suspension based upon her conviction of a serious crime. In re: K, 16-0331 (La. 3/14/16), 186 So. 3d 649 (Johnson, C.J., recused).

UNDERLYING FACTS

In February 2013, respondent qualified to run for Orleans Parish Juvenile Court, representing in her qualifying documents that she was domiciled in Orleans Parish. Respondent subsequently prevailed in a runoff election. In March 2014, a grand jury in Orleans Parish indicted respondent on two felony criminal charges arising out of allegations that she was actually domiciled in St. Tammany Parish and that she made false representations about her domicile when she qualified to run for judicial office.

Following the indictment, this court disqualified respondent from exercising any judicial function during the pendency of further proceedings. In re: K, 14-0924 (La. 5/15/14), 140 So. 3d 711 (Johnson, C.J., recused). Prior to a final adjudication of the judicial discipline matter against respondent, she lost the status of a judge when she was defeated in the fall 2014 elections. As a result, the ODC assumed jurisdiction over respondent.

In November 2015, a jury found respondent guilty of both counts of the indictment. She was sentenced in February 2016 to a suspended jail sentence and probation.

Thereafter, respondent filed a motion for an out of time appeal of her criminal conviction, which motion was granted. The court of appeal then remanded the case to the trial court with instructions to conduct an evidentiary hearing on a claim of ineffective assistance of counsel. *State v. K*, 17-0123 (La. App. 4th Cir. 10/27/17), 231 So. 3d 110.

Following remand, on December 18, 2017, respondent entered into a plea agreement, whereby the original convictions were vacated. In exchange, respondent pleaded guilty to a misdemeanor violation of La. R.S. 18:1461.3(C)(4) (disobeying any lawful instruction of a registrar, deputy registrar, or commissioner).¹

DISCIPLINARY PROCEEDINGS

In March 2016, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b)

(commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent initially failed to answer the formal charges, and the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence. Eight months later, respondent, through counsel, filed an unopposed motion to recall the deemed

admitted order. She also sought a stay of the formal charge proceedings pending her criminal appeal. The motion and request for a stay were granted, and the deemed admitted order was recalled.

In re K (La., 2019)

In her submission, respondent indicated that she is the sole caregiver for her eighty-eight year old mother and fifty-six year old brother, both of whom are disabled and in need of constant care. After respondent's sister passed away in November 2015, respondent moved to Atlanta, Georgia to take care of them. In May 2018, respondent was forced to move with them back to Louisiana due to financial hardship. During the process, they have been without any home healthcare or transportation assistance services.

Respondent argued that she possesses good character and reputation. In support, she submitted three character reference letters as well as a transcript of her deposition, wherein she testified about her lifetime involvement in church and volunteer work with various juvenile agencies.

Respondent suggested that this matter is guided by the court's ruling in In re: Richmond, 08-0742 (La. 12/2/08), 996 So. 2d 282, wherein an attorney was found to have knowingly made false statements under oath regarding his domicile when he qualified as a candidate for public office. For his misconduct, the court suspended the attorney for six months, and in light of the mitigating factors present, deferred all but sixty days of the suspension. Respondent indicated that a similar sanction would be appropriate here, although, unlike Mr. Richmond, respondent did not occupy a position of public trust at the time of her conduct.² Respondent requested that any sanction be made retroactive to the date of her interim suspension, and requested that all costs and expenses associated with this proceeding be waived as she has been unemployed since December 2015.

In its submission on sanction, the ODC indicated that it could not stipulate to the presence of "personal problems" as a mitigating factor, inasmuch as there appeared to be no correlation between the acts of dishonesty by respondent in falsifying her domicile in the qualifying process and her mother's health problems and her brother's care needs. The ODC agreed that this matter is guided by Richmond, but noted that unlike respondent, Mr. Richmond was not criminally prosecuted for his conduct. The ODC suggested that respondent be suspended from the practice of law for one year, retroactive to the date of her interim suspension.

Hearing Committee Report

After considering the record, the hearing committee made factual findings consistent with the underlying facts set forth above. Based on those facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated duties owed to the public of this State. Her actions were knowing and intentional when she falsified her domicile in an attempt to be

elected as a juvenile court judge in Orleans Parish. Her actions caused harm to the public's trust in individuals seeking a position such as a judgeship. Respondent admitted that her behavior caused an undue burden on the legal system and shed a "negative light on the judiciary and legal profession." After considering the ABA's Standards for Imposing Lawyer Sanctions, the committee determined the baseline sanction is suspension.

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Y J K, Louisiana Bar Roll number 22096, be and she hereby is suspended from the practice of law for a period of one year, retroactive to March 14, 2016, the date of her interim suspension.

II. Pertinent Disciplinary Rules:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.

Safekeeping Property

(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. ...*[holding of client funds, see III, Escrow Section, below...]*... Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 3.2.

Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.4.

Fairness to Opposing Party and Counsel

A lawyer shall not:

(a)

unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b)

falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c)

knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d)

in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e)

in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f)

request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1)

the person is a relative or an employee or other agent of a client, and

(2)

the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 4.1.

Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a)

make a false statement of material fact or law to a third person; or

(b)

fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.4.

Misconduct

It is professional misconduct for a lawyer to:

(a)

Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b)

Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c)

Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d)

Engage in conduct that is prejudicial to the administration of justice;

(e)

State or imply an ability to influence improperly a judge, judicial officer, governmental

agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f)

Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or

(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

III. Professional Rules Governing Escrow Accounts:

A. Louisiana Rules of Professional Conduct With amendments through July 1, 2016:

Rule 1.15.

Safekeeping Property

(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. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b)

A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

(c)

A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).

(d)

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those

funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e)

When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f)

Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited.

A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

[Last sentence added 1/13/2015 and effective 4/1/2015]

(g)

A lawyer shall create and maintain an "IOLTA Account," which is a pooled interest bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(1)

IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least \$250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A)

No earnings from such an account shall be made available to a lawyer or law firm.

(B)

Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(C)

Funds in each interest bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.

(2)

To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.

(3)

To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:

(A)

Establishing the IOLTA Account as:

(1) an interest bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000. "U.S. Government Securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United

States or any agency or instrumentality thereof.

(B)

Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or

(C)

Paying a “benchmark” amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of “allowable reasonable fees.”

(4)

Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:

(A)

To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution’s standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

(B)

To transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and

(C)

To transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5)

“Allowable reasonable fees” for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not “allowable reasonable fees” include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6)

A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an “eligible” financial institution.

(7)

“Unidentified Funds” are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(h)

A lawyer who learns of Unidentified Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer’s exercise of reasonable judgment under this paragraph (h).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer.

IOLTA Rules

(1)

The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.

(2)

The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:

(a)

No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.

(b)

Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non IOLTA, interest bearing client trust account and earnings may be made available to the client or third person, respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.

(c)

Funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

(d)

In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:

(1)

The amount of the funds to be deposited;

(2)

The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3)

The rates of interest or yield at financial institutions where the funds are to be deposited;

(4)

The cost of establishing and administering non IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;

(5)

The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;

(6)

Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person. The determination of whether funds to be invested could be utilized to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

(e)

Although notification of a lawyer's participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer's advancing the administration of justice in Louisiana beyond the lawyer's individual abilities in conjunction with other public spirited members of the profession. The placement

of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.

(3)

The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:

(a)

to provide legal services to the indigent and to the mentally disabled;

(b)

to provide law related educational programs for the public;

(c)

to study and support improvements to the administration of justice; and

(d)

for such other programs for the benefit of the public and the legal system of the

state as are specifically approved from time to time by the Supreme Court of Louisiana.

(4)

The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

**B. Rules for Lawyer Disciplinary Enforcement
(Louisiana Supreme Court Rule XIX)
With amendments through January 27, 2016**

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

A. Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, exec

utor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions that execute the agreement described in paragraph D below.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds

or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

B. Access to Lawyers' Financial Account Records.

Every lawyer practicing or admitted to practice law in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution, and

the overdraft reporting requirements mandated by this rule.

C. Request for Production of Records.

A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement.

D. Overdraft Notification Agreement Required.

A financial institution shall be approved as a depository for lawyer trust accounts if it files with the Board an agreement, in a form provided by the Board and approved by the Court, to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall administer securing participation of the financial institutions, and shall annually publish a list of the financial institutions that have executed overdraft notification agreements with the Board. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Board. Notification of trust or escrow account overdrafts shall be made in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

Section 29. Verification of Financial Accounts.

A.

Generally.

Whenever disciplinary counsel has probable cause to believe that financial accounts of a lawyer that contain, should contain, or have contained funds belonging to clients or third parties have not been properly maintained or that the funds have not been properly handled, disciplinary counsel shall request the approval of the chair of a hearing committee selected in order from the roster established by the board to initiate an investigation for the purpose of verifying the accuracy and integrity of all accounts maintained by the lawyer in any bank or similar institution. If the reviewing member approves, counsel shall proceed to verify the accuracy of the financial accounts. If the reviewing member denies approval, counsel may submit the request for approval to one other chair of a hearing committee selected in order from the roster established by the board.

B. Confidentiality.

Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer's records insofar as is consistent with these rules and the lawyer client privilege.

Appendix F to Disciplinary Rules: Supreme Court of Louisiana Trust Account Disclosure & Overdraft Notification Authorization

Pursuant to the inherent, plenary and Constitutional authority of the Louisiana Supreme Court to regulate the practice of law, and in accordance with Supreme Court Rule XIX, every attorney

licensed to and engaged in the practice law in Louisiana is required to disclose the existence of a trust or escrow account (or declare that because of the nature of his/her practice that he/she is not required to maintain such an account). Every attorney who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such account with a federally insured financial institution with whom the attorney has executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any account overdraft. Use of this form complies with the rules of the Louisiana Supreme Court.

C. From the Trust Account Disclosure & Overdraft Notification Authorization Form:

- A. All attorneys holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to a trust or escrow account);
- B. Every attorney maintaining a qualified pooled trust or escrow account must participate in the Interest on Lawyers Trust Account (IOLTA) Program administered by the Louisiana Bar Foundation; and
- C. All attorneys who are required to maintain trust or escrow accounts must do so with federally insured financial institutions with which they have executed agreements requiring the financial institutions to provide to the Office of Disciplinary Counsel written or electronic notification of any overdraft incident created on such accounts.

(Notice to Financial Institution:

Pursuant to Legislative Act 249 of the 2005 Regular Session, notice to the Office of Disciplinary Counsel shall be issued after five (5) business days have passed from the date of notice to the attorney, and whether or not the account remains in overdraft status; but such notice will not issue where the overdraft was created solely by bank charges imposed or when charges are imposed through bank error. Costs associated with providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The act provides that no civil or criminal action may be based upon a disclosure or non-disclosure of financial records made pursuant to the Act.)