

**CUTTING EDGE ENTERTAINMENT LAW CONFERENCE  
August 23-25, 2018**

**Attorney Ethics and Professionalism-CLE OUTLINE:  
Professionalism, Escrow Accounts, and the Ethics of Discovery:**

**David A. Dalia  
Attorney at Law  
830 Union Street, Suite 302  
New Orleans, LA 70112  
Phone: (504)-524-5541  
E-Mail: davidadalia@gmail.com**

**With Judith A. DeFraités, Nadine Ramsey and David A. Dalia**

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

**OUTLINE**

- I. Some Louisiana Supreme Court disciplinary cases-July, 2017-August, 2018**
- II. The Ethics of Discovery  
Professional Rules Which Can Affect the Ethics of Discovery**
- III. Professional Rules Governing Escrow Accounts**

**I. Some Louisiana Supreme Court disciplinary cases-July, 2017-August, 2018:**

**IN RE: MICHAEL M\*\*\*\*\*, NO. 17-B-1288, SUPREME COURT OF LOUISIANA  
October 16, 2017  
CRICHTON, J., dissents and assigns reasons:**

I dissent from the majority's imposition of discipline in this case and would suspend Respondent from the practice of law for three years—as recommended by the Hearing Committee and Justice Clark's dissent. See In Re: Michael M\*\*\*\*\*, 17-B-1288 (Clark, J., dissenting). Without question, Respondent committed serious misconduct by mismanaging his

trust account. However, what I strongly believe exacerbates Respondent's conduct is his total lack of responsiveness to the disciplinary proceedings. Specifically, Respondent did not respond to the formal charges filed by the Office of Disciplinary Council ("ODC"), forward his trust account statements to the ODC (as he said he would), object to the Hearing Committee's report and recommendation, or object to the Disciplinary Board's report and recommendation. In light of the scant evidence that Respondent cares about his bar license, I believe a harsher, three-year suspension is more appropriate.

**IN RE: Ali S\*\*\*\*\* , 232 So.3d 549 (Mem)  
January 9, 2018  
ON APPLICATION FOR REINSTATEMENT  
PER CURIAM:**

This proceeding arises out of an application for reinstatement filed by petitioner, Ali S\*\*\*\*\*, an attorney currently suspended from the practice of law in Louisiana. Petitioner instructed a client to sign petitioner's name on the attorney and notary lines of pleadings to be filed with a court, failed to return a client's file, failed to provide two clients with accountings, failed to refund unearned fees to two clients, and failed to cooperate with the Office of Disciplinary Counsel ("ODC") in an investigation. For this misconduct, we suspended petitioner from the practice of law for one year and one day and ordered her to "refund in full the legal fees paid by" the two clients. In re: S\*\*\*\*\*, 14-2473 (La. 2/27/15), 161 So.3d 614.

Petitioner subsequently filed an application for reinstatement with the disciplinary board, alleging she has complied with the reinstatement criteria set forth in Supreme Court Rule XIX, § 24(E). Included with petitioner's application were documents indicating that she refunded in full the legal fees paid by the two clients who were the subjects of her disciplinary proceeding.

After considering the record in its entirety, we will adopt the adjudicative committee chair's recommendation and reinstate petitioner to the practice of law.

**IN RE: HAROLD R\*\*\*\*\* , NO. 2017-B-1547, February 14, 2018  
PER CURIAM\*:**

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Harold R\*\*\*\*\* , an attorney licensed to practice law in Louisiana but currently on interim suspension pursuant to a joint petition filed by the parties in April 2017. In re: R\*\*\*\*\*, 17-0691 (La. 4/27/17), 218 So. 3d 94.

**UNDERLYING FACTS**

**Count I - The LeDay Matter**

In December 2009, while respondent was representing LeDerian LeDay in a criminal matter, Mr. LeDay was involved in an automobile accident. In August 2010, Mr. LeDay hired respondent on a contingency fee basis to represent him in his personal injury matter. The case settled in April 2011 for \$10,000, at which time respondent endorsed the settlement check and

deposited it into his client trust account. However, respondent did not disburse any funds to Mr. LeDay or provide him with a settlement disbursement statement. Respondent also did not pay Mr. LeDay's medical providers or satisfy a lien for Mr. LeDay's outstanding child support. In July 2013, Mr. LeDay filed a complaint against respondent with the ODC.

## Count II - The Glaude Matter

This matter arises from litigation relative to the seizure of \$129,852 in currency by the United States government, and regarding which the government later initiated a civil forfeiture complaint. The currency was seized from the son of Dianne Glaude, who subsequently died. In March 2008, Ms. Glaude paid respondent \$1,200 to represent her interests in her claim (as the heir to her son) for the return of the seized currency.

In November 2011, Ms. Glaude filed a complaint against respondent with the ODC. Ms. Glaude asserted that respondent failed to communicate with her in a timely fashion throughout the representation, and when she did receive a text message from him, he indicated that he was "on top of this situation." Ms. Glaude also stated that respondent failed to notify her of the proceedings in the district court or of the ruling granting the motion to strike. In response to the complaint, respondent indicated that Ms. Glaude's case was complex and despite his best efforts he could not "change the position of the Federal Government." Respondent noted that he had filed a motion seeking reconsideration of the district court's ruling in order to protect Ms. Glaude's interests, but the motion was denied.<sup>1</sup>

Respondent gave a sworn statement to the ODC in August 2012. He could not recall whether he had filed an opposition to the motion to strike and despite repeated requests, did not produce a copy of any such pleading. Asked why he did not appear in court for the hearing on the motion, respondent stated that the date was not marked on his calendar. Respondent indicated that he made efforts to effectively represent Ms. Glaude, but he also admitted that his efforts were not sufficient to obtain a positive outcome.

In 2012, Ms. Glaude filed a legal malpractice suit against respondent. The suit was settled in Ms. Glaude's favor in March 2015.

The ODC alleged that respondent's conduct violated Rules 1.1(a) (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), and 8.4(a) (violation of the Rules of Professional Conduct) of the Rules of Professional Conduct.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent knowingly violated duties owed to his clients, causing actual harm. The baseline sanction for this type of misconduct is suspension.

The record supports the following aggravating factors: a prior disciplinary record, multiple offenses, substantial experience in the practice of law, and indifference to making restitution. The record supports the following mitigating factors: remorse and remoteness of prior offenses.

Turning to the issue of an appropriate sanction, in *Louisiana State Bar Ass'n v. Hinrichs*, 486 So. 2d 116 (La. 1986), we conducted an extensive review of the jurisprudence in conversion cases in order to determine the appropriate sanctions for different types of conversion. We reserved disbarment, then the most serious sanction available, for conversion cases in which one or more of the following elements are present:

[T]he lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the client is great; the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings.

Here, respondent's conduct falls within the scope of disbarment. The length of the deprivation in the LeDay matter is extensive (more than six years), and respondent has failed to make restitution, causing great expense and inconvenience to Mr. LeDay and to third parties. Coupled with respondent's misconduct in the Glaude matter, we find there is no justification for a downward deviation from disbarment.

JOHNSON, Chief Justice, dissents and assigns reasons.

I disagree with the majority's decision to impose disbarment in this case. Based on the record, I find a more appropriate sanction to be suspension. I agree with the hearing committee's recommendation that respondent should be suspended from the practice of law for three years, subject to two years of supervised probation with conditions.

**IN RE: STEVEN G\*\*\*\*\*, No. 2017-OB-1885, March 2, 2018  
ON APPLICATION FOR REINSTATEMENT:**

CRICHTON, J., additionally concurs and assigns reasons:

I wholeheartedly agree with the Court's decision to deny petitioner's application for reinstatement. However, I write separately to point out petitioner's abhorrent behavior toward the disciplinary process, as well as his personal attacks against a deputy disciplinary counsel assigned to his case. Petitioner, employing inflammatory and derogatory language, accused the deputy disciplinary counsel of being a "conniving liar" and of opposing his application for reinstatement for purely personal reasons.<sup>1</sup> This type of communication with ODC, during the pendency of his application for reinstatement, is unprofessional and unacceptable.<sup>2</sup> In addition to this conduct, and as reflected by the record before us, petitioner has had a troublesome history with alcohol abuse and has displayed irresponsible, obnoxious, and vulgar behavior towards his daughter and her mother. In light of all of this, not only has petitioner engaged in "conduct prejudicial to the administration of justice" as found in Rule 8.4(d) of the Rules of Professional Conduct, I find petitioner has woefully failed to demonstrate he has met the criteria for reinstatement to the practice of law as required by La. Sup. Ct. R. XIX, §24 (E).

**IN RE: Mark S\*\*\*\*\*, 226 So.3d 1102  
PER CURIAM, NO. 2017-B-1043, October 16, 2017**

**UNDERLYING FACTS**

**The Client Trust Account Matter**

The ODC received notice from respondent's bank that his client trust account was overdrawn on September 6, 2012. Despite receiving notice of the overdraft from the ODC via certified mail, respondent failed to respond to the ODC's request for an explanation and request for copies of records related to the account.

Eventually, the ODC was able to audit the account for the period from May 2012 to June 2013. The audit revealed that, on June 30, 2013, respondent had not yet disbursed at least \$5,296.29 to clients or third parties. At that time, the balance in the account was \$1,696.31, indicating that respondent had converted \$3,599.98 in funds belonging to clients or third parties.

The ODC alleged respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.15 (safekeeping property of clients or third persons), 8.1(c) (failure to cooperate with the ODC in its investigation), and 8.4(a) (violation of the Rules of Professional Conduct).

**The Cormier Matter**

In April 2010, Patricia Cormier hired respondent to represent her regarding an EEOC claim against the Lafayette Parish School System. She paid respondent a total of \$2,000 for the representation. Respondent participated in mediation in the matter and corresponded with a representative of the school system in an attempt to present Ms. Cormier's demands to the full school board....Thereafter, respondent took no meaningful action regarding the matter. Ms. Cormier tried to contact respondent several times via e-mail, telephone, text message, and letter to obtain the status of the matter, but respondent failed to respond.

In April 2013, Ms. Cormier filed a disciplinary complaint against respondent. Despite receiving notice of the complaint via certified mail, respondent failed to respond. The ODC issued a subpoena to obtain respondent's sworn statement. Respondent was personally served.... Respondent did not appear at the sworn statement.

The ODC alleged respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.16(d) (obligations upon termination of the representation), 8.1(c), and 8.4(a)....

The committee then determined that respondent acted negligently, except when he intentionally failed to cooperate with the ODC's investigations. The committee also determined that respondent's actions or omissions generally relate to his inattention to detail and failure to clearly and timely communicate with his clients and the ODC.

In light of the above, the committee recommended respondent be suspended from the practice of law for one year and one day, fully deferred, subject to two years of probation with the following conditions: (1) respondent successfully complete trust account management training; (2) respondent successfully complete at least one hour of continuing legal education on the subject of law office practice; and (3) respondent's trust account be audited and found to be in compliance on a quarterly basis.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

#### Disciplinary Board Recommendation

After review, the disciplinary board found that the hearing committee's factual findings are not manifestly erroneous, except for its finding in the client trust account matter that respondent did not convert client funds. The board noted that, during the hearing, respondent stipulated to the findings of the ODC's audit in the client trust account matter. The audit concluded that respondent converted, commingled, and misused the funds in his client trust account and that there were procedural and accounting errors in the account records. The audit further revealed that the client trust account balance fell below the amount necessary to honor funds deposited and that respondent failed to properly document his records to ensure he was handling the account properly. Finally, the audit indicated that the total amount of funds converted was \$3,599.98 because funds due to nine parties at the end of the audit period had not yet been disbursed and the funds in the account were insufficient to cover all of these pending disbursements. Based on these facts, the board determined that respondent violated the Rules of Professional Conduct as charged.

The board then determined that respondent violated duties owed to his clients and the legal profession. He acted negligently with respect to his client trust account management and his handling of Ms. Cormier's legal matter but acted knowingly and intentionally when he failed to cooperate with the ODC in its investigations. The board determined that, while no clients were harmed by respondent's mismanagement of his client trust account, the potential for harm was great. Furthermore, Ms. Cormier suffered great frustration and possible injury due to respondent's failure to properly communicate with her or properly terminate the representation following the mediation process. After considering the ABA's Standards for Imposing Lawyer Sanctions, the board determined that the baseline sanction is suspension.

In aggravation, the board found multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law (admitted 1990). In mitigation, the board found only the absence of a prior disciplinary record.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day, with all but sixty days deferred, followed by two years of supervised probation with the following conditions: (1) respondent successfully complete the Louisiana State Bar Association's

("LSBA") Trust Accounting School; (2) respondent successfully complete the LSBA's Ethics School; and (3) respondent's trust account be audited on a quarterly basis.

In light of this case law, we will adopt the board's recommendation and suspend respondent from the practice of law for one year and one day, with all but sixty days deferred, followed by two years of supervised probation with the following conditions: (1) respondent successfully complete the LSBA's Trust Accounting School; (2) respondent successfully complete the LSBA's Ethics School; and (3) respondent's trust account be audited on a quarterly basis.

**IN RE: LOUISE K\*\*\*\*\*, NO. 2018-B-0093**  
**March 23, 2018**

CRICHTON, J., additionally concurs and assigns reasons:

I agree with the Court's imposition of a one year and one day suspension for respondent in this matter. However, I write separately to point out the troublesome manner in which respondent has blatantly ignored the serious and proven allegations against her. Despite numerous attempts by the Office of Disciplinary Counsel to reach respondent during the course of its investigation, respondent maintained her indifference and consistent refusal to cooperate. In my view, respondent's disdain for the disciplinary process, her negligence in maintaining her client trust account, and her disregard for the Rules of Professional Conduct absolutely warrant the suspension imposed.

**IN RE: TRISHA W\*\*\*\*, NO. 2018-OB-1057, July 3, 2018**  
**ON APPLICATION FOR REINSTATEMENT**

PER CURIAM

This proceeding arises out of an application for reinstatement to the practice of law filed by petitioner, Trisha W\*\*\*\*, a suspended attorney.

**UNDERLYING FACTS AND PROCEDURAL HISTORY**

On December 28, 2013, petitioner intentionally entered the home of S.S. and his wife, J.H., without authorization.<sup>1</sup> During her sworn statement to the Office of Disciplinary Counsel ("ODC"), petitioner acknowledged that she did not have express permission to enter the residence. Petitioner was arrested and charged with unauthorized entry of an inhabited dwelling, a felony. This charge was dropped as part of a plea bargain. On October 30, 2015, petitioner pleaded guilty to stalking and to violation of a protective order, both misdemeanors.

On December 1, 2016, the court interimly suspended petitioner from the practice of law pursuant to a joint petition by the parties. In re: Ward, 16-2003 (La. 12/1/16), 207 So. 3d 397. On September 29, 2017, the court considered petitioner's misconduct, as set forth above, and suspended her from the practice of law for one year and one day, retroactive to the date of her interim suspension. In re: W\*\*\*\*, 17-1047 (La. 9/29/17), 227 So. 3d 251.

## DECREE

Upon review of the recommendation of the hearing committee, and considering the record, it is ordered that Trisha W\*\*\*\*, Louisiana Bar Roll number 31485, be immediately reinstated to the practice of law in Louisiana, subject to a five-year period of probation governed by the conditions set forth herein. The probationary period shall commence from the date petitioner and the ODC execute a formal probation plan. Should petitioner fail to comply with the conditions of probation, or should she commit any misconduct during the period of probation, her conditional right to practice may be terminated immediately, or she may be subjected to other discipline pursuant to the Rules for Lawyer Disciplinary Enforcement, as appropriate. All costs of these proceedings are assessed against petitioner.

### **IN RE: ADAM A\*\*\*\*\*, NO. 2017-B-0453, October 18, 2017 ATTORNEY DISCIPLINARY PROCEEDING**

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Adam A\*\*\*\*\*, an attorney licensed to practice law in Louisiana but currently on interim suspension pursuant to a joint petition filed by the parties in October 2014. In re: A\*\*\*\*\*, 14-2142 (La. 10/22/14), 149 So. 3d 1222.

#### **UNDERLYING FACTS**

Respondent was formerly employed by the Lafayette law firm of Andrus, Boudreaux, Landry & Coussan (the "firm"). In September 2014, the ODC received a complaint alleging that respondent had converted funds from the firm. Specifically, the complaint alleged the following facts, to which the parties herein have stipulated:

1. Respondent wrote three unauthorized checks to himself out of the client escrow account. The checks were made payable to Orange Ocean, LLC, a single member LLC with respondent listed as the sole member, in the amounts of \$5,125, \$2,500, and \$5,000. These funds were being held in escrow as part of a commercial transaction on behalf of a client.

2. Respondent wrote two unauthorized checks to himself out of the client escrow account. The checks were made payable to A\*\*\*\*\* Enterprises, LLC, a single member LLC with respondent listed as the sole member, in the amounts of \$2,000 and \$800. These funds were held in escrow pursuant to an Escrow Agreement, signed by respondent, which stated that the firm would be compensated \$2,500 by the client for its services. Although fees were due to the firm, no checks were made payable to the firm.

3. Respondent wrote an unauthorized check to Belle Realty of Lafayette, LLC ("Belle") in the amount of \$5,910.86 from the firm's operating account, an account on which he never had signing authority. Belle is a commercial real estate company owned by respondent's parents. Respondent claimed the check was for rent payable to Belle and written on behalf of a firm client, and that the firm would be reimbursed by the client through a corresponding invoice. Respondent never billed any client for the corresponding amount paid to Belle.

4. A client wrote a \$1,000 check to "Adam - Boudreaux" as a retainer for legal services. Respondent endorsed the check and deposited it into his personal account. Respondent never tendered these funds to the firm, and the firm continued to provide legal services to the client.

5. Respondent created fraudulent invoices on fictitious firm letterhead for two clients for legal services rendered. One client paid respondent \$11,500 by check made payable to respondent. Respondent never tendered these funds to the firm, and the firm continued to provide legal services to the client.

6. Respondent performed legal services for three clients, including formation of corporate entities and drafting of resolutions, and instructed the clients to pay him cash directly for those services. The clients paid respondent cash in the total amount of \$1,250. Respondent never tendered these funds to the firm.

7. A client, Blanc Bridal, LLC, paid respondent in cash for legal services rendered through the firm. Respondent created a \$3,500 invoice, which he then voided. The firm did not receive the funds for the legal work performed by respondent.

8. A client, Corey Devan Willis, paid respondent \$500 in cash for legal services. Respondent marked a \$500 invoice to Mr. Willis as paid in full, but he never turned over these funds to the firm.

The parties stipulated to the following aggravating factors: a pattern of misconduct and multiple offenses. The board also recognized the additional aggravating factors of a dishonest or selfish motive and illegal conduct. The parties stipulated to the following mitigating factors: the absence of a prior disciplinary record, personal or emotional problems, timely good faith effort to make restitution or to rectify the consequences of the misconduct, full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings, and remorse.

#### DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Adam A\*\*\*\*\*, Louisiana Bar Roll number 30370, be and he hereby is disbarred, retroactive to October 22, 2014, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. 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.

**And there are dozens of other disciplinary cases handed down by the Louisiana Supreme Court in the past year. Just search keywords "In re" AND "disciplinary"**

## **II. The Ethics of Discovery [Legal/CLE 1.0 cr. hr.] Rules Which Can Affect Discovery:**

### **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 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. 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, executor 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.)