Vol. 3, No. 1
Winter 2002

The Louisiana Disciplinary Review

Integrated Network Systems

www.integsys.com

3925 N. I-10 Service Rd., Suite 210, Metairie, LA 70002
504-457-0255 Fax: 504-457-0258 E-mail: wlong3@integsys.com

What you should know about us!

- Over 15 years experience on Local Area Networks
- More than 600 LAN's installed worldwide
- Expert LAN design, troubleshooting, and implementation
- INS is owned and operated by a Novell CNI and Master CNE
- Extensive experience on Novell Groupwise, Managewise and NDS design

Citrix Solutions Network™

Microsoft Certified Solution Provider

What types of products do we offer?

Novell

Gold Partner PartnerNet

- Network OS
- Network Management
- Internet Connectivity
- eMail/Groupware

What services do we provide?

LAN Evaluations

Wouldn't you like to know what your network really looks like? How about what's going on with the servers. Are they efficient or overloaded? Is there a way to make them faster for little or no additional cost? Just how secure is your network? Can entry be made from outside of your business? Are users changing their passwords when they should? Who's using all the disk space? Want to know? Call for information about our LAN evaluations. We can provide complete documentation for your entire network.

LAN/WAN Design

We have designed networks from 10 to 10,000 users. A proper design means an efficient trouble free system. We'll provide you with complete documentation about your LAN or WAN with a guide on design rules for expansion.

Implementation

Our Certified Network Engineers can install and implement your network system efficiently and properly. We'll provide information to your administrators and document the entire network. Our implementation services go all the way to the desktop. We'll even show you how to properly distribute applications to your users.

Contact us today!

The Louisiana Attorney Disciplinary Board

Donna L. Roberts, Board Administrator

DISCIPLINARY BOARD STAFF
Jennifer Stewart, Deputy Administrator
Elizabeth M. Truett, Board Staff Attorney
Juliet P. Bland, Board Staff Attorney
Kim H. Armato, Appellate Clerk
Donna P. Burgess, Senior Docket Clerk
Chanel M. Russell, Docket Clerk
Mildred Williams, Docket Clerk
Annell Stuart, Records Clerk
Katherine Bretz, Accounts Analyst
Rose Ranzino, Part-time Accounts Clerk
E.J. Burgess, Part-time Clerk
William Kulas, Information System Mgr.
Corey Badeaux, Systems Analyst
Rodney B. Hastings, Publications Editor

2800 Veterans Memorial Boulevard, Suite 310, Metairie, Louisiana 70002
(504) 834-1488 or 1-800-489-8411 FAX: (504) 834-1449 [Website - http://www.ladb.org]

The Office of the Disciplinary Counsel

Charles B. Plattsmier, Chief Disciplinary Counsel

G. Fred Ours, Deputy Counsel
Bernadine Johnson, Deputy Counsel
Robert S. Kennedy, Deputy Counsel
Jim T. Daly, Deputy Counsel
Julie B. White, Deputy Counsel
Mimi Nguyen, Deputy Counsel
Stacie Buckhalter, Executive Secretary
Michelle Willis, Legal Secretary
Glenda Lavergne, Legal Secretary
Rosemary Rothkamm, Legal Secretary
Suzanne Chaney, Legal Secretary
Lisa B. Leffell, Legal Secretary
Barbara G. Swanson, General Secretary
Patty Bayles, Receptionist
Aprile P. Waggenspack, Copy Clerk
Kermit Smith, Jr., Supervisor/Lead Inv.
Robin K. Mitchell, Staff Investigator
Damon Manning, Staff Investigator
Gerald Albares, Investigative Assistant

4000 S. Sherwood Forest Boulevard, Suite 607, Baton Rouge, Louisiana 70816
(225) 293-3900 or 1-800-326-8022 FAX: (225) 293-3300

Metairie Office
Eric Barefield, Deputy Counsel
Robin Pittman, Deputy Counsel
Mary Barbier, Legal Secretary
Kathleen Frank, Legal Secretary
Willis E. Walton, Lead Staff Investigator
Carolyn Church, Receptionist
Beverly Moss, Part-time Clerk

The Louisiana Disciplinary Review is published by the Louisiana Attorney Disciplinary Board, 2800 Veterans Memorial Boulevard, Suite 310, Metairie, Louisiana 70002. Telephone: (504) 834-1488. Second-class postage paid at Little Rock, Ark.
Postmaster: Send change of address to: Louisiana Attorney Disciplinary Board, 2800 Veterans Memorial Boulevard, Suite 310, Metairie, Louisiana 70002.

Clare Jupiter
Board Chair,
2001

In recent months, the Louisiana Supreme Court has taken several actions which directly impact the state's attorney disciplinary system. Chief among these are the Court's amendments of Supreme Court Rule XIX to codify permanent disbarment as an available sanction for attorney misconduct and to allow for permanent resignation in lieu of discipline. The Court also made several changes to the Louisiana Rules of Professional Conduct, including a clarification of Rule 1.5's definition of a third-party's interest, which is discussed in more detailed in an article by one of our hearing committee chairs, Jeff Little, on page 6 of this issue. Finally, the Court has appointed a committee to study lawyers' financial assistance to clients. This committee will study and then make recommendations concerning possible amendments to the Rules of Professional Conduct relating to financial assistance to clients, particularly Rule 1.8. This is also discussed in more detail in an article found on page 12 of this issue.

Permanent Disbarment

Effective August 1, Section 10(A)(1) of Supreme Court Rule XIX, was amended to read, "In any order or judgment of the court in which a lawyer is disbarred, the court retains the discretion to permanently disbar the lawyer and permanently prohibit any such lawyer from being readmitted to the practice of law." Previously, under Rule XIX, an attorney disbarred from the practice of law was permitted to apply for readmission after a five-year waiting period. The Court always had the discretion to deny any application for readmission. Now, an attorney who is permanently disbarred will be prohibited from applying for readmission to the bar.

The Court also adopted the guidelines illustrating the types of conduct which might warrant permanent disbarment suggested by the Committee to Study Permanent Disbarment. These guidelines have been enacted as Appendix E of Rule XIX and include the following misconduct:

(1) Repeated or multiple instances of intentional conversion of client funds with substantial harm;

(2) Intentional corruption of the judicial process, including but not limited to bribery, perjury, and subornation of perjury;

(3) An intentional homicide conviction;

(4) Sexual misconduct which results in a felony criminal conviction, such as rape or child molestation;

(5) Conviction of a felony involving physical coercion or substantial damage to person or property, including but not limited to armed robbery, arson, or kidnapping;

(6) Insurance fraud, including but not limited to staged accidents or widespread runner-based solicitation;

(7) Malfeasance in office which results in a felony conviction, and which involves fraud;

(8) Following notice, engaging in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer is suspended from the practice of law or disbarred; and

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

Permanent Resignation From the Practice of Law

While in the past the Court has allowed an attorney facing formal charges of misconduct to resign from the practice of law in lieu of discipline,[1] Rule XIX did not contain any formal provisions for this procedure. Effective July 5, the Court enacted Section 20.1 of Rule XIX, which puts in place procedures to allow an attorney against whom formal charges of misconduct have or may be filed to submit a written request with the Court seeking permanent resignation from the practice of law in lieu of discipline.

The attorney must file an affidavit of consent that includes, among other things, an agreement by the attorney to never practice law in Louisiana or in any other jurisdiction, to permanently resign from all other jurisdictions in which the lawyer is admitted to practice, to never seek readmission in Louisiana or any other jurisdiction, and to never seek admission in any other jurisdiction. The attorney must also certify that he has paid all costs incurred by the Louisiana Attorney Disciplinary Board in investigating and/or adjudicating the charges brought against the attorney.

The request must also be served on the Office of Disciplinary Counsel. ODC may either file a concurrence in the request or file an opposition to the request. If the Court ultimately denies the request, the information contained in the request may not be used against the attorney in any subsequent proceedings. If the Court accepts the request, the attorney is effectively prohibited from practicing law in any jurisdiction.

MCLE Seminars

As demonstrated by these recent changes, as well as those in the past, the state's attorney disciplinary system -- like most areas of the law -- continues to evolve. In response, the Board has launched a series of continuing legal education seminars aimed in part at informing the legal community of recent developments relating to professional responsibility. The seminars are also used as a means to reinforce the basics of the ethical and professional practice of law. These seminars are open to all attorneys, are provided without charge, and will continue to be conducted throughout the state next year. We encourage all of you to plan to attend.

[1] See, e.g., *In re Vezina*, 98-3020 (La. 2/10/99), 730 So. 2d 871; and *In re Estiverne*, 00-2501 (La. 9/20/00), 767 So. 2d 39.

The Louisiana Disciplinary Review

a publication of the Louisiana Attorney Disciplinary Board

Editor: Rodney B. Hastings
Managing Editor: Donna L. Roberts
Advisory Board: The Administrative Committee of the Louisiana Attorney Disciplinary Board
Contributing Writers: Beth Alston, Jane Dimitry, John Farrar, Gayle Jackson, Clare Jupiter, Jeff Little, Donna Roberts, Edgar Starns, and Michael Tusa
Advertising: (504) 834-1488 or (800) 489-8411

Table of Contents

Opening Statement	page 4
New Rule Will Help Solve Disputes with Third Parties Over Client Funds	page 6
Trust Accounts 101: Tenets of Trust Account Handling	page 8
Keeping the Checks & Balances with Your Settlement Funds	page 11
Court Appoints Committee to Review Financial Assistance to Client Rule	page 12
Prevention Tips: How to Minimize Your Disciplinary Exposure	page 13
Ruminations of an Employment Lawyer	page 16
Domestic Violence: Every Lawyer's Business	page 20
The Public Perception	page 23
Recent Supreme Court Decisions	page 24
Summary of Events and Activites for the Year	page 28
ABA Begins Action on Updating Ethic Rules	page 30

About the Cover

Photo by Rodney B. Hastings

Founded in 1848, the area composing present-day Bienville Parish was once part of Natchitoches and Claiborne parishes.

The parish's first permanent settlement, Mt. Lebanon, once was home to the Mt. Lebanon University, today's Louisiana College, which was moved to Pineville in 1907. The town of Sparta served as the parish seat until 1890, when voters decided to move the parish seat to Arcadia.

Bienville Parish also has the distinction of being the site where in 1934 the notorious criminals Clyde Barrow and Bonnie Parker were gunned down by a posse of police officers from Louisiana and Texas. Before dawn on May 23, 193, the officers concealed themselves in bushes along the highway near Sailes. When Bonnie and Clyde passed by in the early morning hours, the officers opened fire, instantly killing the pair. An historical marker, located on the hilltop of the Gibsland-Sailes Highway, serves as a reminder of this event.

New Rule Will Help Solve Disputes with Third Parties Over Client Funds

by Jeffrey L. Little, Esq., Hearing Committee Chair, Louisiana Attorney Disciplinary Board

In recent years, there has been an increase in cases of ethical complaints involving attorneys charged with failing to protect the interest of third parties. This is in keeping with a national trend of third-party liability gaining acceptance in the courts. Several recent discussions of these obligations, specifically Rule 1.15(b) of the Rules of Professional Conduct, have appeared in *The LADB Adjudicator* and in *The Louisiana Disciplinary Review* resulting in a flurry of calls, criticisms and suggestions from the Bar. Many fear that the rule allows third party medical providers to utilize the discipline system as a collection agent or that the rule erodes the duties owed to the client.

Much misunderstanding comes from those of us which began our practice under the former Code of Professional Responsibility. Historically, under Canon 9, and the accompanying Disciplinary Rules (DR 9-102), no duty was owed to third parties, requiring only that we safeguard the property of our clients. Recognizing the need for clarification, Louisiana changed this when it adopted the Model Rules of Professional Conduct, specifically Rule 1.15.

The Model Rules required that a lawyer 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. The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

The Model Rules elevated the third person on a par with the client by mandating the delivery by the lawyer of any funds or other property that the third parties are "entitled to receive" and require that they promptly notify the third person who may have an "interest." Many attorneys are concerned that the rule offers little guidance as to what constitutes an "interest," while some fear that all creditors of the client have an "interest."

To date, the complaints prosecuted by the Office of Disciplinary Counsel have been cases where the attorney negligently or intentionally failed to protect the interest of the third party. Circumstances include where an attorney disbursed all the settlement proceeds to his client, including funds due a medical provider after he executed a letter of guarantee in favor of that medical provider [*In Re Mann*, 98-DB-091 (3/8/99)]; and, where the attorney negotiated the health care provider's privilege to a lower amount, but then negotiated the funds to his client [*In Re Dittmer*, 99-1653 (La. 9/3/99), 743 So. 2d 195].

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. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. 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) 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.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

Other situations include the violation of this rule in addition to commingling. *See In Re Brough*, 99-0844 (La. 6/25/99); 738 So. 2d 531, failing to give an accounting to the third party, despite holding out the funds from the settlement proceeds, and most recently, *In Re Cannizzaro*, 00-0413 (La. 3/17/00); 758 So. 2d 780, where after settlement the attorney retained funds to pay a third party provider, but failed to pay or safeguard the funds.

In the forgoing matters, the third party's "interest" in the

funds was recognized by the lawyer and client. However, the more difficult situation results when the client disputes the claim of the third party. The comments accompanying Rule 1.15 indicate that a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. Although Louisiana has not adopted the comments to the rule, we can examine how this matter has been handled in other states.

Other jurisdictions have required attorneys to recognize the liens of creditors on their proceeds. *Aetna Cas. Co. v. Gilreath*, 625 S.W. 2d 269 (Tenn. 1981) [Employer lien on worker's compensation proceeds]; *In Re Toth*, 684 N.E. 2d 493 (Ind. 1997) [Physician's lien on funds]. Thus, the cases have held when such a dispute arises, the lawyer has a duty to both the client and the third party and will not be relieved from liability by following the client's instructions. *HSU v. Parker*, 688 N.E. 2d 1099 (Ohio Ct. App. 1996).

Unfortunately, Louisiana lawyers were unclear as to when our law established a third party's interest to creat a duty. Other states which have examined the issue have opined that there must be valid security interest to create the duty. Connecticut's Bar Association has rendered an informal opinion [Informal Op. 95-20 91995] indicating that the duty only arises in situations of a valid statutory or judgment lien or if the lawyer knows of a letter of protection or similar obligation directly related to the property which was entered into to aid the lawyer in obtaining the property. Missouri has required the consent of the creditor where the client has previously agreed to pay the creditor out of the funds. The lawyer may hold the funds for a reasonable period of time to allow resolution of the matter, but thereafter the lawyer is required to file interpleader. Mo. Bar Admin. Advisory Comm., Op. 970215 (1997). Philadelphia's Bar Association found in two separate opinions that the mere claims of the creditors and their unilateral actions in foregoing collection did not give rise to an obligation to pay out of the client's funds [Op. 94-9 and 94-24 (1994)].

The Louisiana Supreme Court has offered some clarification. Based on recommendations from the Commission on the Evaluation of the Rules of Professional Conduct, or "Ethics 2000," which is conducting a comprehensive study and evaluation of the ABA Model Rules of Professional Conduct, and based on changes, which were approved by the House of Delegates in January, the Court amended Rule 1.15(b) on May 24, 2001. The modification of Rule 1.15 reflects that a third person's "interest" shall be one of which the lawyer has actual knowledge and limited to a statutory lien or privilege, a final judgment addressing the property, or a written agreement by the client or lawyer guaranteeing payment.

Additional guidance may come from several pending disciplinary matters. In one matter, *McIntire*, the Disciplinary Board is reviewing a situation where the parties agree that there was not a perfected lien, however the attorney disbursed money to the client based on the client's representation that she would negotiate directly with the healthcare provider. The provider, who was not paid, complains the attorney supplied a "personal guarantee."

Even before the current change, the rules, comments and jurisprudence suggest that lawyer follow these guidelines:

1) All funds of clients and third parties must always be placed in a trust account;

2) Payment of undisputed portions of funds should be promptly made;

3) If there is a clear third-party interest, lien, judgment, recognition in settlement documents or in collateral documents as to a third-party interest, notification should be made to the third party and the client;

4) If a dispute arises, the lawyer should not take advantage of his physical control of the funds; and

5) While a reasonable attempt to reach an accord among all parties may be made, do not attempt to arbitrate the dispute yourself.

A lawyer must take affirmative steps to avoid the situations which lead to this dilemma. Awareness and understanding of the rule, and the duties it imposes on the attorney, along with prompt steps by the attorney when a dispute arises, will enhance the public image of our profession and reduce the frequency of this violation.

A 1986 graduate of LSU Law School, Shreveport attorney Jeffrey L. Little has served as a hearing committee attorney member and chairman since his appointment in 1998.

Trust Accounts 101: Tenets of Trust Account Handling

by Jane Dimitry

Attorneys enter into fiduciary relationships through their regular business activities. As closing attorney's they receive sales proceeds in real estate transactions and have a responsibility to disburse funds to sellers, lenders and other third parties. Attorneys receive advance costs in the course of filing suits for contractual disputes, collections and other matters. Attorneys receive advance fee deposits for cases intended to be billed on an hourly basis. No matter what type of law you practice you probably receive monies that you have not yet earned or that do not belong to you. When this occurs you have entered into a fiduciary responsibility and you have an obligation to handle these monies in a prescribed manner. The simple criterion is "it's not your money." Rule 1.5 (f) offers more specific guidelines with which every attorney should familiarize himself. The firm should educate employees in the firm that assist the attorney in fulfilling his fiduciary duty. A simple chart, *Gilsbar Money Management Map,* which can be used to distinguish what money needs to be handled as "trust" monies and what money can be handled as operating monies, can be obtained from Gilsbar. Special rules apply when fee disputes arise on fees that have been previously properly placed into the operating account. Undisputed fees should be returned to the client and the portion of a fee in dispute should be removed from the operating account and put into the trust account.

Rule 1.15 *Safekeeping Property* specifies an attorney's duties for the handling of client property. This property may be in the form of securities or other non-cash items. Non-cash properties should appropriately be recorded in the attorney's records. The attorney has a responsibility for safeguarding the assets in his possession, which may entail procedures such as insurance, storage in an appropriate place such as a separate safety deposit box. Most of Rule 1.15 deals with the liquid cash asset. Cash, as a liquid asset, is more susceptible to theft or misappropriation. Cash needs special attention paid to it. This article concentrates on safekeeping cash.

Since cash has no distinguishing characteristics once it is commingled with other monies the first safeguarding rule that Rule 1.15 specifies is that cash should be held in an account separate from the lawyer's own property. Cash is to be held in a bank or similar institution in the state where the attorney's office is located (unless the client or third party whose money it is consents otherwise). Rule 1.15's commingling rule applies to mixing the attorney's own funds with a client's or third person's. The commingling rule does not apply to mixing other client's or third parties monies into one account.

You as the attorney have a responsibility to determine what type and how many fiduciary, i.e. trust, funds that you need. In making these determinations you need to familiarize yourself with the Federal Deposit Insuracne Corporation's rules. Ask your banker what you need to keep to preserve the FDIC insurance coverage by client. Rule 1.15 (c) and (d) and Louisiana State Bar Association Interest On Lawyers' Trust Accounts rules provide guidance in determining the number and type of trust funds you may need. "Client's funds which are nominal in amount or to be held for a short period shall be retained in an interest-bearing checking or savings trust account with the interest (net of any service chare or fees) made payable to the Louisiana Bar Foundation, Inc." Since attorneys cannot benefit from the client's monies, i.e. earn interest for the attorney on the trust account, in the past many attorney's kept trust funds in non-interesting bearing accounts. However today (since the Supreme Court of Louisiana Order dated December 31, 1990), the IOLTA program provides a viable alternative. Where the costs to administer an interest bearing account does not justify the benefit, i.e. interest earnings for the appropriate client, the attorney is relieved of this duty. A generation of $50 of interest amount is suggested in the LSBA IOLTA rules as a reasonable estimate of the minimum amount of interest that justifies a segregated trust account for an individual account or justifies record keeping for a pooled interest bearing account.

If the amounts are very nominal and of short periods of time then the bank may have service charges greater than any interest earned. In this case the IOLTA program administrator may decide to exempt the account from the IOLTA program. If the account is exempted then the attorney should maintain the separate trust account and request the financial institution to make the account non-interest bearing.

If the amounts are more than nominal and/or are held for longer periods of time then the attorney must decide whether to establish a separate trust account for the matter or to place it in a pooled trust fund. Louisiana Supreme Court Rule XIX requires that the accounts be clearly identified as "trust" or "escrow" accounts and financial institutions should know the purpose and identity of the accounts. If a separate trust account is established then the attorney will usually be able to use the client's federal tax identification number. If a pooled (i.e. holding the accounts of more than one client or third party) trust account is used then the firm's federal tax identification number will be used. LSBA IOLTA Rules specify that "upon the request of the client, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional attorney-client relationships do not compel attorneys either to invest clients' funds or to advise clients to make their funds productive." If an interest-bearing pooled account is used then the attorney must allocate the interest

earnings among the pooled accounts in a fair and consistent manner. A possible procedure could be to allocate earnings monthly based on average balance (beginning and end of month balance added together and divided by two). Firms should file the appropriate tax reports to report the interest earned by the respective parties.

Some practical hints to prevent inadvertent commingling can be to have different colored checks, a different bank, and different check signers for the operating and trust accounts. The physical separation of deposit slips for the trust and operating accounts can prevent accidentally depositing to the wrong account.

Rule 1.15 (a) first prohibits commingling and secondly specifies that "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." In order to maintain complete records, I recommend that the firm establish a consistent system that will ensure that records are created and maintained. In Section 28 of Rule XIX the Supreme Court of Louisiana specifically mentions the following records to be maintained: "check stubs, vouchers, ledgers, journals, closing statements, accounts and other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records . . . ."

The first decision that has to be made upon the receipt of funds is to which bank account the money needs to be deposited. In a sole proprietorship or small firm, receipts may be received directly by the attorney who can indicate the proper fund for deposit. In firms where the deposit function may be delegated it is particularly important that the system properly identify the proper bank account to prevent inadvertent commingling. When there is any doubt as to the proper bank account a responsible attorney should be consulted. If the proper fund cannot be determined in a reasonable amount of time, I recommend depositing to the IOLTA trust fund until determination can be made. A "suspense" account can be used in the trust fund, which would then be cleared to the appropriate specific client ledger as soon as a proper determination can be made.

Upon receipt all cash or checks should be listed, copies of checks made and restrictive endorsements on checks made. Deposit slips should identify the client or third party. Duplicate validated deposit slips should be maintained. Receipts should be entered into a cash receipts journal which clearly identifies the date of receipt, amount and source of funds. The chart of accounts to be used by the trust fund should specify the file number/client name as appropriate for proper identification for the firm. Consistency is important so that additional receipts or disbursements will easily be identified with the proper file. For double entry accounting the entry for each receipt is a debit to the specific trust account and a credit due to client/file. Acknowledgement of the receipt could be by letter or a cash receipt slip.

As the case develops the trust funds will need to be disbursed as intended for the matter involved. The documentation for disbursement, i.e. voucher, will vary with the type of trust fund transaction. For real estate transactions the settlement statement will document the proper disbursement. For client costs advanced, the support for disbursement may be the receipt from the court or an internally prepared document for copy costs, telephone charges, etc. Before the expenditure is made the system should provide for a review of client monies on hand to prevent disbursement over the amount held. Attorneys should be aware of their bank's rules on the availability of funds and not issue checks until the funds are available. It is NOT an acceptable practice to have the trust fund advance any monies to clients or third parties from funds, which belong to other clients or third parties. If the attorney advances certain client cost, then these should be from the attorney's own operating account. Disbursements from the trust fund will properly include the disbursement of fees earned by the attorney. These may be a transfer from advance deposits as the attorney renders the legal services or may be an agreed upon percentage fee from the settlement of a case on which the settlement has been received directly by the attorney. Disbursements of fees can be done by specific case, i.e. at the same time that the client receives his settlement. Disbursements of fees may be summarized for a number of small matters and disbursed to the attorney operating account on a monthly basis. Attorney earned fees should not be left in the trust account since this could be considered commingling. The attorney handling the case should authorize all disbursements. Some of the disbursements may be supported by the accounting that the attorney should render to the client showing the disposition of the fiduciary funds received by the attorney. Disbursements from the trust accounts should be recorded by date, amount, client/matter and type of disbursement. A cash disbursements journal may be used to summarize the transactions.

The cash receipts and cash disbursements will usually be recorded in summary to a trust account general ledger or account's within the firm's general ledger, i.e. a debit (credit) to trust fund cash and a corresponding (credit) debit to the liability account "due to clients /third parties." The liability due to clients/third parties will be supported by individual client and third persons ledgers. An individual client/third party ledger will summarize the various receipts and disbursements made on behalf of the client. The client ledger will show the net proceeds held by the attorney for each client.

In addition to safekeeping and record keeping the attorney has a responsibility for prompt communication and action. Rule 1.15(b) specifies "Upon receiving funds . . . in which a client . . . has an interest, a lawyer shall promptly notify the client. . . . shall promptly deliver to the client or third person any funds . . . that the client or third person is entitled to receive and, upon request . . . shall promptly render a full accounting. . . . Depending on the timing of the transactions the notification of receipt might be combined with the full accounting. While the rule indicates the full accounting is upon request. I strongly recommend that accountings be rendered to the client on a regular basis. The client's ledger sheet should provide all of the detail necessary for an accounting to be rendered.

The ultimate responsibility for fiduciary funds received is

the individual responsibility of the involved attorney, however, in most firms some of the record keeping and tasks will be delegated to other persons. You should consider bonding anyone who has access to trust monies. When there is delegation, then good internal accounting controls encourage the separation of duties into those holding the asset, authorization, and accounting. Those holding the asset, i.e. with access to the funds, are the check signers. Dual signatures provide a safeguard against inappropriate disbursement. Sometimes dual signatures may only be required on larger checks. If dual signatures are used it is very important that no pre-signed checks or unrestricted signature plates be available. Authorization should be from the attorney who has responsibility for the particular account. Disbursement from the funds should preferably be authorized in writing. Accounting for funds in larger firms will separate the receipts and disbursement responsibilities from the general ledger responsibilities. Someone other than the one recording the transactions preferably does the reconciliation of the bank account. However, in a firm with limited personnel, the following suggestions will reduce the possibility of error. Someone other than the reconciler or check signer can receive bank statements. The person receiving the bank statement should periodically review the statements and cancelled checks for any unusual items. Bank reconciliations should also be reviewed and signed by someone who does not prepare the reconciliation of the bank account. On a periodic basis, preferably monthly, the subsidiary client ledger accounts (i. e. the liability side; who the attorney owes) should be reconciled to the total reconciled cash (i.e. the asset side; what the attorney has to satisfy the liabilities).

In the case of *In re Timothy A. Jones*, No. 98-B-0971 (La. 11/6/98); 721 So. 2d 850, Jones was suspended from the practice of law for one year, with all but two months deferred, for commingling and converting client funds. In settling a personal injury matter, Jones withheld $2,500 from the settlement to pay his client's medical bills. Jones paid one bill in the amount of $270 and the remaining $2,230 was deposited in his client trust account. Jones' secretary testified that "she had the sole responsibility for maintaining the records in the client trust and operating accounts. She stated the client trust account would become overdrawn when she wrote checks for office expenses when the operating account had no funds." *Id.* at p. 3 and 851. The bank records subsequently proved that the client trust account was overdrawn on eleven occasions over a twenty-seven month period. *Id.* at p. 2 and 851. As a result, Jones was found to have commingled and converted funds in violation of the Rules of Professional Conduct 1.15(a), failure to keep client or third party funds separate from the attorney's funds, 1.15(b), failure to properly account for client funds and provide refund to client, 1.15(c), failure to keep disputed property separate from the attorney's property.

Additional comments that I believe are in order to ensure proper trust accounting include: When an attorney both receives advance funds fees or costs from clients and also advances funds to or on behalf of clients from operating accounts, then the attorney needs to consider an integration/comparison between client trust and client receivable ledgers. Attorney's can maintain hand-kept or very sophisticated integrated software packages. The criterion for either system is to meet the basic requirements of properly disbursing the funds and being able to reproduce what happened. Rule 1.15(a) requires an attorney to maintain records of client and third party account funds for a period of five years after the termination of the representation.

Finally, the Louisiana Supreme Court has determined that an attorney may not assert a Fifth Amendment privilege as to the client trust account or any account containing third party funds. *In re Henderson*, No. 99-B-3593 (La. 5/26/00); 761 So. 2d 253. Henderson attempted to evade scrutiny of his client trust account records by claiming a Fifth Amendment privilege. The Supreme Court stated that documents that are required to be maintained under the Rules of Professional Conduct, such as financial records required by Rule 1.15(a), are not subject to the Fifth Amendment privilege by the attorney required to maintain the records. *Id.* at p. 3 (citing, *Louisiana State Bar Ass'n. v. Chatelain*, 513 So. 2d 1178 (La. 1987)). Henderson was suspended from the practice of law for two years for failure to maintain funds owed to a third party in a trust account and to make timely payment to that party and forcommingling and conversion of funds turnover by a client for safekeeping.

Keeping the Checks & Balances with Your Settlement Funds

by Edgar S. Starns, CPA, PFS, Postlethwaite & Netterville

Maintaining a proper accounting and recordkeeping system for funds that a lawyer collects on behalf of a client or third party is crucial. Because of the trust relationship between a lawyer and a client, there is a fiduciary obligation that exists to protect the client's interests. A lawyer should make it a policy to provide an appropriate accounting to each client for whom funds are received.

This article will explore, in a question and answer format, the keys issues associated with recordkeeping and make suggestions as to how to improve an existing process.

What types of funds should be placed in a trust account?

All funds that a lawyer collects on behalf of a client or third party should be placed in a trust account. Examples include:

- Funds to be held in escrow
- Succession funds
- Earnest money payments
- Settlement proceeds
- Unearned fees
- Advanced costs
- Disputed funds

How should the accounts be titled and used?

In general, lawyers should maintain at least three separate bank accounts: a trust account for client and third party funds, a cost account for client expenses, and an operating account for the lawyer's administrative expenses. There may be circumstances that additional accounts are required, including payroll and petty cash accounts.

According to the IRS, the trust accounts used for the funds received or held by a lawyer for the benefit of clients should be in an interest bearing account, typically a checking account. The accounts should be labeled "Trust Account", "Attorney/ Client Trust Account", or "Clients Funds Account." The earnings from these accounts should be distributed to clients or sent to the state bar association.

How should the cost accounts be used?

There are two methods for covering the out of pocket costs for clients in certain cases. First, the cost account may be associated with a line of credit established at a bank. When funds are required, the lawyer may borrow the money from the bank rather than paying the costs for the client. As an alternative, the lawyer may want to partially fund the cost account. By partially funding the account, the lawyer builds equity in the business and the bank is likely to view it as a good business practice rather than the lawyer always borrowing the money.

Theoretically, the cost account should almost always have a zero balance for clients. For each client, the account is only used as a temporary holding place for the funds until expenses are paid and the funds are distributed.

What information should be provided on a client settlement sheet?

As the Rules of Professional Conduct state, once the funds are distributed, the client should receive a settlement sheet. The settlement sheet should include documentation of the distribution of the funds and the settlement sheet should be provided in cases where the client does not receive a distribution.

Settlement sheets should recap the entire settlement and should include:

- Total amount of the funds received
- Fee to the lawyer or lawyers involved in the case
- Gross balance available for client
- Detailed outline of the expenses advanced to the client by the lawyer (including court costs, postage, medical records, and other related expenses) with a total due of the advanced expenses
- Balance due the client
- Signature and date line for the client to acknowledge receipt of the information

How long should the records be maintained?

A Louisiana lawyer must maintain banking records for a minimum of five years, according to the Rules of Professional Conduct. The records to be maintained include check stubs, vouchers, journals, closing statements, accounts, and statements of disbursement. Additionally, the records should reflect: the date the funds were received and/or disbursed, the amount of funds received and disbursed, the source of the funds; and an explanation for receipts, withdrawals, deliveries, and disbursements.

On a case-by-case basis, the lawyer must decide whether or not records should be maintained over five years. In the future the event if there is a disgruntled client, it may be helpful to have the documentation rather than relying on memory.

When is accounting necessary?

According to Rule 1.15(b) of the Rules of Professional Conduct, accounting should be provided "upon request by the client or third person …" However, as a good business practice, lawyers should not wait for clients to ask for this information; instead, the accounting should be provided within a reasonable timeframe after the funds are received.

What methods are appropriate for maintaining checks and balances with a law firm?

As with any accounting procedures, it is not advisable to have one person handle the accounting task. The lawyer may select an administrative staff member to assist in the handling of the accounting matters. Staff members should be closely supervised and the lawyer should remember that the clients' funds are ultimately the *lawyer's obligation*.

A few tips for establishing a system of checks and balances include:

· Request to receive the bank statements unopened and examine the bank statements for unusual transactions and cancelled checks for unusual signatures, payees, and endorsements before returning the statements to the staff for reconciliation.

· Require monthly reconciliations listing receipts, disbursements and balances from each client and a reconciliation of the totals to the cash.

As with any other papers and correspondence, it is important to keep drafts and documentation of phone conversations regarding the client's case and the management of funds for a client.

The lawyer will ultimately be held responsible if a proper system of checks and balances is not in place. The results of improper handling of funds, such as in the case of commingling or theft, are consider serious ethical breaches. These types of cases typically results in a baseline sanction of disbarment or lengthy suspension. Proper documentation may take a bit longer; however, the benefits are well worth the time!

Five Critical Tips for Managing Your Practice:

1 Keep detailed notes.

2 Confirm important information in writing.

3 Keep drafts of documents that you produce and send out externally, including contracts and settlements for clients.

4 Save copies of everything that transpires when interacting with clients.

5 Keep files organized and in chronological order.

Sources:

Office of Loss Prevention, Gilsbar, Inc., www.gilsbar.com
Market Segmentation Specialization Program - Attorneys
Department of the Treasury, Internal Revenue Service
The Louisiana Lawyer and Other People's Money
Louisiana Bar Foundation

Court Appoints Committee to Review Financial Assistance to Client Rule

The Louisiana Supreme Court has appointed a committee to study lawyers' financial assistance to clients. Formed on July 5, 2001, the committee has been charged with studying and then making recommenations concerning possible amendments to the Rules of Professional Conduct relating to financial assistance to clients. Presently, case law interperting Rule 1.8(e) allows lawyers to advance minimal living expenses and litigation to clients in need.

In 1976, Justice Tate writing for the majority in *Louisiana State Bar Association v. Edwins*, 329 So. 2d 437 (La. 1976), set the policy for attorney/client relationships where money was advanced prior to the resolution of the litigation. The opinion included the following guidelines: (1) the advances cannot be promised as an inducement to obtain professional employment, nor made until after the relationship was commenced; (2) the advances were reasonably necessary under the facts; (3) the client remained liable fo repayment of all funds, whatever the outcome of the litigation; and (4) the attorney did not encourage public knowledge of this practice as an inducement to secure the representation of others.

The Court first expressed its intention to establish a committee to study financial assistance to clients when it granted writ to consider the case of *Chittenden v. State Farm Mutual Automobile Insurance Company, et al*, 763 So. 2d 610 (La. 6/16/2000). When it rendered its decision in that matter the Court held that clients may be obligated to pay interest in certain circumstances when an attorney procures loans to help the client fund living and litigation expenses. *Chittenden*, 2000-0414 (La. 5/15/01); 788 So. 2d 1140.

Prevention Tips: How to Minimize Your Disciplinary Exposure

by Beth Alston, Esq.

What part of the *Louisiana Bar Journal* do you read? If you are like most Louisiana lawyers, the first (and often only) part you read is in the back: the "Discipline Reports" section. How can you avoid having *your* name appear there?

DOING THE RIGHT THING: NOT ENOUGH ANYMORE

Many lawyers whom I respect, several of them my clients, tell me that they rely on their personal sense of right and wrong to avoid professional discipline. This approach no longer suffices. *See, e.g., In re Thompson*, 98-B-0079 (La. 5/8/88), 712 So. 2d 72 (attempt to pay client value of prescribed case, without advising client to seek independent legal advice, results in one year suspension, deferred, subject to an eighteen month period of supervised probation).

Many disbarment or suspension cases result from lawyers' greed and/or ignorance. Ignorance can be cured, but the cure may not be timely enough to avoid serious sanctions. Power and money may have little value if you are disbarred. Victim restitution can be ordered by the Louisiana Supreme Court in a lawyer discipline matter. Fee forfeiture and damages for unethical behavior may be available to your former clients in a civil matter.[1] In federal criminal cases, such as the recent ones involving client solicitation, financial penalties and restitution may be ordered.

READ THE RULES

What rules? Are there rules? Yes. There are the Louisiana Rules of Professional Conduct. They are the substantive rules governing attorney conduct. Now, there is no excuse to avoid reading them. They can be found at the locations listed on the sidebar. At the minimum, I strongly urge you to read the Table of Contents so that you will have an idea of the general subject matter.

Beware of the accuracy of internet sites: I have discovered errors on the Louisiana Supreme Court, the Louisiana State Bar Association, and the Louisiana Attorney Disciplinary Board web sites – sometimes the text of the rules are incorrect, other times I have found that they do not contain the most current version of the rules. I have also found that Westlaw© is not always as up-to-date as you might expect. At the time of this writing, procedural rule changes made during the year 2000 are not appearing on Westlaw©.

Be cautious that you are reading the *current* rules. Not the old Louisiana Code of Professional Responsibility, which was in effect from 1970 to 1987. Not a previous version of the Rules of Professional Conduct. As new rules may be adopted by the Louisiana Supreme Court, it is important to keep up-to-date.

There are also various procedural rules which establish a complicated maze of steps through various aspects of the lawyer discipline process. The starting place is Louisiana Supreme Court Rule XIX, the "Rules for Lawyer Disciplinary Enforcement." The appendices to this set of rules contain procedural rules for the Disciplinary Board, for hearing committees, for probation monitors, as well as rules for curatorships.

There is at least one rule which does not appear to be published anywhere, a copy of which is routinely disseminated with formal notices given by the Louisiana Attorney Disciplinary Board. It pertains to motions filed with the hearing committees and the board (see sidebar).

Where are the substantive rules?

¨ At the back of West Group's *Louisiana Rules of Court, State*. In the 2001 version, they begin on page 915.

¨ On the internet (**Caveat:** the text may not be accurate or up-to-date on some of these sites.):

- On the Louisiana Attorney Disciplinary Board site, http://ladb.org. Click on the "Publications" tab, then "Rules of Professional Conduct." *(Requires Adobe Acrobat).*
- On the Louisiana State Bar Association site, http://lsba.org.
- On private legal research services, such as Westlaw, Lexis, and Loislaw.com.
- On LegalEthics.com, http://www.legalethics.com/intra.law?law=Louisiana.

Where are the procedural rules?

The Rules for Lawyer Disciplinary Enforcement are found in the Louisiana Supreme Court Rules, at Rule XIX and its appendices. They can be found:

¨ In West Group's *Louisiana Rules of Court, State*. In the 2001 version, Rule XIX begins on page 22.

¨ On the internet (**Caveat:** the text may not be accurate or up-to-date on some of these sites.):

- On the Louisiana Supreme Court web site, http://www.lasc.org/rules/index.html.
- On the Louisiana Attorney Disciplinary Board site, http://ladb.org. Click on the "Publications" tab, then "Rule XIX." *(Requires Adobe Acrobat).*

READ THE CASES

The Court's approach to lawyer discipline has changed dramatically in the last two years. Two cases which might give you a flavor of this change are:

What happens when a settlement or judgment is simply not large enough to satisfy fees and expenses? Many attorneys might well handle such a situation as the lawyer did in *In re Mayeux*, 99-B-3549 (La. 5/16/00), 762 So. 2d 1072. Mr. Mayeux represented a plaintiff in a personal injury case. He personally guaranteed her medical expenses and advanced her money for medical tests and living expenses. The judgment following trial was not sufficient to cover the attorney's fees, costs, and medical expenses. Mayeux reduced his fee, disbursed some money to his client, and negotiated with the medical providers for a reduction in their expenses. He failed to maintain these "funds of a third party" in a trust account, and the balance of the account in which they were deposited dropped down to zero during the negotiations with the medical providers. Mr. Mayeux eventually negotiated reductions in medical expenses, paid all third-party health care providers, and was able to provide a small additional sum to his client as a result.

Mayeux was found to have commingled and converted funds of a third party with his own funds, in violation of Rule 1.15. He argued, unsuccessfully, that since he had personally guaranteed the medical expenses, and as the medical providers had not asserted a privilege on the judgment proceeds pursuant to La. R.S. 9:4751 *et seq.*, no commingling occurred.

The Supreme Court found that rule violations existed despite respondent's good faith and his lack of conscious wrongdoing. The Court specifically found that no actual harm resulted from Mr. Mayeux's conduct, and that he derived no personal benefit. A public reprimand was ordered. Two justices dissented, favoring a sanction of a three month suspension, fully deferred, with six months of probation. One justice dissented, viewing the case to be one appropriate for private discipline only.

Mr. Mayeux may very well have thought he was doing "the right thing." He cut his fee so the client would get something out of the case, and he negotiated with the health care providers to reduce their bills. After doing so, he returned additional money to the client. Good intentions aside, his failure to conform with the strict letter of the rule regarding handling of third-party funds resulted in formal, public discipline.

If you have an alcohol-related criminal record, keep your disciplinary nose clean, as demonstrated in the case of *In re Deshotels*, 98-B-1349, 98-B-1350 (La. 10/9/98), 719 So. 2d 402. Mr. Deshotels was charged with failing to appropriately terminate his representation of a criminal defense client, who had never paid him any money. While the formal hearing on this matter was in progress, an investigator employed by the Office of Disciplinary Counsel discovered upon a court record review that Mr. Deshotels had been convicted twice of driving while intoxicated, and once for disturbing the peace. New charges were brought and the matters were consolidated for decision. In sanctioning Mr. Deshotels, the Louisiana Supreme Court wrote:

New policy for all motions filed with hearing committees and the board, Eff. 2/1/99

A. All motions filed with the Hearing Committees and the Disciplinary Board shall be accompanied by certificate of counsel for the moving party stating: (1) that counsel conferred in person or by telephone with the opposing party regarding the motion and (2) that opposing counsel either has no objections to said motion or does object to the motion. Any motion received which does not include the required certification will be returned to the sender.

B. If the opposing party objects to the motion, a telephone conference will be arranged between the Chair of the Hearing Committee or Adjudicative Board panel assigned to the case to hear both parties' arguments relative to the motion.

C. All pleadings, motions, briefs, and memoranda filed with the Hearing Committees and the Disciplinary Board shall contain a certificate of service by the filing party stating that he or she has served the opposing party with the document and by what means the opposing party was served. Failure to include such certificate of service will result in the pleading or other matter being returned to the sender.

"While we acknowledge these convictions do not directly involve the practice of law, these matters, together with the [failure to properly terminate an attorney-client relationship], show a pattern of misconduct which reflects adversely on respondent's professional fitness. Further, respondent's conduct may indicate an underlying substance abuse problem which could eventually impact his future representation of clients."

Id. at p. 6, 719 So. 2d at 406.

Whether Mr. Deshotels was given an opportunity to defend against the finding of a potential substance abuse problem is not evident from the Court's opinion.

CONDUCT AN AUDIT OF YOUR OFFICE'S POLICIES AND PROCEDURES

For several years, large law firms have been encouraged by their insurance carriers to audit certain areas such as their calendar, tickler, engagement and non-engagement practices. Medium to small firms, and sole practitioners, can reap the benefit of this procedure in several ways. Self-audit forms are available from the American Bar Association and other sources. Participants in the L.S.B.A.-sponsored professional liability insurance program can call upon the Loss Prevention Counsel at Gilsbar to visit their office and assist them in an audit. Some Louisiana lawyers who practice in the legal ethics field provide this service to clients.

BEWARE OF RISKY CLIENTS

What kinds of clients increase your risk of disciplinary trouble? Potential clients who have hired and fired other lawyers before retaining you can be bad news. If your client is the sort of person who is not and never will be happy with any result in their case, think carefully whether the value of the representation truly outweighs the risk of a chronically dissatisfied client. These suggestions apply to insurance adjusters, other corporate clients, and professionals whom you may represent, in addition to personal injury and domestic clients. Remember the old lawyer's saw: If your potential client says that they do not care about the expense, and they want to litigate for the principle of the matter, turn and run away as fast as you can.

Beware of having sex with clients – and not just because of the risk of an STD. Consensual sex with a client can create a "potential" conflict of interest,[2] according to the Supreme Court's decision, *In re Gore*, 99-B-3213, p. 5 (La. 1/28/00), 752 So. 2d 853. The Court observed that this potential existed "especially in light of the fact that [Gore] was representing [his client] in connection with a divorce proceeding." Mr. Gore's petition for consent discipline for a six-month suspension, followed by a two-year period of supervised probation, was accepted. Mr. Gore's record was clean of any other disciplinary violations. His client's ex-husband did not contest the divorce, Mr. Gore did not take unfair advantage of his client, and she did not file a complaint until their consensual relationship terminated. Footnote 4 of the opinion provides further insight into the personality characteristics of Mr. Gore's former client.

PAY YOUR CHILD SUPPORT

Pay up, or run the risk of being declared "immediately ineligible to practice law." La. Sup. Ct Rule XIX, Section 19.1; *In re Dudley*, 99-B-3409 (La. 12/15/99), 756 So. 2d 284.

BE CAREFUL ABOUT CHARGING OR "PASSING ON" INTEREST COSTS ON CLIENT LOANS

At the time this article was written, the Louisiana Supreme Court had granted writs in a civil case on the issue of whether an attorney "may recover interest on advances of funds to the client and, if so, the extent of recovery under the circumstances of this case." *Chittenden v. State Farm Mutual Auto. Ins. Co.*, 2000-C-0414 (La. 6/16/00), 763 So. 2d 610. The issues raised by petitioners-in-writ include a claim that their contract with their former attorney, which allowed the attorney to deduct as costs the interest expense associated with client loans, violates "the letter, spirit or intent" of the Rules of Professional Conduct. The specific rules cited by petitioners in the Fourth Circuit are 1.4 (maintaining proper communication with client), and 1.8 (conflicts of interest). *(Ed. note: See p. 12).*

DO NOT HABITUALLY WRITE NSF CHECKS

Formal charges were filed against Mr. Dixon for issuing seven checks which were returned for insufficient funds, for a total of less than $600.00. *In re Dixon*, 99-B-1753 (La. 10/1/99), 744 So. 2d 618. The checks were made good, and Mr. Dixon also paid all expenses in connection with them. He consented to a transfer to disability inactive status due to his problems with substance abuse.

CONCLUSION

Now is the time for all good lawyers to come to an appreciation of the current law governing lawyers in Louisiana. Good risk prevention practices compel a constant education and awareness of disciplinary rules and opinions.

Bon chance!

---

[1] *See, e.g., In re Boydell*, 00-B-0086 (La. 5/26/00), 760 So. 2d 326, citing with approval the award of damages for unethical conduct by the Fourth Circuit in *Ratcliff v. Boydell*, 93-0362 (La. App. 4th cir. 4/3/96), 674 So. 2d 272.

[2] The Office of Disciplinary Counsel took the position that because of the "potential" conflict of interest, respondent should have advised her of it. The issue of whether the "potential" conflict was waivable was not addressed by the Supreme Court.

Elizabeth A. Alston has been a Louisiana lawyer since 1980. She was appointed by the Louisiana Supreme Court to the L.S.B.A. Committee on Professional Responsibility in 1988. When the Louisiana Attorney Disciplinary Board was first established in 1990, she served as vice-chair of the board. She served as Board chair from 1991-1992. She is the founder and moderator of the Louisiana Association of Professional Responsibility Lawyers, and maintains a Lawyer Risk Avoidance Site at http://LawyerRisk.com. The Alston Law Firm, LLC, maintains its main office in Mandeville, with a satellite location in the New Orleans' CBD.

Ruminations of an Employment Lawyer

by Michael T. Tusa, Jr., Esq.

As tort reform swept over Louisiana, those of us who had previously moved in the small, obscure circle of employment law during the 1980s and early 1990s often found ourselves dealing with an opposing counsel whose name we had never heard of but who advised us of their expertise in our chosen field. The addition of these new faces has reinvigorated the field and, hopefully, will elevate the practice area over time. Nevertheless, some of our more aggressive new colleagues are long on desire but short on their knowledge of the law. Consequently, for the newly appointed head of the firm's "labor section" or the Jones Act lawyer now doing employment law for plaintiffs, I offer a few observations, for what each is worth, on issues that often arise in employment litigation.

1. SHOULD YOU SUE THE SUPERVISOR TO DESTROY DIVERSITY?

Naively, I had always assumed (actually I was taught) that counsel is not supposed to name someone as a defendant unless ". . . it is well grounded in fact and is warranted by existing law or a good faith argument. . . ." FRCP 11 (See La. C.C.P. Art. 863 for the state law version). Further, one should not name an individual as a defendant ". . . for any improper purpose . . . ." FRCP 11.

Nevertheless, some plaintiffs' counsel seem to routinely name a non-diverse individual supervisor as a defendant in state employment discrimination lawsuits and then assert a vague claim of discrimination against the supervisor. Those who are more blatant about the mere desire to destroy diversity often withhold service on the supervisor. Apparently, this is a practice which is often countenanced in personal injury lawsuits.

The issue is problematic for plaintiffs' counsel in employment litigation since the federal and state employment discrimination statutes generally exclude supervisors/co-workers from being sued individually under their provisions. See *Williams v. Banning*, 72 F.3d 552, (7th Cir. 1995); *Tomka v. Seiler Corp.*, 66 F. 3d 1295 (2nd Cir. 1995); *Williams v. E.I. du Pont de Nemours & Co.*, 955 F. Supp. 711 (S.D. Tex. 1996). Indeed, Louisiana law arguably has the stronger exclusion on this point as it defines "employer" as one who receives services from the employee and provides "compensation of any kind to an employee." See La.R.S. 23:311; La.R.S. 23:33 1; *Hornsby v. Enterprise Transportation Co.*, 987 F. Supp. 512 (M.D. La. 1997). Clearly, a supervisor in their individual capacity does not meet that definition. This jurisprudence should provide a sufficient basis to persuade counsel not to add a supervisor as a defendant in a discrimination claim.

However, there is another good reason not to add an individual supervisor as a defendant in a discrimination claim under Louisiana's employment discrimination law merely to defeat diversity. At least as to the sections of the law concerning disability discrimination, there is a provision which provides:

Any party filing suit under this Part who fails to prevail in his cause of action *shall* be held responsible for reasonable attorneys fees and all court costs at the discretion of the judge. La. R.S. 23:325(B) (Emphasis added.)

A slightly similar provision appears in La.R.S. 23:333(B) concerning race, sex, national origin and religious discrimination. That portion of the statute provides:

Any plaintiff found by the judge to have brought a frivolous claim under this Part shall be held responsible for reasonable damages incurred as a result of this claim, reasonable attorneys fees, and court costs.

These provisions provide powerful ammunition for pursuing costs and fees against a party who has added a supervisor or co-worker as a defendant in a discrimination claim under Louisiana law.

Clearly, considering the case law excluding a supervisor or

co-worker from the coverage of these acts, naming a supervisor or co-worker as a defendant in their individual capacity as to a discrimination claim would appear to be frivolous. Consequently, under Louisiana law such a claim may subject your client to paying the supervisor's attorney's fees and costs upon dismissal.

So the first word of caution is that both from an ethical standpoint and from the standpoint of the law, plaintiffs' counsel should not be naming supervisors as defendants, in employment discrimination claims, in their individual capacities.[1] Of course, there is nothing improper about adding a supervisor or co-worker as a defendant when his actions also constituted a tort under state law. A petition which joins a supervisor or co-worker as a defendant with the employer but only alleges a tort against the supervisor or co-worker will generally survive removal on the basis of fraudulent joinder.[2] See *Burden v. General Dynamics*, 60 F.3d 213 (5th Cir. 1995).

If there is a good faith basis for such a tort claim, assert it but try not to overreach by claiming the supervisor's alleged acts of discrimination also violated La.C.C. Article 2315. It is generally held that Article 2315, whatever its scope in torts, is not a basis for imposing employment discrimination liability. See *Hornsby*, supra; *Caletka v. State Farm Mutual Automobile Ins. Co.*, 936 F. Supp. 380 (W.D. La. 1996); *Baygard v. Guardian Life Ins. Co.*, 399 So. 2d 1200 (La. App. 1st Cir. 1981). Such an allegation is generally a tip-off that despite your claims of vast experience in the employment field, you are still treating it like a personal injury case.

2. CAN I REPRESENT THE COMPANY AND THE SUPERVISOR?

What happens when the company you represent is sued, along with one of its supervisors? Especially for those of us with small firms, the temptation might be to represent both the company and the supervisor. The rationale for such an approach varies from cost savings for the client, reassurance to the supervisor, and fear of allowing other counsel to have contact with your client. What is the rule in such a situation when plaintiff s counsel has sued the company for employment discrimination and also set forth a non-frivolous state law tort claim against the supervisor?

The answer to the question is found in Rule 1.7 of the Rules of Professional Conduct concerning conflicts of interest. The answer, of course, is that you may pursue joint representation when there is not a conflict based upon counsel's pre-representation investigation and/or where you have disclosure and consent of the parties.[3] However, I suggest that the area where such joint representation is permissible is narrowing for three reasons.

First, the evolution of employer defenses to employee/supervisor misconduct under the employment discrimination cases has begun in earnest. Under certain circumstances an employer can distance itself from the conduct of the allegedly malfeasing employee by focusing on its own conduct (as opposed to the conduct of the employee/supervisor) and by focusing on the level of authority or responsibility of the employee/supervisor. For an example of this evolution, the employer in a sexual harassment case may be able to defend (where there is no tangible employment action taken against the plaintiff) by showing it undertook reasonable steps to prevent and/or remedy sexual harassment and that the victimized employee failed to take advantage of the company policy on reporting sexual harassment. See *Faragher v. City of Boca Raton*, 524 US 775 (1998); *Burlington Industries Inc. v. Ellerth*, 524 US 742 (1998). More importantly, in reference to punitive damages (which will be alleged by plaintiffs in almost every employment discrimination case under federal law), the employer may defend by showing that the malfeasing employee (the one you are trying to decide whether to jointly represent) was not acting within the course and scope of his employment and/or was not acting in a manner which was authorized or approved by the company. *Kolstad v. American Dental Assoc.*, 119 S.Ct. 2118, 527 US 526 (1999). Diligence in representation should result in all of these defenses being asserted on behalf of the employer, even if asserted in the alternative. A conflict of interest, therefore, seems inherent in the factual defenses a company must assert to avoid punitive damages and the defense the supervisor will likely want to assert.

Secondly, (if in state court), La.C.E. Article 506 provides this interesting exception to the privilege rules for those contemplating joint representation:

There is no privilege . . . as to a communication:

(5) *which is relevant to a matter of common interest* be-

tween or among two or more clients if the communication was made by any of them or their representative to a lawyer or his representative retained or consulted in common, when subsequently offered by one client against the other in a civil action.[4] (Emphasis added.)

By undertaking such joint representation, your clients run the very real risk of losing attorney-client privilege for certain communications ". . . offered by one client against the other . . .." Considering the growing list of defenses available to an employer, it seems reasonable to assume that the employer will often defend by stating, at least alternatively, that the malfeasing employee's actions were contrary to company policy or outside the scope of his employment duties. How likely is it that the employee will agree with that defense and testify in accordance on the stand? As a result, a waiver of privilege in such actions becomes a very real possibility.

Third, experience has shown that it is extremely difficult to be omniscient in reference to the possibility of future conflicts when such joint representation is undertaken. For example, what do you do if a year into the litigation the employer calls you to discuss disciplinary action or termination of the employee (joint client)? The answer is you not only cannot participate in the discussion, but the mere call itself may jeopardize continued joint representation. Similarly, who could predict that the supervisor would leave your client's employ and go to work for a competitor (with the employer now asking you to withdraw as counsel for the supervisor because they are upset). For an interesting example of how difficult the future of such issues is to predict, see *Felix v. Balkin*, 49 F. Supp. 2d 260 (S.D. N-Y. 1999).

Consequently, although not uniformly agreed to, a good rule of thumb is to avoid joint representation whenever possible.

3. WHAT ABOUT ADDING A REFERENCE TO LOUISIANA'S EMPLOYMENT DISCRIMINATION LAW TO GET AROUND THE CAP ON DAMAGES?

Under the Civil Rights Act of 1991 certain damage caps were imposed upon a plaintiff's claim based upon the overall size of the employer. See 42 USC 1981 a(b)(3). These caps do not exist under Louisiana's Employment Discrimination Law. See La.R.S. 23:301 *et seq*. Can a plaintiff circumvent the cap set forth in the federal statutes by also adding a claim under the Louisiana Employment Discrimination statutes (based upon the same facts)?

The answer appears to be in the affirmative. Subject to the potential liabilities previously mentioned if the plaintiff's case is frivolous and/or is dismissed, plaintiff's counsel will have to consider whether it is advisable to include a specific reference to the Louisiana statute. If successful at trial and that big jury verdict comes in which exceeds the federal caps, such ingenuity in pleading may provide a basis for preserving the entirety of the award. For a good discussion of how the courts will utilize the Louisiana statute to allow a plaintiff to get around the federal caps see Judge Berrigan's analysis in *Barrios v. Kody Marine, Inc.*, 2000 WL 775067 (E.D. La. June 14, 2000).

4. CAN I AGREE NOT TO REPRESENT PEOPLE IN THE FUTURE TO SEAL THAT BIG SETTLEMENT?

Suppose you finally get that nationwide class or collective action which you are handling to the settlement stage. The amount to settle is finally worked out but defense counsel indicates his client has one more requirement: that you agree not to sue them anymore on behalf of those who have opted out of the class (FRCP 23) or failed to opt into the collective action (29 USC 216).

It is not uncommon in the settlement of proposed collective actions or class actions for the employer to try to convince plaintiff's counsel to agree in writing not to sue them again as a condition of the settlement. There is only one problem with this condition of the settlement. It is unethical.

Rule 5.6 of the Rules of Professional Conduct specifically provides that:

A lawyer shall not participate in offering or making:

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

This provision specifically addresses the issue and prohibits it. Consequently, when defense counsel requests that you agree not to sue their client in the future, you can provide him or her an ethical basis for declining. Similarly, defense counsel can diffuse this issue with their client in advance by reference to the Rules of Professional Conduct.

5. AN OFFER OF JUDGMENT: WHAT ABOUT ATTORNEYS FEES?

One final area that might be of interest is the use of an Offer of Judgment in employment litigation. It can be a powerful tool to convince a recalcitrant plaintiff of the potential costs of continuing to proceed to trial. While the Louisiana Employment Discrimination laws, as previously mentioned, appear to provide some language, Rule 11 sanctions in federal court for plaintiff's claims which are dismissed at trial are exceedingly rare.

However, to the unwary, use of an Offer of Judgment in employment discrimination litigation may result in your client paying *more* than is set forth in the offer.

FRCP 68 provides the basis for an Offer of Judgment in federal litigation. Because employment discrimination statutes allow for an award of attorney's fees to the prevailing party, an offer of judgment in employment litigation will be construed as also allowing for calculation of costs and attorney's fees unless the offer indicates to the contrary. See *Erdman v. Cochise County*, 926 F. 2d 877 (9th Cir. 1991); *Lanasa v. City of New Orleans*, 619 F. Supp. 39 (E.D. La. 1985). In other words, a savvy plaintiff's lawyer might accept the offer of $10,000 and then also be entitled to costs and attorney's fees above that

amount.

Consequently, a word of caution on making an Offer of Judgment is in order. If you plan on making an Offer of Judgment in employment discrimination litigation, be sure the offer directly addresses the question of attorney's fees and costs. If the offer fails to mention attorney's fees and costs, you may find that your client must pay the offer amount plus plaintiff s cost and attorney's fees.

---

1 Some courts have allowed them to be named in their "official" capacity. See *Hogue v. Roach*, 967 F. Supp. 7 (D.D.C. 1997); *Patton v. United Parcel Service, Inc.*, 910 F. Supp. 1250 (S.D. Tex. 1995).

2 In that regard, try to be more creative than merely alleging intentional infliction of emotional distress as there is a good case law stating that "ordinary employment disputes" do not give rise to intentional infliction claims. See *Deus v. Allstate Ins. Co.*, 15 F. 3d 506 (5th Cir. 1994); *Hornsby*, infra.

3 The basis for requiring full disclosure and consent of the parties is found in Rule 1.7(b)(2).

4 Since privileges are, according to FRE 501, governed by state law, one can ruminate over the application of this rule in federal court.

MICHAEL T. TUSA, JR. *is in private practice in New Orleans with The Tusa Law Firm, LLC. He is a member of the Louisiana State Bar Association and the United States Fifth Circuit Court of Appeals Bar Association. His practice is primarily in employment litigation and employment law related topics. Mr. Tusa has extensive experience counseling employers and managers on issues related to the ADA, ADEA, Title VII, ERISA, Fair Labor Standards Act and state laws governing employment. He has been invovled in several nationwide class actions involving wage and hour issues. He is a frequent speaker to management groups around the country on employment law issues and authors a labor law update received by over 60 corporations annually. He has drafted legislation on behalf of a group of employers, involving noncompetition agreements for employers, which was adopted by the Louisiana legislature in 1989. He has authored several articles related to employment issues, including an article in* Louisiana Labor and Employment Law *entitled "Preventing Lawsuits for Wrongful Termination in Louisiana." He received his B.A. degree from the University of New Orleans and his J.D. degree from Louisiana State University. He was an instructor in Business Law, and an adjunct faculty member, at Delgado Community College and currently is an adjunct with LSU Shreveport.*

DOMESTIC VIOLENCE: EVERY LAWYER'S BUSINESS

Why Lawyers Should Know More About Domestic Violence

by Gayle Jackson, Assistant Attorney General, Louisiana Department of Justice

The data on the prevalence of domestic violence in Louisiana suggest that the state is experiencing a major public health problem. A recent telephone survey conducted by the Louisiana Office of Public Health (OPH) found that 2% of Louisiana women at least 18 years of age have experienced domestic violence in the past year. This compares to 1.5% of all women nationally who have had similar experiences in the past year. Extrapolating from the OPH data by using U.S. Census data for Louisiana, OPH estimates that 40,281 women residing in Louisiana were raped or physically assaulted by an intimate partner in the past 12 months. Louisiana rates of such violence are even higher for our high school students.[1] According to a report released by the Violence Policy Center, in 1998 Louisiana women had the second highest chance of dying at the hands of men as compared to women in other states.[2] Finally, in 1999, Louisiana ranked first in the nation in the number of women killed by men. There were 89 women killed in the state that year. Seventy-five percent of those homicide victims were killed by someone they knew -- in many instances a former spouse or intimate partner. The majority of these women (54%) were killed by guns, far more than were killed by any other weapon or method.[3]

To many Louisiana lawyers these victims of domestic violence are much more than just statistics, they are our clients. In May of 2000 attorneys Mark Moreau and Bernadette D'Souza of the New Orleans Legal Assistance Cooperation represented Jacqulene Gersfeld in her divorce. May 17, 2000 was her day in Court. Gersfeld remarked to Moreau that "today was going to be her day…she was going to get justice today." Shortly after being order to pay his wife $350 a month in temporary alimony, Marvin Gersfeld, despite a protective order against him, accompanied his lawyer to take a picture of Jacqulene Gersfeld's car. Instead of taking a picture, he took her life. When Marvin Gersfeld and his lawyer pulled up next to Jacqulene's car, Gersfeld accompanied his lawyer out of the car and fired a gun at his wife. Marvin then killed himself. In the aftermath Mark Moreau said, "He should not have been anywhere near our client."

As unbelievable as it seems, this tragedy happened outside the halls of justice. Tragedies like these are played out everyday in courtrooms and in the offices of well meaning attorneys. Anyone who does not understand the dynamics of domestic violence puts a victim's life at risk, including lawyers and judges. When presented with clients or litigants who are victims of domestic violence, we have an opportunity to help save a person's life, sometimes two lives. Domestic violence is not just a dispute between a man and a woman; it is a crime. Batterers should be punished; victims should be provided safety.

Being able to recognize domestic violence, a victim and the batterer can be crucial to the safety of a victim and her family. Domestic violence occurs when an intimate partner, whether a spouse, former spouse, partner, or former partner, uses physical violence, threats, harassment, emotional manipulation, or financial abuse to control, coerce, or intimate the other partner. Overwhelmingly, domestic violence is perpetrated by men against women.[4] That is not a bias, that is a fact. This does not mean that men cannot be victims too.

Because domestic violence is so prevalent in our society most lawyers can expect that at some point in their careers their practice will be impacted by domestic violence. Domestic violence is a complex issue and the pain it causes is felt throughout the community. Although domestic violence is complex the solutions don't have to be. We all have a role to play in stopping the violence. Law enforcement, medical, lawyers, educators, employers, elected officials and citizens must join with battered women advocates and experts around the table and seek solutions together. Domestic violence is everybody's business.

For the legal community the key to making a difference is education. How different would the Gretna tragedy have been if the batterer's lawyer had seen him as a batterer, understood

that when women leave their batterers that the batterer feels a loss of control making this the most dangerous time for a woman. Although neighbors commented afterwards that Marvin Gersfeld was somebody you would think would never do this, he was someone that would. Marvin, like most batterers, threatens their victim's lives. After he and his wife separated Gersfeld told her he would kill her. Her lawyers believed him: they instructed her to get a restraining order. What did Marvin Gersfeld's lawyer think? Most lawyers defending batterers believe… that he won't kill her.

" We, in the legal system, need to better informed about he problems of domestic abuse and better trained to handle the situations," said Jill Craft a partner in the Baton Rouge Law Firm of Craft and Craft. "In the court system, the judges, prosecutors, and lawyers need to have a better sense of the danger of such situations and work collectively to diffuse the potential for escalating violence. As lawyers, it is not our job to merely collect a retainer and file some papers. Rather, we need to be better informed and actively counsel our clients to seek counseling and intervention," she said.

Jill has clients who have come to her for legal help and moral support. She has learned that in order for lawyers to help protect their clients they need the support of law enforcement. " Not only do police officers need to enforce court orders, without second guessing, they need to use the protective order registry and follow through on reports of domestic violence," she said.

Jill is right about the role of law enforcement. In the fiscal year 1999-2000 the Office of Women's Service reported that 3,640 women sought restraining orders. Andrea Wright was one of those women. Several days before the fatal shooting at Wooddale Towers in Baton Rouge, Andrea asked her supervisor for time off to obtain a restraining order against her husband, Donald Ray Wright. She and Wright were involved in an ongoing personal dispute, unrelated to her employment and because her husband threatened to kill her. On November 20, 1996, Donald Ray Wright telephoned Andrea at work and told her he was coming to the office to kill her: to make good on his promise. Andrea told her supervisor, who escorted her to an office where Andrea telephoned the police. At approximately 1:59 p.m., she spoke with an officer and beseeched him to send someone to help her because her husband threatened to kill her. A sergeant informed her the police could not respond to her call unless she had a restraining order in her possession. Family members of Andrea said that she had gone to Family Court two days before the murder seeking a restraining order against Wright. That restraining order was denied. She had a hearing set in five days. Andrea telephoned her mother to bring the restraining order petition to the building. At approximately 2:20 p.m., Donald Ray Wright arrived at the Wooddale office building armed with a .38 caliber pistol and proceeded without delay to the 5th floor, where Andrea worked and sought her out. Witnesses said he emptied the five-shot gun into Andrea Wright, reloaded, and shot her two more times. He also raped his wife's co-worker before shooting himself in the abdomen. Andrea was four months pregnant. Andrea's mother arrived at the building while the shooting was in progress. Unlike Marvin Gersfeld, Donald Ray Wright survived his self-inflicted wounds. He is serving a life sentence in prison for murder and has been diagnosed with AIDS.

Andrea Wright… another senseless killing.

Protective orders are a piece of paper and cannot stop bullets or fists, but for law enforcement, and sometimes batterers, they send a powerful message. Louisiana's Supreme Court thinks this message can save a life. In April of 1999 Supreme Court Justice Kitty Kimball of New Roads and State Senator Jay Dardenne unveiled the Louisiana Protective Order Registry. The registry is a statewide network to provide information about protective orders. As with Andrea Wright, too often when battered women call law enforcement for assistance they are turned away because they can't find a copy of their restraining order. Other times because law enforcement does not always understand that battered women have a right to defend themselves, they cannot determine who is the victim. The registry allows police to find out immediately whether a court ordered domestic violence restraining order has been filed against an abusive spouse. Under the registry program, a standardized form is used for protective orders, and clerks of court from around the state send copies of the protective order to the Louisiana Supreme Court Judicial Administrator's Office. That office enters the information from the protective orders into a database that will be accessible to law enforcement officers, courts and prosecutors. "This is an important step to make victims and children sleep just a little bit safer tonight." Kimball said.

Even if you are not realizing the major impact that domestic violence has on your practice your clients are. Statistics provided by Liz Claiborne Women's Work revealed that:

- Husbands and boyfriends commit 13,000 acts of violence against women in the workplace every year.
- A majority of corporate leaders believe domestic violence is a major problem in our society. One-third perceive this problem as having a negative impact on their bottom line and 4 out of 10 are personally aware of employees and other individuals affected by domestic violence. Yet only 12% say that corporations should play a major role in addressing the issue.
- Each year, medical expenses from domestic violence total at least $3-5 billion, in lost wages, sick leave, absenteeism and non-productivity.

A family lawyer should understand the ongoing conflicts that a batterer can cause in child custody cases. A tax lawyer should understand that the woman who has never seen her tax return could be a victim of domestic violence and that she needs help avoiding tax liability for the fraud that her batterer may have perpetrated against her. All lawyers should know not to ask "Why do you stay?" Staying is a part of the dynamics of the violence. The most dangerous time for a battered woman is

when she leaves. The better question is "Why doesn't he stop the violence?" Battered women are often viewed as weak and helpless. Yes, they are helpless to stop the violence, but these women manage to go to work, take care of their children, take the beatings, conceal the abuse and stay alive long enough to come to you for help. It takes a battered woman on average about 8 attempts before she can finally leave her abuser. Your office may be the first stop for her. Your office may just be the last.

When Kathleen Callaghan was clerking for Judge Michael McDonald, they got the chance to experience first hand what doing the right thing could mean to a victim of domestic violence. This is her account of how the court is impacted by domestic violence. "The most frightening and indelible experiences I encountered took place when I was clerking in the 19th Judicial District Court, where very few domestic violence cases are handled since the Family Court for the Parish of East Baton Rouge has jurisdiction over most such cases. In this case, though, the victim had merely dated the man against whom she was seeking an injunction. She had never been married to or lived with him. Jurisdiction, therefore, fell outside that of the Family Court. After the district judge granted the injunction, the ex-boyfriend asked the judge if he could just speak briefly with the victim. The judge sternly refused and motioned to me to approach the bench. He asked me to escort the woman and her friend out of the courtroom via a back hallway to an employee elevator. While we were waiting for the elevator, I explained to the woman that an injunction is nothing more than a piece of paper that she can show to law enforcement personnel so that they can arrest the perpetrator if he violates the order. I told her she needed to make sure that she was in a safe place where he could not find her under any circumstances. I asked if he had any firearms and she said he did. I told her that federal law requires that an abuser give up his guns while an injunction obtained by an intimate partner is in effect, and suggested that she notify the U.S. Attorney's office to let them know of the situation. I also gave her friend instructions on how to get her out of the courthouse without going through any of the public entrances."

The story doesn't end there… "A few weeks later, I was horrified when I picked up the morning newspaper and learned that the ex-boyfriend had forced the woman's car off the road, attempted to shoot her and instead killed an unarmed off-duty deputy sheriff investigating what he thought was a traffic accident. Immediately, my thoughts reverted to my conversation with the woman just a few weeks prior to this terrible incident. Although I was relieved that she was unharmed, I was devastated that someone else had died at the hands of this very dangerous man, " she said. Kathleen is an attorney in the legal section of the Department of Health and Hospitals.

All lawyers have a legal obligation to provide their clients with competent, informed legal representation. Ethically, lawyers should not be putting their clients in harm's way either. The American Bar Association has published a Lawyers Handbook, "The Impact of Domestic Violence on Your Legal Practice." Every lawyer should have a copy; it should be mandatory reading in every law school. The handbook is designed to provide lawyers with information about core domestic violence issues that arise in nearly every practice of law. The handbook offers these pointers for lawyers:

- Make sure the victim is safe. When battered women leave they are in danger. Don't advise battered women to get restraining orders or take any action against the batterer without first assisting her with safety planning. If you can't help her develop a plan, refer her to the nearest battered women's shelter in your area. Work with her counselor, local law enforcement and the battered woman in ensuring that none of your actions increase her danger.
- Lawyers in most areas of practice have already had or will have a client who is a victim or one who is a perpetrator. All clients should be screened for domestic violence. Often women seek help with one issue related to the violence without realizing that the lawyer can help them resolve other issues as well.
- Confront the batterer with his behavior. He may leave unpleasant messages, use custody battles or visitation to harass the victim, or threaten to take the children away. When confronted he may deny his actions and blame the victim for provoking him. Don't be fooled. Only batterers are responsible for their behavior. Assign responsibility to the batterer.
- Lawyers can help overcome the myth that victims prefer to stay in the relationships. Staying is a survival mechanism.
- Discuss the victim's misconceptions about domestic violence. Let her know that the law no longer sanctions it and that there are remedies available to her.
- Realize that being misinformed about domestic violence is one of the most harmful things that you can do to your clients and your practice. Seek out education. Ask for assistance. Gather information about domestic violence programs in

Continued on page 30

The Public Perception

by John G. Farrar, Public Member, Hearing Committee Number 21 (Lafayette), Louisiana Attorney Disciplinary Board

Now that I am well into my second appointment with Louisiana Attorney Disciplinary Board as a public member of Hearing Committee #21 for the Lafayette area. I have gained what I feel is unique insight into the lawyer disciplinary process that few members of the general public will ever have. My experience has been both rewarding and frustrating, but I believe the process is working for the betterment of all.

First things first, my hat is off to the board staff. They do an excellent job of coordinating and following all the cases. This alone is a monumental task, when you add to the mix distributing all the reams of paperwork and arranging for meeting rooms all around the state one quickly realizes just how much work is involved. You lawyers get a lot of bang for your $165.

When Mr. and Mrs. John Q. Public read in their local newspaper that "Lawyer Brown" has been suspended or disbarred, they learn that in fact there is a lawyer disciplinary system and that it is working.

This has not always been the case, many members of the public felt that lawyer discipline was nonexistent and if it did exist it was in the form of just some "good old boys" winking and telling their fellow club member to behave themselves. Thankfully the process is now more out in the light and this exposure hastens the restoration of the public confidence in your profession.

As I mentioned earlier, some of my experiences with the system have been frustrating. Please allow me to share several items that I feel demand your attention regardless of your role in the system.

Continuances

While I realize that occasionally there are legitimate reasons for a continuance, it seems to me that many of these motions made at the last minute are simply delaying tactics that serve no purpose. As a volunteer, these delays are an inconvenience and show no consideration for our time and efforts.

Burden of Proof by Clear and Convincing Evidence

While we may be lay members, please don't ask my chairperson to explain to me the differences between the burdens of proof. I have yet to hear a definitive explanation from anybody! Please rely on my judgment and sense of fair play.

Body Language

Thank you, but I don't need your assistance by way of smirks and eye rolling to determine the veracity or significance of testimony that is being presented. If you feel that you must bolster your position with this type of behavior you are fighting an uphill battle. Furthermore this is insulting and far from professional.

Contempt for the System

I am sure nobody would choose to be at a hearing defending themselves against formal charges. Please refrain from personal attacks and tirades against the prosecutor and the disciplinary system, nobody wants to hear it and it is a complete waste of time and again, far from professional.

Lawyer vs. Lawyer

I have noticed a marked increase of lawyers filing frivolous complaints against other lawyers post trial or post settlement. Some have gone so far as to forward copies of their complaints to the presiding judge. I feel these types of complaints have no place in our system. This system was not set up to oversee our judges. Our judges, I am quite certain, are fully capable of handling any misconduct or unethical behavior that occurs during their contact with the various parties. It all comes off as a childish playground squabble.

Remember you are supposed to be professionals, so act professionally.

Non-lawyer, public members are a vital part of Louisiana's attorney disciplinary system. Anyone interested in serving in such a capacity is urged to contact Jennifer Stewart at 1-800-489-8411 or (504) 834-1488.

Recent Supreme Court Decisions

In re Raymond Earl Boudreau Jr., 2000-3158 (La. 1/5 /01); 776 So. 2d 428

In connection with three distinct matters, Boudreau failed to communicate with his clients, neglected the clients' legal matters, and failed to account for or return unearned fees. Boudreau also failed to provide requested information to the Office of Disciplinary Counsel in each investigation. Furthermore, Boudreau executed a promissory note in favor of the Louisiana State Board of Supervisors representing a student loan borrowed for the purpose of attending law school. Subsequently, he failed to timely satisfy the financial obligation.

Boudreau and ODC filed a joint petition for consent discipline, wherein Boudreau admitted the misconduct and the parties proposed that a three-year suspension was the appropriate sanction for the misconduct. The Board and Court accepted the petition. Boudreau was suspended for the three-year period and ordered to make restitution, to return files to one client, and to commence payment on his student loan obligation.

THREE-YEAR SUSPENSION

In re Lillian Brown-Singh, 2001-0669 (La. 4/27/01); 789 So. 2d 1256

In connection with a prior disciplinary investigation, Brown-Singh had entered into the disciplinary system's diversion program for a period of two years, which required appointment of a practice monitor. Notwithstanding, Brown-Singh continued to disregard the Rules of Professional Conduct in the operation of her law practice, primarily with respect to her handling and use of client funds. Therefore, when other disciplinary complaints were filed, ODC initiated additional investigations, resulting in Brown-Singh being placed on interim suspension.

Prior to the institution of formal charges, Brown-Singh and ODC filed a joint petition for consent discipline. The parties stipulated that Brown-Singh's conduct constituted neglect of legal matters, assessing unreasonable and excessive fees, engaging in a conflict of interest, commingling of clients' funds, failing to account for and refund unearned fees, failing to protect clients' interests upon termination of representation, and engaging in the unauthorized practice of law.

THREE-YEAR SUSPENSION, FOLLOWED BY A TWO-YEAR PERIOD OF SUPERVISED PROBATION WITH SPECIAL CONDITIONS UPON REINSTATEMENT

In re Stephen E. Caillouet, 2001-2461 (La. 11/9/01); ___ So. 2d ____; 2001 WL 1388775

Caillouet is an assistant district attorney in Lafourche Parish. He is permitted to maintain a private civil practice. In 1997, Caillouet represented a client in a divorce and community property matter. During the pendency of the divorce proceedings, the client's wife caused a simple battery charge to be filed against her husband. The charge was later continued without date by Caillouet and Louis Toups, a fellow ADA who also represented the wife. Following the Court's decision in *In re Toups*, 2000-0634 (La. 11/28/00); 773 So. 2d 709, Caillouet filed a petition for consent discipline, wherein he acknowledged that his representation of the client in a civil matter while a criminal matter was pending against the same client constituted an impermissible conflict of interest.

After the noting that Caillouet did not withdraw from the civil representation when he learned of the filing of criminal charges against his client, the Court determined that discipline was appropriate. Based on all the factors, the Court accepted the proposed discipline.

SIX-MONTH SUSPENSION, FULLY DEFERRED

In re Michael D. Callahan, 2000-3357 (La. 3/23/01); 782 So. 2d 624

ODC filed two sets of formal charges against Callahan alleging numerous counts of misconduct, including neglect of client matters, failure to account for client funds, failure to maintain a client trust account, failure to properly withdraw from client representation, failure to cooperate with the disciplinary authorities, and commingling and conversion of client and third party funds. Callahan filed a stipulation of facts admitting to the misconduct in the first set of formal charges, but failed to respond to the second set of formal charges. Both sets of formal charges were deemed proven by the hearing committee, resulting in a recommendation of disbarment. The matters were consolidated by the Board, which adopted the findings and recommendation of the committee.

DISBARMENT

In re Robert F. DeJean Jr., 2001-0150 (La. 3/16/01); 782 So. 2d 566

In June 1996, a client retained DeJean to assist him in a divorce and community property proceeding. Although DeJean completed the divorce, he failed to finish the community property matter in a timely fashion. Due to the client's declining health, his daughter obtained power of attorney in 1999. Neither the client's daughter nor her attorney were able to communicate with DeJean. Ultimately, the daughter's attorney completed the community property matter.

After a complaint in the matter was filed, ODC sent a request for information regarding the allegations of misconduct to DeJean. He failed to respond, requiring ODC to issue a subpoena compelling his appearance for a deposition.

After the filing of formal charges, DeJean filed a petition for consent discipline, admitting to the misconduct and proposing he be suspended from the practice of law for one year, deferred in full, subject to a six-month period of supervised probation

with special conditions.
ONE-YEAR SUSPENSION, FULLY DEFERRED, SUBJECT TO A SIX-MONTH PERIOD OF SUPERVISED PROBATION WITH SPECIAL CONDITIONS

In re Barry G. Feazel, 2001-2309 (La. 11/9/01); ___ So. 2d ____; 2001 WL 1388765

In October 1997, a client retained Feazel to represent him in a divorce. Feazel represented to his client that he had filed the divorce, but in fact, he did little or nothing on the client's behalf and failed to communicate with the client. Thereafter, Feazel was suspended in an unrelated matter. After his suspension became effective, Feazel failed to inform his client of his suspension, failed to return the client's file, and failed to account for or return the unearned portion of the fee.

In two separate matters, Feazel accepted fees to handle legal matters after the effective date of his suspension. Feazel failed to notify these clients of his suspension and failed to account for or return the fees he accepted from the clients. Additionally, Feazel failed to cooperate with ODC during the course of its investigation of the complaints filed against him.

The hearing committee recommended that Feazel be suspended for three years. However, after review and consideration of mitigating factors, the Board recommended that one year of the proposed suspension be deferred, followed by one year of probation with conditions. The Court accepted this recommendation.

THREE-YEAR SUSPENSION, WITH ONE YEAR DEFERRED, FOLLOWED BY ONE YEAR OF PROBATION WITH CONDITIONS

In re Pierre F. Gaudin Jr., 2000-2966 (La. 5/4/01); 785 So. 2d 763

After Gaudin entered a guilty plea in federal court to one count of making and subscribing a false tax return, ODC filed formal charges alleging that Gaudin was convicted of a serious crime which adversely reflects upon his moral fitness to practice law. At the formal hearing, Gaudin conceded that he pled guilty to the tax charge. However, he insisted he was not guilty, and testified he pled guilty only because he was embarrassed, confused and sought to protect his reputation and that of his family. The hearing committee concluded Gaudin violated the professional rules as charged, but the injury to the public or the administration of justice was minor. Relying on this factor, as well as additional mitigating factors, the committee concluded a one-year suspension, with credit for time served under the existing interim suspension and with all remaining time deferred, subject to a one-year period of supervised probation with conditions, was the appropriate sanction for Gaudin's misconduct.

The Board also determined Gaudin violated the professional rules as charges, but, unlike the committee, concluded there was actual injury, albeit minimal, to the public fisc, and injury to the reputation of the legal profession. Therefore, the Board recommended that Gaudin be suspended from the practice of law for a period of eighteen months, with six months deferred and with credit for time served on his interim suspension. It further recommended Gaudin be placed on supervised probation for a period of one year with conditions.

After noting that "a respondent cannot seek to try again the issue of guilt after he has been convicted," the Court found that Gaudin's guilty plea was conclusive evidence of a violation of the charged offense. Based on the presence of several mitigating factors, the Court concluded that a suspension from the practice of law for a period of eighteen months, retroactive to the date of Gaudin's interim suspension was the appropriate sanction.
EIGHTEEN-MONTH SUSPENSION

In re Charles R. Grady, 20000-3524 (La. 3/16/01); 782 So. 2d 570

Attorney disbarred for knowingly and intentionally violating duties owed to his clients, the public, the legal system and the profession, and causing significant injury to his clients by failing to properly safeguard and converting third party property; failing to complete work, failing to use reasonable diligence, failing to provide competent representation and communicate with his clients; deceiving his clients; failing to inform them he was ineligible to practice law; failing to charge a reasonable fee and failing to return unearned fees.
DISBARMENT

In re Thomas L. Grand Jr., 2001-0131 (La. 2/9/01); 778 So. 2d 580

In December 1999, Grand pleaded guilty in U.S. District Court to one count of misprision of a felony. In February 2000, prior to the institution of formal charges Grand filed a petition for consent discipline wherein he admitted that his federal conviction constituted a violation of Rule 8.4(a) (commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) of the Rules of Professional Conduct. In addition, he admitted the factual allegations of two complaints then being investigated by ODC.

In the first matter, Grand admitted that rental cars were provided to his clients in connection with his personal injury practice. In each case, Grand agreed to repay the rental car charges from any judgment or settlement the client received. However, on one occasion, he settled a client's case and failed to pay the rental car provider. Grand agreed that he failed to promptly deliver funds belonging to a third party. In the second matter, Grand admitted that he paid runners to solicit personal injury clients.

In the petition, Grand proposed that he be suspended from the practice of law for three years, with one year deferred. However, after Grand filed this petition, ODC learned that Grand had continued to practice law, albeit as a "paralegal," following the entry of an order of interim suspension. As a result, Grand filed an amended petition admitting this misconduct and proposed that he be disbarred.
CONSENT DISBARMENT

In re Whitley R. Graves, 2001-0922 (La. 5/15/01); ___ So. 2d ____; 2001 WL 505195

In February 2000, the Court issued an order holding Graves in contempt of court for his willful disobedience of a lawful order of the Court by failing to file a required sentence review memorandum in a timely manner. Thereafter, ODC and Graves filed a joint petition for consent discipline. After noting the existence of mitigating factors, the Court approved the petition.

NINE-MONTH SUSPENSION, FULLY DEFFERED, SUBJECT TO A TWO-YEAR PERIOD OF PROBATION

In re Johnnie A. Jones Jr., 2000-2765 (La. 2/21/01); 779 So. 2d 712

Jones initially agreed to represent a client in connection with divorce and custody proceedings on a *pro bono* basis. After no action was taken in a four month period, the client paid Jones $750 to handle the matter. Thereafter, Jones failed to complete the matter and failed to keep the client informed of the status of the case.

After an investigation, ODC filed formal charges. After the resulting formal hearing, the committee found that Jones demonstrated a lack of diligence in handling his client's case and failed to communicate with his client on a reasonable basis. The committee further found that Jones failed to place the client's funds in a trust account, and failed to account for this fee or refund the unearned portion of the fee at termination of representation. The committee recommended that Jones receive a public reprimand, with the further recommendation that he be placed on supervised probation with special conditions.

The Board agreed with the hearing committee's factual findings that Jones neglected his client's case and failed to communicate with her. The board also observed that Jones failed to make efforts to resolve the dispute over the fee as mandated by Rule 1.5(f)(6) of the Rules of Professional Conduct. The Board recommended that Jones be suspended from the practice of law for ninety days, fully deferred, subject to a one-year period of supervised probation with special conditions.

NINETY-DAY SUSPENSION, FULLY DEFERRED, SUBJECT TO A ONE-YEAR PERIOD OF SUPERVISED PROBATION WITH SPECIAL CONDITIONS

In re Johnnie A. Jones Sr., 00-1939 (La. 4/3/01); 787 So. 2d 271

In February 1995, a client retained Jones to represent her in a personal injury matter after discharging her former attorney. Pursuant to the contract between Jones and the client, Jones was entitled to receive a maximum 40% contingency fee.

Subsequently, Jones negotiated a settlement on behalf of his client. He withheld his 40% contingency fee from the disbursement. However, he also withheld an addition sum from the client's portion of the settlement, representing the negotiated amount in fees due to the client's former attorney. Jones never mentioned to his client that he was not entitled to retain the excess amount of the attorney's fees.

In an unrelated matter, a second client retained Jones to represent him in a criminal case, as well as related civil service and worker's compensation proceedings. The client paid Jones $7,000 for the full representation. However, Jones performed minimal work on behalf of the client. The client discharged Jones and requested an accounting and return of the unearned fee. Jones failed to comply with either request, alleging he earned the entire fee.

With regard to the first matter, the hearing committee found Jones violated Rule 1.15 of the Rules of Professional Conduct by wrongfully disbursing funds belonging to his client. As to the second matter, the committee found Jones failed to account for his fee. However, the committee found insufficient evidence of a violation of Rule 1.5(f)(6), relating to failure to return unearned fees, because it was unclear which part of the fee should be returned. Based on these violations, the committee recommended that Jones be suspended from the practice of law for a period of one year and one day.

The Board concurred in most of the findings of the hearing committee. However, the Board concluded the committee erred in failing to find a violation of Rule 1.5(f)(6), because the record indicated Jones did not place any of the disputed funds in his trust account and failed to provide an accounting to his clients. The Board also concurred in the sanction recommended by the committee.

Based upon these findings and the mitigating factors present in this matter, the Court concluded that a sanction of a one-year suspension was appropriate.

ONE-YEAR SUSPENSION

In re Daniel R. Keele, 2000-3105 (La. 4/3/01); 783 So. 2d 1261

ODC filed formal charges against Keele for alleged misconduct in five separate matters. In general, the charges alleged that Keele neglected the legal matters of his clients, failed to communicate with his clients, failed to render an accounting or return unearned fees, failed to properly terminate representation, and failed to cooperate in the disciplinary investigation of the complaints filed against him.

After a hearing, the committee determined that, save for the charges of failure to cooperate in a disciplinary investigation in two matters and failure to communicate in one of those matters, ODC failed to prove the charges by clear and convincing evidence. The committee recommended that Keele be suspended from the practice of law for a period of thirty days for each of the proven violations, with the suspensions to run concurrently.

After review, the Board adopted the findings of the committee, but recommended that a harsher sanction be issued. The Court adopted the Board's recommendation and suspended Keele from the practice of law for a period of eight months, with five months deferred, subject to successful completion of a six-month probation period.

EIGHT-MONTH SUSPENSION, WITH FIVE MONTHS DE-

FERRED, SUBJECT TO A SIX-MONTH PERIOD OF SUPERVISED PROBATION

In re Jeffrey P. LeBlanc, 2001-0099 (La. 4/27/01); 786 So. 2d 719

ODC filed nine counts of formal charges against LeBlanc alleging lack of diligence, failure to communicate, failure to return unearned fees, commingling and conversion of client funds, failure to cooperate in a disciplinary investigation, and engaging in conduct involving deceit, dishonesty, fraud or misrepresentation. LeBlanc failed to file an answer to the charges or to otherwise participate in the disciplinary proceeding.

DISBARMENT

In re Richard James Mithun, 2000-3174 (La. 1/11/01); 776 So. 2d 426

In 1998, a client retained Mithun to represent him in connection with criminal charges pending against him in Jefferson Parish. In June 1998, in an attempt to influence the outcome of the case, Mithun delivered $49,135 in cash to a Jefferson Parish assistant district attorney. Thereafter, Mithun was charged with and plead guilty to conspiracy to commit public bribery.

CONSENT DISBARMENT

In re Dennis F. Nalick, 2000-2891 (La. 1/30/01); 777 So. 2d 1220

In October 2000, ODC filed a motion to initiate reciprocal discipline based upon discipline imposed against Nalick by the Supreme Court of Illinois in 1998. In that matter, based upon a consent discipline filed by Nalick, the Illinois court imposed a one-year suspension, with all but thirty days deferred and probation with special conditions.

In the petition, Nalick stipulated that, upon settling a minor client's case in 1983, he failed to comply with a specific court order and disciplinary rules requiring him to deposit the minor client's settlement proceeds ($3,835) into a restricted account. Instead, he placed the funds in his general escrow account. During the twelve years that the funds were to be held, the account's balance fell below this amount on occasion and, in fact, was overdrawn. The conversion was discovered in March 1996 when the minor reached majority and requested the funds. Nalick provided full restitution with interest prior to the matter being reported to the Illinois Attorney Registration and Disciplinary Commission.

The Supreme Court of Louisiana noted that from the record of the Illinois proceeding, it appeared there was no evidence of a direct conversion of client funds by Nalick. The stipulated facts indicate to the Court that Nalick was unaware the conversion took place, due to his failure to conduct periodic audits to review and reconcile his client trust account, or discuss the matter with his office staff; but, nonetheless, it was clear that Nalick bears the ultimate responsibility for the conversion due to his failure to supervise his office staff.

ONE-YEAR SUSPENSION, WITH ALL BUT THIRTY DAYS DEFFERRED, SUBJECT TO A NINE-MONTH PERIOD OF PROBATION

In re Iona A. Renfroe, 2001-1947 (La. 11/9/01); ___ So. 2d ____; 2001 WL 1388770

ODC filed formal charges alleging that Renfroe failed to complete a legal matter, failed to provide an accounting or to return the unearned fee, and failed to cooperate with ODC in its investigation of the complaint filed by her client.

Renfroe failed to respond to the formal charges. As a result, the matter was submitted to the hearing committee on written argument and documentary evidence. After considering these documents, the committee recommended that Renfroe be suspended.

Renfroe appeared before a panel of the board. After review, the Board recommended that Renfroe be suspended for six months, fully deferred. The Court accepted this recommendation.

SIX-MONTH SUSPENSION, FULLY DEFERRED, WITH CONDITIONS

In re Jason Blaine Rochon, 2000-3356 (La. 1/12/01); 776 So. 2d 432

Rochon was the subject of some thirty-four disciplinary investigations involving more than forty client files. The categories of misconduct involved, and the approximate number of instances in which the type of misconduct occurred, may be summarized as follows: twenty-four instances of failing to properly handle client property by failing to render an accounting, failing to inform a client of a settlement, failing to properly remit a settlement, forging a client's signature, converting and commingling client and third-party funds, and failing to use and maintain a trust account; eight instances of neglect of client matters; nine instances of failing to properly withdraw as counsel by abandoning his law practice, failing to return client files, failing to protect a client's interest, and failing to complete a matter; two instances of failing to return unearned fees and charging excessive fees; seven instances of failing to communicate with clients and/or misrepresenting cases to clients; two instances of dishonesty, fraud, deceit, or misrepresentation (such as lying to clients); and four instances of engaging in conduct that is disruptive to a tribunal and prejudicial to the administration of justice.

CONSENT DISBARMENT

In re James F. Slaughter, 2001-0151 (La. 2/16/01); 778 So. 2d 1138

In 1996, a client retained Slaughter in connection with a paternity and child custody matter. The client agreed to pay Slaughter a fee of $1,000 plus $200 in court costs, apparently to be paid on an installment basis. Although Slaughter accepted weekly payments toward the fee from the client, he failed to keep records to indicate how much had been paid.

In July 1997, prior to the completion of the matter, Slaughter advised the client he would have to withdraw from further rep-

Continued on page 30

Summary of Events and Activities for the Year

-- prepared by Donna L. Roberts, Board Administrator

Disciplinary Board Video and Website Debut

Good news! The Supreme Court recently gave the Board approval to begin distribution of the Louisiana Attorney Disciplinary Board's informational video.

The informational video is designed for public education purposes however, we also believe the video will be beneficial to the lawyer population as well. Specifically, it explains the function of the Louisiana Attorney Disciplinary Board, the types of cases it handles, and how and why attorneys are disciplined. Generally, it will educate the public about its role in the attorney/client relationship, what clients can expect from their attorneys, what the attorney disciplinary process seeks to achieve, and the importance of good communication between the client and attorney. The video also explains what the Board cannot do in attorney disciplinary matters.

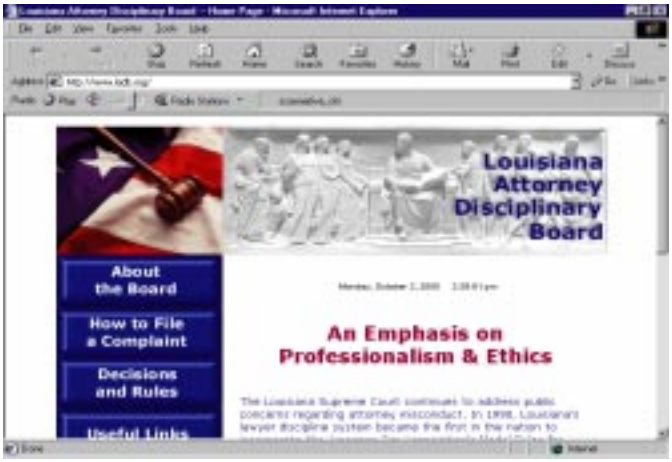
The 15-minute video illustrates the mission and workings of the LADB, featuring two or three vignettes highlighting the types of complaints typically filed against attorneys. It also features visuals of the hearing process, board review process, and attorneys working with clients. The last section of the video focuses on the role of the Louisiana Supreme Court in its authority to discipline lawyers within our State.

The style of the video is fast-paced and upbeat, using graphics and music bridges, high-tech open, and creative images making the video both interesting and compelling. In an attempt to make this video as concise and professional as possible, Mr. Clancy Dubois a veteran journalist and attorney narrated.

The video was written, edited and produced by LADB staff members, Rodney Hastings and myself.

We will begin airing the video on statewide television, such as public access cable systems and public broadcasting stations, as a result of Congressional and FCC action and rulings qualifying the Agency for free television air time. This will allow us to reach 99% of the State's population. We also plan to mount the video onto the Board's Internet Web site for easy access and viewing by anyone. Additionally, we will show the video at public forums we currently have scheduled and any future forums such as Rotary Clubs, etc. Finally, we plan to distribute the video to the law schools and local bar associations.

The Board has designed and created its own Web page (ladb.org). With just a click of a mouse, those interested in the legal profession can access a variety of areas which were designed to be beneficial to the lawyer and others desiring information about the Board.Of particular interest is the Decisions and Rules section, in this area are the discipline opinions from 1901 to present. We have incorporated the latest publishing technology within the Web page to efficiently provide instantaneous access (real time environment) to opinions as they are rendered in each stage of the disciplinary process. An easy to use customized searching template, in addition to a full-text indexing capability, is provided to the user for comprehensive searching. Louisiana is the only state currently using this technology.



You can also download or print out copies of the most recent versions of the Louisiana Rules of Professional Conduct and Supreme Court Rule XIX from the website by clicking on the "Publications" button, and then selecting which document you want. The Board generally updates these particular versions of the rules in a short period of time following the approval of any changes by the Court. Additionally, by clicking on the "Downloads" button you can access the download site for the Board's complaint form and readmission application.

Other buttons on the website's sidebar allow you to navigate to pages offering useful information about the Board and the disciplinary process, as well as a listing of useful links to other legal professional responsibility sites.

The Board is always on the lookout for improved ways to educate and inform the public and those involved in the disciplinary process. We believe the website can be a very useful tool in accomplishing this. Please take a few minutes to explore its possibilities, and then let us hear from you.

Your comments or suggestions are always welcomed. Call (504) 834-1488 or (800) 489-8411 or send your e-mail to RodneyH@ladb.org or DonnaR@ladb.org.

Sanctions Imposed During the Year 2001*

1) Admonitons - 47
2) Reprimands - 16
3) Suspensions - 26
4) Disbarments - 13

* - As of December 1, 2001

Board Filings During the Year 2001*

1) Formal Proceedings (Formal Charges/Consent Discipline) - 115
2) Appeals of Dismissals - 209

* - As of December 1, 2001

Top Ten Frequently Alleged Rule Violations For the Year 2001

1) Lack of Communication
2) Neglect
3) Misrepresentation/Dishonesty
4) Lack of Diligence
5) Unearned Fees
6) Scope of Representation
7) Improper Funds Handling
8) Ineffective Assistance
9) Conflict of Interest
10) Unreasonable Fees

Domestic Violence . . . continued from page 22

your area. Learn the law that applies to domestic violence situations.

Lawyers who learn the signs of domestic violence can then learn how to respond appropriately.

Across Louisiana employers are gathering for trainings and lending their support to a statewide effort to make workplaces safer. In August of 2000 Attorney General Richard P. Ieyoub created a statewide task force of employers, advocates and attorneys to develop model policies and procedures for addressing domestic violence in the workplace. Domestic violence is a workplace issue that affects thousands of Louisiana business each year. Andrea Wright was killed at work. Jacqulene Gersfeld could have been killed inside of the courthouse. Both are incidents of domestic violence coming to the workplace. If you or clients would like to be in the forefront in preparing your workplace to respond to appropriately to domestic violence, please call Gayle Jackson at the Louisiana Department of Justice, 225-342-9724 or Jacksong@ag.state.la.us. To find out more about the Attorney General's Domestic Violence in the Workplace Initiative visit their website at www.ag.state.la.us.

---

[1] Bodek, L., & McMahon, P.M. (2001). Violence in Louisiana. Louisiana Morbidity Report, 4-5.

[2] Violence Policy Center. (2000). When Men Murder Women: An Analysis of 1998 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents.

[3] Louisiana Protective Order Registry

[4] U.S. Department of Justice, Bureau of Justice Statistics, Special Report, National Crime Victimization Study, Violence Against Women: Estimates from the Redesigned Survey (August 1995) reporting that women are victims of Intimate violence six times more often than men).

ABA Begins Action on Updating Ethics Rules

The American Bar Association House of Delegates began considering proposed revisions to the ABA Model Rules of Professional Conduct last August. The process of updating the national model ethics standards for lawyer disciplinary enforcement will continue in February when the delegates reconvene in Philadelphia. The House members, representing ABA entities, state and local bar associations, specialty, and national ethnic bar associations, and other law related groups, is considering more than 50 proposed changes in the national ethics model, taking up each revision individually and voting to adopt, reject or amend the proposal. When it completes debate and action on all of the proposals, it will entertain a motion to adopt the full report of the ABA's Ethics 2000 Commission, as revised in those individual votes.

Only then will the ethics code measures become association policy, and be circulated to state supreme courts and ethics agencies for their consideration. Because lawyers are licensed at the state level, it is only by action of state licensing authorities that any ethics rule applies to the conduct of individual lawyers across the nation

In considering specific proposed ethics rules changes, the House:

(1) Declined to require lawyers to put all fee agreements with their clients in writing. Under existing rules, only contingent fees must be committed to writing.

(2) Adopted a requirement that clients sign express agreements when they waive conflicts of interest.

(3) Adopted a prohibition on lawyers having sex with their clients, except when the sexual relationship predated the lawyer-client relationship.

(4) Expanded the discretion of lawyers to reveal confidential information to prevent reasonably certain death or substantial bodily harm, but declined to expand that discretion to cover a situation where a client is using the lawyer's services to commit crimes or frauds reasonably certain to result in substantial injury to the financial interests or property of another.

A complete listing of all House of Delegates action during the August meeting is available online at http://www.abanet.org/ftp/pub/leadership/2001journal.doc Where recommendations for House action were amended, the amended language follows the listing. A listing of each recommendation, with a link to the full text of the resolution language and the supporting report, is also available online at http://www.abanet.org/leadership/2001/summary.html The proposed amendments to the Model Rules of Professional Conduct, with explanatory notes for each, are accessible through the link to Report 401.

Supreme Court . . . continued from page 27

resentation due to a conflict of interest. After withdrawing, he failed to account for his earned fee and failed to refund the unearned portion of the fee, despite a request from the client.

After ODC filed formal charges in this matter, Slaughter filed a petition for consent discipline, admitting to the misconduct and proposing he be suspended from the practice of law for six months, deferred in full, subject to a one-year period of supervised probation. The Board and Court accepted the petition.

ONE-YEAR SUSPENSION, FULLY DEFERRED, SUJBECT TO A ONE-YEAR PERIOD OF SUPERVISED PROBATION

In re Stanley S. Spring, II, 2001-2515 (La. 11/16/01); ___ So. 2d ____; 2001 WL 1464700

ODC filed formal charges stemming from Spring's misdemeanor conviction in federal court for failure to pay child support. In his answer to the formal charges, Spring admitted the conviction, but raised numerous mitigating circumstances concerning his inability to satisfy his financial obligation. After consideration of the evidence and the mitigating circumstances, the hearing committee recommended that Spring be suspended for two years, fully deferred, subject to successful completion of two years of probation with conditions.

TWO-YEAR SUSPENSION, FULLY DEFERRED, SUBJECT TO SUCCESSFUL COMPLETION OF TWO YEAR OF PROBATION WITH CONDITIONS

In re Leila Selden Withers, 2001-0967 (La. 5/4/01); 786 So. 2d 724

In August 1997, Withers was certified ineligible to practice law stemming from her failure to comply with her mandatory continuing legal education requirements. In September 1998, she was again rendered ineligible resulting from her failure to pay her bar association fees and disciplinary assessment.

In January 1999, while ineligible to practice law, Withers met with a client and accepted a retained of $4,000 to represent the client's son in a post-conviction criminal matter. Withers failed to disclose her ineligibility to practice law. Days later, Withers accepted an addition $530 from the client.

Subsequently, Withers failed to take any action in the case. After several months, the client requested a refund of the legal fees she paid. Withers refused to comply with this request.

Prior to a formal hearing, Withers and ODC filed a joint petition for consent discipline. Withers admitted to the misconduct and the parties proposed that as a result she be disbarred from the practice of law.

CONSENT DISBARMENT

Get OnePrice Business Checking® with no service charge 'til 2001.

9 Out of 10 Small Business Owners Prefer OnePrice Business Checking.

(Apparently, number 10 would rather pay a monthly service charge.)

Hibernia OnePrice Business Checking® is the preferred choice of business owners. That's because there's no monthly cycle service charge on all new Hibernia OnePrice Business Checking accounts until the year 2001. So join the crowd! Open a OnePrice Business Checking account with as little as $100 today. Just stop by any of our convenient banking offices, or

Call 1-800-996-8672

or email us at

smallbus@hibernia.com

HIBERNIA
Small Business Banking
Specializing in the needs of growing businesses.

Pssst! Bank Online HIBERNIA.com

The Louisiana Disciplinary Review

Published by
The Louisiana Attorney Disciplinary Board
2800 Veterans Memorial Boulevard, Suite 310
Metairie, Louisiana 70002

Bulk Rate
U.S. Postage
PAID
Little Rock, AR
Permit No. 1884

This public document was published at an approximate cost of $10,843.73. Twenty thousand (20,000) copies of this public document were published in this first printing at an approximate cost of $6,843.73. The total cost of all printings of this document, including reprints is $10,843.73. This document was published by the Louisiana Attorney Disciplinary Board to educate the public and the legal profession under authority of Supreme Court Rule XIX. This material was printed in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.