

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: JEFFERY DEE BLUE**

**DOCKET NUMBER: 22-DB-018**

**RECOMMENDATION TO THE LOUISIANA SUPREME COURT**



**INTRODUCTION**

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Jeffery Dee Blue (“Respondent”), Louisiana Bar Roll Number 35015.<sup>1</sup> ODC alleges Respondent violated the following Rules of Professional Conduct: 1.1, 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c).<sup>2</sup>

**PROCEDURAL HISTORY**

The formal charges were filed on May 2, 2022. The charges were sent via certified mail to Respondent’s primary registration address on May 5, 2022, where they were received two days later.<sup>3</sup> Because Respondent failed to file an answer or otherwise respond to the charges, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, Section 11(E)(3)<sup>4</sup> on June 13, 2022. By order signed June 16, 2022, the factual allegations

<sup>1</sup> Respondent was admitted to the practice of law in Louisiana on July 15, 2013. Respondent is currently ineligible to practice law. He has been ineligible since October 20, 2020, for failure to maintain his professional obligations.

<sup>2</sup> See the attached Appendix for the text of these Rules.

<sup>3</sup> 806 Celeste Ave., River Ridge, LA 70123.

<sup>4</sup> This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned

contained in the formal charges were deemed admitted. On August 15, 2022, ODC filed its submission on sanctions.

On September 30, 2022, Hearing Committee No. 37 (“the Committee”)<sup>5</sup> issued its report, finding that Respondent violated Rules 1.1, 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct. The Committee recommended that Respondent be suspended for two years and be ordered to make full restitution, with interest, to Channel Atkins, Cassi Holmes, and Thomas Berryhill, the complainants in this matter. The Committee also recommended that Respondent be assessed with costs and expenses of the proceeding pursuant to Rule XIX, Section 10.1.

ODC filed a notice of objection to the Committee’s report on October 3, 2022, objecting to the ABA Standards applied by the Committee and the leniency of the recommended sanction. Respondent did not file an objection to the Committee’s report. On November 7, 2022, ODC also filed its Board brief. Respondent did not file a reply brief.

Oral argument before Panel “C”<sup>6</sup> of the Disciplinary Board was held on December 8, 2022. First Assistant Disciplinary Counsel Gregory L. Tweed appeared on behalf of ODC. Respondent did not appear.

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requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

<sup>5</sup> Members of the Committee included Mark D. Latham (Chair), Jennifer M. O’Neal (Lawyer Member), and Robert P. Ventura (Public Member).

<sup>6</sup> Members of Panel “C” included Paula H. Clayton (Chair), Aldric C. “Ric” Poirier, Jr. (Lawyer Member), and Valerie S. Fields (Public Member).

## **FORMAL CHARGES**

The formal charges read, in pertinent part:

### **ODC File No. 0038326 (Count 1)**

Channel Atkins hired you for a divorce and to obtain a restraining order. The fee agreement was \$2,000 plus expenses. Ms. Atkins made numerous efforts to communicate with you concerning her case, which you ignored. You intentionally delayed completing Ms. Atkins's case, which required Ms. Atkins to incur a large amount of credit card debt because she had to live off credit cards while waiting on the case to be completed and because her interim spousal support expired.

Notice of the complaint was transmitted to you on February 20, 2020, to your primary bar registration address, 806 Celeste Street, River Ridge, Louisiana 70123. The correspondence was returned as undeliverable.

A second copy of the complaint was transmitted to you on March 17, 2020. In response, you emailed ODC on April 2, 2020, acknowledging receipt of the complaint and requesting an additional thirty days to submit a response. Your request was granted; however, you failed to submit a written response.

Due to your failure to provide a written response, a subpoena was issued for your sworn statement. You appeared for your statement on July 28, 2020. During your statement, you indicated you were in the process of shutting down your law practice. You have intentionally abandoned your law practice and have not taken adequate steps to notify your clients and protect their interests.

You were given thirty days to provide ODC with a written response, a copy of the client file, and proof of a refund to Ms. Atkins at the time of your statement. You intentionally failed to produce the requested information. You have also intentionally refused to refund Ms. Atkins the money owed to her following the abandonment of your law practice.

ODC subsequently received notice that you were declared ineligible on October 20, 2020, due to your failure to pay your bar dues. You were also declared ineligible on June 18, 2021, for failing to complete your MCLE requirements for 2020.

In connection with this matter, you have knowingly and intentionally violated Rules 1.1, 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

**ODC File No. 0038449 (Count 2)**

Cassi Holmes initially hired you in October of 2017 to handle the curatorship of her father, Willie Holmes, Sr. Ms. Holmes paid you \$5,151.50 and confirmed you resolved this case.

Ms. Holmes hired you again on February 26, 2018, to handle her father's succession. Ms. Holmes paid you a flat fee of \$2,500.00 to handle the succession. While trying to get all of her father's affairs in order, Ms. Holmes waited for an annuity account decision to determine how everything would be separated. Initially, Ms. Holmes was supposed to receive 100% of the annuity; however, it appeared that someone fraudulently changed the annuity paperwork to show that the annuity would be split three ways between Ms. Holmes and her siblings. Due to possible fraudulent activity, a handwriting expert was brought in to examine the document. Ms. Holmes gave you a deadline to communicate with the examiner, and you failed to follow up as requested. Mary Ann Sherry, the investigator who handled the case, is now retired.

You failed to meet with Ms. Holmes when she would travel to Louisiana from California. Ms. Holmes received no proof that you performed any work on her father's succession. Attorney John A. Occhipinti, Ms. Holmes's family attorney for over 40 years, checked with the clerk's office; however, as of August 2019, there was nothing filed regarding her father's succession.

On August 16, 2019, Ms. Holmes wrote you a letter discharging you from the case and requesting a refund of \$2,500. At this time, she still has not received her refund.

Notice of the complaint was transmitted to you on April 17, 2020, at your primary bar registration address at 806 Celeste Ave., River Ridge, Louisiana 70123. You accepted the notice on April 20, 2020.

Due to your failure to provide a written response, a subpoena was issued for your sworn statement. You appeared for your statement on July 28, 2020. During your statement, you were given thirty days to provide your written response, a copy of the client file, and proof of a refund. You intentionally refused to produce the requested information. You have also intentionally refused to refund Ms. Holmes the money owed to her following the abandonment of your law practice.

In connection with this matter, you knowingly and intentionally violated Rules 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

### **ODC File No. 0038767 (Count 3)**

Thomas Berryhill hired you sometime around August 2018 for a criminal matter. Mr. Berryhill paid \$4,000 for the legal representation. You failed to provide diligent representation and did not provide Mr. Berryhill with copies of the documents about his case. You convinced Mr. Berryhill to agree to a plea he didn't want. Mr. Berryhill wanted to go to trial to prove his innocence. Mr. Berryhill was sentenced on September 19, 2019, and had 30 days to file an appeal. Mr. Berryhill advised you he wanted to appeal the conviction. Mr. Berryhill's family tried to reach out to you by phone, but he [sic] never answered. The letters Mr. Berryhill sent you also went unanswered.

Notice of the complaint was transmitted to you on September 11, 2020, your primary bar registration address, via certified mail, at 806 Celeste Ave, River Ridge, Louisiana 70123. You received the correspondence on September 16, 2020. To date, you have not responded to this complaint.

You have intentionally failed to pursue Mr. Berryhill's case. You have also intentionally refused to refund Mr. Berryhill the money owed to him following the abandonment of your law practice.

In connection with this matter, you have knowingly and intentionally violated Rules 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct.

### **THE HEARING COMMITTEE'S REPORT**

As noted above, the Committee issued its report on September 30, 2022. In its report, the Committee noted that it reviewed ODC Exhibits 1-17 that were submitted by ODC. It also noted that Respondent did not submit evidence or argument for its consideration nor did he request to be heard in mitigation pursuant to Rule XIX, Section 11(E)(4).

The Committee then issued the following findings of fact.<sup>7</sup>

### **FINDINGS OF FACT**

On October 20, 2020, Respondent was declared ineligible to practice law due to his failure to pay his bar dues and disciplinary assessment and was also declared ineligible on June 18, 2021, for failing to complete his MCLE requirements for 2020.

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<sup>7</sup> The footnotes found in the Committee's findings of fact have been deleted from this recommendation.

**ODC File No. 0038326 (Count 1)**

Channel Atkins hired Respondent for a divorce and to obtain a restraining order. The fee agreement was \$2,000 plus expenses. Ms. Atkins's numerous efforts to communicate with Respondent concerning her case were ignored. Respondent delayed completing Ms. Atkins' case, which required Ms. Atkins to incur a large amount of credit card debt because she had to live off credit cards while waiting on the case to be completed and because her interim spousal support had expired.

Notice of the complaint was transmitted to Respondent at his primary bar registration address on February 20, 2020. The correspondence was returned as "Unclaimed. Unable to Forward." The ODC transmitted a second copy of the complaint to Respondent on March 17, 2020. Respondent's April 2, 2020 email reply to ODC acknowledged receipt of the complaint and requested additional time to submit a substantive response. The ODC agreed to the request, but Respondent failed to submit a written response.

When Respondent failed to submit a written response, ODC subpoenaed him to appear for a sworn statement. During his July 28, 2020 sworn statement, Respondent stated that he was in the process of shutting down his law practice. At the conclusion of the sworn statement, ODC granted Respondent another thirty days to provide ODC with a written response, a copy of the client file, and proof of a refund to Ms. Atkins. Respondent did not provide a response, did not refund Ms. Atkins any unearned fee, and did not provide her file to her. The Committee finds that Respondent intentionally abandoned Ms. Atkins' matter and did not take adequate steps to notify her and protect her interests.

**ODC File No. 0038449 (Count 2)**

Cassi Holmes first hired Respondent in October of 2017 to handle the curatorship of her father. She paid Respondent \$5,151.50 and confirmed he completed the matter.

On February 26, 2018, Ms. Holmes again retained Respondent to handle her father's succession and paid him a flat fee of \$2,500.00. While trying to get all of her father's affairs in order, Ms. Holmes waited for an annuity account decision. Ms. Holmes understood that she was supposed to receive 100% of the annuity; however, someone had apparently fraudulently changed the annuity paperwork to show that the annuity would be split among Ms. Holmes and her siblings. Due to possible fraudulent activity, a handwriting expert was brought in to examine the document. Ms. Holmes gave Respondent a deadline to communicate with the expert, but Respondent failed to follow up as requested by his client.

Respondent failed to meet with Ms. Holmes when she traveled to Louisiana from California. Ms. Holmes received no proof that Respondent performed any work on her father's succession. Attorney John A. Occhipinti, Ms. Holmes's family

attorney for over 40 years, confirmed with the clerk of court's office that as of August 2019, nothing was filed regarding the succession. On August 16, 2019, Ms. Holmes sent Respondent a letter discharging him from the case and requesting her file and a refund of \$2,500. At the time the matter was submitted, she still has not received her refund or the file.

Notice of the complaint was transmitted to Respondent on April 17, 2020, at his primary bar registration address at 806 Celeste Ave., River Ridge, Louisiana 70123. Respondent accepted the notice on April 20, 2020.

Due to his failure to provide a written response, a subpoena was issued for Respondent's sworn statement. He appeared for his statement on July 28, 2020. During the statement, he admitted he did not properly handle the matter and owed Ms. Holmes a full refund. The ODC afforded him an additional thirty days to provide a written response to the complaint, a copy of the client file, and proof of a refund to Ms. Homes. He failed to do any of these things.

Respondent did not comply with any of these requirements. He intentionally refused to provide a response to the complaint, intentionally refused to provide a copy of the client file, and intentionally refused to refund Ms. Holmes the money owed to her following the abandonment of his law practice. The Committee finds that Respondent intentionally abandoned Ms. Atkins' matter and did not take adequate steps to notify her and protect her interests.

### **ODC File No. 0038767 (Count 3)**

Thomas Berryhill hired Respondent in 2018 for a criminal matter and paid him \$4,000 for the legal representation. Respondent failed to provide diligent representation and did not provide Mr. Berryhill with copies of the documents about his case. Mr. Berryhill wanted to go to trial to prove his innocence, but Respondent convinced him to agree to a plea that he did not want. He was sentenced on September 19, 2019 and had 30 days to file an appeal. Mr. Berryhill advised Respondent he wanted to appeal the conviction, and Mr. Berryhill's family tried to reach Respondent by phone, but he never answered.

Notice of the complaint was transmitted to Respondent on September 11, 2020, his primary bar registration address via certified mail. Respondent received the correspondence on September 16, 2020. To date, he has not responded to this complaint.

The Committee finds that Respondent intentionally failed to pursue Mr. Berryhill's case and refused to refund Mr. Berryhill the money owed to him following the abandonment of his law practice.

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As to the alleged rule violations, the Committee determined as follows.

## **RULES VIOLATED**

With respect to all three matters, the Committee's findings discussed above demonstrate that Respondent violated Rules 1.3, 1.4, 1.5, 1.15(a), 1.16(d), 8.1(c), and 8.4(c) of the Rules of Professional Conduct because he:

1. did not act with reasonable diligence (Rule 1.3);
2. failed to reasonably communicate with his clients (Rule 1.4);
3. failed to keep his clients reasonably informed about the status of the matter (Rule 1.4);
4. failed to promptly comply with reasonable requests from the clients for information (Rule 1.4);
5. failed to return unearned fees to each client (Rule 1.5);
6. failed to safeguard property of the client (Rule 1.15(a));
7. failed to take reasonable steps to protect each client's interest by providing the client with his or her file (Rule 1.16(d));
8. failed to cooperate with the ODC in its investigation of the matters (Rule 8.1(c)); and
9. engaged in dishonest conduct (Rule 8.4(c)).

In addition, in connection with ODC File No. 0038326 (Count 1), the Committee finds that Respondent has knowingly and intentionally violated Rule 1.1 by failing to provide competent representation.

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As to the sanction, the Committee analyzed the Rule XIX, Section 10(C) factors and found that Respondent violated duties owed to his clients, the public, the legal system, and the profession. It also concluded that Respondent's conduct was intentional. The Committee also concluded that Respondent's actions caused actual harm to multiple clients who paid for services not performed, including approximately \$2,000 taken from Channel Atkins, \$2,500 from Cassi Holmes, and \$4,000 from Thomas Berryhill. Further, Respondent's intentional refusal to cooperate with ODC caused actual harm to the legal profession, as ODC was forced to spend additional time and resources investigating these matters without Respondent's assistance. The following aggravating factors were found by the Committee:

1. dishonest or selfish motive;



2. a pattern of misconduct;
3. multiple offenses;
4. bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
5. refusal to acknowledge wrongful nature of conduct;
6. the vulnerability of the victims; and
7. indifference to making restitution.

No mitigating factors were found by the Committee.

After discussing Standards 4.42(a), 4.42(b), 4.52, 4.12, and 7.2 of the *ABA Standards for Imposing Lawyer Sanctions*, the Committee found that suspension was the baseline sanction for Respondent's misconduct.<sup>8</sup>

After reviewing various cases including *In re Wilson*, 2018-1800 (La. 1/14/2019), 260 So.3d 1203 and *In re Hicks*, 2018-1211 (La. 10/05/18), 255 So.3d 1021, the Committee determined that a two-year suspension was appropriate in this matter. *Wilson* involved one count of misconduct. In that matter, the respondent failed to perform any substantial work in a client's

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<sup>8</sup> Standard 4.42(a) provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to the client.

Standard 4.42(b) provides that suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standard 4.52 provides that suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

Standard 4.12 provides that suspension is generally appropriate when the lawyer knows or should know that he or she is dealing improperly with client property, and causes injury or potential injury to the client.

Standard 7.2 provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

matter, failed to communicate with the client, failed to refund an unearned fee, and failed to comply with ODC's investigation. The respondent received a two-year suspension. Similarly, the respondent in *Hicks* neglected legal matters, failed to communicate with his clients, failed to refund unearned fees, and failed to cooperate with ODC's investigations. The respondent received a two-year suspension and was ordered to make full restitution with interest. The respondent's misconduct in *Hicks* affected four clients. The Committee also cited three other decisions in which a similar result was reached.<sup>9</sup>

In conclusion, the Committee found that Respondent violated the Rules of Professional Conduct as charged. It recommended that Respondent be suspended for two years and be ordered to make full restitution, with interest, to the complainants, Ms. Atkins, Ms. Holmes, and Mr. Berryhill. The Committee also recommended that Respondent be assessed with costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

## **ANALYSIS OF THE RECORD BEFORE THE BOARD**

### **I. Standard of Review**

The powers and duties of the Disciplinary Board are defined in Section 2 of Louisiana Supreme Court Rule XIX. Rule XIX, Section 2(G)(2)(a) states that the Board is "to perform

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<sup>9</sup> See, e.g., *In re Oustalet*, 2019-0486 (La. 5/20/2019), 271 So.3d 194 (in a consent discipline matter, the respondent was suspended for two years for neglecting clients' legal matters, failing to communicate with his clients, failing to return unearned fees and client files upon request, and relocating and accepting a position as an attorney with the state without giving notice to his active clients; the number of clients affected by the respondent's misconduct was not stated in the Court's opinion); *In re Lewis*, 2008-2293 (La. 1/21/09), 1 So.3d 444 (the respondent was suspended for two years for neglecting legal matters, failing to communicate with clients, failing to account for funds received from clients or on their behalf, failing to properly withdraw from cases upon relocating out of state, and failing to cooperate with ODC in its investigations; three clients were affected by the respondent's misconduct); *In re Hawkins*, 2007-1619 (La. 2/22/08); 974 So.2d 1280 (the respondent was suspended for two years for failing to act with reasonable diligence and promptness in representing his clients, failing to communicate with his clients, failing to return unearned fees, charging excessive fees due to impermissible non-refundable language in his contract, failing to comply with obligations upon termination of representation, and failing to cooperate with ODC in its investigation; two clients were affected by the respondent's misconduct).

appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and prepare and forward to the court its own findings, if any, and recommendations.” Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of “manifest error.” *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee’s application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

**A. The Manifest Error Inquiry**

The factual allegations in the formal charges have been deemed admitted and proven pursuant to Louisiana Supreme Court Rule XIX, Section 11(E)(3). The Committee made its findings of fact cited above, which are based on the deemed admitted facts of the formal charges, along with facts found in the exhibits attached to ODC’s submission on sanctions. The findings of the Committee are not manifestly erroneous and are adopted by the Board.

**B. De Novo Review**

The committee found that ODC had established that Respondent violated the Rules of Professional Conduct as charged. These legal conclusions of the Committee are supported by the factual allegations asserted in the formal charges and/or by the evidence submitted in support of the allegations. *See In re Donnan*, 2001-3058 (La. 1/10/03), 838 So.2d 715. The Board adopts the Committee’s findings and reasons therefor. Each rule violation is discussed below.

**Rule 1.1:** Rule 1.1(a) provides that a lawyer shall provide competent representation to a client. Respondent failed to provide competent representation to Ms. Atkins when he failed to

complete her divorce matter, particularly the community property issues involved in the proceeding. Respondent's actions, therefore, violated this rule.

Further, Rule 1.1(b) provides that a lawyer is required to comply with the minimum requirements of continuing legal education prescribed by Louisiana Supreme Court rule. Under Rule 1.1(c), the lawyer is also required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including the payment of bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein. By failing to complete his MCLE requirements for 2020 and failing to pay his bar dues and disciplinary assessment for 2020-2021, Respondent also violated this rule.

**Rule 1.3:** Rule 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent failed to promptly move Ms. Atkins' divorce matter to conclusion, failed to perform any work in the succession matter of Ms. Holmes' father, and failed to file Mr. Berryhill's appeal or request for post-conviction relief in his criminal matter. His actions violated Rule 1.3.

**Rule 1.4:** Rule 1.4 provides, in part, that a lawyer shall keep the client reasonably informed about the status of his or her matter. By failing to reasonably communicate with Ms. Atkins, Ms. Holmes, and Mr. Berryhill concerning the status of their cases, Respondent violated this rule.

**Rule 1.5:** Rule 1.5 provides, in part, that when a client pays the lawyer a fixed fee, a minimum fee, or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. Here, Respondent failed to account for or return unearned fixed fees owed to Ms. Atkins

and Mr. Berryhill when he abandoned his law practice. He also failed to account for or return the unearned fixed fee owed to Ms. Holmes when she discharged him from her case. Despite the demand for return of the complainants' fees by Ms. Holmes or ODC (on behalf of Ms. Atkins and Mr. Berryhill), Respondent has failed to comply with an accounting or by tendering the fee. His actions violate Rule 1.5.

**Rule 1.15(a)**: Rule 1.15(a) provides, in part, that 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. Here, upon demand for the return of unearned fees by Ms. Holmes or ODC, the fees should have been accounted for or returned to the complainants, or held in Respondent's trust account pending the resolution of any fee dispute. Respondent failed to take any of these actions. As noted in *In re Deshotels*, 2003-2060 (La. 12/12/03), p. 14, 863 So.2d 507, 514, a respondent's failure to account for and refund unearned fees results in conversion of those funds to the detriment of the respondent's clients. Respondent's actions violated Rule 1.15(a).

**Rule 1.16(d)**: Rule 1.16(d) provides, in part, that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expenses that has not been earned or incurred. Respondent failed to give reasonable notice to Ms. Atkins, Ms. Holmes, and Mr. Berryhill that he was shutting down his law practice, effectively abandoning the representation of these clients. He also failed to return their files and failed to account for or refund earned fees. Such actions violated Rule 1.16(d).

**Rule 8.1(c)**: Rule 8.1(c) provides that a lawyer in connection with a disciplinary matter shall not fail to cooperate with ODC in its investigation of any matter before it except for an openly

expressed claim of a constitutional privilege. At Respondent's sworn statement, ODC requested that Respondent provide it with various information, including responses to Ms. Atkins' and Ms. Holmes' complaints. Respondent failed to provide this information to ODC. Moreover, he failed to submit a response to Mr. Berryhill's complaint to ODC. Respondent's actions violated Rule 8.1(c).

**Rule 8.4(c):** Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. By failing to account for or return the unearned fees to Ms. Atkins, Ms. Holmes, and Mr. Berryhill and advise them that he was shutting down his practice, Respondent engaged in conduct involving dishonesty and misrepresentation. His conduct violated this rule.

## **II. The Appropriate Sanction**

### **A. The Rule XIX, Section 10(C) Factors**

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to his clients, the public, the legal system, and the profession. The deemed admitted facts and the record establish that Respondent's conduct was knowing and intentional. "Knowing" conduct is described by the ABA Standards as the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. "Intentional" conduct involves the

conscious objective or purpose to accomplish a particular result. A review of Respondent's sworn statement and other parts of the record show that while he initially acted knowingly while neglecting the Atkins and Holmes matters, his actions in failing to cooperate with ODC and addressing his obligations owed to these clients after his sworn statement were clearly intentional. Additionally, the deemed admitted facts establish that his actions in connection with the Atkins, Holmes and Berryhill matters were knowing and intentional.

As explained by the Committee, Respondent's actions caused actual harm to multiple clients who paid for services not performed. Ms. Atkins is owed \$2,000 for legal fees paid to Respondent, Ms. Holmes is owed \$2,500, and Mr. Berryhill is owed \$4,000. Ms. Atkins, Ms. Holmes, and Mr. Berryhill have requested copies of their files, which they have not received. Ms. Atkins incurred a large amount of credit card debt because her interim spousal support had expired, and she had to live off credit cards while waiting on her divorce case to be completed. The succession of Ms. Holmes' father was delayed at least a year-and-a-half when Respondent took no action in the matter. Mr. Berryhill's appeal and/or post-conviction proceedings were not filed by Respondent. Further, Respondent's intentional refusal to cooperate with ODC caused actual harm to the legal profession. ODC has spent additional time and resources investigating these matters without Respondent's assistance.

Aggravating factors include dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of his conduct, the vulnerability of the victims, particularly Ms. Atkins and Mr. Berryhill, and

indifference to making restitution. Mitigating factors include absence of a prior disciplinary record and personal or emotional problems.<sup>10</sup>

## **B. ABA Standards and Case Law**

The Committee relied upon ABA Standards 4.42(a), 4.42(b), 4.52, 4.12, and 7.2 in determining that suspension is the baseline sanction for Respondent's misconduct. All of these standards, except for Standard 4.42(b), address "knowing" conduct. As discussed above, Respondent's conduct in this matter was knowing in some instances and intentional in others. The Board finds particularly egregious the fact that Respondent failed to participate in these proceedings after his sworn statement and failed to appear for the oral argument. Moreover, serious or potentially serious harm or injury befell Respondent's clients. Therefore, the applicable ABA Standards addressing disbarment should also be considered.

ABA Standard 4.11 provides that disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. By failing to account for or return unearned fees to Ms. Atkins, Ms. Holmes, and Mr. Berryhill, Respondent has knowingly and intentionally converted the fees to his own use. His actions caused injury to these clients in that they have been deprived of their funds for a significant period of time -- at least two-and-one-half years.

ABA Standard 4.41 indicates that disbarment is generally appropriate when:

- a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

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<sup>10</sup> Respondent testified at his sworn statement that during the time of his misconduct, he suffered from anxiety and depression, his wife was experiencing medical problems, and he and his wife were experiencing marital problems. ODC Exhibit 7, pp. 25-28.



- c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Here, Respondent knowingly and intentionally abandoned his practice, failed to perform services for his clients, and engaged in a pattern of neglect with respect to his clients' matters. His actions caused both serious and potentially serious injury to his clients. As discussed above, Ms. Atkins' case was delayed and she was forced to incur significant credit card debt while waiting on her divorce case to be completed. The succession of Ms. Holmes' father was delayed at least a year-and-a-half when Respondent took no action in the matter, and Mr. Berryhill's appeal and/or post-conviction proceedings were not filed by Respondent.

ABA Standard 4.61 provides that disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client. By failing to apprise his clients that he was shutting down his practice, Respondent knowingly and intentionally deceived his clients -- to his own benefit -- and caused serious injury in that he failed to account for or return their unearned fees. He also caused other harm as explained above.

ABA Standard 5.11 provides that disbarment is generally appropriate when:

- b) a lawyer engages in . . . intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

By failing to apprise Ms. Atkins, Ms. Holmes, and Mr. Berryhill that he was shutting down his practice and failing to account for or return their unearned fees, Respondent knowingly and intentionally misrepresented the status of his practice to his clients and engaged in dishonest conduct. This conduct seriously adversely reflects on his fitness to practice.

ABA Standard 7.1 provides that disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and cause[s] serious or potentially serious injury to a client, the public, or the legal system. By failing to cooperate with ODC in its investigation of the complaints at issue and by failing to participate in these proceedings after his sworn statement, Respondent knowingly and intentionally engaged in conduct that was a violation of a duty owed as a professional with the intent to obtain a benefit -- the retention of unearned fees -- which caused significant financial harm to his clients. His actions caused ODC to spend additional time and its limited resources investigating the complaints at issue, without Respondent's assistance.

Given the above, the Board finds that the baseline sanction in this matter is disbarment.

Case law also supports the sanction of disbarment. The Court recently considered similar misconduct in the case of *In re Gross*, 2022-01471 (La. 3/14/23), 357 So.3d 339. *Gross* was a deemed admitted matter, involving five counts of misconduct. One count addressed charges of the unauthorized practice of law and failure to cooperate with ODC; the other four counts addressed misconduct which affected either his former law firm or three clients. The Court found that the respondent accepted legal fees from his clients, neglected their legal matters, and then either failed to communicate with them or deceived them regarding the status of their matters. He also failed to refund their unearned fees. The respondent further represented a client during a period of ineligibility and collected attorney's fees from clients and never turned them over to his law firm. Moreover, he failed to cooperate with ODC's investigations of the numerous complaints filed against him. *Id.*, 2022-01471, pp. 7-8, 357 So.3d at 344.

The Court determined that the respondent knowingly and intentionally violated duties owed to his clients, his law firm, the legal system, and the profession. His conduct was found to

have caused both potential and actual harm. Two clients had attachments issued for their arrests due to his neglect of their legal matters. Further, the Court noted that the respondent collected at least \$11,700 in attorney's fees from several clients and then did little to no work on their behalf; he also did not refund any of the unearned fees to his clients or reimburse his law firm when it stepped in to complete some of the representations for which he had been paid. Numerous aggravating factors were present, including a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, vulnerability of the victims, substantial experience in the practice of law, and indifference to making restitution. The sole mitigating factor present was the absence of a prior disciplinary record. *Id.*, 2022-01471, pp. 6, 8-9, 357 So.3d at 343- 45. The Court disbarred the respondent and ordered him to make full restitution to all harmed parties for all funds and unearned fees he improperly converted to his own use. *Id.*, 2022-01471, p. 10, 357 So.3d at 345.

Likewise, in *In re Hatfield*, 2008-2632 (La. 2/20/09), 2 So.3d 425, ODC filed five counts of formal charges against the respondent. The Court found that the respondent neglected his clients' legal matters, failed to communicate with his clients, failed to refund unearned fees, and failed to cooperate with ODC in its investigations. The Court further determined that the respondent caused substantial harm to his clients by neglecting their legal matters, which caused delay in the resolution of their legal matters and increased costs. Additionally, the respondent failed to refund unearned legal fees totaling more than \$3,000. *Id.*, 2008-2632, pp. 8-9, 2 So.3d at 429-30. At least five clients were affected by the respondent's misconduct.

As aggravating factors, the Court found a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally

failing to comply with the rules or orders of the disciplinary agency, vulnerability of the victims, and substantial experience in the practice of law. The only mitigating found was the respondent's lack of a prior disciplinary record. The Court further discussed the hearing committee's finding that the respondent had been difficult to locate and had not participated in the matter and the committee's belief that the respondent "has a complete lack of interest in these proceedings and . . . in continuing the practice of law." *Id.*, 2008-2632, p. 6, 2 So.3d at 428. The Court disbarred the respondent and ordered that he make full restitution to his clients. *Id.*, 2008-2632, p. 9, 2 So.3d at 430.

In *In re Poirrier*, 2001-1116, 2001-1118 (La. 6/29/01), 791 So.2d 94, the Court disbarred the respondent for knowingly and intentionally failing to communicate with his clients, neglecting his clients' legal matters, abandoning his clients and his law practice, failing to expedite his clients' litigation, failing to account for or refund unearned fees and/or unused costs to his clients, failing to return his clients' files, and failing to cooperate with ODC. Six counts of misconduct affecting six clients were proven by ODC in this deemed admitted matter. *Id.*, 2001-1116, 2001-1118, pp. 7-8, 791 So.2d at 98-99.

The Court determined that the respondent's conduct caused actual harm to his clients by depriving them of their funds for a substantial time and jeopardizing their legal matters. The Court also noted:

By utterly abandoning his law practice without notice, respondent has demonstrated he has little if any concern for the welfare of clients. Likewise, his failure to cooperate in the numerous disciplinary investigations displays an indifference to the practice of law and has impaired the efficient operation of the disciplinary process, causing harm to the legal profession as a whole.

*Id.*, 2001-1116, 2001-1118, p. 9, 791 So.2d at 99.

The Court found that numerous aggravating factors were present, including a pattern of misconduct and failure to make (or even attempt to make) restitution to clients. The Court disbarred the respondent and further ordered that he return his clients' files, as well as provide a full accounting and refund of any unearned fees and unused costs to each of his clients. *Id.*

Finally, in *In re Decker*, 2005-1550 (La. 12/16/05), 916 So.2d 1023, another deemed admitted matter, the Court disbarred the respondent based upon one count of formal charges filed by ODC. In *Decker*, the respondent accepted \$5,000 from a client in order to complete her husband's succession, then failed to perform any work for the next two years. When his client requested an accounting, the respondent failed to respond. Despite doing no work at all, he also failed to refund the \$5,500 unearned fee. Furthermore, the respondent did not respond to the complaint his client filed against him and did not inform the client that he was suspended from the practice of law. *Id.*, 2005-1550, p. 5, 916 So.2d at 1026.

The Court determined that the respondent had violated duties owed to his client, which caused a delay in the succession and deprived his client of her \$5,500. He also violated duties owed as a professional by not cooperating with ODC in its investigation or participating in the disciplinary proceedings. The Court further found that respondent acted knowingly, if not intentionally, and that the baseline sanction was suspension. *Id.*, 2005-1550, p. 5-6, 916 So.2d at 1026.

The Court also found that numerous significant aggravating factors were present, including the respondent's prior suspension for nearly identical misconduct, a pattern of misconduct, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution. No mitigating factors were present. After

considering the numerous aggravating factors present, the respondent's prior suspension, and the \$5,500 unearned fee that was not refunded, the Court accepted the Board's recommendation of disbarment and imposed this sanction upon the respondent. *Id.*, 2005-1550, p. 6, 916 So.2d at 1026-27.

Similar to the respondents in *Gross*, *Hatfield*, *Poirrier*, and *Decker*, Respondent has accepted fees for legal work, neglected and failed to complete the matters, and failed to account for or return unearned fees owed to his clients. He also has failed to communicate with his clients and failed to cooperate with ODC in its investigation of the complaints at issue. However, unlike Mr. Gross, Respondent has not engaged in the practice of law while ineligible, and unlike Mr. Decker, he does not have prior discipline for similar misconduct.

Given Respondent's troubling disregard for this disciplinary proceeding, his failure to meet his professional obligations, and the numerous aggravating factors found in this matter, the Board finds that disbarment, instead of a two-year suspension recommended by the Committee, is the appropriate sanction. While the Board recognizes that the number of affected clients in the cases cited above in support of disbarment may differ from the number of clients involved in the instant matter, the same thread runs throughout the entirety of these cases. In all, the respondents lack concern for the welfare of their clients, and overall, they possess a lack of interest in their disciplinary proceedings and in the practice of law. Under these circumstances, the Board finds that Respondent lacks the fitness to practice law in this state and disbarment is warranted.

### **CONCLUSION**

The Board adopts the findings of fact of the Committee. The Board also adopts the Committee's finding that Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4, 1.5,

1.15(a), 1.16(d), 8.1(c), and 8.4(c). Instead of the two-year suspension recommended by the Committee, however, the Board recommends that Respondent be disbarred.

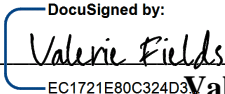
The Board further adopts the Committee's recommendation that Respondent provide full restitution to the complainants. These amounts would include: \$2,000 to Channel Atkins, \$2,500 to Cassi Holmes, and \$4,000 to Thomas Berryhill. The Board additionally recommends that Respondent be ordered to return Ms. Atkins', Ms. Holmes', and Mr. Berryhill's files and that he be assessed with all costs and expenses of this proceeding pursuant to Rule XIX, Section 10.1.

### **RECOMMENDATION**

Based on the foregoing, the Board recommends that Respondent, Jeffery Dee Blue, be disbarred from the practice of law. The Board further recommends that Respondent provide full restitution to the complainants in the following amounts: \$2,000 to Channel Atkins, \$2,500 to Cassi Holmes, and \$4,000 to Thomas Berryhill. The Board additionally recommends that Respondent be ordered to return Ms. Atkins', Ms. Holmes', and Mr. Berryhill's files and that he be assessed with all costs and expenses of this proceeding pursuant to Rule XIX, Section 10.1.

### **LOUISIANA ATTORNEY DISCIPLINARY BOARD**

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By:  \_\_\_\_\_  
EC1721E80C324D3 Valerie S. Fields  
**FOR THE ADJUDICATIVE COMMITTEE**

## **APPENDIX**

### **Rule 1.1. Competence**

- (a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- (b) A lawyer is required to comply with the minimum requirements of continuing legal education as prescribed by Louisiana Supreme Court rule.
- (c) A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

### **Rule 1.3. Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **Rule 1.4. Communication**

- (a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.
- (c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

### **Rule 1.5. Fees**

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7)



the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect: (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or (2) a contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if: (1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive; (2) the total fee is reasonable; and (3) each lawyer renders meaningful legal services for the client in the matter.

(f) Payment of fees in advance of services shall be subject to the following rules: (1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account. (2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account. (3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances. (4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances. (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or

at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

### **Rule 1.15. Safekeeping Property**

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

...

### **Rule 1.16. Declining or Terminating Representation**

...

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

### **Rule 8.1. Bar Admission and Disciplinary Matters**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

...

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

#### **Rule 8.4. Misconduct**

It is professional misconduct for a lawyer to:

...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

...