

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: SAMUEL ROBERT AUCOIN

NUMBER: 22-DB-020

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel (“ODC”) against Samuel Robert Aucoin (“Respondent”), Louisiana Bar Roll Number 20682.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct in three counts included in the formal charges:

Count I (Jones): 1.3 (diligence); 1.4(a) and (b) (communication); 1.5(f)(5) (failure to refund an unearned fee); 8.1(c) (failure to cooperate with ODC investigation); and 8.4(a) (attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another);

Count II (Stutes): 3.4(c) (knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists); 8.4(a); 8.4(b) (criminal act especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects); and 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation);

Count III (Comeaux): 1.3, 1.4(a) and (b); 8.1(c); and 8.4(a).<sup>2</sup>

The hearing committee (“Committee”) assigned to the matter concluded that Respondent violated Rules 1.3 (Counts I and III), 1.4(a) (Counts I and III); 1.5 (Counts I and III), 3.4 (Count II), 8.1(c)

<sup>1</sup> Respondent is currently on suspension. He was admitted to the Louisiana Bar on October 11, 1991. Respondent was interimly suspended from the practice of law effective August 10, 2020, for threat of harm to the public. *In re Aucoin*, 2020-00979 (La. 8/10/20), 300 So.3d 838. After formal charge proceedings, he was suspended for one year and one day effective December 21, 2021. *In re Aucoin*, 2021-00847 (La. 12/7/21), 328 So.3d 409. Respondent’s current primary registration address is 600 Wedell St., Apt. 2, Patterson, LA 70392.

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

(Count I), 8.4(a) (Counts I, II, and III), 8.4(b) (Count II), and 8.4(c) (Count II). The Committee did not find the charged violations of Rule 1.4(b) in Count I and Rules 1.4(b) and 8.1(c) in Count III. The Committee recommended that Respondent be suspended for three years retroactive to December 7, 2021, that he pay restitution in the amount of \$1,800.00 to Cory Jones and restitution in the amount of \$800.00 to Michael Comeaux, and that he be assessed with the costs and expenses of this proceeding.

For the following reasons, the Board adopts the Committee's factual findings with the limited additions discussed herein and concurs in the Committee's conclusions regarding rule violations with the exceptions discussed herein in connection with Count III. The Board recommends that Respondent's suspension in *Aucoin I* be extended such that his total suspension is for a three-year period beginning December 21, 2021, the effective date of the suspension in *Aucoin I*, and that he be ordered to pay restitution as discussed herein. Finally, the Board recommends that Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

#### **PRIOR DISCIPLINE**

Respondent was admitted to practice law in Louisiana on October 11, 1991.

On August 10, 2020, Respondent was placed on interim suspension for threat of harm to the public. *In re Aucoin*, 2020-00979 (La. 8/10/20), 300 So.3d 838. The ODC's petition for interim suspension was based in part on the complaints received in connection with Counts I and II herein.

On December 7, 2021, Respondent was suspended for one year and one day (effective December 21, 2021). *In re Aucoin*, 2021-00847 (La. 12/7/21), 328 So.3d 409 ("*Aucoin I*"). The Court found that Respondent practiced law while ineligible due to his failure to comply with his

MCLE requirements for 2018; that, while attempting to cure his ineligibility, Respondent provided the LSBA with an altered certificate of completion for a CLE course; and that he knowingly altered the certificate of completion and then provided false statements about the altered certificate of completion to the ODC and at the formal hearing. Respondent was found to have violated Rules 1.1(b) (competence – failure to comply with minimum mandatory legal education requirements), 5.5(a) (unauthorized practice of law), 8.1(c), 8.4(a), and 8.4(c).

### **PROCEDURAL HISTORY**

The formal charges were filed in the present matter on May 5, 2022. The charges state, in pertinent part:

#### **COUNT I**

\*\*\*

The Complainant in Count I is Cory Jones. In his formal complaint, Mr. Jones advised the ODC that he had hired Respondent to represent him pursuant to a divorce and child-custody matter. Respondent charged Mr. Jones \$1,800.00 for the representation. Mr. Jones said that Respondent failed to secure the divorce, never answered his telephone [FN1], and after two years, Respondent had still not performed the work that he was hired to complete. Mr. Jones accused Respondent of having taken the fee and then run. The matter was opened under ODC Investigative File #0038040.

[FN1 Complainant said that it was impossible to leave a message given that Respondent's cell phone mailbox was always full.]

The ODC sent a copy of the complaint to Respondent's address that he listed with LSBA. However, the complaint was sent back to the ODC unclaimed. Mr. Jones sent to the ODC copies of numerous text messages attempts [sic] that he had made to contact Respondent, most of them without success.

Respondent did not respond to the complaint. The ODC issued a subpoena for Respondent to appear at the ODC office to submit to a sworn statement. Respondent was personally served with the subpoena on July 14, 2020. However, he did not appear for his statement.

In the *Jones* matter, Respondent violated Rules of Professional Conduct Rule 1.3, Rule 1.4(a)(b), Rule 1.5(f)(5), Rule 8.1(c), and Rule 8.4(a).

#### **Count II**

ODC Chief Disciplinary Counsel Charles Plattsmier received a letter dated January 9, 2020 from the, then, District Attorney for Lafayette Parish, Keith A. Stutes. Attached to the letter was a Bill of Information and a Warrant and Affidavit addressing alleged criminal activity committed by Respondent. The Bill of Information, Count 1, alleged that Respondent, on May 2, 2019, had issued a

worthless check in the amount of \$153.48, drawn on JP Morgan Chase Bank, to Melancon Pharmacy. This criminal act violated Louisiana R.S. 14:71.

Count 2 of the Bill alleged that Respondent had issued a worthless check drawn on the same bank on June 1, 2019 in the amount of \$36.45 to Don's Specialty Meats. This criminal act also violated Louisiana R.S. 14:71. Court records reflect that Respondent failed to appear for court, resulting in a bench warrant issued on June 22, 2020 for his arrest. Respondent was again scheduled to appear in court on August 16, 2021. He appeared and requested an opportunity to make payment on what appeared to be the outstanding worthless checks. However, Respondent left court, did not make any payments, and did not return to court. The court issued another bench warrant for Respondent's arrest. Respondent finally, more than two years later, reimbursed the vendors for the worthless checks on August 26, 2021. The matter was opened under ODC Investigative File #0038231.

In the *Stutes* matter, Respondent violated Rules of Professional Conduct Rule 3.4(c) and Rule 8.4(a)(b)(c).

### **Count III**

The Complainant in this matter is Michael W. Comeaux. In his formal complaint, Mr. Comeaux advised that he had hired Respondent to represent him in a divorce action. Complainant said that he and Respondent were present for a hearing wherein the judge orally granted the divorce. Complainant contacted the Clerk of Court several months later but was told that his divorce was never made final. It appeared that required paperwork was never filed. Mr. Comeaux said that he tried to contact Respondent, texting and calling, but Respondent would not call or text him back. Mr. Comeaux advised the ODC that he was going to be forced to hire another attorney in order to complete the divorce. The matter was opened under ODC Investigative File #0039138.

A copy of the complaint was sent to Respondent's current address in Patterson, La. The USPS certified green card showed that he signed for the letter on April 12, 2021. However, Respondent failed to respond to the complaint. The ODC was required to subpoena Respondent to appear for a sworn statement to answer the complaint. Respondent was personally served with the subpoena on July 22, 2021. Respondent appeared for his sworn statement on August 12, 2021. In his statement, Respondent said he had no recollection of the representation and had no client file. He appeared to try to make an issue from the narrative that Mr. Comeaux paid \$750.00 of an \$800.00 fee. The complaint explained that Mr. Comeaux met Respondent after the oral judgment was rendered and implying that he had paid to Respondent the \$50.00 remaining balance. When questioned, Respondent admitted that he knew that the judge would have to sign an order to complete the legal process. Respondent continued to deny knowledge or memory of the representation. Despite conceding that he knew that a signed, final order was necessary, Respondent expressed surprise that Mr. Comeaux was still married.

During his statement, Respondent was instructed to contact Mr. Comeaux in order to clear up any confusion that resulted from the representation. Despite his claim that he had no memory of the representation, he advised the ODC that there were no child custody or community property issues. Respondent was given Mr.

Comeaux's contact information. Respondent did not contact Mr. Comeaux as instructed.

In the *Comeaux* matter, Respondent's behavior violated Rule 1.3, Rule 1.4(a)(b), Rule 8.1(c), and Rule 8.4(a).

Respondent, by engaging in the above behavior, has violated Louisiana Rules of Professional Conduct Rule 1.3, Rule 1.4(a)(b), Rule 1.5(f)(5), Rule 3.4(c), Rule 8.1(c) and Rule 8.4(a)(b)(c).

Respondent answered the formal charges on July 8, 2022. In his answer, Respondent preliminarily argued for a dismissal of all charges. He asserted that the present charges should be dismissed because when ODC was asked in the hearing on the charges in *Aucoin I* if there were any other charges against Respondent, ODC replied that it had no other charges against him. Respondent further argued that all of the charges now filed against him existed and were available to ODC at the time the first set of charges were filed against him.

In answer to Count I of the current charges, Respondent stated that a stroke in early 2020 affected his ability to respond to the complaint and appear for his sworn statement. He asserted that he had to deal with Mr. Jones's mother because Mr. Jones traveled out of town for employment and was unable to meet with Respondent. He further stated that he had to spend a large amount of time trying to get information from Mr. Jones which he needed to represent Mr. Jones.

In response to Count II, Respondent asserted that he did not receive any notice of the NSF checks or any criminal proceeding until August of 2021, "almost 1½ years later," and that he made payments for those checks very shortly after receiving notice.

In response to Count III, Respondent stated he had no recollection of the specifics of his representation of Mr. Comeaux, but did find paperwork drafted for Mr. Comeaux on his computer. He further asserted that it does not make sense that he would have prepared the paperwork and not filed it.

On July 21, 2022, Respondent filed a second motion to dismiss on the basis of alleged improper service of process.

ODC filed oppositions to both of Respondent's motions to dismiss. By order signed August 8, 2022, the Chair of Committee #62 at the time denied both motions. However, the Chair stated in the order that the appropriate time for presenting evidence and argument on the issue related to ODC's alleged statements during the hearing in *Aucoin I* was at the hearing on the charges in the current matter. The Committee heard further argument on this issue and fully addressed it in its report after the hearing. The Board concurs in the Committee's analysis and ultimate decision to deny Respondent's motion to dismiss.

The hearing in this matter was held on October 11, 2022, before Hearing Committee No. 62.<sup>3</sup> Deputy Disciplinary Counsel Paul E. Pendley, Harrel L. Wilson, Jr., and Rene H. Pennington appeared on behalf of ODC. Respondent appeared pro se. The Committee heard testimony from the following: Respondent; Cory Jones (Complainant in Count I); Ronald Dauterive (Assistant District Attorney in Lafayette/Count II); and Michael Comeaux (via telephone/Complainant in Count III). ODC's Exhibits ODC 1 through ODC 19 were admitted into evidence.

The Committee filed its report on November 28, 2022.

On December 21, 2022, Respondent filed an objection to the Committee's report. The objection stated simply that Respondent objected to the entirety of the report.

Original briefs to the Board were due thirty days before the panel argument date of March 30, 2023. ODC filed its brief in support of the Committee's recommendation on February 28, 2023. Respondent did not file a brief with the Board.

---

<sup>3</sup> Hearing Committee No. 62 was comprised of Henry G. Terhoeve (Committee Chair), Kimberly D. Avery (Lawyer Member), and Vallan B. Corbett (Public Member).

Oral argument of this matter was held on March 30, 2023, before Board Panel “B.”<sup>4</sup> Mr. Pendley appeared on behalf of ODC. Respondent did not appear. Mr. Pendley informed the Board panel that he had received an e-mail from Respondent at approximately 3:30 p.m. the afternoon before the argument. Mr. Pendley further reported that in the e-mail, Respondent wrote that Respondent was sick and had no way to attend the argument and requested that the argument be continued.<sup>5</sup> Mr. Pendley stated that he informed Respondent that Respondent would have to file a motion to continue with the Board and should note in the motion that ODC objected to the motion. The Board having received no brief, motion, or other communication from Respondent prior to the scheduled Board panel argument, the Board panel conducted the argument as scheduled.<sup>6</sup>

### **HEARING COMMITTEE REPORT**

In its report filed on November 28, 2022, the Committee made the following findings and conclusions:

#### **FINDINGS OF FACT [FN3] and DISCUSSION OF RULES VIOLATED**

[FN3 This is not intended to be a recitation of the testimony and exhibits. These are the factual **findings** of the Committee when considering all testimony and exhibits presented. While it may be suggested that there was some information presented that is contrary to the findings listed here, the Committee did not find such proven, found it implausible or unfounded and rejected such.]

This case presents serious issues as it relates to the responsibilities of an attorney as it relates to his client, a criminal charge against an attorney, and a dismissive attitude by an attorney of the disciplinary process that governs his profession. The Disciplinary Rules both in letter and spirit have plainly been violated in this case, and the clients and the legal profession have been harmed. This has been proven with clear and convincing evidence by the ODC as required

---

<sup>4</sup> Board Panel “B” was composed of Aldric C. Poirier, Jr. (Chair) (substituting for James B. Letten), Lori A. Waters (Lawyer Member) (substituting for Todd S. Clemons), and M. Todd Richard (Public Member).

<sup>5</sup> Mr. Pendley provided the panel with a copy of the e-mail he received from Respondent which copy was filed into the Board record.

<sup>6</sup> It is further noted that Respondent has not filed a motion or other pleading with the Board since the date of the Board panel argument.

by *In re: Quaid*, 94-1316 (La.11/30/94), 646 So.2d 343 and *Louisiana State Bar Ass'n v. Boutall*, 597 So.2d 444 (La.1992).

In the context of stating the findings of the Committee, certain portions of the testimony and exhibits will be discussed. This should not be interpreted as meaning that the portions of the record that have not been cited were not considered. ALL evidence was considered and given the weight that it deserved while considering bias, credibility and common sense.

At the outset it should be noted that the Committee was miffed at the cavalier attitude at and in anticipation of the formal hearing by Aucoin. He had already been through such a hearing and would seem to have a heightened awareness and interest. He had neither. He presented not a single exhibit or witness (other than himself). He produced no client file, including attorney notes or financial records in any form, no emails, no texts—nothing.

While it may be argued that the two client complainants had a paucity of exhibits, Aucoin was the lawyer. He was the professional who for both client, profession and personal reasons should have kept and been able to seek the assistance within his own documentation.

\*\*\*

Several times Aucoin spoke of hospitalizations and his medical condition, but produced no record in support thereof, which might have been important as it relates to certain dates and his condition at the time.

The Committee presumes that possible client records and medical/hospitalization records were not presented since they were contrary to Aucoin's factual statements and defense.

### **Count 1 Jones**

Cory Jones filed a formal complaint with the ODC. It was received by the ODC October 9, 2019 and results from his retention of Aucoin for a simple divorce and custody matter. Jones paid \$1800 to Aucoin. A review of texts supplied (ODC 5 and ODC 8 texts from Jones and/or Jones mother [FN4]) shows the initial contact was several weeks before January 29, 2018. [FN5] During the time period of the texts there were also calls made to Aucoin. Voicemail was not available for Aucoin and Aucoin never answered his telephone.

[FN4] Jones mother had referred her son to Aucoin. His mother was previously represented by Aucoin.

[FN5] The texts in ODC 5 supplied and printed 10/6/19 start on January 29 but cover more than one year to support the dates of early 2018 or late 2017 as the date Aucoin was retained.]

There were 37 texts to Aucoin from January 29, 2018 until he finally responded April 22, 2018 when Aucoin asked Jones for an email address. The email address was supplied. In the texts, Jones or his mother then asked for return of the money paid to Aucoin. The client advised that documents were not received after supplying the email address to Aucoin. Aucoin responds that he assumed the documents had been received and that no one else will represent Jones for such a low amount.

The papers that were emailed were then completed by Jones and on July 8 Jones' mother advises of this (Bates 41). Four texts followed seeking an update



from Aucoin who replied on July 10 that he would call shortly since he was in court. Aucoin did not call and texts again followed beginning July 16. Four texts were sent to Aucoin, until Aucoin on July 22, 2018 says he just found his phone that has been missing for a week and that before that he had been in the hospital and had surgery. He said he was ready to pick up the papers the next day (July 23). The text chain infers he got the papers as of August 5. Jones mother then inquires about the court date. There is a video in a text of August 19, 2018 which is Jones signing the documents that [were] sent via text.

Jones' mother continued to follow in January 2019 with multiple texts. On January 22, 2019 Aucoin states his father had a stroke and that both his parents are in the hospital (Bates 61). 21 unanswered texts follow from Jones' mother. It appears on September 19, 2019 (Bates 96) Aucoin states he presented the filing to the Judge in person, and that is the reason why the clerk of court has no record of it. [FN6] This is consistent with Jones testimony that Aucoin told him it was filed and that Aucoin learned it did not go through. Jones had returned the necessary documents to Aucoin. Jones eventually hired attorney David Lee who handled the matter in 1 week.

[FN6 Exhibit 8 texts are confusing since all were printed / captured July 14, 2020. Some have a handwritten date. Many are undated. Some are duplicate of Exhibit 5. Aucoin takes issue in his Post-trial Memorandum with Exhibit 8. Clearly the email address is a source that was used to reproduce texts for submission. Some of the reproduced texts even include communications from Aucoin. Nevertheless, Aucoin misses the point. Even if the texts are not authentic, it was HIS duty to keep the client informed. The client should not need to keep inquiring about the status of the client's case.]

Aucoin testified that he never got the signed documents. He said he got Jones to record the signing of the documents to serve as his notarial viewing of the signing. [FN7] He received the video of the signing of the documents. Aucoin says he was paid \$1500 and that he owes ½ of it back to Jones.

[FN7 It is noted that at this time Aucoin could NOT notarize remotely ...]

The Committee does not believe Aucoin. It finds Aucoin received \$1800 from Jones. It finds that Aucoin received the signed documents from Jones that Aucoin claimed he was waiting on. Aucoin's own texts support this conclusion. Aucoin represented to Jones he filed the returned documents and the Committee concludes this is not true. [FN8] Had the documents been filed they should be able to be found with the clerk of court. The facts stand in stark contrast to Aucoin's testimony and letter of July 3, 2020 [ODC 7] when he claims he was waiting for the return of the documents from Jones. Aucoin says his files were moved to a storage shed and that his cousin threw them out in 2020.

[FN8 See *In re O'Neal JONES, Jr.* No. 2012-B-1700 106 So.3d 1019 (La 2013) where an attorney was [suspended] for 2 years for notarizing document whose signature [sic] he did not witness.]<sup>7</sup>

---

<sup>7</sup> It is noted that Respondent here has not been charged with notarizing a document outside the presence of the signatory.

As it relates to this complaint, Aucoin was sent notice November 14, 2019 (ODC 2). This was sent certified and was unclaimed. ODC 3. He was sent an email December 26, 2019. ODC 4. Covid shutdowns began approximately March 2020. Aucoin was sent a letter June 4, 2020 by Mr. Pendley. ODC 6. Aucoin then answered. On July 14, 2020 Aucoin was served with a subpoena and subpoena duces tecum to appear for a statement and to bring documents on July 29, 2020. ODC 9. He did not appear on July 29, 2020. ODC 10. When asked why he did not respond in 30 days Aucoin said he did not know why. He knew he had to do so in 30 days. No inquiry was made, or explanation given for failing to appear for his statement.

As it relates to Count I Jones:

- The facts show Aucoin did not use reasonable diligence and promptness in representing Mr. Jones. This is a violation of Rule 1.3 Diligence.
- The facts show that Aucoin did not keep Mr. Jones reasonably informed on the status of his case. Aucoin did not promptly comply with reasonable requests for information. This is a violation of Rule 1.4 (a) Communication. There was no factual support for a finding for [sic] a violation of Rule 1.4 (b).
- The facts show there was a dispute as to the earned fee. Aucoin admits he owes at least \$750 to Jones. He has yet to refund this amount that he admits is owed. The amount Aucoin claims he earned is disputed and should have been in trust. He said he has no bank account. These are violations for [sic] Rule 1.5 Fees.
- These violations further support globally a violation of Rule 8.4(a) Misconduct, since Aucoin has violated the Rules of Professional Conduct.
- Aucoin's lack of response to the ODC investigation, especially in light of prior experience with the process, was a violation of Rule 8.1 (c) in that he failed to cooperate with the ODC investigation. To the extent he argues his medical condition was a defense, this is rejected as unsupported.

### **Count II Stutes, District Attorney**

In December 2019 and January of 2020 an arrest, indictment and bill of information was filed by the State of Louisiana against Aucoin in 2019-MD-174432 in Lafayette Parish. Per ODC 11 this was for:

- Issuance on May 2, 2019 of a check to Melancon Pharmacy for \$153.48 on an account with JP Morgan Chase for which Aucoin did not have sufficient credit for payment of the check in full on presentation. [footnote omitted]
- Issuance on June 1, 2019 of a check to Don's Specialty Meats for \$36.45 on an account with JP Morgan Chase for which Aucoin did not have sufficient credit for payment of the check in full on presentation.

The Court minutes (ODC 19) reflect that Aucoin was served February 11, 2020. He entered a plea of not guilty on the same day during his arraignment.

He was to appear in court June 22, 2020 for a pre-trial conference. He did not appear. A warrant was issued for his arrest. That warrant was recalled June 7, 2021 when he paid a \$50 contempt fee. Another warrant for his arrest was issued August 16, 2021 when he appeared but failed to remain for his pretrial. That warrant was recalled August 26, 2021 without a fine based on a letter from Judge Breaux, the content of which was not supplied.

A request to dismiss the criminal charges against Aucoin was filed August 27, 2021 by the Office of the District Attorney when Aucoin paid the checks. The matter was dismissed on August 31, 2021. Aucoin admitted that he issued two worthless checks. Had the district attorney chosen to pursue the charges it is clear that Aucoin would have been convicted of two violations of La. R.S. 14:71.<sup>8,9</sup>

The Committee finds:

- Aucoin issued a worthless check on May 2, 2019 to Melancon Pharmacy for \$153.48.
- Aucoin issued a worthless check June 1, 2019 to Don's Specialty Meats for \$36.45.
- Aucoin had notice of these worthless check issues at least by February 11, 2020 when he was served with the criminal proceeding. He likely had knowledge before February 11, 2020.
- On June 22, 2020 and August 16, 2021, Aucoin was held in contempt for failing to appropriately respond to his criminal matter by way of appearances in court in Lafayette Parish.
- Aucoin paid the worthless checks August 2021.
- That for at least from February 11, 2020 to August 2021 Aucoin was aware of the problems with the checks.
- That had the Lafayette district attorney decided to prosecute they would have been successful in the prosecution of Aucoin for violations of La. R.S. 14:71.

Lawyers should be not [sic] issuing worthless checks in the community. It reflects poorly on the lawyer and the profession. If a lawyer is made aware of the issuance of a worthless check this should be cured promptly. If a lawyer has criminal charges brought against him the lawyer should give due respect to the Court and appear when ordered to appear. Aucoin failed on all facts.

As it relates for [sic] Count II the Committee finds as follows:

- The findings of contempt violations constitute a violation of Rule 3.4(c) Fairness to Opposing Party and Counsel in that Aucoin knowingly disobeyed his responsibilities to the state district court in Lafayette Parish.
- The issuance of worthless checks are [sic] a criminal act that reflects adversely on Aucoin's honesty and trustworthiness as a lawyer that

---

<sup>8</sup> See attached Appendix for full text of pertinent provisions of criminal statute La.R.S. 14:71, entitled "Issuing worthless checks."

<sup>9</sup> The fact that an attorney has not been convicted of a crime does not preclude the ODC from proving by clear and convincing evidence that the attorney committed a criminal act in violation of Rule 8.4(b). *In re Williams*, 2011-1457 (La. 1/24/12), 85 So.3d 583, 591.

[sic] he engaged in conduct involving dishonesty, fraud and deceit in violations [sic] of Rule 8.4 (b) and (c) Misconduct.

- The above findings further support a violation of Rule 8.4(a) in that Aucoin has violated the Rules of Professional Conduct.

### **Count III Comeaux**

Aucoin agreed to represent Michael Wade Comeaux for the purpose of filing a divorce. Aucoin prepared the divorce papers and there was an appearance in court in January of 2019. (ODC 12 complaint of Comeaux). The divorce was orally granted in court in St. Landry Parish. Comeaux still owed Aucoin \$50 and was told by Aucoin to return to the courthouse a week later to pay the \$50. Comeaux did so and paid the \$50. Aucoin then gave him a paper which Comeaux states said he was divorced as of January 14, 2019. Comeaux lost this paper. The clerk advised Comeaux no judgment was signed. On multiple occasions thereafter Comeaux tried to contact Aucoin without success.

A signed judgment never made it into the Court record in St. Landry Parish and therefore there was no final judgment of divorce. Aucoin gave a sworn statement August 12, 2021 on this complaint only (ODC 16). Aucoin could not explain what happened. He acknowledged he would not have gone into court without a judgment. (Bates 173 in ODC 16). Once again however Aucoin did not have a file to provide clear evidence of what occurred—as he should have. He agreed at the time of his statement in August 2021 to contact Comeaux and attempt to resolve the matter. Aucoin never contacted Comeaux as a result of this agreement (ODC 18). Comeaux tried unsuccessfully to get a refund from Aucoin.

Aucoin cannot explain what happened. His testimony is unclear and dodgy. The Committee concludes that the likely scenario is that the Judge signed a Judgment in open court and that Aucoin never took the necessary steps to have the formal judgment filed into the record. It is the responsibility of the lawyer to ascertain that the process was completed for his client. This should have been accomplished promptly.

Once Comeaux identified the problem he could not get in touch with Aucoin. Once the ODC became involved, Aucoin clearly knew of the problem. Aucoin still did not resolve the problem. When Aucoin gave his sworn statement, he agreed to contact Comeaux to resolve the issue. Aucoin did not do this either.

As it relates to Count III the Committee finds:

- Aucoin did not use reasonable diligence and promptness in representing Mr. Comeaux. This is a violation of Rule 1.3 Diligence.
- Aucoin did not keep Mr. Comeaux reasonably informed on the status of his case. Aucoin did not promptly comply with reasonable requests for information. He did not try to make contact with Mr. Comeaux to resolve the matter and complete the job. This is a violation of Rule 1.4 (a) Communication. There was no factual support for a finding for [sic] a violation of Rule 1.4 (b).
- There was a dispute as to the earned fee. Aucoin was paid \$800. By not completing the job he did not earn his fee. Unearned fees should have been in trust. Aucoin said he has no bank account. These are violations of Rule 1.5 Fees.

- The above violations further support globally a violation of Rule 8.4(a) Misconduct since Aucoin has violated the Rules of Professional Conduct.
- As it relates to the Comeaux complaint the Hearing Committee does not find a violation of Rule 8.1 (c).

**Summary of Complaint violations and finding**

As it relates to **Count I Jones** Aucoin is found to have violated the following Rules: 1.3 Diligence; 1.4 (a) Communication; 1.5 Fees; 8.4(a) Misconduct; 8.1 (c) Disciplinary Cooperation. The claim for violation of Rule 1.4 (b) is rejected.

As it relates to **[Count] II Stutes District Attorney** Aucoin is found to have violated the following Rules: 3.4 Fairness to Opposing Party and Counsel, 8.4 (a), (b) and (c) Misconduct.

As it relates to **Count III Comeaux** Aucoin is found to have violated the following Rules: 1.3 Diligence; 1.4 (a) Communication; 1.5 Fees; 8.4(a) Misconduct. The claim for violation of Rule 8.1(c) and 1.4 (b) is rejected.

Committee Report, pp. 9-21.

In addressing the appropriate sanction to be imposed, the committee first considered the factors outlined in Louisiana Supreme Court Rule XIX, §10(C) and the *ABA Standards for Imposing Lawyer Sanctions* as follows:

**SANCTION**

\*\*\*

Here, the Committee finds as to Count I and III that Aucoin through his actions, knowingly violated duties owed to his clients, [Cory] Jones and Michael Comeaux. In so doing he also knowingly violated his duty to the legal profession to uphold the standards of the profession. The previously stated factual conclusions are self-supporting of these findings. While Aucoin is not required to have a physical office or a landline telephone, the impression given to the clients here was that Aucoin was a flat fee briefcase lawyer who was unable to process a simple divorce. Aucoin reflects poorly on the legal profession.

As it relates to Count II and the worthless checks, the Committee finds that these actions were intentional and violated duties owed to the public (the stores with which he did business), the legal system (by ignoring his court obligations) and to the legal profession.

Aucoin’s actions caused actual injury to Mr. Jones and to Mr. Comeaux. Both had to retain other attorneys to process a simple divorce that should have easily been processed by Aucoin who was retained for this purpose and who agreed to undertake the representation. Mr. Jones and Mr. Comeaux should be reimbursed the fees that they paid to Aucoin of \$1800 and \$800 respectively.

Aucoin's action caused potential injury to the profession. The extent will never be known and can never be quantified. An action by one lawyer that causes other clients to distrust their lawyer is damage to all lawyers.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. Under Standard 4.42, suspension is generally appropriate when a lawyer fails to perform services for a client and causes injury to a client. This is supported by the complaints and evidence on Count I and Count III.

Suspension is also a baseline sanction as it relates to Count II. Aucoin in issuing worthless checks, leading to criminal charges and then contempt charges, committed criminal conduct that seriously adversely reflects on his fitness to practice law as per Standard 5.12.

As it relates to Aucoin's ignorance of the ODC investigation on Count I suspension is also warranted under Standard 6.22.

The Committee has also considered the aggravating and mitigating factors outlined in Section 9 of the ABA Standards. Those that are applicable to the present matter have been listed with a short reference provided as to its applicability.

The following present aggravating factors justify an increase in the degree of discipline to be imposed:

- Prior disciplinary offenses—strongly present based upon his prior charges. However, this was not considered per the *Chatelain* discussion below.
- Pattern of misconduct—present in that both complaints by Jones and Comeaux are of a similar nature.
- Multiple offenses—present in that there are 3 complaints and multiple rule violations.
- Bad faith obstruction of disciplinary proceeding by failing to comply with the rules of the disciplinary process—strongly present.
- Refusal to acknowledge wrongful nature of the conduct—strongly present. Aucoin still does not seem to understand the significance of the disciplinary process.
- Substantial experience in the practice of law—strongly present in that Aucoin has been licensed to practice for many years.
- Indifference in making restitution—strongly present in that he even acknowledges that Jones was owed reimbursement and has still not paid Jones.
- Illegal conduct—present as it relates to issuing worthless checks.

The following mitigating factors were determined to possibly justify a reduction in the degree of discipline to be imposed:

**None.** [FN10]

[FN10 The burden was on Aucoin to present mitigating circumstances. The evidence did not support such a finding. While there was some fleeting information of medical problems it was wholly uncorroborated and is rejected.]

This analysis supports an upward deviation for the sanction of suspension. This will further be addressed below.

Committee Report, pp. 21-23.

After considering the Court's decision in *LSBA v. Chatelain*, 573 So.2d 470 (La. 1991), which will be discussed in more detail below, and several other decisions relating to imposition of sanction, the Committee made the following recommendation:

### **CONCLUSION**

In Conclusion the Committee makes the following recommendations:

1. That respondent Samuel Robert Aucoin be suspended from the practice of law in Louisiana for a period of three years. This suspension should run concurrently with the suspension imposed in *In re Aucoin*, 2021-0847 (La. 12/7/2021), 328 So.3d 409, such that the period of suspension should be for three years beginning December 7, 2021.
2. That respondent Samuel Robert Aucoin pay restitution to [Cory] Jones in the amount of \$1,800.00 plus legal interest on this amount from the date of the recommendation until paid.
3. That respondent Samuel Robert Aucoin pay restitution to Michael Comeaux in the amount of \$800.00 plus legal interest on this amount from the date of the recommendation until paid.
4. That respondent Samuel Robert Aucoin be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

Committee Report, pp. 27-28.

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

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

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is “to perform 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 petitions for reinstatement and readmission, 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 findings of the Committee are not manifestly erroneous, are supported by the record, and are adopted by the Board. In connection with Count III, the Board makes the following additional findings. Respondent was served with the complaint giving rise to Count III on April 12, 2021 but failed to provide any response to the complaint. Having received no response after waiting three months, ODC had to issue a subpoena to Respondent for his sworn statement.

**B. De Novo Review**

In Count I (Jones), Respondent was charged with violations of Rules 1.3, 1.4(a) and (b), 1.5(f)(5), 8.1(c), and 8.4(a). The Committee concluded that Respondent violated Rules 1.3, 1.4(a), 1.5, 8.1(c), and 8.4(a) but did not violate Rule 1.4(b). The Committee’s conclusions are supported by the evidence. The Board concurs in the Committee’s conclusions for the reasons stated in the Committee’s report.

In Count II (Stutes), Respondent was charged with violations of Rules 3.4(c), 8.4(a), 8.4(b), and 8.4(c). The Committee concluded that Respondent committed the charged violations. The Committee’s conclusions are supported by the evidence. The Board concurs in the Committee’s conclusions for the reasons stated in the Committee’s report.

In Count III (Comeaux), Respondent was charged with violations of Rules 1.3, 1.4(a) and (b), 8.1(c), and 8.4(a). The Committee concluded that Respondent violated Rules 1.3, 1.4(a), 1.5,



and 8.4(a) but did not violate Rules 1.4(b) and 8.1(c). The Board concurs in the Committee's conclusions for the reasons stated in the Committee's report with two exceptions.

The Committee found that Respondent violated Rule 1.5. However, Respondent was not charged with a violation of Rule 1.5 in Count III. The only allegation of a Rule 1.5 violation was in Count I arising from the complaint filed by Mr. Jones.

Under *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968), procedural due process demands that Respondent only be held accountable for the charged misconduct. The Court has held that due process requires that an attorney be given notice of the misconduct for which the disciplinary authority seeks to sanction him. *La. State Bar Ass'n v. Keys*, 88-2441 (La. 9/7/90), 567 So.2d 588, 591, *citing In re Ruffalo*. However, "formal and technical pleadings are not essential in disciplinary proceedings against an attorney. All that is required is that the charges against the defendant shall be so specific as to fairly inform him of the misconduct of which he is accused." *Louisiana State Bar Ass'n v. Martin*, 451 So.2d 561 (La. 1984).

The charges asserted and the evidence showed that Respondent was paid a fee of \$800.00 to obtain a divorce for Mr. Comeaux and that he successfully performed services resulting in the judge orally granting the divorce in court. However, Respondent then failed to perfect the ruling by filing and having the judge sign a final judgment of divorce. The charges did not state that Respondent failed to return an unearned fee and did not mention a Rule 1.5 violation relating to Count III.

ODC filed its pre-hearing memorandum approximately 2½ weeks before the hearing in this matter. In the pre-hearing memorandum, ODC again omitted any reference to a Rule 1.5 violation when recounting the charges and addressing the facts relating to Count III. ODC Pre-Hearing Memo., pp. 3-4, 7-8. In one place in the pre-hearing memorandum, when jointly referencing

complainants Jones and Comeaux, ODC stated that “by refusing to refund an unearned fee, Respondent violated Rule 1.5(f)(5).” ODC Pre-Hearing Memo., p. 10. The Board finds that this sole reference to Rule 1.5 made for the first time in ODC’s memorandum, when the formal charges and the other sections of ODC’s pre-hearing memorandum made no mention of a Rule 1.5 violation relating to Count III, was not sufficient to give Respondent fair notice of a charge of a violation of Rule 1.5 relating to Count III. Therefore, the Board does not find a Rule 1.5(f) violation in Count III.

Additionally, the Board does not concur in the Committee’s finding that Respondent did not violate Rule 8.1(c) in Count III. On April 12, 2021, Respondent was served with a copy of Mr. Comeaux’s complaint and a letter from ODC stating that a response to the complaint was due in fifteen days from receipt. Exs. ODC 13 and ODC 14. Having received no response from Respondent for three months, ODC had to issue a subpoena for Respondent to appear for a sworn statement. Additionally, during Respondent’s sworn statement, Respondent agreed to contact Mr. Comeaux to address the matter, but Respondent failed to contact him. Ex. ODC 16, Bates pp. 174, 177-178; T.143-144. By this conduct, Respondent violated Rule 8.1(c) which provides that a lawyer shall not fail to cooperate with ODC in its investigation of a disciplinary matter.

## **II. The Appropriate Sanction**

### **A. Rule XIX, §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 actual or potential injury caused by the lawyer’s misconduct; and
4. the existence of any aggravating or mitigating factors.

Respondent here breached duties to clients, the public, the legal system, and the profession. His conduct in connection with Counts I and III was knowing. He failed to complete the legal work for which he was hired by Mr. Jones and Mr. Comeaux. In the case of Mr. Jones, he failed to file any pleadings in the matter. In Mr. Comeaux's matter, he failed to file and have signed the final judgment to perfect the judge's oral ruling granting the divorce. His conduct caused significant delay in both divorce proceedings and both complainants were required to hire other counsel to complete their divorces.

Respondent's conduct in Count II was intentional. Respondent wrote checks to two different vendors on a bank account which had been previously closed. T.89, 92. He caused harm to the payees of the insufficient checks by depriving them of the monies owed for over two years. He caused delay in the criminal proceedings and the use of extra resources of the court due to his failure to appear. Additionally, Respondent's criminal and dishonest behavior reflects adversely on the profession as a whole.

Finally, Respondent's failure to cooperate with the ODC investigations is damaging to the profession and the disciplinary system and created the potential for delays and additional costs in investigation and enforcement.

Aggravating factors include dishonest or selfish motive; 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 wrongful nature of conduct; substantial experience in the practice of law; indifference to making restitution; and illegal conduct. There are no mitigating factors present. The Committee correctly recognized that there was no evidence presented to corroborate any referenced medical problems or any effect such problems may have had on Respondent's behavior.

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

The following *ABA Standards for Imposing Lawyer Sanctions* provide guidance in determining the appropriate sanction to be imposed for Respondent's misconduct:

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale . . . ; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

7.2 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.

Also, in considering the appropriate sanction to be imposed here, a *Chatelain* analysis must first be applied. In *LSBA v. Chatelain*, 573 So.2d 470 (La. 1991), the Court determined that it is generally inappropriate to impose additional discipline upon an attorney for misconduct that occurred before or concurrently with the violations which resulted in a prior disciplinary sanction. Rather, the overall discipline to be imposed should be determined as if both proceedings were before the Court simultaneously. *See also, In re Bates*, 2022-1357 (La. 1/27/23), 356 So.3d 980. The basis for the Court's approach in *Chatelain* was concern that it would be potentially unfair to

impose a greater sanction simply because of the timing of the prosecution. However, in more recent jurisprudence, the Court has further explained:

... as the jurisprudence has evolved, we have also recognized that the lawyer should not benefit in cases where it is obvious that the cumulative effect of the newly-charged misconduct and the prior misconduct would have caused the court to impose a greater sanction had it been aware of that misconduct at the time the court rendered its initial judgment. *See, e.g., In re: Holley*, 03-1366 (La. 10/3/03), 856 So. 2d 1197 (“[h]ad we considered the instant misconduct together with the misconduct in *Holley I*, it is likely we would have imposed a more severe sanction, probably in the range of eighteen months, with some period of deferral and probation.”). In short, the court's overriding consideration has been to determine the appropriate overall sanction for the lawyer's misconduct, ignoring any distortions which may be caused by the timing of the filing of formal charges.

*In re Wilson*, 2021-01579 (La. 1/26/22), 331 So.3d 917, 922.

The substantive misconduct which formed the basis of the formal charges in *Aucoin I* occurred in 2019. Respondent altered the certificate of completion of the CLE course in June 2019 and he engaged in the unauthorized practice of law during the period from June through August 2019. His false statements to the ODC about the certificate of completion and his failure to produce credit card statements requested by ODC continued through the ODC investigation which culminated in the filing of formal charges in November of 2019.

Here, Respondent's misconduct in Count I began in approximately October 2017 when Mr. Jones hired him to obtain a divorce which work was never performed or completed. The failure to take action in filing the divorce petition and failure to communicate with the client continued at least through the filing of the complaint in October 2019. Respondent's failure to respond to Mr. Jones's complaint occurred from November 2019 through July 3, 2020 and he failed to appear for his sworn statement on July 29, 2020. Further, to date, there is no indication that Respondent has ever returned the unearned fee.

In Count II, Respondent's misconduct in writing checks on a closed account occurred in May and June of 2019. The payees on the checks were not made whole until August 2021. Respondent's failure to comply with criminal court orders occurred in the 2020-2021 time period.

Regarding Count III, Respondent's misconduct in failing to perfect the judge's oral ruling granting the divorce by obtaining a written final judgment began in January 2019 and continued at least until the filing of the complaint in April 2021. The failure to cooperate with the ODC investigation occurred in 2021.

Considering the above, there is some overlap in the misconduct in *Aucoin I* and the misconduct here, but the misconduct here extends after that in *Aucoin I*. The Board finds that had the Court considered the misconduct occurring in this matter prior to November 2019 together with the misconduct in *Aucoin I*, it is likely that a more severe sanction would have been imposed. Considering the combined misconduct which occurred through 2019 and the additional misconduct which occurred in this matter through 2021 (and continues as to Mr. Jones's unearned fee), the Board concludes that the three-year suspension recommended by the Committee is appropriate.

In *In re Parks*, 2008-3006 (La. 4/24/09), 9 So.3d 106, a disciplinary complaint was filed against the respondent by the victim of an automobile accident caused by the respondent. The complainant asserted that the respondent had failed to address her responsibility for the accident and had failed to maintain liability insurance coverage on her vehicle on the date of the accident. The Court found that such conduct, while concerning, did not warrant discipline by the Court. However, the respondent had failed to respond to the disciplinary complaint despite being mailed four copies of the complaint and later being personally served with a copy of the complaint. She also failed to appear for a sworn statement despite having been personally served with a subpoena.

The respondent further made misrepresentations to the ODC, both while under oath and in written and verbal statements. The Court found this conduct to be in violation of Rules 8.1(a) (knowingly make a false statement of material fact in connection with a disciplinary matter), 8.1(c), 8.4(a), and 8.4(c). The Court determined that the respondent acted knowingly and intentionally and caused harm to the disciplinary system and the legal profession and had never acknowledged her wrongfulness. The respondent was suspended for one year and one day.<sup>10</sup>

The respondent in *In re Montgomery*, 2018-0637 (La. 8/31/18), 251 So.3d 401, another deemed admitted matter, was also suspended for one year and one day. The *Montgomery* case arose out of complaints filed by two clients, both of whom had retained and paid the respondent to represent them in divorce matters. The respondent had failed to take any action or respond to his client in one matter. In the other matter, his misconduct included among other things, waiving his client's right to support against the client's interest, failing to file a detailed descriptive list of assets, failing to communicate with the client, failing to appear at the divorce hearing, and failing to notify the client that a final divorce judgment had been granted. The Court found that the respondent failed to comply with bar obligations, neglected legal matters, failed to communicate with clients, failed to account for fees, and failed to cooperate with the ODC in its investigations. The respondent was found to have violated Rules 1.1(b) (failure to comply with MCLE requirements), 1.1(c) (failure to pay bar dues and disciplinary assessment), 1.3, 1.4, 1.5(f)(4) (failure to account for funds paid in advance), 1.16(d) (obligations upon termination of the representation), 8.1(c), and 8.4(a). The respondent knowingly violated duties owed to his clients, the legal system, and the legal profession, causing actual harm. Aggravating factors included multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to

---

<sup>10</sup> *Parks* was a deemed admitted matter, but the respondent did later appear at oral argument before the Board panel.

comply with the rules or orders of the disciplinary agency, substantial experience in the practice of law, and indifference to making restitution. The only mitigating factor was absence of a prior disciplinary record.

In *In re Charles*, 2013-0352 (La. 4/19/13), 113 So.3d 1078, also a deemed admitted matter, the respondent neglected two client matters, failed to communicate with her clients, failed to return unearned fees, failed to return a client's file, and forged her client's signature on an affidavit filed with a court. She was found to have violated Rules 1.3, 1.4, 1.16(d), 3.3 (candor toward a tribunal), 8.4(a), 8.4(c), and 8.4(d) (conduct prejudicial to the administration of justice). The Court determined that the respondent knowingly violated duties owed to her clients, the legal system, and the legal profession, causing actual harm. Aggravating factors included prior disciplinary record (admonition for similar misconduct approximately fifteen years earlier), a pattern of misconduct, multiple offenses, substantial experience in the practice of law, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and indifference to making restitution. The only mitigating factor present was remoteness of prior offenses. The Court suspended the respondent for three years.

In *In re Henderson*, 2002-0903 (La. 6/6/02), 819 So.2d 296, the charges included five counts. The respondent neglected a legal matter, allowing it to prescribe, and then created a conflict of interest by attempting to settle his liability for legal malpractice without advising his client to seek the advice of independent counsel prior to entering into the settlement. He also issued three checks which were subsequently dishonored for insufficient funds and did not make good on any of the checks until after the district attorney was notified and/or a disciplinary complaint was filed. The respondent also failed to pay a third-party medical provider from a settlement and commingled and converted those funds to his own use. Finally, the respondent



failed to cooperate with the ODC in the investigation of two of the matters. The Court found that the respondent's misconduct was serious in nature and had caused actual harm. Aggravating factors present were prior discipline,<sup>11</sup> substantial experience in the practice of law, pattern of misconduct, and multiple offenses. There were no mitigating factors. The respondent was disbarred.

Considering all of Respondent's combined misconduct, including the misconduct in *Aucoin I*, and the above discussion, the Committee's recommendation of a three-year suspension appears to be appropriate. Respondent has engaged in various types of misconduct including neglect of client matters, multiple acts of dishonest and criminal behavior, and failure to cooperate with ODC. However, the Committee's conclusion that Respondent's misconduct is not as egregious as that which resulted in disbarment in *Henderson* appears warranted.

### CONCLUSION

In light of the above, the Board adopts the Committee's factual findings with the limited additions discussed herein and concurs in the Committee's conclusions regarding rule violations as to Counts I and II. As to Count III, the Board concludes that Respondent violated Rules 1.3, 1.4(a), 8.1(c), and 8.4(a). ODC did not charge Respondent with a violation of Rule 1.5(f)(5) in Count III and the Board finds that Respondent did not have fair notice of an allegation of such violation. The Board recommends that Respondent's suspension in *Aucoin I* be extended such that his total suspension is for a three-year period beginning December 21, 2021, the effective date of the suspension in *Aucoin I*. The Board also recommends that Respondent be ordered to pay restitution to Mr. Jones in the amount of \$1,800.00. Finally, the Board recommends that

---

<sup>11</sup> The respondent was suspended from the practice of law for eighteen months for failing to maintain settlement funds in a trust account, failing to remit payment to a third-party health care provider, failing to cooperate in a disciplinary matter and commingling and conversion of client funds. He had not sought reinstatement from that suspension at the time of the Court's decision discussed here.

Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

**RECOMMENDATION**

The Board recommends that Samuel Robert Aucoin’s suspension in *Aucoin I* be extended such that his total suspension is for a three-year period beginning December 21, 2021, the effective date of the suspension in *Aucoin I*. The Board also recommends that Respondent be ordered to pay restitution to Mr. Jones in the amount of \$1,800.00. The Board further recommends that Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**R. Alan Breithaupt  
Paula H. Clayton  
Todd S. Clemons  
Albert R. Dennis III  
Susan P. DesOrmeaux  
James B. Letten  
M. Todd Richard  
Lori A. Waters**

By: \_\_\_\_\_  
DocuSigned by:  
*Aldric C. Poirier, Jr.*  
24ED18126A254F3  
**Aldric C. Poirier, Jr.**  
**FOR THE ADJUDICATIVE COMMITTEE**

## APPENDIX

### 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.

...

### Rule 1.5. Fees

...

(f) Payment of fees in advance of services shall be subject to the following rules: ... (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 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

...

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

...

### **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:

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

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

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

...

### **La.R.S. 14:71 Issuing worthless checks**

A. (1)(a) Issuing worthless checks is the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, with intent to defraud, of any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has not sufficient credit with the bank, or other depository for the payment of such check, draft, or order in full upon its presentation.

(b) This Section shall apply to a check, draft, or order tendered for satisfaction, in whole or in part, of payments due on installment contracts, open accounts, or any other obligation for which the creditor has authorized periodic payments or the extension of time in which to pay.

...

(2) The offender's failure to pay a check, draft, or order, issued for value, within ten days after notice of its nonpayment upon presentation has been deposited by certified mail in the United States mail system addressed to the issuer thereof either at the address shown on the instrument or the last known address for such person shown on the records of the bank upon which such instrument is drawn or within ten days after delivery or personal tender of the written notice to said issuer by the payee or his agent, shall be presumptive evidence of his intent to defraud.

B. Issuing worthless checks is also the issuing, in exchange for anything of value, whether the exchange is contemporaneous or not, with intent to defraud, of any check, draft, or order for the payment of money or the issuing of such an instrument for the payment of a state tax obligation, when the offender knows at the time of the issuing that the account designated on the check, draft, or order has been closed, or is nonexistent or fictitious, or is one in which the offender has no interest or on which he has no authority to issue such check, draft, or order.

C. (1) Whoever commits the crime of issuing worthless checks, when the amount of the check or checks is twenty-five thousand dollars or more, shall be imprisoned at hard labor for not more than twenty years, or may be fined not more than fifty thousand dollars, or both.

(2) When the amount of the check or checks is five thousand dollars or more, but less than twenty-five thousand dollars, the offender shall be imprisoned, with or without hard labor, for not more than ten years, or may be fined not more than ten thousand dollars, or both.

(3) When the amount of the check or checks is more than one thousand dollars, but less than five thousand dollars, the offender shall be imprisoned, with or without hard labor, for not more than five years, or may be fined not more than three thousand dollars, or both.

(4) When the amount of the check or checks is less than one thousand dollars, the offender shall be imprisoned for not more than six months, or may be fined not more than five hundred dollars, or both. If the offender in such cases has been convicted of theft two or more times previously, upon any subsequent conviction he shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than two thousand dollars, or both.

D. When the offender has issued more than one worthless check within a one hundred eighty-day period, the amount of several or all worthless checks issued during that one hundred eighty-day period may be aggregated to determine the grade of the offense.

...