ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DANIEL B. BARZARE

DOCKET NO. 24-DB-009

REPORT OF HEARING COMMITTEE # 5

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Daniel B. Barzare ("Respondent"), Louisiana Bar Roll Number 18780.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.8(a) and 8.4(a) (c).[2]

PROCEDURAL HISTORY

The formal charges were filed on March 21, 2024. By letter dated March 28, 2024, the formal charges were mailed via certified mail to Respondent's primary registration address.[3] On April 16, 2024, ODC requested the Board serve the formal charges at Respondent's "preferred and residential address." By letters dated April 17, 2024, the formal charges were mailed via certified mail to Respondent's secondary/residential and preferred registration addresses.[4] The mailings were returned to the Board. Respondent failed to file an answer to the charges. Accordingly, on June 18, 2024, ODC filed a motion to deem the factual allegations admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).[5] By order signed June 27, 2024, the factual allegations

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[1] Respondent was admitted to the practice of law in Louisiana on October 7, 1988. Respondent is currently eligible to practice law.
[2] See the attached Appendix for the text of these Rules.
[3] 212 Calcasieu St., Ville Platte, LA 70586.
[4] 128 Duffy Ave., Sunset, LA 70584 (secondary/residential); P.O. Box 1143, Ville Platte, LA 70586 (preferred).
[5] 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

contained in the formal charges were deemed admitted. On August 26, 2024, ODC filed its submission on sanction.

For the following reasons, the Committee finds Respondent violated Louisiana Rules of Professional Conduct 1.8(a) and 8.4(a)(c).

FORMAL CHARGES

The formal charges read, in pertinent part:

> The formal complaint in this matter was received by the ODC on July 18, 2022 and assigned investigative file number 0040201. Complainant, Geraldine M. Stelly, had hired Respondent to represent her pursuant to a partition of the marital community. Complainant said that Respondent had asked her to loan him $5,000.00 and he would pay her back. Complainant cashed in stocks that she owned and tendered the funds to Respondent.
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> Four months later, Respondent again approached Complainant and asked to borrow another $5,000.00. Complainant again cashed in more stocks and tendered the additional funds to Respondent. The agreement between the parties was that Respondent would repay the loan and would also pay for any tax liabilities associated with the loan funds. Respondent made a request for a third loan from Complainant, for $300.00. Complainant said that she denied the request. Later, Respondent made a 4th request for a loan from Complainant, again for $5,000.00. Complainant said, at the time, that she declined this request as well. Complainant said that Respondent then requested payment of his legal fees to be paid up-front. Complainant cashed in $45,000.00 in stocks and tendered the funds to Respondent.
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> Respondent filed a written response to the complaint. He denied that the payments were loans. He said that the payments were actually an advance on his attorney fees. According to Respondent, the total amount of his fee was $105,000.00. The breakdown of the fee payments, as explained by Respondent, was two payments of $40,000.00 plus $25,000.00 which equaled the complete fee.

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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 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.

The ODC took the sworn statement of Respondent. He appeared to confirm that he had, in fact, asked Complainant for a loan in the amount of $5,000.00 in the summer of 2020. This time period was during his legal representation of Complainant. At the bottom of page 17 of his statement, when asked if he had borrowed $5,000.00 from Complainant, he responded "Yes sir, I borrowed three sums of money in three increments, 15,000, 5,000, and 5,000. So, it's a total of 25,000." Respondent said the form of the loan tenders was either checks or money orders. Respondent explained that one of the loans was for home improvements. The other loans were to pay personal bills. Respondent was specifically asked why he approached his client for loans rather than apply for loans at a bank. He responded on page 19 of his statement that he knew his client had about $200,000.00 in the bank and he figured that she would help him. Respondent also conceded that he had failed to make a contract for the loans or to reduce the agreement(s) to writing.

Regarding the tax reimbursement, Respondent admitted that he had offered to reimburse Complainant for the taxes incurred pursuant to the loans but he never reimbursed her. Respondent appeared to blame Complainant that he did not reimburse her for the tax amounts.

The ODC also took the sworn statement of Complainant, Ms. Stelly. Complainant confirmed in the summer of 2020 that Respondent first asked her to lend $5,000.00 to him when they had met at a McDonald's restaurant and that he would pay her back. She said that she had cashed in stocks to get the funds to loan to him. Complainant confirmed that this loan was not a part of Respondent's fee. Complainant specifically called it a loan. Complainant also confirmed that Respondent did not reduce the agreement to writing in the form of a promissory note or any other type of written agreement. The agreement was entirely verbal. Complainant advised the ODC that Respondent never paid the money back to her nor did he mention it to her again.

Complainant confirmed that Respondent was supposed to pay the taxes on the withdrawn funds at the end of the year during tax season. Complainant seemed to recall that the tax penalty for the withdrawn loan funds was set at 20% along with (potentially) a penalty of 20% as well. Respondent did not reimburse Complainant either the taxes or the penalty amount, although she was unclear if she was assessed the penalty since it would have been based on her age at the time.

Complainant described Respondent's request for a second loan, also in the amount of $5,000.00. She said she agreed to the second loan to Respondent. As with the first loan, Complainant said that she had cashed in some of her stocks in order to generate the funds for the second loan. She was also liable for taxes on the withdrawal in the amount of 20% although she was unsure if she was made to pay the additional 20% penalty. Respondent agreed to pay Complainant back, along with any tax liabilities she had incurred. As with the first loan, Complainant said

there was no mention from Respondent that this loan was actually a legal fee in disguise. Respondent did not reduce the second loan agreement to writing.

Complainant described the third request for a loan that Respondent made to her. Respondent requested a loan of $300.00 for which Complainant recalled having agreed to, although she indicated that she was beginning to harbor reservations about these loans. Complainant loaned Respondent the $300.00 in cash that she had in her pocket. Respondent provided no receipt to Complainant for the cash loan tender and nothing of the agreement was reduced to writing.

Complainant described Respondent's request for a 4th loan. She had mentioned it in her formal complaint but she appeared to initially have difficulty remembering the details. She had advised that the request was for $5,000.00 but may have been for $2,000.00. Although she had said in her formal complaint that she had declined the request for $5,000.00, she said in her statement that she agreed to loan to Respondent $2,000.00. The funds would have also come from the sale of stocks and taxed at 20%. As with the other loans, Respondent never paid back the loans or reimbursed Complainant for the taxes she paid on the withdrawals. Complainant appeared to agree that the total amount of the loans, minus taxes and penalties, was $12,300.00. The total could potentially increase the loan amount, given an additional $4,400.00 in taxes and penalties.

Complainant advised that Respondent did request an advance on his fee. There appeared to be some back and forth between the parties on the amount of the fee. Ultimately, Respondent agreed to a total fee of $85,000.00. Complainant paid this amount separately in two payments, one payment of $45,000.00 and the other payment in the amount of $40,000.00. Complainant said Respondent never mentioned the loans she made to him and she was afraid to ask him about them. Complainant acknowledged that she felt that Respondent had stolen the funds from her.

After a review of a copy of a text message that Complainant had attached to her original complaint, she amended her narrative to reflect that Respondent's third request may have been for $5,000.00, not $2,000.00 as she had originally believed and had testified. However, she was not completely certain. Complainant did clarify that Respondent had requested loans, not advances on fees, when she loaned the money to him. The only uncertainty in the fact pattern appears to be the total amount of the loans that Complainant made to Respondent. The evidence reflects that the amount is approximately $16,000.00 to $25,000.00, with the higher amount having been acknowledged by Respondent whose own testimony corroborates Complainant's allegation that the payments to Respondent were loans rather than fee advances. Further corroborating the allegation is that the contract called for a contingency fee rather than an advanced fee deposit. Complainant alleges that Respondent never repaid the loans, a fact that Respondent doesn't dispute.

While Rule 1.8(a) does allow transactions of the type engaged in by Complainant and Respondent, the Rule imposes requirements that must be observed. Rule 1.8(a)(1) dictates that the transaction and terms on which the lawyer acquires the interest be fair and reasonable to the client *and are fully disclosed and transmitted in writing* in a manner that can be reasonably understood by the client. No evidence has been produced to support a defense that Respondent complied with the requirement for a writing of the multiple transactions. Rule 1.8(a)(2) dictates that the client must be advised *in writing* of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction. No evidence has been produced to establish that Respondent satisfied this requirement. Rule 1.8(a)(3) dictates that the client must give informed consent, *in a writing signed by the client,* to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction. No evidence was produced to show that Respondent satisfied this requirement either. There appears to have been no part of any of the transactions that was reduced to a writing.

Respondent never repaid any of the loans that he took from Complainant. He also never reimbursed Complainant for the taxes and penalties that she paid as a result of her having to cash in stocks in order to secure the funds to lend to Respondent. Although Respondent had attempted to portray the funds as an advanced fee deposits, he acknowledged that the funds were loans from his client. This conclusion is bolstered by the fact that the attorney contract was for a contingency fee, not for an advanced fee deposit. Respondent's failure to repay the loans to his client has violated Rule 8.4(a)(c) due to the dishonest and fraudulent nature of his actions. A factor in aggravation, found under ABA Standard 9.22(h), is the vulnerability of Complainant.

Respondent, by engaging in the above listed behaviors, has violated Louisiana Rules of Professional Conduct Rule 1.8(a) and Rule 8.4(a)(c).

EVIDENCE

The Committee reviewed the exhibits submitted by ODC, which are Exhibits ODC 1-5. Respondent did not submit evidence or argument for the Committee's consideration and likewise did not request to be heard in mitigation pursuant to Rule XIX, §11(E)(4).

FINDINGS OF FACT

The Committee determined the following findings of fact:

(1) Complainant Geraldine M. Stelly hired Respondent to represent her pursuant to a partition of the marital community.

(2) Respondent asked Complainant for several loans during his representation of her, totaling $25,000.00, which he never re-paid. Additionally, Respondent agreed to pay any tax liabilities associated with the loans, which he also failed to pay.
(3) Respondent did not reduce these loans/agreements to writing.
(4) Respondent asked Complainant for these loans knowing she had $200,000.00 in the bank.

RULES VIOLATED

The Committee finds Respondent violated Louisiana Rules of Professional Conduct 1.8(a) and 8.4(a)(c).

While Rule 1.8(a) does allow transactions of the type engaged in by Complainant and Respondent, the Rule imposes requirements that must be observed. Rule 1.8(a)(1) dictates the transaction and terms on which the lawyer acquires the interest be fair and reasonable to the client *and are fully disclosed and transmitted in writing* in a manner that can be reasonably understood by the client. No evidence has been produced to support a defense that Respondent complied with the requirement for a writing of the multiple transactions. Rule 1.8(a)(2) dictates the client must be advised *in writing* of the desirability of seeking and be given a reasonable opportunity to seek the advice of independent legal counsel on the transaction. No evidence has been produced to establish that Respondent satisfied this requirement. Rule 1.8(a)(3) dictates that the client must give informed consent, *in a writing signed by the client,* to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction. No evidence was produced to show that Respondent satisfied this requirement either. In fact, no part of any of the transactions was reduced to writing.

Respondent never repaid any of the loans he took from Complainant. He also never reimbursed Complainant for the taxes and penalties she paid as a result of her having to cash in stocks in order to secure the funds to lend to Respondent. Although Respondent has attempted to portray the funds as an advanced fee deposit, he acknowledged the funds were loans from his

client. This conclusion is bolstered by the fact that the attorney contract was a contingency fee, not an advanced fee deposit. Respondent's failure to repay the loans to his client violated Rule 8.4(a)(c) due to the dishonest and fraudulent nature of his actions.

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee 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 Complainant. Respondent, a lawyer since 1988, acted intentionally and dishonestly/selfishly in seeking multiple loans (pattern of misconduct) from a wealthy, elderly client. Respondent's misconduct involving multiple offenses caused actual harm to Complainant in the loss of funds and additional tax penalties which have yet to be repaid. Respondent has refused to acknowledge his misconduct and shown an indifference to making restitution to Complainant. Finally, no evidence of mitigating factors has been provided by Respondent; however, the Committee notes a lack of prior discipline involving Respondent.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. ABA Standard 4.12 dictates a suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA Standard 4.32 dictates a suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict and causes injury or potential injury to a client. ABA Standard 4.62 dictates a suspension is generally appropriate when a lawyer knowingly deceives a

client and causes injury or potential injury to the client. Finally, ABA Standard 7.2 dictates a 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.

In addition, in reaching its recommendation, the Committee considered the following case law. In the matter of *In re: Michael A. Fenasci,* 2009-1665 (La. 11/20/09), 21 So.3d 934, the respondent improperly obtained a loan from a client, improperly advanced living expenses to a client, commingled client funds with his own, and converted client funds to his own use. The Rules implicated in the misconduct were Rule 1.8(a) (a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client), Rule 1.8(e) (a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation), and Rule 1.15(a) (safekeeping property of clients or third persons). Aggravating factors were found to be prior disciplinary offenses, a refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. No mitigating factors were identified. The Court held "respondent violated the standards for providing financial assistance to a client as set forth in *Louisiana State Bar Ass'n v. Edwins,* 329 So.2d 437 (La. 1976), specifically that the client remains liable for repayment of all funds, whatever the outcome of the litigation." The respondent was suspended for three years.

Additionally, in the matter of *In re: Wade R. Baggette,* 2009-1091 (La. 10/20/09), 26 So.3d 98, the respondent entered into two financial transactions with a client. First, he borrowed $600,000.00 from his elderly client without disclosing the terms of the transaction and without allowing her time to seek the advice of independent counsel or obtaining her written consent. Second, the respondent also entered into an agreement to purchase this elderly client's interest in

a succession without disclosing the terms of the transaction, without allowing her time to seek the advice of independent counsel or obtaining her written consent. The respondent was found to have violated Rule 1.8(a) (misconduct occurred under a version of this Rule, which was later amended to require greater disclosures). Aggravating factors were found to be a dishonest or selfish motive, vulnerability of the victim, and substantial experience in the practice of law. The lone mitigating factor was found to be no prior disciplinary record. The respondent was disbarred.

Also, in the matter of *In re: Vincent C. Cofield,* 2006-0577 (La. 09/01/2006), 937 So.2d 330, the respondent drew up an irrevocable trust and named himself as the trustee even though he lacked the requisite training or knowledge for such a position; he failed to communicate with the client, obtained a loan from the client with a mental disability; he failed to place disputed fees in his trust account, and he failed to timely remit settlement funds due to insufficiencies in his client trust account. Three sets of formal charges were filed alleging violations of Rules 1.1(a) (competence), 1.4 (communication), 1.5 (fees), 1.7, 1.8 (conflict), 1.14 (client with diminished capacity), 1.15(a)(b) (safekeeping property), 1.16 (duties on termination), 2.1, 2.2 (advisor), 3.4(c) (fairness), 4.2 (communication with parties represented by counsel), 8.1(c) (failure to cooperate with the ODC), and Rule 8.4(a)(c)(d)(g) (professional duties). Aggravating factors were found to be prior disciplinary offenses, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and substantial experience in the practice of law. No mitigating factors were identified. The respondent was disbarred.

Finally, the matter of *In re: Curry, Robert Lee; Paul D. Spillers; Edwin K Theus,* 2008-2557 (La. 7/1/09), 16 So.3d 1139, the respondents entered into an improper business transaction with a client in the form of a fee agreement. The respondents also renegotiated the fee agreement

in order to benefit their firm. The respondents also failed to provide an accounting to the client. The respondents were charged with violations of Rules 1.7(b) (conflict of interest, general rule), 1.8(a) (conflict of interests, prohibited transactions), 1.15(b) (full accounting), and 1.16(d) (accounting post-termination). Aggravating factors were found to be a refusal to acknowledge the wrongful nature of the misconduct and substantial experience in the practice of law. Mitigating factors were described by the Court, "We find that respondents have no prior disciplinary record and have demonstrated a cooperative attitude toward these disciplinary proceedings, despite their failure to admit their transgressions." The respondents were suspended for six months, with a deferral of three months.

Considering the facts of this case and the aggravating factors, the Committee recommends a sanction of 3 years suspension with restitution of all sums owed to Complainant, including the principal of all loans, repayment of the tax penalty as well as judicial interest on the loans, in addition to all costs and expenses of the proceedings.

CONCLUSION

In conclusion, the Committee finds Respondent violated Louisiana Rules of Professional Conduct 1.8(a) and 8.4(a)(c) and recommends a sanction of 3 years suspension with restitution of all sums owed to Complainant, including the principal of all loans, repayment of the tax penalty as well as judicial interest on the loans, in addition to all costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

This opinion is unanimous and has been reviewed by each committee member.

Lafayette, Louisiana, this 2nd day of October, 2024.

Louisiana Attorney Disciplinary Board
Hearing Committee # 5

BY: 
Catherine M. Landry, Committee Chair

BY: *s/Timothy A. Maragos*
Timothy A. Maragos, Lawyer Member

BY: *s/Lisa M. Berlin*
Lisa M. Berlin, Public Member

APPENDIX

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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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;

...

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

...