ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: WALTER P. REED

DOCKET NO. 16-DB-066

REPORT OF HEARING COMMITTEE # 24

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Walter P. Reed ("Respondent"), Louisiana Bar Roll Number 02225.[1] ODC alleges that Respondent violated the following Rules of Professional Conduct: 8.4(a), (b), (c), and (d).[2]

PROCEDURAL HISTORY

The formal charges were filed on August 1, 2016. Respondent filed an answer to the charges on August 23, 2016. On September 9, 2016, this matter was stayed pursuant to Rule XIX, §19(C). The stay was lifted on July 11, 2019, when ODC filed a motion to set this matter for hearing. The hearing of this matter was held on November 13, 2019. Chief Disciplinary Counsel Charles B. Plattsmier appeared on behalf of ODC. Richard T. Simmons, Jr., and Dane S. Ciolino appeared on behalf of Respondent.

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[1] Respondent was admitted to the practice of law in Louisiana on April 28, 1978. Respondent is currently suspended from the practice of law on an interim basis. *In re Reed*, 2016-0871 (La. 6/3/16), 193 So.3d 1168.

[2] Rule 8.4 states, in pertinent part:

> It is professional misconduct for a lawyer to: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) Engage in conduct that is prejudicial to the administration of justice; …

For the following reasons, the Committee finds that Respondent violated Rules of Professional Conduct 8.4(a), (b), (c), and (d), and should be disbarred.

FORMAL CHARGES

The formal charges read, in pertinent part:

> On May 2, 2016 the Respondent was convicted by a jury in the United States District Court for the Eastern District of Louisiana of multiple counts of conspiracy to commit fraud in connection with a scheme to defraud and to obtain money and property from the 'Walter Reed Campaign' and from contributors to the 'Walter Reed Campaign' by means of materially false and fraudulent pretenses, representation, and promises by use of interstate wire transmission. The indictment also charged Respondent with accepting payments individually from the St. Tammany Parish Hospital district when the district was represented by the District Attorney's office. Additionally, the Respondent paid money ($25,000) to another for the purposes of compensating for the referral of private civil legal work.
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> Respondent was found guilty to the below listed Counts of the Superseding Indictment:
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> COUNT 1 (18 U.S.C. § 371-Conspiracy)
> COUNT 2, 3, 4, 5, 6, 7, 8 (18 U.S.C. § 1343-Wire Fraud)
> COUNT 9 (18 U.S.C. § 1956-Money Laundering)
> COUNT 11-14 (26 U.S.C. § 7206(1) - False Statements on Income Tax Return)
> COUNT 15-19 (18 U.S.C. § 1341-Mail Fraud)
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> Pursuant to Rule XIX, section 19, the Respondent's conduct reflects violations of Rule 8.4(b) (the commission of a criminal act); Rule 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation); Rule 8.4(d) (conduct prejudicial to the administration of justice); and Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct) and warrants the imposition of discipline.

EVIDENCE

The Office of Disciplinary Counsel presented four exhibits, which were admitted: the Indictments Against Respondent, the Jury Verdict, the Decision by the U.S Court of Appeals for the Fifth Circuit, and the U.S. Supreme Court Writ Denial. A fifth exhibit, the U.S. District Court's "Judgment in a Criminal Case," was included in ODC's bench books.

The Committee was especially impressed by ODC Exhibit 1, the Indictment and Superseding Indictment against Respondent, and the particular counts for which the jury found Respondent guilty and which were subsequently affirmed by the Court of Appeals. [ODC Exhibit 3]. These are discussed below under "Findings of Fact."

Respondent offered a number of exhibits, which were stipulated as admissible and were admitted.

Respondent I	Criminal Sentencing Order
Respondent 2	Transcript of Sentencing Hearing dated 4 / 5 /17
Respondent 3	Unopposed Motion for a Thirty Day Extension
Respondent 4	Bureau of Prisons – Eligibility for Release
Respondent 5	Walter Reed – Narcotic Undercover Agent
Respondent 6	Photograph of the "Phantom" (NOPD Reed)
Respondent 7	Mark Essex Shooting
Respondent 8	Letter from Billy Schultz
Respondent 9	Letter from Bob Livingston
Respondent 10	Letter from Harry Pastuszek
Respondent 11	Youth Offender's Letters
Respondent 12	Check Payments of $15,000 and $1,800
Respondent 13	Letters re: Restitution and Sale of Condo
Respondent 14	Medical Records
Respondent 15	Police Report – Accident February 2019
Respondent 16	Letters to Judge Fallon
Respondent 17	IRS Payments
Respondent 18	Letter from John Evans
Respondent 19	Letter from Houston Gaston III

Respondent 20 Letter from G. Brice Jones

Among these was a transcript of District Court Judge Fallon's remarks at Respondent's sentencing hearing, in which he said: "At the outset I feel this case falls outside of the heartland of cases involving fraud and money laundering. It's an unusual case, unusual because of the facts of the case." [Respondent Exhibit 2].

Also noteworthy were the 1970 memorandum from "The Citations and Awards Committee" describing Respondent's distinction in the police department [Respondent Exhibit 5], and letters of support from Robert L. Livingston, Harry P. Pastuszek, Garrett Griggs, Preston S. Rose, G. Brice Jones, Richard L. Reynolds, Jerry H. Rosenberg, M.D., Rev. M.R. Crouch, Kenneth Burkhalter, Sandra St. Romain, Mike Manguno, John A. Evans, and Houston C. Gascon, III. [Respondent Exhibits 8, 9, 10, 11, 16, 18, 19, and 20]. A number of these letters were also presented to Judge Fallon in connection with Respondent's sentencing.

In addition, Respondent called two witnesses: William A. Schultz and William J. Dutel. Mr. Schultz, a former New Orleans police officer, testified as to Respondent's effective undercover work as a narcotics detective in the early 1970's (in the course of which Respondent assisted in the arrests of approximately 140 suspects and in fact submitted to incarceration for several days in Orleans Parish Prison to protect his undercover role), and about Respondent's courageous actions in 1973 when he was instrumental in flushing Mark Essex from the top floor of the Howard Johnson's Hotel to the roof where he could finally be fatally shot. [Transcript, page 13 and Respondent Exhibit 5].

Mr. Dutel, a practicing lawyer who has Respondent's power of attorney, testified regarding the attempts being made to sell Respondent's condominium unit to provide funds payable in restitution to the U.S. Attorney's office. Mr. Dutel also was asked to comment on Respondent's character. He said:

I have known Walter for 30 years. I believe, like all of us, we have our good attributes, and we also have faults. The one thing that has always stood out to me about Walter . . . as in his term as district attorney, I know from the community that - - the one thing I have always appreciated about Walter was that he had an affinity for helping young people. If a young man had a problem, got in trouble, he made a special effort to put him on a path to earn their way back into good graces and salvage their life to do something to make something of their life. So that is the one thing I can say about Walter. [Transcript, page 22]

A number of letters among Respondent's exhibits also attest to positive aspects of Respondent's life and character.

FINDINGS OF FACT

The Committee finds as facts that Respondent was found guilty in a jury trial before the United States District Court of numerous counts of conspiracy to commit wire fraud and money laundering, wire fraud, money laundering, false statements on income tax returns, and mail fraud. Respondent was sentenced to a total term of 48 months. [Respondent Exhibit 1]. The sentence was affirmed (except with respect to the allocation of a $46,200 forfeiture imposed by the court below) on November 5, 2018, by the United States Court of Appeals for the Fifth Circuit, in a lengthy opinion. [ODC Exhibit 3]. The Court of Appeals noted that Reed's 48-month sentence was "below-guidelines." [ODC Exhibit 3, page 4/74].

The Supreme Court of the United States denied Respondent's petition for a writ of certiorari on May 28, 2019. [ODC Exhibit 4].

The Committee has no reason to dispute the statements contained in the "Prehearing Memorandum of Respondent Walter Reed" [pages 3 and 4] that Respondent reported to prison in Morgantown, West Virginia, on May 23, 2019, and that due to certain factors including his age, behavior, and medical condition, Respondent may be released from prison, though perhaps confined at home, after serving about 18 months, or roughly in November 2020.

The Committee accepts as factual those charges contained in the Indictment and the Superseding Indictment admitted as ODC Exhibit 1 (hereinafter cited as "Indictment") upon which the jury found Respondent guilty and which were subsequently affirmed by the Court of Appeals. Among numerous others, these include:

(1) Respondent spent at least $100,000 from his campaign fund bank account for personal expenses, for recruiting potential clients for his legal practice, and for various expenses of his son. [Indictment, pages 8 and 39].

(2) Respondent spent $2,635 from his campaign fund bank account for a dinner for "Pentecostal Preachers" for the purpose of recruiting them to refer private civil work to him. [Indictment, pages 14 and 45].

(3) Respondent sent $4,701 from his campaign fund bank account to "First Pentecostal Church" for the purpose of recruiting religious figures to refer private civil work to him. [Indictment, pages 18 and 49].

(4) On behalf of the District Attorney's office, and for approximately 20 years, Respondent accepted stipends of $25,000 to $30,000 annually from the St. Tammany Hospital Board for legal representation, and he deposited those funds into his personal accounts. He submitted tax documents to the hospital indicating that Forms 1099 were to be sent to the tax identification number of an entity he owned, "Old English Antiques." [Indictment, pages 24-26, 56-58].

(5) The Court of Appeals noted that the prosecution presented evidence that "Reed was aware that the Hospital Board had repeatedly reaffirmed the *D.A. 's office 's* [emphasis by the Court] designation as special counsel, and that Reed sent another attorney from the D.A.'s office when he was un able to attend Board meetings. [ODC 3, page 4/74]. The monthly check

for this service went into Respondent's accounts; the Assistant District Attorneys who actually attended were not compensated beyond their standard salary. [Indictment, pages 25 and 57].

(6) The Court of Appeals noted that the prosecution "presented evidence at trial that the same pastor who gave Walter Reed the referral [at a dinner] sought a 'referral fee' in the form of a contribution to a church gymnasium, and after his firm declined to provide that fee, Walter Reed 'donated' $25,000 of campaign funds for a church gymnasium. [ODC 3, page 3/73]. District Court Judge Fallon also acknowledged this jury finding at sentencing. [Respondent Exhibit 2, page 85].

RULES VIOLATED

Supreme Court Rule XIX, Section 19 governs these proceedings and provides:

> **Section 19. Lawyers Convicted of a Crime**.
>
> **A. Determination of Conviction.** Upon learning that an attorney has been convicted of a crime, whether the conviction results from a plea of guilty or nolo contendere or a verdict after trial, disciplinary counsel shall secure proof of the finding of guilt from the applicable clerk of court. Clerks of court and district court judges should assist in the prompt identification of such attorneys by notifying the Office of Disciplinary Counsel immediately following an attorney's criminal conviction.
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> **B. Definition of "Serious Crime."** The term means "serious crime" means any felony or any other lesser crime that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime."

In an attorney disciplinary proceeding based on the lawyer's criminal conviction, the issue of his guilt may not be re-litigated. Because the lawyer's conviction, whether based on adjudication or guilty plea, is tantamount to a finding of his guilt beyond a reasonable doubt, the clear-and-convincing standard of proof that applies to disciplinary proceedings has already been

satisfied. *Maryland State Bar Assn. v. Rosenberg,* 273 Md. 351, 329 A.2d 106 (1974). Thus, due process does not require a second opportunity for the lawyer to refute the criminal charges. *Florida Bar v. Lancaster,* 448 So.2d 1019 (Fla.1984).

It is clear that Respondent's conviction reflects violations of Rule 8.4(b)—the commission of a criminal act; 8.4(c)—engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; Rule 8.4(d)—conduct prejudicial to the administration of justice; and 8.4(a)—violating or attempting to violate the Rules of Professional Conduct.

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.

While the injury caused by Respondent's misconduct may be debatable, the harm done to the public, the legal system, and the profession is not. As his convictions reflect, his acts were clearly intentional and for his personal benefit.

Standard 5.11 is applicable and provides:

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, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; 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.

The Committee finds that Respondent's conduct meets each of these tests for disbarment. Respondent has been convicted of intentional criminal acts that reflect adversely on his honesty, trustworthiness and fitness as a lawyer.

The Louisiana disciplinary jurisprudence also supports the conclusion that the baseline sanction in this matter is disbarment. As regards Respondent's fraudulent diversion of attorney fee payments owed to the District Attorney's office to himself personally, see *In re Sharp,* 2009-0207 (La. 06/26/2009), 16 So.3d 343 (respondent intercepted approximately $50,000 in fees from a personal injury matter due the firm but which he converted to his personal use); and *In re Bernstein,* 2007-1049 (La. 10/16/2007) 966 So.2d 537 (respondent intercepted fees at two firms for a total perhaps as much as $50,000).

Lawyers convicted of wire and mail fraud have been disbarred for their criminal conduct. See *In re Arledge,* 2010-1014 (La. 9/3/10), 42 So.2d 969 (respondent was convicted in federal court of one count of conspiracy to commit mail and wire fraud, four counts of mail fraud, and two counts of wire fraud); *In re O'Keefe*, 2003-B-3195 (La. 7/2/04), 877 So.2d 79 (mail fraud and obstruction of justice convictions resulted in a baseline sanction of disbarment). Moreover, the Court has made clear that where lawyers are public officials, they are held to a higher ethical standard. See *In re Bankston,* 2001-2780 (La. 03/08/2002) 810 So.2d 1113, in which the Court stated, "This court has held an attorney occupying a position of public trust is held to even a higher standard of conduct than an ordinary attorney; *In re Naccari*, 97-1546 (La.12/19/97), 705 So.2d 734; *In re Huckaby*, 96-2643 (La.5/20/97), 694 So.2d 906.

Prosecutors in particular have been identified as occupying an extraordinarily role in our system of justice. See *In re Jordan,* 2004-2397 (La. 06/29/2005) 913 So.2d 775 ("A prosecutor stands as the representative of the people of the State of Louisiana. He is entrusted with upholding the integrity of the criminal justice system by ensuring that justice is served for both the victims of crimes and the accused.")

In the instant matter, all counsel appear to have agreed that the issue is not disbarment versus some lesser sanction, but it is whether disbarment or permanent disbarment is most appropriate, [Transcript, page 24], though Respondent did provide authority in a footnote to his brief for the proposition that the Supreme Court has on many occasions in felony cases departed downward to impose suspension. [Prehearing Memorandum of Respondent Walter Reed, page 11, fn. 4]. Considering the gravity of the crimes for which Respondent was convicted, the Committee does not believe that any "downward departure" from the baseline is warranted.

The Louisiana Supreme Court has provided guidelines for the disbarment analysis in Appendix E to Rule XIX:

"The following guidelines illustrate the types of conduct which might warrant permanent disbarment. These guidelines are not intended to bind the Supreme Court of Louisiana in its decision making. It is hoped that these guidelines provide useful information to the public and to lawyers concerning the types of conduct the Court might consider to be worthy of permanent disbarment.

GUIDELINE 1. Repeated or multiple instances of intentional conversion of client funds with substantial harm.

GUIDELINE 2. Intentional corruption of the judicial process, including but not limited to bribery, perjury, and subornation of perjury.

GUIDELINE 3. An intentional homicide conviction.

GUIDELINE 4. Sexual misconduct which results in a felony criminal conviction, such as rape or child molestation.

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

GUIDELINE 6. Insurance fraud, including but not limited to staged accidents or widespread runner-based solicitation.

GUIDELINE 7. Malfeasance in office which results in a felony conviction, and which involves fraud.

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

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

ODC specifically points to Guideline 6 (runner-based solicitation) and Guideline 7 (malfeasance in office), but also relies heavily on jurisprudence. In the matter of *In Re: Bell*, 2011-1330 (La. 10/07/2011), 72 So.3d 825, the Respondent was a prosecutor in Baton Rouge City Court who entered a plea to federal charges that he accepted bribes in exchange for "fixing" criminal and traffic matters. *Bell* conspired with others to engage in bribery by soliciting and accepting payments from individuals with matters pending before the court in exchange for the promise that the charges would be dismissed or otherwise "fixed". The Supreme Court there noted (as in the instant matter) that the crime for which the Respondent entered a guilty plea was a felony under federal law. Noting both Guidelines 2 and 7, the Court found that *Bell's* corruption of the criminal judicial process is the "sort of pervasive public corruption" that interferes with the administration of justice and undermines the principle that all are equal before the law. Permanent disbarment was imposed. See also *In re Burks*, 2007-0637 (La. 8/31/07), 964 So.2d 298 involving similar misconduct for which permanent disbarment was imposed. See also *In re Williams*, 2016-1253 (La. 12/06/16) 218 So.3d 1009.

Respondent, on the other hand, submits that none of the Guidelines applies, arguing: that Mr. Reed did not convert client funds, that he did not act to corrupt the judicial process, commit a homicide, engage in sexual misconduct, commit armed robbery, arson or kidnapping or engage in "widespread" runner-based solicitation, that he was not convicted of malfeasance in office, that he did not engage in the unauthorized practice of law, and that he had no prior disbarment or suspension when his crimes were committed. [Prehearing Memorandum of Respondent Walter Reed, pages 11-12].

The Respondent also cites a number of cases in which the Supreme Court did not impose permanent disbarment. He argues that permanent disbarment is to be reserved for those cases where the respondent's conduct convincingly demonstrates that he lacks the requisite moral fitness to ever practice law in this state, thereby making it highly unlikely readmission would ever be granted. See, e.g., *In re Muhammad*, 3 So. 3d 458 (La. 2009) (in which the court imposed permanent disbarment).

In *In re White*, a lawyer involved in the "Wrinkled Robe" scandal in Jefferson Parish pleaded guilty to a federal count of misprision of felony and served jail time. See White, 996 So. 2d 266 (La. 2008). Mr. White not only was guilty of misprision, but he also inappropriately communicated ex parte with a judge. See id at 274. The Court disbarred the lawyer—it did not permanently disbar him. Mr. White has since been readmitted to the practice of law in Louisiana. See *In re White*, 78 so. 3d 740 (La. 2012).

Similarly, in *In re Bankston*, a lawyer—also a state senator—was convicted of federal charges of bribery. *In re Bankston*, 810 So. 2d 1113 (La. 2002) (lawyer imprisoned for 41 months and fined $20,000). The Louisiana Supreme Court disbarred Bankston because his "actions are particularly egregious because they occurred while he was a state senator." The Court later readmitted Mr. Bankston to the practice of law. See *In re Bankston*, 869 So. 2d 791 (La. 2004).

Likewise, a sitting Louisiana district court judge admitted that he inappropriately used his staff in campaign activities while on the trial court—not during his law practice—and that he pleaded guilty to conspiracy to commit public payroll fraud, a felony. See *In re King*, 33 So. 3d 873, 874 (La. 2010), In addition, he was not honest during his testimony under oath before the Judiciary Commission. The Court, ruled that the judge/lawyer be disbarred, but not permanently disbarred. Three justices dissented in the decision and would have only suspended Mr. King. (See *King* at 878-882).

Finally, *In re Gilmore*, 218 So 3d 100, 105 (La. 2016), in which the Louisiana Supreme Court rejected permanent disbarment and imposed regular disbarment for a lawyer convicted of racketeering and bribery as an elected official The court did so as a result of the existence of significant mitigating factors.

DISCUSSION

The Committee is mindful that the decision to impose permanent disbarment relies upon the facts of each particular case and involves great discretion. In this case, a number of aggravating factors are present. The Respondent abused his position of public trust for his own personal financial benefit. He involved religious leaders who, wittingly or unwittingly, were corrupted into making choice legal referrals which, again, personally benefitted Respondent.

The Committee finds that two of the crimes for which Respondent was convicted are especially egregious from the perspective of the Rules of Professional Conduct. First, Respondent used his position as District Attorney, and the funds he had collected as contributions to his campaigns, to host social functions for religious leaders, and to make contributions to their budgets, for the purpose of receiving lucrative client referrals from the ministers that Respondent, or his law firm, or their affiliates could profitably handle. Second, Respondent used his position as District Attorney to collect hundreds of thousands of dollars

over twenty years from the St. Tammany Hospital Board and kept what should have been public money for himself.

These actions and practices reflect disgracefully upon the legal profession, the institutions of justice, and the public office held by Respondent.

In mitigation, the Committee has considered Respondent's high repute as a police officer and his courageous actions in ending the terrible Essex rampage in which numerous policemen and civilians were killed. Respondent long served, without disciplinary issues, as the St. Tammany Parish District Attorney, though this fact weighs more heavily as an aggravating than a mitigating factor: he should have known better than to engage in the crimes for which he was convicted. It is also apparent that Respondent is experiencing serious health problems.

Weighing the mitigating factors against the aggravating factors, the Committee is of the unanimous opinion that Respondent should be permanently disbarred from the practice of law.

CONCLUSION

The Committee recommends that Respondent be permanently disbarred from the practice of law. The Committee also recommends that respondent be assessed with the costs and expenses of this proceeding.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Anthony P. Dunbar, to sign on their behalf.

New Orleans, Louisiana, this 26th day of December, 2019.

Louisiana Attorney Disciplinary Board Hearing Committee # 24
Anthony P. Dunbar, Committee Chair
Kenneth K. Orie, Lawyer Member
Daniel E. Sullivan, Public Member

BY: _____
Anthony P. Dunbar, Committee Chair
For the Committee