

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MICHAEL PETER ARATA

NUMBER: 16-DB-016

Louisiana Attorney Disciplinary Board	
FILED by: <i>Lyndy Arato</i>	Filed-On
Docket#	12/22/2020
16-DB-016	

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION AND PROCEDURAL HISTORY

This attorney disciplinary matter arises out of formal charges filed on February 18, 2016 against Michael Peter Arata, Bar No. 21448, who was licensed to practice law in the State of Louisiana on October 16, 1992.<sup>1</sup> In the formal charges, ODC alleges that Respondent violated Rules of Professional Conduct 8.4(a) (violate or attempt to violate the Rules of Professional Conduct), 8.4(b) (commission of a criminal act), and 8.4(c) (conduct involving fraud, deceit and misrepresentation)<sup>2</sup> based upon his criminal conviction of “multiple counts of conspiracy to commit fraud” in connection with a tax credit fraud scheme involving the renovation of a historic New Orleans mansion into a post-production film studio.<sup>3</sup>

<sup>1</sup> Respondent was interimly suspended from the practice of law by the Louisiana Supreme Court on February 17, 2016, and he remains suspended at this time. *In re Arata*, 2016-0203 (La. 2/17/2016), 184 So.3d 671.

<sup>2</sup> Rule 8.4 provides in pertinent part:

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; [and]
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

<sup>3</sup> At the conclusion of his criminal trial, Respondent was convicted of a total of 13 charges: 1 count of conspiracy to commit mail and wire fraud (Count 1 of the Second Superseding Indictment (“Superseding Indictment”)); 7 counts of wire fraud (Counts 2-7, 13 of the Superseding Indictment), 1 count of mail fraud (Count 21 of the Superseding Indictment), and 4 counts of false statements to the FBI (Counts 22-25 of the Superseding Indictment). See ODC Exhibit 1, Second Superseding Indictment for Conspiracy, Wire Fraud, Mail Fraud and False Statements to a Federal Agent, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 14-22, Section “F” (E.D. La. 5/15/04). Following the filing of post-trial motions, the district court upheld 2 counts of Respondent’s convictions, including 1 count of conspiracy (Count 1 of the Superseding Indictment) and 1 count of wire fraud (Count 6 of the Superseding Indictment). ODC Exhibit 3, Order and Reasons, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No.14-022, pp. 122-24 (E.D. La. 12/9/15). On appeal, the Fifth Circuit Court of Appeals then determined that Respondent was guilty of 1 count of conspiracy (Count 1 of the Superseding Indictment), 7 counts of wire fraud (Counts 2-7, 13 of the Superseding Indictment), 1 count of mail

Respondent filed an answer to the formal charges on April 12, 2016, denying that he violated the Rules of Professional Conduct as charged. Pursuant to Rule XIX, Section 19(C), the matter was held in abeyance pending the exhaustion of all appeals of Respondent's conviction. On June 7, 2019, ODC filed a motion to set the matter for hearing, as Respondent's conviction had become final pursuant to Rule XIX, Section 19(E). The Respondent filed an opposition to ODC's motion on June 14, 2019. The Chair of Hearing Committee No. 37, Wade P. Webster, granted ODC's motion on June 20, 2019, and the matter was ultimately set for hearing on November 5, 2019. ODC's pre-hearing memorandum was filed on October 18, 2019, and Respondent's pre-hearing memorandum was filed on October 26, 2019. A hearing before the Committee was held as scheduled on November 5, 2019.<sup>4</sup> The Committee issued its report on December 5, 2019, recommending that Respondent be disbarred from the practice of law.

ODC filed its objection to the Committee's report on December 5, 2019, asserting that permanent disbarment, and not disbarment, is the appropriate sanction in this matter. Respondent also filed an objection to the Committee's report, objecting to the Committee's failure to find various mitigating factors and to its finding that "forfeiture was entered against Respondent in the amount of \$1,132,480.80" in his criminal matter. *See* Objections to Hearing Committee Report of Respondent, Michael P. Arata, p. 1. ODC's pre-argument brief was filed

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fraud (Count 21 of the Superseding Indictment), and 3 counts of making a false statement to the FBI (Counts 23-25 of the Superseding Indictment). ODC Exhibit 4, Opinion and Judgment, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 16-30527, p. 42 (5<sup>th</sup> Cir. 8/24/18). Respondent filed a Petition for Certiorari with the United States Supreme Court, which was denied. ODC Exhibit 5, Order, *Peter M. Hoffman et al. v. United States*, No. 18-1049 (U.S. Supreme Ct. 5/20/19). He was initially sentenced by the district court to probation for a term of 4 years, consisting of 4 years as to each of Counts 1 and 6, to be served concurrently, along with other conditions. Respondent Exhibit 6, Sentencing Transcript, *United States of America v. Michael P. Arata*, No. 14-CR-22, pp.13-15 (E.D. La. 1/27/16). Later, following the order of the court of appeals, he was resentenced by the district court. This sentence included probation for a term of 60 months, with the special condition of 12 months of home detention with location monitoring (in addition to a fine, which Respondent had already paid and community service, which had been completed). Respondent Exhibit 10, Order and Reasons on Resentencing, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 14-022, pp. 32, 62 (E.D. La. 2/19/20).

<sup>4</sup> Members of the Committee included Mr. Webster (Chair), Robert M. Johnston (Lawyer Member), and Linda S. Ellis (Lay Member).

on December 20, 2019. Respondent's pre-argument brief was filed on December 23, 2019. Oral argument before Panel "A" of the Disciplinary Board was held on January 23, 2020.<sup>5</sup> Chief Disciplinary Counsel Charles B. Plattsmier appeared on behalf of ODC. Dane S. Ciolino appeared on behalf of Respondent.

On February 20, 2020, Respondent filed an unopposed motion to the supplement the record in the proceeding, in which he sought to file into the record the February 19, 2020 opinion of U.S. District Judge Martin L.C. Feldman in which Respondent was re-sentenced to a 5-year term of probation in his criminal matter. Respondent's motion was granted by Ms. Theriot on March 3, 2020. On March 24, 2020, Respondent filed a second unopposed motion to supplement the record, which was also granted by Ms. Theriot on March 26, 2020. Exhibits submitted in connection with this motion show that Respondent and the Government had entered into an agreement to terminate his criminal matter.<sup>6</sup>

## **THE FORMAL CHARGES**

The formal charges in this matter read, in pertinent part, as follows:

### **I.**

The Respondent in these proceedings is Michael Peter Arata (Bar #21448) a Louisiana licensed attorney born February 23, 1966 and admitted to the practice of law in the State of Louisiana October 16, 1992 after graduating from Tulane University School of Law. The Respondent has no prior disciplinary record.

### **II.**

In April of 2015 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 the renovation of a historic New Orleans mansion into a film post production studio. Following post trial motions,

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<sup>5</sup> Members of Panel "A" included Melissa L. Theriot (Chair), Linda G. Bizzarro (Lawyer Member), and Evans C. Spiceland (Public Member).

<sup>6</sup> In terminating the criminal matter, the Government agreed to not appeal Respondent's 5-year probationary sentence, and Respondent agreed to withdraw his pending Brady-related motions and to refrain from seeking to have his conviction set aside in the district court or court of appeals. On March 20, 2020, the district court accepted the parties' agreement and dismissed Respondent's post-trial motions. Respondent Exhibits 12 and 13.

the trial court upheld two counts of the Respondent's conviction, Count 1 (conspiracy) and Count 6 (wire fraud) from the Superceding Indictment. Respondent was sentenced January 27, 2016.

### **III.**

Pursuant to the provisions of Supreme Court Rule XIX, Section 19, because the Respondent stands convicted of a felony and therefore a serious crime, the Office of Disciplinary Counsel moved to have Respondent interimly suspended. The Supreme Court granted ODC's motion and the Respondent was interimly suspended by order effective the 17<sup>th</sup> day of February, 2016.

### **IV.**

The Respondent's conduct reflects violations of Rules 8.4(b) (the commission of a criminal act); Rule 8.4(c) (conduct involving fraud, deceit and misrepresentation); and Rule 8.4(a) (violate or attempt to violate the Rules of Professional Conduct).

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

As noted above, the Committee issued its report on December 5, 2019. In its report, the Committee made the following factual findings, findings concerning the Rule XIX, Section 10(C) factors, and findings concerning the appropriate sanction in this matter:

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### **I. FINDINGS OF FACT**

The Respondent has no prior disciplinary record. Respondent was interim[ly] suspended by Order of the Louisiana Supreme Court effective February 17, 2016. *In re Arata*, 2016-0203 (La. 2/17/2016), 184 So.3d 671. Thus, the Respondent has already endured a suspension exceeding three years. By agreement made by the Respondent with the Chief Disciplinary Counsel on April 12, 2016, disciplinary action in this matter was held in abeyance pending an appeal of the criminal convictions.

Respondent is married with two adolescent children to support.

In 2015, the Respondent was convicted by a jury in the United States District Court for the Eastern District of Louisiana on eight felony counts involving conspiracy and wire fraud arising from fraudulent claims and submissions to obtain tax credits under a program instituted by the State of Louisiana that affords tax credits for expenditures made in Louisiana involving the movie film industry. The tax credits were claimed in connection with the

renovation of an old building to become a studio for post-production film work at 807 Esplanade Avenue in New Orleans.

Peter M. Hoffman and Susan Hoffman were two co-defendants convicted with Respondent.

It is undisputed, and the parties agree, that the Respondent was convicted of multiple felonies (see Verdict Form, ODC Exhibit 2). The gist of the conviction was that Respondent submitted paperwork falsely claiming that costs & expenses had been incurred for the studio, when they had not been. The Verdict Form, ODC Exhibit 2, adopts by reference the criminal acts set forth in the Second Superseding Indictment, so set forth below are those specific acts for which Respondent was convicted, copied verbatim from the Second Superseding Indictment (ODC Exhibit 1), to-wit:

**COUNT 1**  
**(Conspiracy)**

**A. THE CONSPIRACY:**

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2. Beginning on or about March 1, 2006, and continuing until on or about July 3, 2012, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate and agree with each other to:
  - a. use and cause to be used a private and commercial interstate carrier in furtherance of and for the purpose of executing the scheme and artifice to defraud set forth in paragraph 2 of Counts 6 through 20; in violation of Title 18, United States Code, Section 1341; and
  - b. transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds in furtherance of and for the purpose of executing the scheme and artifice to defraud set forth in paragraph 2 of Counts 6 through 20; in violation of Title 18, United States Code, Section 1343.

**B. WAYS AND MEANS TO ACCOMPLISH THE CONSPIRACY:**

The defendants and co-conspirators carried out the conspiracy in the following ways and through the following means, among others:

1. prepared and filed, and caused to be prepared and filed, with the State of Louisiana materially false and misleading tax credit applications and supporting documents that fraudulently claimed that certain

expenditures had been made relative to 807 Esplanade when, in truth and in fact, the expenditures had not been made as claimed;

2. prepared and submitted, and caused to be prepared and submitted, to the auditors and to the State of Louisiana materially false and misleading internal accounting books and records to make it appear as if certain expenditures had been made when, in truth and in fact, the expenditures had not been made as claimed;
3. prepared and submitted, and caused to be prepared and submitted, to the auditors and to the State of Louisiana materially false and misleading payment receipt certifications to make it appear as if certain items had been paid for and received when, in truth and in fact, the items had not been paid for and had not been received;
4. prepared and submitted, and caused to be prepared and submitted, to the auditors and to the State of Louisiana materially false, misleading and fraudulent invoices in support of fraudulent expenditures;
5. conducted and caused to be conducted materially false and misleading circuitous bank transfers of money to make it appear that certain items were paid for when, in truth and in fact, the items had not been paid for, and
6. prepared and submitted, and caused to be prepared and submitted, to the auditors proofs of payment that were materially false and misleading in that only outgoing money transfers were disclosed to the auditors when, in truth and in fact, the money had been immediately returned to the originating bank account and the return money transfers were not disclosed to the auditors.

**C. OVERT ACTS:**

In furtherance of and to conceal the conspiracy and accomplish its purposes, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand jury, committed and caused to be committed at least one of the following overt acts, among others, in the Eastern District of Louisiana and elsewhere:

1. between on or about October 2, 2008 and October 6, 2008, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for construction work;
2. between on or about October 2, 2008 and October 6, 2008, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for film equipment;

3. on or about November 6, 2008, prepared and caused to be prepared a materially false and misleading affidavit relative to the purchase of film equipment;
4. on or about December 1, 2008, e-mailed and caused to be e-mailed materially false and misleading bank fund-transfer requests to the auditors;
5. on or about December 2, 2008, e-mailed and caused to be e-mailed materially false and misleading bank fund-transfer requests to the auditors;
6. on or about December 9, 2008, e-mailed and caused to be e-mailed materially false and misleading internal accounting documents to the auditors;
7. on or about December 29, 2008, e-mailed [*sic*] and caused to be e-mailed [*sic*] photographs of film equipment fraudulently claimed to have been purchased for 807 Esplanade;
8. on or about December 29, 2008, provided and caused to be provided materially false and misleading financial documents, invoices and payment verifications to the auditors;
9. on or about February 4, 2009, prepared and caused to be prepared a materially false and misleading vendor payment certification for film equipment;
10. on or about February 4, 2009, prepared and caused to be prepared a materially false and misleading vendor payment certification for construction;
11. on or about February 9, 2009, e-mailed and caused to be e-mailed a materially false and misleading vendor payment certification for construction costs to the auditors;
12. on or about February 25, 2009, e-mailed and caused to be e-mailed a materially false and misleading internal accounting record;
13. on or about February 26, 2009, e-mailed and caused to be e-mailed a materially false and misleading application and support documents for film infrastructure tax credits to the State of Louisiana;

14. on or about May 14, 2009, e-mailed and caused to be e-mailed materially false and misleading vendor payment certifications and invoices for construction and film equipment to the State of Louisiana;
15. on or about April 7, 2009, e-mailed and caused to be e-mailed materially false and misleading invoices for construction and film equipment to the State of Louisiana;
16. on or about September 4, 2009, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for construction, legal fees, and construction finance supervision fees;
17. on or about September 8, 2009, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for construction, developers' fees, and general contractor fees;
18. on or about September 9, 2009, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for developers' fees and interest fees;
19. on or about September 14, 2009, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for developers' fees and construction;
20. on or about October 27, 2009, e-mailed and caused to be e-mailed materially false and misleading bank fund-transfer requests, supporting bank records, and invoices to the auditors;
21. on or about November 24, 2009, prepared and caused to be prepared a materially false and misleading vendor payment certification for interest payments, legal fees, construction, auditor fees, and overhead;
22. on or about November 24, 2009, prepared and caused to be prepared a materially false and misleading vendor payment certification for project management fees, office rent and consultant fees;
23. on or about November 30, 2009, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding confirmation letters and equipment purchase information;
24. on or about December 1, 2009, faxed and caused to be faxed a materially false and misleading vendor payment certification for



interest payments, legal fees, construction, auditor fees and overhead to the auditors;

25. on or about December 1, 2009, faxed and caused to be faxed a materially false and misleading vendor payment certification for project management fees, office rent and consultant fees to the auditors;
26. on or about December 19, 2009, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding equipment purchases, legal fees, audit fees, interest expenditures, office rent, and invoices;
27. on or about December 21, 2009, e-mailed and caused to be e-mailed materially false and misleading invoices for legal services to the auditors;
28. on or about December 29, 2009, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding equipment purchases, equipment consultant fees, legal fees, office rent, and supervisory fees;
29. on or about December 31, 2009, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding supervisory fees, lease agreements, interest payments, and office rent;
30. on or about January 7, 2010, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding legal fees, office rent, audit fees, equipment consultant fees, and interest payments;
31. on or about January 12, 2010, e-mailed and caused to be e-mailed an Operating Agreement in support of illegitimate legal fees;
32. on or about January 20, 2010, e-mailed and caused to be e-mailed a materially false and misleading representation letter to the auditors;
33. on or about January 20, 2010, e-mailed and caused to be e-mailed a materially false and misleading application and support documents for film infrastructure tax credits to the State of Louisiana;
34. on or about February 2, 2010, prepared and caused to be prepared a materially false and misleading affidavit relative to the purchase of film

equipment and the relationship between the defendants and certain companies;

35. on or about February 3, 2010, mailed and caused to be mailed materially false and misleading correspondence with attached affidavits, interest payment support, and invoices for project management, equipment consulting and office rent;
36. on or about June 29, 2012, e-mailed and caused to be e-mailed materially false and misleading bank fund-transfers and invoices to the auditors in support of developer's fees and interest payments; and
37. on or about July 3, 2012, e-mailed and caused to be e-mailed a materially false and misleading audit report to the State of Louisiana.

All in violation of Title IS [*sic*], United States Code, Section 371.

**COUNTS 2 - 5**  
**(Wire Fraud)**

1. Beginning on or about March 1, 2006, and continuing until on or about July 3, 2012, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN** and **MICHAEL ARATA**, and others known and unknown to the Grand Jury, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises by submitting and causing to be submitted materially false, misleading and fraudulent information to the auditors and to the State of Louisiana for the purpose of obtaining film infrastructure tax credits relative to 807 Esplanade.
2. On or about the dates specified in each count below, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN** and **MICHAEL ARATA**, and others known and unknown to the Grand Jury, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth in paragraph 2 of this section, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, as more particularly described below:

<b>COUNT</b>	<b>DATE</b>	<b>DESCRIPTION OF WIRE COMMUNICATION</b>
2	February 9, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending payment certification for \$2,002,480.00 in construction to the auditors.
3	February 25, 2009	Email transmitted between Louisiana and outside the State of Louisiana attaching General Ledger of Seven Arts Pictures Louisiana, LLC.
4	February 26, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending application for film infrastructure tax credits and supporting documents to the State of Louisiana.
5	January 12, 2010	E-mail transmitted between Louisiana and outside the State of Louisiana sending Operating Agreement in support of claimed legal fees to the auditors.

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNTS 6 - 20**  
**(Wire Fraud)**

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2. Beginning on or about March 1, 2006, and continuing until on or about July 3, 2012, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand Jury, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises by submitting and causing to be submitted materially false, misleading and fraudulent information to the auditors and to the State of Louisiana for the purpose of obtaining film infrastructure tax credits relative to 807 Esplanade.
  
3. On or about the dates specified in each count below, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand Jury, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth in paragraph 2 of this section, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, as more particularly described below:

<b>COUNT</b>	<b>DATE</b>	<b>DESCRIPTION OF WIRE COMMUNICATION</b>
6	April 7, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending invoices for \$2,002,480.00 in construction and \$1,027,090.00 in film equipment to the State of Louisiana.
7	May 14, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending invoices and vendor payment certifications for \$2,002,480.00 in construction and \$1,027,090.00 in film equipment to the auditors and to the State of Louisiana.
13	December 21, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending invoices for legal services, [l]oan and security agreements, and an operating agreement to the auditors.

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNT 21**  
**(Mail Fraud)**

1. The allegations contained in paragraphs 1 through 9 of the General Allegations section and section B of Count 1 of this Second Superseding indictment are realleged and incorporated by reference as though fully set forth herein.
2. On or about February 3, 2010, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand Jury, for the purpose of executing and attempting to execute, and in furtherance of, the scheme and artifice to defraud set forth in paragraph 2 of Counts 6 through 20 above, did knowingly send and cause to be sent, delivered, and moved by private and commercial interstate carriers correspondence dated February 2, 2010, addressed to an auditor for the State of Louisiana with attached affidavits, corporate agreements, and invoices for project management, equipment consulting, and office rent.

All in violation of Title 18, United States Code, Sections 1341 and 2.

**COUNTS 22 - 25**  
**(False Statements)**

On or about January 27, 2014, in the Eastern District of Louisiana, in a matter within the jurisdiction of the United States Department of Justice, a department of the Government of the United States, the defendant, **MICHAEL ARATA**, did knowingly and willfully make materially false, fictitious and fraudulent statements

and representations to a Special Agent of the Federal Bureau of Investigation as more particularly described in each count below:

COUNT	DESCRIPTION OF STATEMENT
22	<b>MICHAEL ARATA</b> stated that he terminated his relationship with defendant <b>PETER HOFFMAN</b> in or about July 2009, when in truth and in fact, as he then well knew, he had continued working with <b>PETER HOFFMAN</b> including reviewing and preparing information for the January 20, 2010 application for tax credits and other tax credit related business ventures.
23	<b>MICHAEL ARATA</b> stated that he was not aware that \$350,000 in legal fees were submitted to the State of Louisiana for tax credits, when in truth and in fact, as he then well know [ <i>sic</i> ], he was aware that \$350,000 in legal fees had been submitted to the State and he had personally provide [ <i>sic</i> ] information to the auditors in support of the claimed legal fees in order to assist in the completion of the January 20, 2010 application for tax credits.
24	Regarding film equipment reported in the February 26, 2009 tax credit application to the State of Louisiana, <b>MICHAEL ARATA</b> stated that the film equipment had been "acquired" in that the equipment would be contributed to 807 Esplanade by the vendor as a business partner, when in truth and in fact, as he then well knew, the equipment had not been acquired or contributed and that he had repeatedly advised the auditors and the State that the equipment had been <u>purchased and paid for</u> .
25	<b>MICHAEL ARATA</b> stated he thought he fully disclosed both sides of the transactions for construction and equipment expenditures to the auditors, when in truth and in fact, as he then well knew, he had purposely concealed the circular transactions from the auditors.

All in violation of Title 18, United States Code, Section 1001.

Considering the above criminal convictions, the Respondent offered mitigating circumstances as to his good character. The committee finds that the numerous letters and testimony from witnesses are not sufficient to establish good character as a factual matter, nor does the committee find any evidence that the Respondent was lacking good character (except for the egregious criminal convictions). The committee finds the issue of character to be neutral as a mitigating factor.

The letters and testimony offered by Respondent about character carry insufficient weight because they are from friends or people who naturally desire to help someone they know as a friend, or as the client of the Respondent. Moreover, there is no genuine means to cross-examine these people as to the full character of the Respondent. Furthermore, most humans would offer favorable character testimony about someone they know where there are no consequences to the person for not being candid about a subjective matter like this.

Following the criminal conviction, the Federal Court ordered no restitution. An Order of forfeiture was entered against Respondent in the amount

of \$1,132,480.80 to be paid by Respondent and the two co-defendants. The committee accepts as fact the testimony of William Gibbens (the criminal trial attorney for Respondent) that Respondent would owe one-third of this amount. Mr. Gibbens further testified that he is seeking, by motion with the Federal Court, to have another co-defendant held responsible for the full amount of the forfeiture on grounds that Respondent never received any benefit of the \$1,132,480.80 that comprised the amount of tax credits granted by the State. The forfeiture order was entered to compel the three co-defendants to return the tax credits of \$1,132,480.80 awarded by the State of Louisiana for the project at 807 Esplanade Avenue.

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### **III. CONCLUSIONS AND RECOMMENDATIONS**

The Office of Disciplinary Counsel seeks permanent disbarment under the provisions of the Louisiana Supreme Court Rule XIX, Section 19 because the Respondent stands convicted of multiple felonies involving violations of Rule 8.4(b) (the commission of a criminal act); Rule 8.4(c) (conduct involving, fraud, deceit and misrepresentation); and Rule 8.4(a) (violating or attempting to violate the [R]ules of [P]rofessional [C]onduct). Based on the findings of fact the committee concludes that each of these Rules were violated, and makes the following determinations as to the guidelines:

- (1) The Respondent violated a duty owed to the public and to the profession, but not to a client or the legal system;
- (2) The Respondent acted intentionally;
- (3) The pecuniary amount of the actual injury caused by the Respondent's misconduct is not apparent; and
- (4) There are no aggravating nor mitigating factors.

Respondent [*sic*] seeks to apply, and this Committee will follow, Rule XIX, Appendix D, which provides guidelines to determine whether permanent disbarment is appropriate. These guidelines "are not intended to bind the Supreme Court of Louisiana in its decision-making."

[fn1 Rule XXI, Appendix D states: "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."]

Although not binding, none of the guidelines weigh in favor of permanent disbarment:

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

There is no evidence of conversion of client funds.

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

There is no evidence of bribery, corruption of the judicial process or perjury. The Respondent was convicted of lying to the FBI. That is an egregious act, but it is not perjury.

**GUIDELINE 3.** An intentional homicide conviction.

There was no homicide.

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

This is inapplicable.

**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.

There is no evidence of any violent act by the Respondent.

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

This is inapplicable.

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

The Respondent did not hold public office, so this is inapplicable.

**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.

The Respondent had no prior disciplinary actions.

**GUIDELINE 9.** Instances of serious attorney misconduct or conviction of a serious crime, misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime.

Although there are a multitude of serious crimes involved, there were no prior instances of any attorney misconduct by the Respondent.

Applying the Supreme Court guidelines, there does not appear to be grounds to recommend permanent disbarment. Accordingly, the Committee does not recommend permanent disbarment, but does recommend disbarment.

[fn 2 A lesser discipline would also be appropriate in this case if one analogizes the Respondent's conduct to that involving felony tax fraud which is similar to this case. In effect, the Respondent here was engaged in tax fraud. The base line disciplinary sanction for attorneys who have been convicted of felony tax evasion is a substantial suspension from the practice of law. *In re Samuel H. Thomas*, 38 So.3d 248, 254 (La. 2010) (“The jurisprudence indicates the baseline disciplinary sanction for attorneys who have been convicted of felony tax evasion is a substantial suspension from the practice of law”). In *Thomas*, the respondent was permanently disbarred, but chiefly because he also had a prior disciplinary conviction.]

The Committee further recommends that the Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

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Two of the Committee members, Mr. Johnston and Ms. Ellis, did not concur with the findings discussed in footnote 2 of the report.

## **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 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, with two exceptions. First, the Committee erred in finding that Respondent was “convicted by a jury in the United States District Court for the Eastern District of Louisiana on eight felony counts involving conspiracy and wire fraud.” Hrg. Comm. Rpt., p. 1. As noted above, initially, Respondent was convicted of 13 felony counts by the jury in his criminal case, and after all appeals were exhausted, he was ultimately convicted of 12 felony counts, including 1 count of conspiracy, 7 counts of wire fraud, 1 count of mail fraud, and 3 counts of making a false statement to the FBI. ODC Exhibit 4, Opinion and Judgment, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 16-30527, p. 13 (5<sup>th</sup> Cir. 8/24/18).

Further, the Committee determined that the order of forfeiture entered against Respondent and the other two co-defendants in his criminal matter was in the amount of \$1,132,480.80, and that Respondent would owe one-third of this amount. Hrg. Comm. Rpt., p. 13. This is incorrect. The evidence admitted at the hearing established that the order of forfeiture imposed against the defendants was in the amount of \$223,434.25, for which the defendants were held jointly and severally liable. *Id.*; Respondent Exhibit 8, Order and Reasons, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 14-022, p. 37 (E.D. La. 5/15/16); Tr., pp. 25-26. At the time of the hearing, the issue of Respondent’s responsibility for payment of his assessed share of this forfeiture judgment was before the federal district court, to be resolved in the future. Tr., pp. 25-26. Respondent’s Exhibit 12 filed with his

second unopposed motion to supplement the record shows that as part of an agreement between Respondent and the Government, the Government agreed that it will not seek to collect more than 40% of the forfeiture judgment against the Respondent. However, if through an appeal filed by Respondent's co-defendants the amount of forfeiture allocated to Respondent is modified to less than 40%, the Government and Respondent agree to abide by the new final judgment.

## **B. *De Novo* Review**

The Committee correctly found that Respondent violated the Rules of Professional Conduct as charged. Each rule violation is addressed below:

**Rule 8.4(b)**: Rule 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act, particularly one which reflects adversely on his honesty, trustworthiness or fitness in other respects. By committing the criminal acts of conspiracy, wire fraud, mail fraud, and making false statements to the FBI, Respondent committed criminal acts which reflect adversely on his honesty and trustworthiness, thus violating this rule.

**Rule 8.4(c)**: Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. The crimes of which Respondent was convicted involved these characteristics, in violation of this rule.

**Rule 8.4(a)**: Rule 8.4(a) provides that it is professional misconduct for a lawyer to 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. By violating Rules 8.4(b) and (c), Respondent also violated Rule 8.4(a).

## **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.

Here, Respondent has violated duties owed to the public and to the profession. His conduct was intentional. Although the federal district court found that the State had suffered no actual pecuniary loss, and this ruling was not challenged on appeal<sup>7</sup>, Respondent's conduct had the potential to cause injury to the state and to its taxpayers. As to the potential injury that arises when a party illegally obtains tax credits, Fifth Circuit's comments in its opinion in Respondent's criminal case are noteworthy:

As tax credits reduce dollars otherwise owed to the state, lying to obtain them has the same effect as lying to evade taxes: the state collects less money. . . . Fraud in connection with obtaining these credits can affect the state's books as much as fraud used to evade paying Louisiana income taxes.

ODC Exhibit 4, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 16-30527, pp. 15-16 (5<sup>th</sup> Cir. 8/24/18). While Respondent has not been cast with restitution owed to the State, he has been assessed with forfeiture of 40% of the dollar amount of the issued tax credits, subject to any reduction determined by his co-defendants' appeals.

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<sup>7</sup> The district court denied the government's motion for restitution because the state, in the district court's view, ended up suffering no actual pecuniary loss. According to the district court, even if the state had initially suffered a loss in issuing tax credits due to fraud, the state did not ultimately lose money because Seven Arts Pictures Louisiana, LLC, which was jointly owned and operated by Respondent and the Hoffmans, eventually made infrastructure expenditures on 807 Esplanade entitling the company to an amount of credits at least equal to those issued. ODC Exhibit 4, Opinion and Judgment, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 16-30527, p. 13 (5<sup>th</sup> Cir. 8/24/18).

Respondent's felony convictions and associated criminal conduct have tarnished the reputation of the profession in the State.

Aggravating factors present include dishonest or selfish motive, pattern of misconduct, multiple offenses, substantial experience in the practice of law (admitted in 1992), and illegal conduct. Mitigating factors include absence of a prior disciplinary record, full and free disclosure to the disciplinary board or cooperative attitude towards the proceedings, character or reputation<sup>8</sup>, imposition of other penalties or sanctions, and remorse.

**B. The ABA Standards, Permanent Disbarment Guidelines, and Case Law**

The ABA *Standards for Imposing Lawyer Sanctions* suggest that disbarment is the appropriate baseline sanction in this matter. Standard 5.11 states that:

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

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<sup>8</sup>As to this mitigating factor, the Committee found:

Considering the above criminal convictions, the Respondent offered mitigating circumstances as to his good character. The Committee finds that the numerous letters and testimony from witnesses are not sufficient to establish good character as a factual matter, nor does the committee find any evidence that the Respondent was lacking good character (except for the egregious criminal convictions). The Committee finds the issue of character to be neutral as a mitigating factor.

Hrg. Comm. Rpt., p. 12.

Over 130 community members, film industry professionals, lawyers, clergy, family, and others submitted statements to the federal district court prior to Respondent's first sentencing date showing Respondent's character, civic engagement, dedication to family and community, as well as his contributions to the Louisiana Bar, Louisiana culture, and the local film community. Respondent Exhibit 6, Sentencing Transcript, *United States of America v. Michael P. Arata*, No. 14-CR-22, p. 12 (E.D. La. 1/27/16). By the time of Respondent's re-sentencing, the district court had received "hundreds of letters." Respondent Exhibit 10, Order and Reasons on Resentencing, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 14-022, pp. 51-52 (E.D. La. 2/19/20). Numerous similar statements were submitted to the Disciplinary Board. Respondent Exhibits 4 and 9. Further, the witnesses' testimony at the hearing established good character or reputation on behalf of Respondent. Respondent Exhibits 2, 3, 4, and 9; Testimony of Pat Cane, Jr., Blake George Arata, Jr., Christy Wagmen, and Emily Arata. Tr., pp. 33-47. The Board finds that the Respondent has proven this mitigating factor.

(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 law.

By engaging in a conspiracy, committing wire fraud and mail fraud, and giving false statements to the FBI, Respondent engaged in serious criminal conduct, necessary elements of which included misrepresentation or fraud. Disbarment is the baseline sanction in this matter.

ODC maintains that permanent disbarment is the appropriate sanction in this matter, while the Respondent argues that the Committee properly determined that disbarment is the appropriate sanction. ODC correctly points out in its pre-argument brief that while Respondent's misconduct does not squarely fit within one of the Permanent Disbarment Guidelines found in Rule XIX, Appendix D, the preamble to the Guidelines and case law show that the Guidelines are only illustrative and not intended to restrict or bind the Court in any way. *In re Edwards*, 2004-0290, pp. 7-8 (La. 9/3/04), 879 So.2d 718, 722; *In re Bark*, 2011-1737, p. 10 (La. 10/21/11), 72 So.3d 853, 860.

In support of permanent disbarment, ODC cites various case law, including two cases in which the respondents sought to defraud the State of Louisiana by misusing the Louisiana film tax credit program. First, in *In re Smith*, 2009-2523 (La. 3/12/10), 29 So.3d 484, the respondent served as director of the Louisiana Film Commission. In this capacity, he was charged with the responsibility of approving budgets submitted to the State of Louisiana by the film production companies. In August of 2007, the U.S. Attorney for the Eastern District of Louisiana filed a bill of information alleging respondent engaged in a conspiracy to willfully allow and approve inflated budgets to be submitted to the state by a film production company in order to receive inflated state tax credits. The bill of information alleged respondent knowingly solicited bribes to influence his issuance of the state tax credits. *Id.*, 2009-2523, p.1, 29 So.3d at 485.

In September of 2007, the respondent entered a plea of guilty in the district court to one count each of bribery and conspiracy. In the factual basis accompanying the guilty plea, respondent admitted that he knowingly conspired to falsely inflate movie budgets so that a film production company could reap bigger state tax credits; in return, respondent accepted cash bribes totaling \$67,500. *Id.*, 2009-2523, pp. 1-2, 29 So.3d at 485.

ODC filed one count of formal charges against the respondent. The charges alleged the respondent's actions violated Rules of Professional Conduct 8.4(a), (b) and (c). The hearing committee and the Board recommended that the respondent be permanently disbarred from the practice of law. The Court agreed, citing numerous aggravating factors including dishonest or selfish motive, pattern of misconduct, substantial experience in the practice of law, and illegal conduct. In mitigation, the Court found the absence of a prior disciplinary record. The Court also relied upon Permanent Disbarment Guideline 7 in making its sanction determination. This guideline refers to "[m]alfeasance in office which results in a felony conviction, and which involves fraud." The Court also pointed out that it has consistently held that an attorney occupying a position of public trust is held to a higher standard of conduct than an ordinary attorney. *Id.*, 2009-2523, pp.7-8, 29 So.3d at 488-49.

Similar to the respondent in *Smith*, Respondent submitted false information to the State in order to obtain unjustified tax credits for himself or others. However, Respondent is not a public official who submitted to bribery, and more mitigating factors are present in Respondent's case than in *Smith*.

Next, in *In re Petal*, 2010-0080 (La. 3/26/10), 30 So.3d 728, two counts of formal charges were brought against the respondent. In the first count, ODC alleged that the respondent and another individual, William Bradley, were charged with conspiring to give cash payments to

Mark Smith<sup>9</sup>, an agent of the State of Louisiana, in connection with the approval of \$1,350,000 in Louisiana tax film credits. On December 12, 2008, the respondent entered a plea of guilty to one count of “conspiracy to bribe a state official with a program receiving federal funds.” The respondent admitted that he paid a total of \$135,000 to Bradley contingent upon Smith’s approving the tax credits. By terms of the plea agreement, the respondent agreed to pay restitution to the State of Louisiana in the amount of \$1,350,000. *Id.*, 2010-0080, p. 2, 30 So.3d at 730-31.

In the second count, ODC alleged that the respondent initiated and appeared in court proceedings on behalf of another party at a time when he was suspended and certified ineligible from the practice of law and that he pursued an illegal action in the court proceeding. *Id.*, 2010-0080, p. 3, 30 So.3d at 731-32.

In determining the matter, the Court specifically found that the respondent had violated Rule 8.4(b) and also that he had engaged in the unauthorized practice of law. It also found that the following aggravating factors were present: prior disciplinary offenses, dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the misconduct, and illegal conduct. The sole mitigating factor found was the imposition of other penalties. After determining that the baseline sanction was disbarment, the Court then focused on the Permanent Disbarment Guidelines, finding that Guideline 8 was relevant to the matter. Guideline 8 provides that permanent disbarment is appropriate when the respondent engages 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.” Noting that the respondent was suspended from the practice of law when he held himself out as a lawyer in the proceedings addressed in Count II of the formal charges, the Court found that the

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<sup>9</sup> See *In re Smith*, 2009-2523 (La. 3/12/10), 29 So.3d 484, *supra*.

respondent lacked the moral character and fitness to practice law, warranting permanent disbarment. The Court also added that respondent's conviction to commit bribery demonstrated a clear lack of moral fitness, and pointed out that it had not hesitated to permanently disbar attorneys who have committed serious crimes reflecting on their honesty and integrity. *Id.*, 2010-0080, p. 11, 30 So.3d at 736, citing *In re Edwards*, 2004-0290 (La. 7/2/04), 879 So.2d 718; *In re Kirchberg*, 2003-0957 (La. 9/26/03), 856 So.2d 1162.

Similar to Mr. Petal, Respondent engaged in criminal activity in order to obtain unjustified tax credits. Unlike the respondent in *Petal*, however, Respondent was not charged with or convicted of bribery and has not engaged in the unauthorized practice of law. Additionally, more mitigating factors are present in Respondent's case than in *Petal*.

Respondent also cites cases in support of his argument that disbarment is the appropriate sanction, the most persuasive of which is the case of *In re Gilmore*, 2016-0967 (La 10/19/16), 218 So.3d 100.<sup>10</sup> In *Gilmore*, the respondent was a member of the Monroe, Louisiana City Council. He was charged in an indictment with engaging in a racketeering enterprise whereby he used his office and position as an elected city councilman to extract bribes in the form of cash and other things of value from individuals and organizations having business before the council. In exchange, the respondent took actions favorable to these individuals and corporations. After several post-trial motions were filed and a new trial was held, the respondent was found guilty of racketeering. He was sentenced to serve twenty-four months in federal prison, which was below

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<sup>10</sup> Other cases relied upon by Respondent in his pre-argument brief include *In re White*, 2008-1390 (La. 12/2/08), 996 So.2d 266 (lawyer involved in the "Wrinkled Robe" scandal in Jefferson Parish pled guilty to a federal count of misprision of a felony and was incarcerated; he also inappropriately communicated *ex parte* with a judge. The lawyer was disbarred); *In re Bankston*, 2001-2780 (La. 3/8/02), 810 So.2d 1113 (lawyer, who was also a state senator, was convicted of federal charges of bribery in violation of 18 U.S.C. §§1952 and 2; he was incarcerated and fined \$20,000. The lawyer was disbarred); *In re King*, 2009-1560 (La. 1/8/10), 33 So.3d 873 (lawyer, who was a district court judge, pled guilty to payroll fraud, a felony; he also was not honest during his testimony before the Judiciary Commission. The lawyer was disbarred).



the sentencing guidelines range.<sup>11</sup> *Id.* ODC filed formal charges against the respondent, alleging he violated Rule XIX, Section 19 (lawyers convicted of a crime). Although the hearing committee considered the respondent's conduct in light of the permanent disbarment guidelines, it ultimately decided that permanent disbarment was not warranted. The committee was compelled by the respondent's character witnesses, who all believed that the respondent had been punished enough and that permanent disbarment should be reserved for a more egregious offense than respondent's offense. The committee was also compelled by the numerous mitigating factors present,<sup>12</sup> as well as the district judge's reasons for imposing a more lenient sentence upon the respondent than the sentencing guidelines presented. *Id.*, 2016-0967, p. \*, 218 So.3d at 104. The Board disagreed, recommending that the respondent be permanently disbarred in light of the permanent disbarment guidelines and prior jurisprudence of the Court. *Id.*, 2016-0967, p. \*, 218 So.3d at 105.

The Court found that the respondent had violated Rules of Professional Conduct 8.4(b), (c), (d), and (e). The Court rejected the Board's recommendation of permanent disbarment, finding that disbarment was the appropriate sanction. In doing so, it stated:

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<sup>11</sup> In imposing the sentence, the federal district judge commented that:

In this case, the Government's main witness engaged in an ongoing program of planned enticement to provoke [respondent] into agreeing to bribes in exchange for perceived favors from [respondent's] position with the Monroe City Council. Because of that, the Guidelines, in my opinion, may overstate the relative seriousness of [respondent's] actions and the application of an equitable sentence.

So I find there exists a mitigating circumstance of a kind not adequately taken into consideration by the Guidelines and that in order to advance the objective set forth under the Guidelines, the sentence will be different from that described.

*Id.*, 2016-0967, p. \*, 218 So.3d at 101-02.

<sup>12</sup> Mitigating factors found by the hearing committee included full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, character or reputation, imposition of other penalties or sanctions, and remoteness of a prior disciplinary offense. The Board and the Court later found that the mitigating factor of remorse was also present. The Court further concluded that the aggravating factors of illegal conduct, prior disciplinary record, dishonest or selfish motive, and substantial experience in the practice of law were present.

In concluding that permanent disbarment is not an appropriate sanction in this matter, the hearing committee gave great weight to the testimony of the character witnesses, the applicable mitigating factors, and the reasons given by the federal district judge for imposing a more lenient sentence upon respondent than called for by the sentencing guidelines. We agree that all of these factors are compelling, and accordingly we find that it is not necessary to impose permanent disbarment in this case.

*Id.*, 2016-0967, p. \*, 218 So.3d at 106.

Like the respondent in *Gilmore*, Respondent has been convicted of serious federal crimes which arguably fall in the scope of permanent disbarment; however, he was not charged with or convicted of bribery as was Mr. Gilmore. Further like Mr. Gilmore, Respondent has presented numerous character witnesses who described his professional, civic, and personal achievements and good works. The final sentence imposed upon Mr. Arata in his criminal case was well below the sentence recommended under the federal sentencing advisory guidelines,<sup>13</sup> as was the sentence imposed upon Mr. Gilmore.

The comments made by the federal district judge in determining Respondent's sentence are very significant to the Board in determining his sanction. After finding that greed on the part of Respondent was absent from the record, the judge further stated that:

Nor did Mr. Arata receive any proceeds from the film infrastructure expenditures associated with the project; Peter Hoffman alone, and by his own candid admission, profited from the tax credit scheme.

Respondent's Exhibit 10, Order and Reasons on Resentencing, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 14-022, pp. 58, 60 (E.D. La. 2/19/20).

The judge further observed that:

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<sup>13</sup> The federal sentencing advisory guidelines range for Respondent's conviction was 135-168 months. As explained above, at resentencing the judge imposed the maximum term of probation permitted by law—60 months—with the special condition of 12 months of home detention with location monitoring (in addition to a fine, which Respondent had already paid and community service, which was completed.) Respondent Exhibit 10, Order and Reasons on Resentencing, *United States of America v. Peter M. Hoffman, Michael P. Arata, and Susan Hoffman*, No. 14-022, pp. 32, 62 (E.D. La. 2/19/20). This sentence was not appealed by the Government, pursuant to its March 19, 2020 agreement to terminate litigation with Respondent. Respondent Exhibit 12.

It is no hyperbole for the Court to observe that in all of 36 years sentencing individuals convicted of all sorts of federal crimes, it has never received so many letters uniformly attesting to what a kind, selfless, generous, professional, remarkable, benevolent, devoted man, son, brother, father, husband, friend, colleague, mentor, advocate, boss, coach, neighbor, good Samaritan the defendant is.

*Id.* at 51. The judge further observed that evidence of Mr. Arata's post-sentencing conduct suggests that he continued "to exhibit professionalism, ethics, patience, integrity, benevolence strongly suggesting that the no-harm, victimless crimes for which he was convicted was an aberration" and that "the uncontroverted evidence submitted indicates that he will continue to contribute to and positively impact the community." *Id.* at 60. In commenting on the murkiness of the laws surrounding the film tax credit program, the judge also cited a character letter received from a state senator who did not until recently know Respondent, and who worked to revise the state film tax credit law. This senator observed:

No lawyer should suffer for interpreting broken law and the ordeal this family has been through is more than a cautionary tale. This case highlighted the dysfunction in the law that led to a correction in statute and a fundamental restructuring of the Louisiana Film Tax Credit Program into a sane and fiscally sound model.

*Id.* at 51-52.

Numerous mitigating factors also are present in this matter, as in *Gilmore*.

After a careful review of the record, including the character letters and testimony submitted by Respondent, the mitigating factors present, and the comments made by the district judge when determining Respondent's sentence in his criminal matter, the Board finds that Respondent's case is more akin to the case of *In re Gilmore*, 2016-0967 (La 10/19/16), 218 So.3d 100 than to *Smith* or *Petal*. The Board further concludes that the circumstances of this case do not warrant an upward deviation from the baseline sanction of disbarment to permanent disbarment, and will recommend that disbarment be imposed.

## **CONCLUSION**

The Board adopts the findings of fact of the hearing committee, except for the two manifestly erroneous findings of fact noted above. As to these two findings of fact, the Board determines that Respondent was convicted of twelve felony counts, not eight as found by the Committee. Further, the Board corrects the Committee's determination of the amount of the forfeiture order imposed against the Respondent and his co-defendants; the amount is \$223,434.25 (with Respondent, by agreement with the Government, being assessed with 40% of this amount, subject to any reduction determined by his co-defendants' appeals) and not \$1,132,480.80 as reported by the Committee.

Further, the Board adopts the Committee's finding that Respondent violated Rules of Professional Conduct 8.4(a), (b), and (c). However, the Board will not adopt the Committee's finding that the mitigating factor of character and reputation is a "neutral factor." Instead, the Board finds character and reputation as a mitigating factor, along with absence of a prior disciplinary record, full and free disclosure to the disciplinary board or cooperative attitude towards the proceedings, imposition of other penalties or sanctions, and remorse. The Board also finds that the aggravating factors of dishonest or selfish motive, pattern of misconduct, multiple offenses, substantial experience in the practice of law, and illegal conduct are present. Based on the above and the applicable jurisprudence, the Board will adopt the Committee's recommended sanction of disbarment, and also recommend that the Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

## **RECOMMENDATION**

The Disciplinary Board recommends that Respondent, Michael Peter Arata, be disbarred from the practice of law, retroactive to the date of his interim suspension. The Board also

recommends that all costs and expenses in this matter be assessed against Respondent, in accordance with Supreme Court Rule XIX, Section §10.1.

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**Linda G. Bizzarro**

**Paula H. Clayton**

**Susan P. DesOrmeaux**

**Alfreda Sellers Diamond**

**Laura B. Hennen**

**Danna E. Schwab**

**Evans C. Spiceland**

**Charles H. Williamson, Jr.**

DocuSigned by:  
*Melissa Theriot*  
By \_\_\_\_\_  
**Melissa L. Theriot**  
**FOR THE ADJUDICATIVE COMMITTEE**