Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #013

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **25th day of March, 2022** are as follows:

PER CURIAM:

2021-B-01439 IN RE: TIMOTHY DAVID RAY

SUSPENSION IMPOSED. SEE PER CURIAM.

Retired Judge Jimmie C. Peters appointed Justice ad hoc sitting for Griffin, J., recused in case number 2021-B-01439 only.

Weimer, C.J., dissents in part and assigns reasons.

Crain, J., concurs.

SUPREME COURT OF LOUISIANA

NO. 2021-B-1439

IN RE: TIMOTHY DAVID RAY

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM*

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Timothy David Ray, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

By way of background, Ellen Hazeur served as Clerk of New Orleans First City Court from March 2000 to April 2018. In March 2018, Ms. Hazeur won an election to an open seat on the Orleans Civil District Court. Respondent served as Ms. Hazeur's campaign manager. Shortly before her resignation as Clerk, Ms. Hazeur appointed respondent as her Chief Deputy Clerk. Respondent then assumed the role of interim Clerk of First City Court upon Ms. Hazeur's resignation, which went into effect at the close of business on April 24, 2018.

On July 18, 2018, respondent qualified to run for Clerk in a November 6, 2018 special election to fill the vacancy left by now-Judge Hazeur. Respondent lost the special election to Austin Badon, who was sworn into office on November 16, 2018. Thus, respondent served as interim Clerk of First City Court for less than seven months, from April 25, 2018 through November 16, 2018.

* Retired Judge Jimmie C. Peters, assigned as Justice Ad Hoc, sitting for Griffin, J., recused.

At all relevant times, First City Court held funds as a fiduciary for others in a garnishment account and a registry of the court account. The interest earned on these fiduciary funds was transferred to a separate Capital Improvement Fund checking account ("CIF Account") with Liberty Bank in New Orleans.[1] During his tenure as interim Clerk of First City Court, respondent had access to, and the ability to write checks on, the CIF Account. After Mr. Badon was elected, he sent a memorandum to Chief Judge Paulette Irons of Orleans Civil District Court,[2] Senior Judge Angelique Reed of New Orleans First City Court, and Judicial Administrator Traci Dias in which he expressed concern about certain checks written on the account by respondent in his final two weeks in office as interim Clerk. Two of these checks, made payable to Merlin Flores and Morgan Jones, are at issue in this disciplinary proceeding. Both Mr. Flores and Mr. Jones are personal friends of respondent's, and Mr. Flores has also been a client of respondent's.

The Flores Check

On November 2, 2018, four days prior to the special election, respondent wrote a check from the CIF Account for $4,766 payable to Mr. Flores for "new shelves (case records FCC)." An invoice submitted by Mr. Flores to respondent reflects that the check was issued for an "initial consultation" ($1,589) and "refitting of existing shelving" ($3,178) at First City Court. The invoice also reflected that Mr. Flores would charge $4,895 to "construct new shelves," for a total fee of $9,662 for the project. However, it is undisputed that Mr. Flores did not refit any existing shelves or construct new shelves at First City Court.

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[1] Although this account was denominated a "Capital Improvement Fund," use of the funds was not restricted to capital improvement projects at First City Court. See La. Atty. Gen. Op. No. 92-236 (April 16, 1992) (opining that interest earned on the garnishment and registry accounts "may be used for the general operating expenses" of the First City Court).

[2] The judges of Orleans Civil District Court, en banc, act in a supervisory capacity over the First City Clerk of Court.

Judge Irons subsequently raised questions concerning the Flores check. In a December 2, 2018 letter to Judge Irons, respondent represented that he had entered into an agreement "to both retrofit our current shelving in the rear room to allow 2019 records to be filed there, and to construct new shelving in the same space on a 'rush' (invoice is attached)." In a December 10, 2018 email to Judge Irons, respondent represented that Mr. Flores was paid "for his initial surveys and the very short time frame for both phases to be completed. … In addition to initial work and payment to secure urgent service, Mr. Flores completed repairs and retrofitted the existing shelves…" These representations by respondent were false, a fact which both Mr. Flores and respondent subsequently acknowledged under oath.

Mr. Flores gave a sworn statement to the ODC during its investigation. He testified that he spoke with respondent and "did some measurements" at First City Court, but he did not refit any existing shelving at First City Court, nor did he construct any new shelves. He testified that he wrote in the handwritten description of "initial consultation" ($1,589) and "refitting of existing shelving" ($3,178) on the invoice he submitted to respondent only after speaking with respondent about those descriptions. Mr. Flores, who currently serves as the pastor of a church, further acknowledged that he had no licenses or permits to perform construction-related work and that he had never charged such a large "initial consultation" fee for proposed work.

Respondent also gave a sworn statement during the ODC's investigation. He admitted that Mr. Flores took some measurements at First City Court but that he did not perform any additional work relating to the shelving project. According to respondent, he made a partial payment to Mr. Flores with the expectation that Mr. Flores would complete the shelving project after the special election, but Mr. Badon

opted not to proceed.[3] Respondent also testified that he did not receive an invoice from Mr. Flores until after Judge Irons later requested a copy of the same. Respondent testified that he could no longer locate the original invoice.

On February 27, 2019, a local television station published a report concerning respondent's issuance of checks from the CIF Account. During an interview with the reporter, Mr. Flores admitted that he had not done any work at First City Court other than to give respondent "some estimates." On March 4, 2019, Mr. Flores wrote a letter to Ms. Dias in which he stated that after viewing the television report, "I do not want to be apart [sic] of any political gamesmanship. … I have requested my bank to send a cashier's check in the amount of $3,178 to refund the court and am severing all business ties with First City Court."

On March 12, 2019, Mr. Flores obtained a cashier's check in the amount of $3,000 and gave it to respondent for delivery to First City Court. Respondent subsequently delivered the cashier's check, along with $1,767 in cash which he personally provided, to Ms. Dias. Together, the cashier's check and the cash supplied by respondent equal the amount of the check written to Mr. Flores from the CIF Account, plus $1.

The Jones Check

On November 13, 2018, one week after losing the special election and three days prior to leaving office as interim Clerk of First City Court, respondent wrote a check from the CIF Account for $5,150 payable to Mr. Jones for "labor,

[3] Respondent admitted that he should have told Mr. Flores to return the funds "once Austin didn't keep him on the job," but instead, respondent told Mr. Flores "if [Austin Badon] doesn't want to talk to you, doesn't want to follow up, then just – you can do what you want, which was not the right advice to give to him…"

reimbursement, services." An invoice submitted by Mr. Jones to respondent reflects that the check was issued for moving First City Court records to a storage facility.[4]

Judge Irons subsequently raised questions concerning the Jones check. In a December 3, 2018 email to Judge Irons, respondent represented that the check related to the "packing, cataloging and transportation" of 61 boxes of First City Court records to an offsite storage warehouse operated by Vital Records Control ("VRC").[5] The standard procedure to request payment of expenses for offsite storage of First City Court records is submission of invoices to the Judicial Expense Fund for approval. It is also standard procedure for employees of the clerk's office, at no additional cost, to package and catalog files in boxes for pick-up and delivery to offsite storage. Respondent did not follow the standard procedure in this instance, and the ODC contends there was no exigent need for court records to be delivered to an offsite storage facility during respondent's final days as interim Clerk. Moreover, respondent stated that he had the moving work done "at the same cost VRC charged." However, pursuant to VRC's contract with First City Court, it would have cost only a few hundred dollars for the company to do the same work for which respondent paid Mr. Jones $5,150.

Respondent gave a sworn statement to the ODC during its investigation. He testified that Mr. Jones has no prior moving company experience, but instead works at an Apple store.[6] Respondent also admitted that he did not solicit any bids for the moving work, and that he did not ask Mr. Jones for an invoice until after Judge Irons

[4] The invoice is actually for $5,000; however, according to respondent, the work could not be performed during the agreed-upon window of time due to a malfunctioning elevator in the Civil District Court building, and therefore respondent paid Mr. Jones an additional sum "to show a desire to compensate for the unforeseen added length of the work."

[5] First City Court has contracted with VRC to store its records since at least 2014.

[6] The ODC issued a subpoena to Mr. Jones for the production of documents and to take his sworn statement; however, Mr. Jones has avoided service of the subpoena and told the ODC's staff investigator that he did not "want to be a part of this."

later requested a copy of the same. No portion of the $5,150 paid to Mr. Jones has been refunded to First City Court.

In January 2019, Susan Brown, CPA/CFF, was retained to prepare a forensic accounting report examining the checks issued by respondent from the CIF Account. In February 2019, Ms. Brown provided her report to Judge Irons, Judge Reed, and Mr. Badon. Among other conclusions reached in the report, it was noted that during his final two weeks as interim Clerk of First City Court, respondent had "potentially misappropriated, converted, misused or otherwise wrongfully taken public funds" under his custody and control. In March 2019, Judge Irons, Judge Reed, and Mr. Badon forwarded Ms. Brown's report to the ODC.

DISCIPLINARY PROCEEDINGS

In July 2019, the ODC filed formal charges against respondent. The ODC alleged that respondent (1) grossly misused public funds by (a) making a payment of $1,589 to his friend Mr. Flores for a one-time visit to take shelving measurements at First City Court, and making an additional payment of $3,178 to Mr. Flores for shelving work he did not perform, and (b) making a payment of $5,150 to his friend Mr. Jones for moving files to an offsite storage facility, when the storage facility would have charged far less for the same work; and (2) made false representations to Judge Irons regarding the work performed by both Mr. Flores and Mr. Jones. The ODC alleged that this conduct violated Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct.[7]

[7] The formal charges also alleged that respondent's misstatements to Judge Irons violated Rule 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal); however, the hearing committee found that rule is inapplicable here because it governs the conduct of a lawyer who is advocating for a client in the proceedings of a tribunal. The ODC does not

Respondent answered the formal charges, denying he engaged in any misconduct. Accordingly, the matter proceeded to a formal hearing on the merits.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee made the following findings:

Regarding the Flores check, the committee found Mr. Flores' testimony to be forthright and credible. Mr. Flores testified that he was paid by respondent to oversee the refitting of shelving in the clerk's office, that he took initial measurements but did not perform any physical work to refit the shelving, and that he intended to complete the work for the agreed price, including labor and materials. The committee found the price paid was not unreasonable because the clerk's office had previously received a much larger proposal from Cox & Cox for similar work.[8] The intended work was necessary to accommodate an upgraded filing system that respondent had instituted as part of his efforts to modernize the clerk's office, and to reduce inefficiencies and what he viewed as excessive expenses.

The committee found no wrongdoing by respondent regarding the agreement to refit the shelving. The committee pointed out that there was no testimony demonstrating that competitive bids were required for projects paid from the CIF Account, so Mr. Flores was not selected improperly. Respondent and Mr. Flores were acquaintances, but there is no evidence of any improper financial motivation. Mr. Flores had supervised extensive repair and construction work at his church following Hurricane Katrina, and he was capable of supervising the refitting of the

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object to the committee's determination in this regard, which is correct as a matter of law. Therefore, no further mention will be made in this opinion of Rule 3.3(a)(1).

[8] Cox & Cox, a drywall, painting, and general services contractor in New Orleans, provided an undated document addressed to Ellen Hazeur in which it proposed to install new shelving in the court's second floor storage room for a total cost of $19,685, including labor, materials, and removal of debris from the job site.

shelves even if he was not a general contractor. However, Mr. Badon never contacted Mr. Flores to complete the work. Mr. Flores eventually returned the entire amount he was paid, which he credibly described as a deposit for labor and materials.

The committee found that respondent did commit misconduct in responding to questions concerning his agreement with Mr. Flores. Specifically, respondent advised Judge Irons that Mr. Flores had in fact "completed repairs and retrofitted existing shelves" and strongly implied that the contracted work had been completed. Mr. Flores credibly testified that he had done no such work, apart from a site visit and visual inspection. Accordingly, the committee found that respondent was not truthful in his response to Judge Irons, in violation of Rules 8.4(a) and 8.4(c) of the Rules of Professional Conduct. The committee found that Rule 8.4(d) does not apply to respondent's false statement in a non-adjudicative matter.

Regarding the Jones check, the committee found that respondent paid $5,150 from the CIF Account to an acquaintance, Morgan Jones, for moving boxes of old case records from the clerk's office to VRC, an offsite storage facility. For many years, the clerk's office periodically moved old records to the storage facility to make space for new case files, so there was nothing unusual about moving files offsite. However, because the agreement with Mr. Jones was made after respondent lost the special election, the timing of the agreement raised Mr. Badon's suspicions.

The committee found it was reasonable for respondent to have continued the practice of moving files offsite even after he lost the election. Respondent testified that he was trying to ensure the clerk's office was in good shape for his successor. The committee found this testimony was credible and noted it was supported by a contemporaneous email sent by respondent to his staff asking them to take extra

steps to get the office in shape for the new clerk.[9] Furthermore, respondent testified that he hired Mr. Jones because VRC was not able to perform the work before he left office.

The committee found the only issue of concern is the amount of the payment approved by respondent to Mr. Jones. The evidence showed that VRC would have moved the boxes from the clerk's office into storage for a much smaller charge pursuant to its contract with the clerk's office. No witness could state precisely what it would have cost to move the files per the contract, but email messages from VRC to Mr. Badon quoted a price of less than $500, which is considerably below the sum approved by respondent.[10] The committee found that respondent seems to have misunderstood the VRC contract, which has an itemized charge "per case record (in/out)," apparently for situations in which a single case file is removed from storage and brought to the clerk's office on request. Based on a rough calculation of that price applied to the number of files to be moved, respondent believed the sum paid to Mr. Jones was comparable to what VRC would charge. In light of the email to Mr. Badon, it is clear respondent was wrong about the moving fee, but the committee found this was an "error in business judgment" which does not rise to the level of a disciplinary violation. Accordingly, the committee found no misconduct by respondent in connection with the issuance of the Jones check. The committee did not address in its report the ODC's allegation that respondent made a false statement to Judge Irons regarding the work performed by Mr. Jones.

The committee determined respondent violated duties owed to the public and the legal system. He acted "knowingly with the intent to deceive Judge Irons with

[9] The committee also noted the animosity between respondent and Mr. Badon, which apparently continues to this day, and suggested that respondent was justified in his belief that Mr. Badon would attempt to discredit him after taking office.

[10] The committee acknowledged that respondent did not have the benefit of this pricing information because it was quoted to Mr. Badon after he took office.

regard to his use of public funds." His conduct caused potential harm through the expenditure of public funds for work that was not bid, not authorized, and not performed. Respondent caused actual harm to the reputation of the legal profession in his false statement to Judge Irons when asked a direct question regarding the work in question. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee found that respondent occupied a position of public trust as the interim Clerk of First City Court, and therefore should be held to a higher standard than an ordinary lawyer. In mitigation, the committee found the absence of a prior disciplinary record, a cooperative attitude toward the proceedings, and inexperience in the practice of law (admitted 2016).

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day. The committee also recommended that respondent be assessed with the costs and expenses associated with this proceeding.

Both respondent and the ODC filed objections to the hearing committee's report.

Disciplinary Board Recommendation

After review, the disciplinary board adopted some of the hearing committee's factual findings but determined that others are not supported by the record and are manifestly erroneous. The board also made additional factual findings.

Regarding the Flores check, the board agreed with the committee's assessment of the credibility of Mr. Flores, his capability to perform the shelving job, and the lack of restrictions on the use of the CIF Account. However, the board determined the committee erred in finding that the price paid was not unreasonable,

that there was no wrongdoing by respondent regarding the agreement to refit the shelving, and that there was no evidence of any improper financial motivation.

It appears the committee determined that the price for the shelving project was not unreasonable given the prior estimate provided by Cox & Cox. Nevertheless, the committee failed to address the fact that respondent paid Mr. Flores $4,766 for little, if any, work. There is no support in the record to establish that $1,589 was a reasonable amount for an initial consultation, and the payment of $3,178 to refit the existing shelving was clearly unreasonable because the work was not performed. It is undisputed that respondent hired Mr. Flores, a friend, only days prior to the special election. It is also undisputed that respondent did not follow the usual process for obtaining approval for the work through the Judicial Expense Fund, even though he was familiar with that process. While respondent's use of the funds in the CIF Account may have been unrestricted, there is no dispute that these funds belonged to the public and respondent had a fiduciary obligation to use them prudently.

After Mr. Badon won the special election, he declined respondent's offers to discuss the state of affairs of the clerk's office, including the shelving project. At that point, respondent should have recouped the $4,766 he paid to Mr. Flores, but instead, he created an after-the-fact invoice in an attempt to substantiate the payment. Indeed, it appears that but for the inquiry by Judge Irons, respondent intended to allow Mr. Flores to retain these public funds even though little to no work had been performed.

Although the committee pointed out that the funds were eventually returned, the board found that repayment does not negate respondent's misconduct. His use of the public funds in this manner was dishonest. Furthermore, the committee erred in finding that Mr. Flores returned the entire amount paid to him. The record clearly shows that Mr. Flores returned $3,000 to the Judicial Expense Fund while respondent refunded $1,767 in cash.

Concerning the charge that respondent was dishonest in his response to Judge Irons, the board agreed with the committee and found that in between the time he left office in November 2018 and when the money was returned in March 2019, respondent actively and intentionally sought to hide or disguise the payment to Mr. Flores as being legitimate. He caused the invoice to be created after the fact and lied to Judge Irons in his December 2, 2018 letter and December 10, 2018 email in which he indicated that the $4,766 payment was for "work already performed" to retrofit the existing shelves, which was simply not true.

Regarding the Jones check, the board found the record supports the committee's findings that respondent paid Mr. Jones $5,150 to move boxes of old case records to VRC and that there was nothing unusual about the undertaking of this end-of-the-year practice. The board did not take issue with the committee's finding that respondent credibly testified he wanted to leave the clerk's office in good order. However, the board disagreed with the committee that the arrangements made were reasonable.

As the committee recognized, respondent was concerned that Mr. Badon would attempt to discredit and publicly criticize him. In addition to his desire to leave the office in good order, fear of this criticism appears to have motivated respondent to move the records after he lost the election. In attempting to preserve his reputation, respondent appears to have lost sight of his fiduciary obligation to be a prudent manager of public funds. When he could not get VRC to pick up the records before he left office, respondent came up with a plan to hire a friend (who had no moving experience) to do the job. He used the CIF Account to bypass the usual approved procedures for payment through the Judicial Expense Fund. Furthermore, in his haste, respondent arranged to pay Mr. Jones thousands of dollars, when by all accounts the job should have cost much less. Nevertheless, the board determined there is no clear evidence in the record that the overpayment to Mr. Jones

was intentional. The committee apparently believed respondent's testimony that the amount he paid Mr. Jones was based upon his misunderstanding of the contract with VRC, and found no misconduct. The board could not say this finding was erroneous.

The board found the committee did err in failing to address respondent's response to Judge Irons' inquiry concerning the Jones check. As with the Flores check, respondent's response was less than forthright. He obtained an invoice after the fact and by letter dated December 2, 2018 and email dated December 3, 2018, respondent represented to Judge Irons that Mr. Jones was paid for "cataloging," packing, and transporting all 2013 files plus the prior year's loose files that were packed and shipped back to the warehouse. However, respondent could point to no documentation or record to substantiate the claim that Mr. Jones performed any sort of cataloging.[11] Further, Mr. Badon's Chief Deputy Clerk confirmed in his testimony that the records transported by Mr. Jones were cataloged by an employee of the clerk's office.

The board found respondent knowingly overstated Mr. Jones' services in his response to Judge Irons in an attempt to bolster and justify the course of action he chose to take. The evidence shows that it took Mr. Jones and one other worker just three hours to "catalog, transport and deliver" the 61 boxes of records. When questioned why it was necessary to pay Mr. Jones to catalog the records, respondent testified that he had shifted the office responsibilities of his regular staff, but he provided no rational explanation as to why these workers did not perform the cataloging task. Indeed, the testimony indicated that staff did perform the task.

Based on these facts, the board determined respondent violated Rules 8.4(a) and 8.4(c) by paying Mr. Flores $4,766 for performing little to no work and by making misrepresentations to Judge Irons during her inquiry into the Flores and

[11] According to the testimony at the hearing, cataloging was typically an internal process performed by clerk's office employees to keep track of records retrieved from storage.

Jones checks. The board also found that respondent's misrepresentations to Judge Irons violated Rule 8.4(d). The board acknowledged that this rule typically applies to conduct which is connected to a legal proceeding, but it "also reaches conduct that is uncivil, undignified, or unprofessional regardless of whether it is directly connected to a legal proceeding." *In re: Downing*, 05-1553, n. 5 (La. 5/17/06), 930 So. 2d 897. Here, respondent – a lawyer and a public official – misled a judge who was carrying out an administrative function of the court and caused invoices to be prepared which misrepresented the work that was paid for with public funds. While no specific legal proceeding was impacted, the board found the operations of First City Court were no doubt impacted. Judge Irons, Ms. Dias, and other members of the court and court personnel were required to expend time and effort to address the matter. Therefore, respondent's conduct was unprofessional and prejudicial to the administration of justice.

The board then determined that respondent violated duties owed to the public, the legal system, and the legal profession. His conduct was knowing, if not intentional, and caused damage to the reputation of the profession. His conduct also had the potential to cause injury to the public. Respondent misled Judge Irons and had the funds advanced not been returned, the public would have suffered harm. Further, he caused Judge Irons and other court personnel to expend time and effort, unnecessarily, to address his conduct. Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

In aggravation, the board found that respondent acted with a dishonest or selfish motive. The board also agreed with the committee that respondent was serving as a public official when he engaged in the misconduct and is therefore held to a higher standard. In mitigation, the board found the absence of a prior disciplinary record, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and inexperience in the practice of law.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day.

Respondent filed an objection to the board's recommendation. Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

At issue in this matter is whether respondent misused public funds under his control by issuing checks from the CIF Account to Mr. Flores and Mr. Jones. The record supports a finding that respondent committed misconduct by paying $4,766 to Mr. Flores, who admittedly did no work at First City Court on a proposed shelving project other than to take some measurements. However, for the reasons expressed by the hearing committee and adopted by the disciplinary board, we agree there is no misconduct by respondent related to his $5,150 payment to Mr. Jones for moving First City Court records to an offsite storage facility. The committee apparently found respondent credible when he explained his method for calculating the payment (premised upon a misunderstanding of the court's contract with the storage facility)

and his reason for moving the records on an expedited basis. While we might have reached a different conclusion, we cannot say the committee's finding is clearly wrong, given the record before the court. *See In re: Bolton*, 02-0257 (La. 6/21/02), 820 So. 2d 548 ("Although this court is the trier of fact in bar disciplinary cases, we are not prepared to disregard the credibility evaluations made by those committee members who were present during respondent's testimony and who act as the eyes and ears of this court."). Respondent's misuse of public funds violated Rules 8.4(a) and 8.4(c) of the Rules of Professional Conduct.

The second issue in this matter is whether respondent made false statements to Judge Irons in response to her inquiry concerning the Flores and Jones checks. The record supports a finding that respondent was dishonest in his responses, created after-the-fact invoices to support the checks, and actively and intentionally sought to legitimize the payment of public funds to Mr. Flores and Mr. Jones. Respondent's conduct in this regard violated Rules 8.4(a), 8.4(c), and 8.4(d) of the Rules of Professional Conduct.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent knowingly violated duties owed to the public, the legal system, and the legal profession. His conduct was reported in the news media and thus caused damage to the reputation of the profession. Respondent also caused Judge

Irons and other court personnel to expend time and effort, unnecessarily, to address his conduct. In addition, respondent's conduct would have caused injury to the public had the sums paid to Mr. Flores not been returned to the court. The applicable baseline sanction is suspension. The record supports the disciplinary board's findings regarding aggravating and mitigating factors.

Turning to the issue of an appropriate sanction, there are no Louisiana cases precisely on point; however, some limited guidance is provided by the cases of *In re: Richmond*, 08-0742 (La. 12/2/08), 996 So. 2d 282, and *In re: King*, 19-0356 (La. 5/20/19), 271 So. 3d 1253. In both of these cases, the respondents falsely stated their domicile on a notice of candidacy when qualifying to run for public office.

In *Richmond*, the respondent was sanctioned for six months, with all but sixty days deferred, for knowingly making a false statement of domicile on his notice of candidacy for the New Orleans City Council. Furthermore, after his qualifications for office were challenged, the respondent made similarly false statements regarding his domicile in pleadings and oral testimony in the election contest. Mr. Richmond had no prior disciplinary record, was relatively inexperienced in the practice of law, was fully cooperative, and maintained a good reputation in the community. Mr. Richmond also held a position of public trust in that he was serving in the Louisiana Legislature at the time of his misconduct.

In *King*, the respondent was suspended for one year for knowingly and intentionally making a false statement of domicile on her notice of candidacy for judicial office. She claimed to have been domiciled in Orleans Parish when she was actually domiciled in St. Tammany Parish. She was found guilty by a jury on two felony criminal charges, but after remand on a claim of ineffective assistance of counsel, the conviction was vacated and Ms. King pleaded guilty to a misdemeanor for her conduct. In the disciplinary proceeding, the court's determination of an appropriate sanction was "guided by *Richmond*." Aggravating factors included a

dishonest or selfish motive and substantial experience in the practice of law. Mitigating factors included the absence of a prior disciplinary record, a cooperative attitude toward the disciplinary proceeding, the imposition of other penalties or sanctions, and remorse.

In the instant case, respondent was not convicted of a criminal offense, as was the case in *King*, and unlike the respondent in *Richmond*, respondent did not violate Rule 3.3(a) by offering false evidence or testimony before a tribunal. Nevertheless, respondent was a public official who misused public funds within his custody and control. He also provided misleading information to a judge who was investigating the expenditures. It appears that absent this inquiry, respondent intended to allow Mr. Flores to keep the public funds he was paid for work that was not performed. Although the funds did not directly benefit respondent and were eventually returned, respondent's conduct was dishonest, brings the legal profession into disrepute, and erodes the public's confidence in those serving as public officials.

Based on this reasoning, we find the board's recommended sanction is appropriate. Thus, we will suspend respondent from the practice of law for one year and one day.[12]

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Timothy David Ray, Louisiana Bar Roll number 37269, be and he hereby is suspended from the practice of law for a period of one year and one day. All costs and expenses in the matter are assessed against respondent in accordance

[12] During oral argument, the ODC urged us to require respondent to pay restitution to the First City Court for the $5,150 he paid to Mr. Jones for moving records to the offsite storage facility. Having found no misconduct in connection with the issuance of the Jones check, we decline to order such restitution.

with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

SUPREME COURT OF LOUISIANA

NO. 2021-B-1439

IN RE: TIMOTHY DAVID RAY

ATTORNEY DISCIPLINARY HEARING

WEIMER, C.J., dissenting in part.

I agree with all but two aspects of the majority's decision. First, I respectfully disagree with the conclusion that there was no misconduct by respondent related to his authorization of a $5,150 payment to Mr. Jones for moving First City Court records to an offsite storage facility. My independent review of the record convinces me that the conclusion of the hearing committee was clearly wrong and that misconduct was proven by clear and convincing evidence.

Second, I respectfully disagree with the majority in its assessment of the appropriate sanction. I would order that respondent be suspended from the practice of law for 18 months, with all but one year suspended. I would additionally order that respondent pay restitution to the First City Court for the $5,150 paid to Mr. Jones.