ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: H. BRENNER SADLER

NUMBER: 12-DB-032

RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

This is a discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel ("ODC") against H. Brenner Sadler ("Respondent"), Louisiana Bar Roll Number 11647. The formal charges, which consist of one count, allege violations of the following Rules of Professional Conduct ("Rule(s)"): Rule 1.3; Rule 1.4(a)(2); Rule 1.4(b); Rule 1.7 and/or Rule 1.9(a); Rule 1.16(a)(1); Rule 4.1(b) and/or 3.3(a)(1) or (b);[1] Rule 8.4(a); and Rule 8.4(d).[2] The Hearing Committee assigned to this matter found that Respondent violated Rules 1.3, 1.9(a), 1.16(a)(1), and 8.4(a). As a sanction, the Committee recommended that Respondent be publicly reprimanded.

For the reasons stated below, the Board adopts the findings, conclusions, and recommendation of the Committee. Accordingly, the Board orders that Respondent be publicly reprimanded.

PROCEDURAL HISTORY

The formal charges were filed on May 30, 2012. The formal charges state, in pertinent part:

> Chrystal Landry Thompson consulted H. Brenner Sadler in her domestic relations case on June 17, 2009. Ms. Thompson retained Mr. Sadler to represent her in that case, particularly the division of the community property, on or about February 24, 2010. Ms. Thompson's prior counsel had filed her sworn descriptive list in June 2007. Ms. Thompson's former husband, James N. Thompson, had not filed a sworn descriptive list. The community property division was set for trial on

[1] The formal charges actually list Rule "3.1(a)(1) or (b)." This appears to be a typographical error as the subsequent memorandum of the ODC references Rule 3.3. Respondent never raised an issue regarding this error.
[2] See Appendix A for the text of the Rules.

September 21, 2010. One of the parcels of real estate involved in the community property was a farm on highway 167 of about 827 acres. Mr. Sadler did not, at any point in time, receive from James N. Thompson any account for the community assets, any appraisals of the real estate involved in the community, or any sworn descriptive list of community assets. Unbeknownst to Ms. Thompson, Acadian Gas Pipeline System had entered into negotiations with James N. Thompson beginning in December 2009 for pipeline servitudes relative to the farm property. James N. Thompson failed to disclose these ongoing servitude negotiations to Mr. Sadler in the documentation turned over to Mr. Sadler on June 7, 2010. On July 23, 2010 Mr. Sadler filed a Motion and Rule to Show Cause adverse to James N. Thompson because his client, Ms. Thompson, did not have sufficient means to employ experts to value the community property assets and her former husband had, since the date of separation, maintained complete control and dominion over all of the community property. Mr. Sadler did not obtain an appraisal or other expert evaluation of the community property. Mr. Sadler used an estimated value for the 827 acre farm in the community property matter of $1,300,000.00 or about $1,572 per acre. This figure was not based upon any appraisal or other expert evaluation, and was the estimated value used on Mr. Sadler's spreadsheet of assets which he prepared in anticipation of taking James N. Thompson's July 29 2010 deposition. This estimated value for the farm property was made without the benefit of any accounting or sworn descriptive list received from James N. Thompson. Between July 23 and 26, 2010, shortly before his July 29 2010 deposition, James N. Thompson initiated community property settlement discussions. On July 29, 2010 a community property settlement was reached, which Ms. Thompson accepted on advice of her counsel, Mr. Sadler. That settlement called for James N. Thompson to receive almost all of the real estate, including the farm property, and almost all of the community debt; and for Ms. Thompson to receive a cash payment of $500,000.00. A letter agreement was signed on July 29, 2010, with the formal settlement agreement to be executed by August 15, 2010. Also on July 29, 2010, Ms. Thompson e-mailed Mr. Sadler expressing her concern over the child support situation. On or about August 2, 2010 Ms. Thompson became aware of the pipeline servitude negotiations between James N. Thompson and Acadian Gas Pipeline System when she was contacted by a person identifying himself as a landman. Ms. Thompson e-mailed Mr. Sadler about the undisclosed servitude negotiations on the morning of August 3, 2010, and Mr. Sadler assured her that he would look into it. In the afternoon of August 3, 2010 Mr. Sadler e-mailed Ms. Thompson confirming the gas pipeline, advising that he would talk to James N. Thompson's counsel and "I can then find out about how much money we are talking about and whether we have an issue". On August 5, 2010 Mr. Sadler e-mailed Ms. Thompson that "I will have my real estate partner try and compute the amount of money involved. We can then decide whether this was a material failure to disclose or whether it is just part of what goes with the land." Between August 5, 2010 and August 15, 2010 Ms. Thompson and Mr. Sadler communicated about her concern about the settlement, and Mr. Sadler's opinion that the pipeline servitude was a "value neutral issue" not a material failure to disclose. On August 16, 2010, in response to Ms. Thompson's

August 15, 2010 e-mail inquiring if she still had the option to change her mind about the community property settlement, Mr. Sadler e-mailed Ms. Thompson "This would put me in an awkward situation, since I committed to a settlement. I am bound by this. You could discharge me and hire other counsel, who could then try to set the "deal" aside based on the fact that you were not fully aware of all the issues, and particularly the non-disclosed negotiations with the pipeline company." On August 18, 2010 Ms. Thompson expressed to Mr. Sadler by e-mail that she thought the settlement was "completely ridiculous and one sided". Ms. Thompson did not want to change counsel and on August 23, 2010 the community property settlement was executed, approved and homologated by the court, filed and recorded. Although there was no other currently pending litigation in the domestic relations case, Mr. Sadler did not file a motion to withdraw and remained Ms. Thompson's counsel of record in the domestic relations case until he was replaced by Koby D. Boyett pursuant to court order on July 19, 2011.

On August 27, 2010 Acadian Gas Pipeline System sent James N. Thompson two letters wherein they confirmed "a series of telephone conversations and meetings, the latest conversation taking place on August 5, 2010 regarding your refusal of an offer to purchase a pipeline servitude ... ", and enclosed an agreement containing their offer of $111,308.00 to purchase the servitude on the farm property and an additional $18,004.00 to purchase an additional temporary servitude. These letters stated that the offer was based upon a $17,500.00 per acre value for the farm property. James N. Thompson rejected this $129,312.00 offer. On September 24, 2010 Acadian Gas Pipeline System sued James N. Thompson to expropriate the pipeline servitude on the farm property. The expropriation case was set for trial on December 14, 2010. On October 14, 2010 Mr. Sadler was retained to represent James N. Thompson in the expropriation lawsuit, saw the August 27, 2010 letters, and became aware that the July/August 2010 pipeline negotiations, which James N. Thompson had failed to disclose to Ms. Thompson in the community property case, involved an offer of $129,312.00 and used a $17,500.00 per acre value for the farm property. As of October 14, 2010 Mr. Sadler knew that the estimate which he used to value the farm property in the community property case (827 acres at about $1,572 per acre equals a total value of about $1,300,000.00) was significantly and substantially lower than the value of the farm property being used by James N. Thompson and Acadian Gas Pipeline System in the servitude negotiations (827 acres at $17,500.00 per acre equals a total value of $14,472,500.00). The value of the farm being used in the pipeline negotiation/litigation was more than ten times the value estimated by Mr. Sadler in the community property case. On December 14, 2010 Mr. Sadler negotiated a settlement of the expropriation suit for $275,000.00 plus $12,500.00 for attorney's fees.

By failing to obtain an appraisal or other expert evaluation of the community property, particularly after discovering the failure to disclose the pipeline negations, Mr. Sadler failed to act with diligence in violation of Rule 1.3. By failing to provide Ms. Thompson with an appraisal or other expert evaluation of the community property, particularly after discovering the failure to disclose the pipeline negations, Mr. Sadler failed to reasonably consult with his client

> about the means to accomplish an equal division of the community property, and failed to provide her with sufficient information to participate intelligently in decisions concerning the community property division in violation of Rule 1.4(a)(2) & (b). By accepting the representation of James N. Thompson in the pipeline expropriation litigation involving the farm property, particularly after discovering that the pipeline negotiation/litigation was using a per acre valuation for the farm property ($17,500) which was more than ten times the estimated per acre valuation which Mr. Sadler had used in the community property matter ($1,572), without obtaining informed consent, confirmed in writing, from both Ms. Thompson and James N. Thompson, Mr. Sadler violated Rules 1.9(a); and/or 1.7(a)(1)(2) (b)(4); and 1.16(a)(1) . Once Mr. Sadler became aware that the pipeline expropriation negotiation/litigation was using a value for the farm property which was ten times the estimated value that he had used in the community property settlement, his failure to disclose that fact to Ms. Thompson and the court which had approved the community property settlement violated Rules 4.1(b) and/or 3.1(a)(1) or (b) [reference also Rules 1.8(b) and 1.6(b)(3)]. Mr. Sadler's misconduct as detailed above also violated Rules 8.4(a) & (d).

On June 12, 2012, Leslie J. Schiff enrolled as counsel on behalf of Respondent. On June 27, 2012, Respondent filed an answer through counsel. This matter was assigned to Hearing Committee Number 7 ("the Committee").[3]

A hearing of this matter was scheduled for October 17, 2012. ODC filed its pre-hearing memorandum on September 28, 2012. Respondent filed his memorandum on October 4, 2012. The parties also filed a Joint Stipulations of Facts and a Joint Agreement regarding exhibits on October 15, 2012.

The hearing was held as scheduled. Deputy Disciplinary Counsel G. Fred Ours appeared on behalf of ODC. Respondent appeared along with his counsel, Leslie J. Schiff.

The Committee filed its report on January 11, 2013. The Committee's factual findings and analysis are very detailed and thorough. The findings and conclusions are not reproduced in this recommendation because of their length, but can be found at pages 7-23 of the Committee's

[3] The Committee was composed of Kendrick J. Guidry (Chairman), George R. Ramier (Lawyer Member), and R. Reed Mendelson (Public Member).

report.[4] As noted above, the Committee concluded that Respondent violated Rules 1.3, 1.9(a), 1.16(a)(1), and 8.4(a). As a sanction, the Committee recommended that Respondent be publicly reprimanded. The Committee also recommended that Respondent:

(1) Attend the LSBA's Ethics School and/or CLE programs geared toward study and analysis of conflicts of interest and diligent representation of clients; and
(2) Respondent pay all costs and expenses of the disciplinary proceedings.

Hearing Committee Report, p. 27.

This matter was docketed for oral argument on March 7, 2013, before Board Panel "B". However, on January 31, 2013, ODC and Respondent filed a Joint Statement to [the] Louisiana Attorney Disciplinary Board. In this statement, ODC and Respondent agreed that "the recommendation of the Hearing Committee of a public reprimand is reasonable and proper." Joint Statement to Louisiana Attorney Disciplinary Board (1/31/13), ¶3. The parties waived the opportunity to present briefs and argument to the Board.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges … and petitions for reinstatement, and 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

[4] The Hearing Committee Report is attached to this recommendation as Appendix B.

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 do not appear to be manifestly erroneous and are supported by the record.

B. *De Novo* Review

The Committee correctly applied the Rules of Professional Conduct. The record supports the Committee's conclusion that Respondent violated Rules 1.3, 1.9(a), 1.16(a)(1), and 8.4(a), but not Rules 1.4(a)(2), 1.4(b), 1.7(a), 4.1(b), 3.3(a)(1), 3.3(b), or 8.4(d).[5] Each Rule is discussed below.

Rule 1.3: Rule 1.3 states that a lawyer shall act with reasonable diligence and promptness when representing a client. Here, the Committee concluded that Respondent's failure to further investigate the effect of the proposed pipeline on the value of the farm property after becoming aware of the issue while he represented Ms. Thompson constituted a violation of Rule 1.3. The Committee's conclusion that Respondent violated Rule 1.3 is supported by the factual findings and relevant law.

The mere failure to fully investigate a particular issue during the course of the representation of a client does not necessarily constitute a violation of Rule 1.3. Rather, depending on the circumstances, such a failure in diligence may only constitute legal malpractice. The Louisiana Supreme Court has held that legal malpractice does not equal professional misconduct in all cases. *In re Brown*, 2007-0995 (La. 10/17/07), 967 So.2d 482.

[5] In the formal charges, ODC also references Rules 1.8(b) and 1.6(b)(3). Given the context, it does not appear that ODC alleges that Respondent violated these Rules. Rather, it appears that ODC referenced the substance of the Rules as an aide to determining whether Rules 4.1(b) and/or 3.3(a)(1) or (b) were violated.

> The question of when ordinary legal malpractice becomes an ethical violation is somewhat unclear. Strictly speaking, virtually any time an attorney allows his client's case to prescribe or to become abandoned, it could be said the attorney lacks competence in violation of Rule 1.1 and failed to act with diligence in violation of Rule 1.3. However, as a practical matter, disciplinary sanctions are not always appropriate in every instance in which an attorney commits minor violations of the Rules of Professional Conduct. *In re: Hartley*, 03-2828 (La.4/2/04), 869 So.2d 799. When significant discipline has been imposed in this context, the cases typically involve situations in which the malpractice is combined with additional misconduct, such as where the attorney acts with deceit or misrepresents facts in an effort to conceal the malpractice from the client. *See, e.g., In re: Blanson*, 05-2561 (La.6/2/06), 930 So.2d 943 (attorney suspended for three years for allowing a suit to become abandoned and falsely assuring the client the suit was still pending when it had been dismissed).

Id. at 486. Thus, in order for acts of legal malpractice to rise to the level of professional misconduct, the malpractice must generally be combined with additional acts of misconduct.

Here, after learning of the pipeline issue, Respondent conducted a very limited investigation into the effect of the pipeline on the value of the land and did not discover the $17,500 per acre offer by the pipeline company.[6] The record indicates that Respondent did nothing more than discuss the matter with opposing counsel, Steve Mansour. Transcript, pp. 247-249. Respondent's testimony indicates that he agreed with Mr. Mansour's opinion that the pipeline was value neutral, i.e. had no effect on the value of the property.

> And the tenor of the conversation was is this a significant issue, is this something that should unwind the settlement? And Steve said something to me that made perfect sense and I bought into it. Whether I should have or not, time will tell. But he said, look, this is an expropriation. All we're doing is getting value for value, whatever the property is worth, it doesn't -- it's not like extra money. It replaces damage to the property. So it's a cash neutral or a net worth neutral transaction. And I think he was right.

Id. at 248. Respondent's failure to investigate the issue beyond this conversation could constitute legal malpractice but does not necessarily rise to the level of professional misconduct.

[6] Between the signing of the community property agreement on July 29, 2010 and the date of the homologation on August 23, 2010, the pipeline company had not taken any formal action other than making offers to Mr. Thompson. The pipeline company did not file the expropriation action until September 28, 2010, after Respondent's representation of Ms. Thompson had concluded. See Respondent Exhibit S-40 (expropriation lawsuit).

The circumstances that raise the potential malpractice to the level of professional misconduct is the combination of the conduct above and Respondent's response to Ms. Thompson's reservations about continuing with the settlement after learning that Dr. Thompson had not disclosed the pipeline issue. The Committee found "…Ms. Thompson expressed to Respondent more than just the usual misgivings regarding a settlement agreement" after learning of the expropriation issue. Hearing Committee Report, p. 14. This finding is supported by the record. *See* Respondent's Exhibits S32, S34, and S35; and Transcript pp. 101-102. Respondent's response to Ms. Thompson's reservations was for her to hire other counsel to challenge the agreement. In an email sent to Ms. Thompson on August 16, 2010, Respondent stated:

> [Setting aside the agreement] would put me in an awkward situation, since I committed to a settlement. I am bound by this. You could discharge me and hire other counsel, who could then try to set the "deal" aside based on the fact that you were not fully aware of all the issues, and particularly the non-disclosed negotiations with the pipeline company. If you want to do this, I promise it will not hurt my feelings. The foremost thing is for you to be comfortable with the settlement. I just can't retract a deal I made.

Respondent Exhibit S32. After reading this response, Ms. Thompson testified that she felt "trapped." Transcript p. 109.

Rule 1.2 states that a "lawyer shall abide by a client's decisions concerning the objectives of representation …"[7] Rule 1.2 also states that "A lawyer shall abide by a client's decision whether to settle a matter." Ms. Thompson expressed an objective to either back out of the settlement because of the non-disclosure or, at the very least, learn more about the pipeline issue. Respondent's response of "hire another lawyer" was not consistent with abiding by her objective. Accordingly, Respondent's failure to diligently investigate the pipeline's effect on the value of

[7] ODC did not charge Respondent with violating Rule 1.2. However, the substance of Rule 1.2 is relevant to the interpretation of Rule 1.3 in this matter.

the property combined with his failure to abide by his client's objective constitute a violation of Rule 1.3.

Rule 1.4(a)(2) & 1.4(b): Rule 1.4(a)(2) states that a lawyer shall "reasonably consult with the client about the means by which the client's objectives are to be accomplished." Likewise, Rule 1.4(b) states that a lawyer shall "give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Here, the Committee concluded that Respondent provided "adequate and reasonable consultation" to Ms. Thompson regarding the pipeline negotiation. Hearing Committee Report, p. 21. Accordingly, the Committee found that Respondent did not violate Rule 1.4(a)(2) or 1.4(b). This conclusion is supported by the record.

This conclusion is consistent with the finding that Respondent violated Rule 1.3. While Respondent maintained adequate communication with Ms. Thompson and provided reasonable consultation, he did not diligently pursue the course of action that he should have.

Rule 1.7(a) & Rule 1.9(a): Rule 1.7(a) states that a lawyer shall not represent a client if a concurrent conflict of interest exists. A concurrent conflicts exists if "the representation of one client will be directly adverse to another client" or "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." Rule 1.9 states that a "lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing."

ODC charged Respondent with violating Rule 1.7(a) or, in the alternative, Rule 1.9(a). In this matter, the determination of what Rule applies turns on whether Ms. Thompson was Respondent's current or former client when he commenced the representation of Dr. Thompson in October 2010. The Committee concluded that Ms. Thompson was a former client. This conclusion is correct. It is undisputed that Respondent was retained by Ms. Thompson to handle her community property partition only. He was not retained for any other aspect of the domestic litigation. The community property partition was concluded on August 23, 2010. *See* Respondent Exhibits S38 & S39. It is also undisputed that after August 23, 2010, there were no other legal matters Respondent was expected to address on behalf of Ms. Thompson.[8] Accordingly, Respondent's representation of Ms. Thompson concluded on August 23, 2010, and she was a "former client" at the time Respondent commenced his representation of Dr. Thompson in October 2010. Thus, Rule 1.9(a) is applicable.[9]

Turning to the substance of Rule 1.9(a), the first issue is whether the community property matter and the expropriation matter are substantially related. In *Walker v. State Department of Transportation and Development*, the Louisiana Supreme Court held that two matters are substantially related "when they are so interrelated both in fact and substance that a reasonable person would not be able to disassociate the two." Here, the Committee found that the value of the farm property was a central issue in both the community property matter and the expropriation matter, thereby making the two matters "substantially related" for the purposes of Rule 1.9(a). The record supports this conclusion. The amount of money Ms. Thompson was to

[8] The formal charges suggest that Ms. Thompson also discussed a child support issue with Respondent in a July 29, 2010 email. However, a reading of this email demonstrates that child support was mentioned only in the context of a condition or term of the community property settlement. *See* Respondent Exhibit S-28.

[9] ODC advanced the argument that because Respondent was still enrolled as counsel in the domestic litigation the attorney-client relationship between Respondent and Ms. Thompson was on-going. However, ODC presented no legal authority stating that an attorney-client relationship is on-going until a formal motion to withdraw is filed and granted. *See* Hearing Committee Report, p. 16.

receive pursuant to the community property partition was dependent on determining the value of the community assets, which included the farm property. Likewise, the amount of compensation Dr. Thompson was to receive pursuant to the expropriation of a portion of the farm property for the pipeline was dependent upon placing a value on the farm property.

The second factor in determining a 1.9(a) violation is whether the interests of the client are materially adverse to the former client. Here, the Committee concluded that Dr. Thompson's interests were materially adverse to Ms. Thompson. Again, the record supports this conclusion. By not knowing the per acre value that the pipeline company offered Dr. Thompson, Ms. Thompson was deprived of significant bargaining power in the community property settlement because of the high value the pipeline company was offering per acre.[10]

Finally, pursuant to Rule 1.9(a), if two matters are substantially related and the interests are materially adverse, the lawyer may still represent the client if he obtains the written, informed consent of the former client. Here, it is undisputed that Respondent did not obtain Ms. Thompson's informed consent. Accordingly, the record supports the Committee's conclusion that Respondent violated Rule 1.9(a).

Rule 1.16(a)(1): Rule 1.16(a)(1) states, in pertinent part, a lawyer shall not represent a client if the representation will result in violations of the Rules of Professional Conduct or other law. Here, because Respondent did not obtain Ms. Thompson's informed consent, his was not allowed to commence the representation of Dr. Thompson. Accordingly, the record supports the Committee's conclusion that Respondent violated Rule 1.16(a)(1).

Rule 4.1(b): Rule 4.1(b) states, in pertinent part, that "[i]n the course of representing a client a lawyer shall not knowingly … fail to disclose a material fact when disclosure is necessary to

[10] As determined by the Committee, it was not established by ODC or Respondent whether the $17,500 offer by the pipeline company would have netted Ms. Thompson more than she received in the community property settlement executed on August 23, 2010. *See* Hearing Committee Report, pp. 18-19.

avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6." Here, the Committee concluded that Respondent did not violate this Rule. As noted above, neither ODC nor Respondent proved that the $17,500 offer by the pipeline company would have changed the community property settlement in any way. In other words, there is no evidence that Ms. Thompson would have obtained a judgment higher than the $500,000 settlement amount had the community issue gone to trial. In fact, an appraisal conducted immediately prior to the community property homologation on August 12, 2010 valued the farm at $1,250 per acre for a total value of $1,064,400, which is less than the $1,300,000 value used by Respondent in his list of community assets. *See* Respondent Exhibit S-51 (August 12, 2012 appraisal) and Exhibit S-22 (Respondent's list of community assets[11]). Thus, without evidence of a definite impact on the community property settlement, there is no evidence that Dr. Thompson's failure to disclose the pipeline negotiations were either material or fraudulent. At most, as discussed in detail above, Ms. Thompson was deprived of bargaining power. Accordingly, the record supports the Committee's conclusion that Respondent did not violate Rule 4.1(b).

Rule 3.3(a)(1) & 3.3(b): Rule 3.3(a)(1) states that a lawyer shall not knowingly "make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Likewise, Rule 3.3(b) states that a "lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal." Here, the Committee concluded that Respondent did not violate this Rule. First, when Respondent represented Ms. Thompson in the community property partition, he was unaware of the $17,500

[11] When compiling the list of assets, Respondent based the value of the farm on an August 28, 2004 appraisal, which valued the farm at $1,050 per acre for a total of $830,000. *See* Respondent Exhibit S-52. The Thompsons acquired additional acreage after the date of the 2004 appraisal.

per acre offer to Dr. Thompson by the pipeline company. Thus, it cannot be said that he failed to correct a false statement of fact. Second, as discussed above, there is no evidence of fraudulent or criminal conduct on behalf of Dr. Thompson. Accordingly, the record supports the Committee's conclusion that Respondent did not violate Rules 3.3(a)(1) or 3.3(b).

Rule 8.4(d): Rule 8.4(d) states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Here, there is no evidence of dishonest conduct by Respondent, concealment of fraudulent or criminal conduct by Respondent, or evidence that the community property settlement would have concluded differently had the offer of the pipeline company been known at the time of the settlement. Absent these factors, it cannot be said that Respondent's misconduct was prejudicial to the administration of justice. Accordingly, the record supports the Committee's conclusion that Respondent did not violate Rule 8.4(d).

Rule 8.4(a): Rule 8.4(a) states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct. Here, by violating Rules 1.3, 1.9(a), and 1.16(a)(1), Respondent 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 violated duties owed to his client/former client by failing to diligently investigate a important aspect of Ms. Thompson's community property settlement and by subsequently failing to obtain Ms. Thompson's informed consent prior to representing Dr. Thompson in the expropriation matter. Respondent's misconduct appears to be the result of negligence as opposed to intentional actions. As the Committee noted, Respondent actually considered the diligence and conflict issues but simply (and negligently) chose the wrong course of action. *See* Hearing Committee Report, p. 24.

The harm/potential harm element is not as clear as the duty and mental state elements. The only actual harm that appears to have resulted from Respondent's actions was Ms. Thompson's loss of bargaining power in the community property negotiation because of Respondent's failure to diligently investigate and discover the pipeline company's $17,500 per acre offer prior to the community property homologation on August 23, 2010. However, as mentioned above, there was no evidence that the amount that Ms. Thompson received in the community property settlement would have been higher had the per acre value offered by the pipeline company had been known. Potentially, Ms. Thompson could have obtained a more favorable settlement. However, this has to be balanced with the possibility that the expropriation could have negatively affected the value of the farm, thereby causing a less favorable community property settlement.

The following mitigating factors, as found by the Committee, are supported by the record: absence of a prior disciplinary record; absence of a dishonest or selfish motive; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and character and reputation.[12]

[12] ODC appears to acknowledge this mitigating factor by listing "prior good character and reputation" as a mitigating factors in its pre-hearing memorandum. ODC's Pre-hearing Memorandum (9/28/12), p. 17.

The only aggravating factor supported by the record is Respondent's substantial experience in the practice of law. He was admitted to the bar in Louisiana on September 21, 1972. The Committee also found vulnerability of the victim and refusal to acknowledge the wrongful nature of the conduct as aggravating factors. These aggravating factors are not supported by the record. With regard to the vulnerability of Ms. Thompson,[13] the Committee's report and the record do not indicate what factors made Ms. Thompson vulnerable. There is testimony and evidence regarding her inability to provide funds to hire experts but this factor was out of Respondent's control and he was not obligated to advance funds for these services. On the other hand, as found by the Committee, Respondent frequently communicated and consulted with Ms. Thompson. In other words, she was continually made aware of the status of the community property settlement. Accordingly, the Board rejects the Committee's finding of vulnerability of the victim as an aggravating factor. Likewise, the Board rejects the Committee's finding of refusal to acknowledge the wrongful nature of the conduct as an aggravating factor. Again, the Committee's report does not indicate what findings support this aggravating factor. First, while Respondent still believes the expropriation was a "value neutral" occurrence, this does not indicate that he refuses to acknowledge his lack of diligence absent a finding that the expropriation was not "value neutral." *See* Transcript, pp. 248-249. Second, Respondent never denied that a conflict did exist. Rather, he testified that at the time he considered the issue before accepting the representation of Dr. Thompson, he did not think a conflict existed. *Id*. at 255-256. Third, on January 31, 2013, Respondent and ODC filed a Joint Statement to the Louisiana Attorney Disciplinary Board, in which the parties agreed that the recommendation of the

[13] The Committee's report does not state who the "victim" is. It is assumed that the "victim" is Ms. Thompson, the complainant in this matter.

Committee is "reasonable and proper." Accordingly, the Board rejects as an aggravating factor Respondent's refusal to acknowledge the wrongful nature of the conduct.

B. The ABA Standards and Caselaw

The *ABA Standards for Imposing Lawyer Sanctions* indicate that public reprimand is the baseline sanction in this matter. The relevant standards are listed below:

> Standard 4.42 – Suspension is generally appropriate when:
> a. a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
> b. a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
>
> Standard 4.43 – Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
>
> Standard 4.32 – Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
>
> Standard 4.33 – Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

As discussed above, Respondent's misconduct was negligent as opposed to knowing or intentional. His conduct caused actual and potential harm to Ms. Thompson. However, the extent of the harm is not apparent. Based upon the Standards listed above, reprimand is the baseline sanction.

With regard to the case law, there are no closely analogous disciplinary opinions that have been issued by the Louisiana Supreme Court or the Disciplinary Board that involve violations of Rule 1.9(a). However, there is similar case law involving violations of Rule 1.7 (conflicts of interest with current clients). These cases are briefly discussed below.

In *In re Pardue*, the Court suspended Mr. Pardue for six months for engaging in a concurrent conflict of interest. 2002-0169 (La. 4/12/02), 814 So.2d 1269. While Mr. Pardue represented the administratrix of a succession he advised heirs to oppose the administratrix and signed pleadings on their behalf. The conduct was knowing but caused no actual harm to the administratrix.

In *In re Blair*, the Court suspended Mr. Blair for three months for engaging in a concurrent conflict of interest. 2002-2164 (La. 2/25/03), 840 So.2d 1191. At the time Mr. Blair represented the testator and the testator's niece, he prepared a will for the testator that adversely affected the niece's right. When the testator's niece challenged the will, Mr. Blair represented the executrix. Additionally, Mr. Blair named his wife as a legatee in the will, which is prohibited by Rule 1.8(c).[14] The Court found that Mr. Blair's actions were the result of negligence rather than "any improper motive." *Id*. at 1197. The only aggravating factor recognized by the Court was the vulnerability of the victim. In mitigation, the Court recognized Mr. Blair's lack of a prior disciplinary record, his inexperience in the practice of law, and his remorse.

In *In re Vidrine*, the Court upheld the Board's imposition of a public reprimand for engaging in a concurrent conflict of interest and for making false representations to a tribunal. 2011-1209 (La. 10/7/11), 72 So.2d 345. *See also In re Vidrine*, 10-DB-015, Recommendation of the Louisiana Attorney Disciplinary Board (6/3/11). Mr. Vidrine was initially retained by two siblings seeking to probate the wills of their deceased parents. The siblings were named co-

[14] Rule 1.8(c) states:

> A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift, is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, or grandparent.

Mr. Blair's wife was a close family friend of the testator.

executors in the wills. The wills disinherited three other siblings. However, the two siblings decided not to proceed with the probate. Rather, Mr. Vidrine prepared and filed a petition on behalf of all five siblings seeking to proceed with the matter as an intestate succession. The petition falsely stated that there was no will. Subsequently, the two siblings favored by the wills had a change of heart and Mr. Vidrine filed the wills for probate on their behalf, which was detrimental to the three other siblings. The Board found that Mr. Vidrine negligently engaged in a conflict of interest and knowingly filed pleadings containing misrepresentations. The only aggravating factor was Respondent's substantial experience in the practice of law. There were several mitigating factors: absence of a prior disciplinary record; absence of a dishonest or selfish motive; timely effort to rectify the consequences of the misconduct; full and free disclosure to the disciplinary board and a cooperative attitude toward the proceeding; character and reputation; and remorse.

While the ABA Standards suggest that reprimand is the baseline sanction, the case law indicates that this matter is on the line between suspension and reprimand. In *Blair*, contrary to the baseline sanction called for by the ABA Standards, the Court imposed a three-month suspension for negligent conduct. However, in *Vidrine*, the Court agreed that reprimand was appropriate for misconduct that was a combination of negligent and knowing actions and that was more egregious than the misconduct present in *Blair*. While the misconduct in this matter does not appear to be more or less egregious than the misconduct in *Blair*, the misconduct in *Vidrine* is more egregious than the misconduct at issue here. Given that *Vidrine* is a more recent decision, the ABA Standards call for a baseline of reprimand, and the mitigating factors outweigh the aggravating factors, reprimand appears to be the appropriate sanction in this matter.

CONCLUSION

The Board adopts the factual findings and legal conclusions of the Committee. Furthermore, the Board adopts the sanction recommended by the Committee – public reprimand. The Committee also recommended, as a condition, that Respondent "[a]ttend the LSBA's Ethics School and/or attend CLE programs geared toward study and analysis of conflicts of interests and diligent representation of clients." Hearing Committee Report, p. 27. While the record does not necessarily indicate that Respondent needs instruction in the diligent representation of clients, it does appear that he would benefit from attending CLE classes geared toward the analysis of conflicts of interest. Thus, the Board also orders Respondent to attend two (2) hours of additional CLE geared toward conflicts of interest within a year of the conclusion of this matter. Finally, the Board assesses Respondent with the costs and expenses of this matter.

RULING

Based on the foregoing, the Board hereby orders that Respondent, H. Brenner Sadler, be publicly reprimanded. The Board also orders that Respondent attend two (2) hours of additional CLE geared toward conflicts of interest within a year of the conclusion of this matter. Finally, Respondent is to be assessed with the costs and expenses of this matter.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Carl A. Butler
Stephen F. Chiccarelli
Tara L. Mason
Edwin G. Preis, Jr.
R. Lewis Smith, Jr.
Linda P. Spain
R. Steven Tew

BY:
Jamie E. Fontenot
FOR THE ADJUDICATIVE COMMITTEE

George L. Crain, Jr. – Dissents with reason.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: H. BRENNER SADLER

DOCKET NO.: 12-DB-032

DISSET

I find that Mr. Sadler failed to have the farm appraised to obtained the true value of the property before settling the community property therefore, costing his client a substantial amount of money.

By: _____

George L. Crain, Jr.
Adjudicative Committee Member

APPENDIX A

RULE 1.3. DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4. COMMUNICATION [in pertinent part]

(a) A lawyer shall:
***
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
***
(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.
***

RULE 1.7. CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
(1) the representation of one client will be directly adverse to another client; or
(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
(2) the representation is not prohibited by law;
(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
(4) each affected client gives informed consent, confirmed in writing.

RULE 1.9. DUTIES TO FORMER CLIENTS [in pertinent part]

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
***

RULE 1.16. DECLINING OR TERMINATING REPRESENTATION [in pertinent part]

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
(1) the representation will result in violation of the rules of professional conduct or other law;
***

RULE 3.3. CANDOR TOWARD THE TRIBUNAL [in pertinent part]

(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
***

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
***

RULE 4.1. TRUTHFULNESS IN STATEMENTS TO OTHERS [in pertinent part]

In the course of representing a client a lawyer shall not knowingly:
***

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

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

(d) Engage in conduct that is prejudicial to the administration of justice;
***