LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JAMES B. DOYLE

NUMBER: 11-DB-011

RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

This is a disciplinary proceeding based upon the filing of formal charges against James B. Doyle ("Respondent") by the Office of Disciplinary Counsel ("ODC"). Respondent is currently eligible to practice law in Louisiana.

The charges allege that Respondent violated Rules 3.3(a),[1] 8.4(a), and 8.4(c),[2] of the Rules of Professional Conduct with respect to his involvement in his wife's personal legal matter. After reviewing the hearing testimony and the documentary evidence, the Hearing Committee concluded that the record did not contain sufficient evidence to clearly and convincingly establish that Respondent had engaged in professional misconduct. Thus, the Committee recommended that the matter be dismissed.

For the reasons set forth below, the Board adopts the Committee's findings of fact and makes some additional findings with respect to aggravating and mitigating factors. The Board rejects the Committee's conclusion that there is insufficient evidence to clearly and convincingly establish that Respondent violated the Rules of Professional Conduct as charged. The Board also rejects the Committee's recommendation that the matter be dismissed. Based on a thorough,

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[1] Rule 3.3(a) 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.

[2] 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;

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

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independent review of the record, the Board finds that there is sufficient evidence to support the conclusion that Respondent engaged in professional misconduct with respect to his wife's personal legal matter. Accordingly, the Board rules that Respondent be publicly reprimanded for his misconduct. In addition, the Board orders that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1(A).

PROCEDURAL HISTORY

ODC opened the complaint against Respondent in April 2007. Upon completing its investigation in August 2008, ODC closed the complaint based on a lack of clear and convincing evidence of prosecutable misconduct. The Complainant timely exercised his right to appeal ODC's decision, and the appeal of dismissal was assigned to Hearing Committee No. 26 for review. Hearing Committee No. 26 remanded the matter with specific findings. ODC conducted additional investigation and submitted a remand report further explaining its decision to close the matter. Hearing Committee No. 26 remanded the matter a second time with additional findings and directed ODC to proceed with formal charges.[3]

ODC reopened the complaint and formal charges against Respondent were filed on January 25, 2011. In the charges, ODC alleges that Respondent violated Rules of Professional Conduct 3.3(a) (knowingly making a false statement of fact or law to a tribunal), 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit and misrepresentation). The formal charges were served upon Respondent via certified mail at his primary and secondary registration addresses on February 7, 2011.

[3] *See* Pre Argument Brief By the Office of Disciplinary Counsel, pp. 1-2.

Leslie J. Schiff enrolled as counsel for Respondent on February 16, 2011. Respondent filed his Answer to Formal Charges on February 23, 2011 through his counsel, Mr. Schiff.

The Board Administrator scheduled the formal hearing in the matter for June 16, 2011 before Hearing Committee No. 41 ("Committee"). ODC filed its pre-hearing memorandum on June 3, 2011. Respondent filed his Pre-hearing Memorandum on June 8, 2011, in which he denied that his conduct was unethical or violated the Rules of Professional Conduct.

The hearing in the matter was held as scheduled on June 16, 2011. Deputy Disciplinary Counsel, Damon S. Manning, appeared on behalf of ODC. Respondent appeared with his attorney, Leslie J. Schiff. ODC and Respondent jointly introduced various exhibits that were entered into the record as Exhibits ODC-1 through ODC-16, with Exhibits ODC-6A and ODC-8A filed under seal. In addition, the following witnesses testified at the hearing: Alvin King, counsel of record for Respondent's wife, Cynthia Doyle, in the underlying litigation; Judge Guy Bradberry, the judge presiding over the underlying litigation; Randy Fuerst, opposing counsel in the underlying litigation; Walter Sanchez, successor counsel of record for Cynthia Doyle in the underlying litigation; Complainant Louis Mere, Jr.; and Respondent James Doyle.

The Committee issued its report on August 31, 2011. Based upon the evidence record, the Committee concluded that Respondent did not violate the Rules of Professional Conduct and recommended that the matter be dismissed.

Respondent filed his concurrence with the findings and conclusions of the Committee on September 2, 2011. On September 6, 2011, ODC filed a Notice of Objection to the Committee's finding that ODC failed to demonstrate or prove its case by clear and convincing evidence.

Oral argument in the matter was heard by Panel "B" of the Disciplinary Board on November 4, 2011. Deputy Disciplinary Counsel, Mr. Manning appeared on behalf of ODC.

Steven R. Scheckman argued on behalf of Respondent's counsel of record, Mr. Schiff. Respondent did not appear due to ill health.

FORMAL CHARGES

The formal charges in the matter read as follows:

COUNT I

In February of 2007, the Office of Disciplinary Counsel received a complaint against Respondent filed by Louis Mere. The matter was assigned investigative file number 0022475, and is summarized as follows.

Cynthia Doyle is the ex-wife of Complainant Louis Mere. At all times pertinent to these disciplinary proceedings, Cynthia Doyle was married to Respondent James Doyle.

Cynthia Doyle was involved in custody and visitation litigation with her ex-husband, Louis Mere. Alvin King represented Cynthia Doyle, and Randy Fuerst represented Louis Mere in the family law matter. The parties had undergone psychological evaluation by Dr. Patricia Post who was to file a report and make recommendations to the Court regarding custody and visitation. A hearing was scheduled in the Matter for June 15, 2004.

On or about June 7, 2004, Respondent and Cynthia Doyle traveled to Europe on business and were unavailable for the June 15, 2004 hearing. As a result, Mr. King moved to continue the hearing on behalf of Cynthia Doyle. Although the motion was granted, both counsel of record were ordered to appear in Court on June 15, 2004 for a status conference.

Meanwhile, Dr. Post issued her report and recommendations on June 9, 2004. A copy of the report was forwarded to Respondent in Europe.

On June 15, 2004, Attorneys Alvin King and Randy Fuerst appeared before Judge Guy Bradberry where they stipulated that Dr. Post's recommendations would become the interim order of the Court. Judge Bradberry instructed Randy Fuerst to prepare an interim judgment reflecting their stipulation.

On or about June 22, 2004, Respondent and Cynthia Doyle returned from Europe. At some point, Respondent drafted an Interim Joint Custody Order for use in connection with the Cynthia Doyle family law litigation. The Interim Order drafted by Respondent was much broader than Dr. Post's recommendations. On July 1, 2004, Respondent forwarded the draft Interim Order to Cynthia Doyle's attorney, Alvin King. Respondent's cover letter to Mr. King stated,

> "We will not agree to any Order being issued which does not contain these protections, which are not only reasonable under the

> circumstances, but required... We will not agree to any implementation of any visitation unless that plan [referring to Louis Mere undergoing counseling] is put into place immediately... After you have had a chance to review the proposed Order, please let me know if you have any changes."

Respondent's draft Interim Order contained "findings" of the Court as if the Order was the result of a contradictory hearing. Without making any changes, Mr. King submitted the draft Interim Order to the Court for consideration. Although Mr. King made a copy available for opposing counsel Randy Fuerst's review, the draft Interim Order prepared by Respondent was signed by Judge Bradberry on or about July 7, 2004, without Mr. Fuerst's review or approval.

The Interim Joint Custody Order drafted by Respondent and signed by Judge Bradberry was contrary to the stipulation made by counsel during the June 15, 2004 conference.

On July 8, 2004, Respondent received notice of the signed Interim Joint Custody Order containing the "findings" of the Court. That same day, Respondent dictated a letter to Louis Mere's attorney, Randy Fuerst, advising that he planned to use the Order to prevent Mr. Mere from exercising any visitation with the minor children unless Mr. Mere complied with the terms of the Order. As previously stated, counsel stipulated on June 15, 2004 that Dr. Post's recommendations would become the Interim Order of the Court regarding custody and visitation. However, the signed Order, as prepared by Respondent, went well beyond the recommendations of Dr. Post.

Randy Fuerst notified Judge Bradberry of the situation as soon as he learned of the erroneously signed Interim Order. With assistance and cooperation from Alvin King and Walter Sanchez, [FN1] the Interim Order was vacated and a new Stipulated Judgment was put into place on July 16, 2004, nine days after the initial Order was signed.

Respondent assumed the role of co-counsel for Cynthia Doyle. Respondent drafted a proposed Interim Joint Custody Order that went well beyond both the stipulation of counsel and the intent of the Court. Respondent drafted the proposed Order and engaged in misrepresentation by inserting "findings" of the Court knowing full well there had been no hearing on the merits or findings made by the Court. When the proposed Order was erroneously signed by the Court, Respondent used it to threaten the opposing party.

Respondent violated Rule 8.4(a) (violated or attempted to violate the Rules of Professional Conduct, knowingly assisted or induced another to do so, or did so through the acts of another). Respondent's violation of Rule 8.4(a) arises out of his violation or attempted violation of Rules 3.3(a) (knowingly made a false statement of fact or law to a tribunal), and 8.4(c) (engaged in conduct involving dishonesty, fraud, deceit or misrepresentation).

[FN1] During this time, Alvin King retired and Walter Sanchez took over the representation of Cynthia Doyle.

THE HEARING COMMITTEE'S REPORT

As stated above, the formal hearing in this matter was held on June 16, 2011. After reviewing the testimony presented at the hearing and the documentary evidence, the Committee issued its report on August 31, 2011, making the following findings of fact:

FINDINGS OF FACT

In April of 2004, Respondent was a practicing attorney in Lake Charles, Louisiana, when he married Cynthia Thomason Mere. Cynthia Thomason Mere was divorced from Louis J. Mere and there existed a custody order regarding their children. Shortly before the Respondent's marriage to Cynthia, Louis Mere began having difficulty exercising his visitation rights and had filed for custody. When the matter was fixed for hearing, it conflicted with a business\pleasure trip to Europe that the Doyles had previously planned. Cynthia Doyle's attorney, Alvin King, asked Respondent to prepare a motion for continuance of the hearing because he was in the process of retiring and had no secretary. Respondent complied and the order was sent to Mr. King. Mr. King presented it to the duty Judge at the time and it was signed. The duty Judge, not being the Judge assigned to the case, granted the continuance but ordered that counsel for the parties appear on the June 15th date before the assigned Judge, Judge Bradberry.

Alvin King, counsel for Cynthia Doyle and Randy Fuerst, counsel for Louis Mere did appear on June 15, 2004 and had discussions with the Judge Bradberry regarding the case. The evaluation report in the domestic matter had been received by the court from Dr. Pat Post. It was received after the motion for continuance was granted but before the June 15th date set for counsel to appear. After counsel for parties discussed the matter they appeared in court and entered a stipulation that the recommendations of Dr. Post, as contained in her report, would be implemented and that a judgment to that effect would be prepared by Randy Fuerst, counsel for Louis J. Mere, and submitted to the court.

Alvin King never informed his client or Respondent that a stipulation had been entered into by him and Randy Fuerst. At some point in time, Alvin King did forward the recommendation portion of Dr. Post's report to his client and Respondent who were in Europe and asked Respondent to prepare a Judgment. Mr. King told respondent to put whatever was wanted in the judgment and that he would work from there and present it to Judge Bradberry. At all material times, Respondent was either in Europe on [*sic*] in Houston addressing medical issues. The delivery of information to Respondent and his wife usually came via delivery by Mr. King to Respondent's office who forwarded same to Respondent.

> Respondent candidly admitted that he prepared the Judgment that was ultimately signed on July 8, 2004, at the request of Alvin King. Respondent further admitted that the Judgment went beyond the recommendations of Dr. Post, however he was unaware that that [*sic*] a stipulation was already in place regarding the findings of Dr. Post. Respondent's position that he knew nothing of the stipulation is credible since Mr. King had received specific instructions from his client via letter from Respondent the day before the June 15th hearing took place, stating that Mr. King had no authority to stipulate to anything. The committee finds the testimony of Respondent credible and reasonable under the facts since no evidence was introduced, testimony or otherwise which indicated that Respondent knew of the stipulation or that Randy Fuerst was to prepare the judgment resulting from the stipulation.
>
> The charges in this matter arise out of Respondent's alleged violation or attempted violation of Rules 3.3(a) (knowingly making a false statement of fact or law to a tribunal), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). The committee does not find clear and convincing evidence that Respondent knowingly made a false statement of fact or law to the court nor was he trying to do the same through Mr. King. The committee rather finds that Respondent was asked by Mr. King to prepare an order to include what Respondent believed his wife wanted in terms of results from a contested hearing when such hearing would be held. Since Mr. King failed to inform his client and Respondent of the stipulation and the included direction by Judge Bradberry that Mr. Fuerst prepare a judgment to that effect, it is unlikely that the judgment prepared by Respondent could have ever been used in the context of a replacement for the stipulation.

Based upon these findings, the Committee determined that there was not enough clear and convincing evidence to establish that Respondent violated Rule 3.3(a) by making false statements to the court or that he violated Rule 8.8(c) by engaging in acts of dishonesty, fraud, deceit, or misrepresentations. The Committee further concluded that Respondent did not violate Rules 8.4(a) by engaging in conduct in violation of the Rules of Professional Conduct. Thus, the Committee recommended that the matter be dismissed.

ODC'S OBJECTION TO THE HEARING COMMITTEE'S REPORT

As noted above, ODC filed a Notice of Objection to the Committee's report on September 6, 2011. ODC submitted a Pre-argument Brief on October 3, 2011 in which it outlined its objection to the Committee's finding that ODC failed to demonstrate by clear and

convincing evidence that Respondent had engaged in professional misconduct. In its brief, ODC restated the procedural history in this matter—first, that ODC had initially recommended closure of the underlying complaint; next, that the hearing committee reviewing the matter on appeal disagreed and recommended that ODC file formal charges; and lastly, that the Committee presiding over the formal charge hearing recommended that the matter be dismissed due to insufficient evidence of professional misconduct. Since opinions do vary, ODC urged the Board to conduct an independent (*de novo*) review of the complete and thorough evidentiary record made available.

ANALYSIS

I. The Standard of Review

The powers and duties of the Disciplinary Board are defined in Section 2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Subsection (G)(2)(a) states that the Board is "to perform appellate review functions, consisting 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.

Here, the Committee's findings of fact do not appear to be manifestly erroneous. However, *de novo* review of the Committee's application of the Rules of Professional Conduct reveals that the Committee incorrectly concluded that Respondent had not engaged in professional misconduct as alleged in the formal charges. With respect to Rule 8.4(a), which the

Committee did not specifically address in its report, a violation of that Rule appears to be present here. Each of the other alleged Rule violations is discussed below:

A. Rule 3.3(a): Rule 3.3(a) 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. Here, the Committee found that there was no Rule 3.3(a) violation because Mr. King asked Respondent "to prepare an order to include what Respondent believed his wife wanted in terms of results from a formal contested hearing when such a hearing would be held." The Committee also found that Mr. King failed to inform his client or Respondent of the June 15, 2004 stipulation to adopt Dr. Post's recommendations or Judge Bradberry's directive that Mr. Fuerst was to prepare an interim order according to this stipulation. Thus, the Committee concluded it was unlikely Respondent's Interim Joint Custody Order could have been used as a replacement for the June 15, 2004 stipulation. While these findings are supported by the record and do not appear to be manifestly erroneous, the Committee's conclusion that Respondent, therefore, could not have violated Rule 3.3(a) is not well founded. The fact that Respondent was unaware of the stipulation of counsel, or that Mr. Fuerst was asked to prepare the Interim Order, does not automatically free him from culpability. Respondent still had a professional duty to uphold. The problem is not necessarily that Respondent's Order went beyond the stipulation of counsel or the recommendations of Dr. Post, but that it contained false statements of material fact that were presented to the Court.

First, even though Respondent knew there had not been a recent contradictory hearing regarding custody or visitation, his Interim Joint Custody Order included "findings" of the Court as though it was the product of such a hearing. For example, in Paragraph 3, Respondent states:

> b. The Court specifically finds that prior exchanges of the children for visitation has [*sic.*] been difficult, sporadic, and inconsistent . . .
>
> * * *

f. The Court specifically finds, based on the statement of Counsel during status conferences and by the summary and recommendations of Dr. Post, that Luis J. Mere has repeatedly used this Court's prior admonition to the parties to communicate by telephone to arrange visitations and other issues, to harass, promote, and provoke arguments with his childrens' [*sic.*] mother . . .

Exhibit ODC-1C: Respondent's Interim Joint Custody Order, pp. 3-4.

Furthermore, although Respondent received a copy of Dr. Post's report,[4] his Interim Joint Custody Order contains false statements regarding her findings and recommendations. For example, Paragraph 2 of Respondent's Order reads:

> Because of Dr. Post's findings that Louis J. Mere has exhibited significant anger both towards his children and their mother…

Exhibit ODC-1C: Respondent's Interim Joint Custody Order, p. 1. Dr. Post made no finding that Mr. Mere ever exhibited anger *towards* his children. Then, in Paragraph 3, Respondent states:

g. Upon recommendation of Dr. Patricia Post, Louis J. Mere shall engage, at his expense, prior to the implementation of any visitation under this Order, in a minimum of twice monthly counseling session with a properly certified counselor. These counseling sessions shall be exercised with a non-interested party. Excluded counselors include any with family or other ties to Louis J. Mere or his extended family, and ties to any business venture or employment of Louis J. Mere. . . Proof that these counseling sessions are on-going shall be provided on a monthly basis to Cynthia Gay Doyle or her counsel. Failure to follow through on these counseling sessions shall halt all visitation between Louis J. Mere and the minor children.

Exhibit ODC-1C: Respondent's Interim Joint Custody Order, p. 4. Dr. Post actually recommended that Mr. Mere re-enter individual therapy to address ways in which he can rebuild his relationship with his children. She also recommended that "[a]n increase in contact with them should only occur when the girls are comfortable that Louis will be more predictable in his

[4] Only the last four pages of Dr. Post's report containing the Summary and Recommendations were made available to the parties (pp. 16-19).

manner, and when he will be able to be more flexible in his approach to issues important to the children."[5] Dr. Post did not recommend that Mr. Mere engage in therapy *before* any visitation plan was implemented, as Respondent's Order suggests.

B. **Rule 8.4(c):** Rule 8.4(c) states that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation." In Respondent's Answer to Formal Charges, he denies that his Interim Joint Custody Order was "much broader" than the recommendations in Dr. Post's report. He claims that he adopted and included Dr. Post's recommendations but added mechanisms to ensure compliance. This claim is not supported by the record. For example, Paragraph 3 of Respondent's Interim Joint Custody Order reads:

> g. [Daughter I] is exempted from this visitation, and no provision is made herein for visitation between [Daughter 1] and Louis J. Mere unless said visitation is specifically agreed to by the parties in writing, in advance of such visitation, and after approval of said visitation by the counselors appointed by the parties under the Order.

Exhibit ODC-1C: Respondent's Interim Joint Custody Order, p. 3. This paragraph not only ignores Dr. Post's recommended visitation, but it contradicts her recommendation that Daughter 1 and Mr. Mere need to begin working on their relationship:

> 3. [Daughter 1] should not be required to spend overnight time with her father given her level of anxiety, post traumatic stress issues, and concern about her father's behavior toward her. However [Daughter 1] and her father need to work on their relationship by beginning to attend activities she enjoys with her father. [Daughter 1] should have the responsibility of spending two hours weekly with her father. They could attend a movie together, go out to eat together, attend musical performances, etc. . . . As [Daughter 1] feels more comfortable, she could begin longer visits and stay over night in her father's home.

Exhibit ODC-6A: Dr. Post's Summary and Recommendations.

Furthermore, Respondent asserts that, at all relevant times, Mr. King was Cynthia Doyle's attorney, and Respondent was acting only as Ms. Doyle's husband who was "by

[5] Exhibit ODC-6A, Dr. Post's Summary and Recommendations, pp. 17-18.

coincidence an attorney."[6] Respondent insists that he served merely "as a scribe at the request of his wife's lawyer"[7] and that King delivered the order to Judge Bradberry's office, "apparently without editing the order to comply with the stipulation."[8] This does not necessarily square with the documentary evidence. For example, Respondent's June 29, 2004 cover letter to Mr. King regarding the Interim Joint Custody Order states:

> **I am attaching an original and two copies of the draft Interim Order I would like you to present to Judge Bradberry for his signature**.... I understand the purpose of the status conference with Judge Bradberry on Thursday is for the confection of an interim Joint Custody Plan...
>
> ...I have attached to this letter for your review, such a plan which incorporates the recommendations of Dr. Post...
>
> After you have had a chance to review the proposed Order, please let me know if you have any changes.

Exhibit ODC-4G: June 29, 2004 Letter from Respondent to Alvin King (emphasis added). Although Respondent refers to it as a *draft*, he forwards Mr. King an original and two copies of the order, which would be appropriate for filing with the Court.[9] Respondent testified that he expected Mr. King to make changes if anything appeared improper before the order was presented to the Court; however, Respondent also testified that even though King's representation of his wife formally continued until early July 2004, "Alvin was much further out the practice than he was in the practice at that time." Hearing Transcript, p. 200, lines 12-17.

There is additional evidence to suggest that Respondent knew or should have known that the order had not been altered by Mr. King prior to being presented to the Court for consideration. In a July 1, 2004 e-mail to Walt Sanchez, Respondent states:

> As you may remember, there was a status conference scheduled today between the lawyers. Alvin showed up, and Randy did not. **I had prepared an Interim Order**, copy attached for your review, **and Alvin left it with the judge, who**

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[6] Pre-argument Brief on Behalf of Respondent, James B. Doyle, p. 2.
[7] Respondent's Pre-hearing Memorandum, p. 3.
[8] Pre-argument Brief on Behalf of Respondent, James B. Doyle, p. 2.
[9] *See* Hearing Transcript, pp. 228-229.

> **took it under advisement.** He tentatively scheduled another conference for Tuesday and, as I understand it at least, indicated he would sign the Order if Randy didn't come forward with specific objections.

Exhibit ODC-10: July 1, 2004 E-mail from Respondent to Walt Sanchez (emphasis added).

Then on Wednesday, July 7, 2004, Respondent sent another e-mail to Sanchez stating:

> …I'm still in the hospital in Houston waiting for my walking papers…Louis Mere is supposed to have visitation this weekend; based on the existing order, it's Saturday morning at 9 a.m., to be returned at 7 p.m. Sunday evening. This is moot, for several reasons, the first of which is that he is not allowed on my property and if he shows up, I will call the sheriff. I hope you've told Randy this, in writing if not verbally. The second is that **Pat Post's report makes it abundantly clear she views unmoderated visitations by Louis with [Daughter 2] and [Daughter 3] as dangerous to them,** a position with which their counselor, Ruth Singletary, agrees. **It is imperative that we get the order I drafted, or something so close to it that the same protection is provided** Cindy and the girls, **signed before Friday. If nothing happens to implement Pat Post's recommendations regarding Louis' counseling, the girls will not go to visitation;** if he calls my house, I will call the sheriff and report him for harassment; and if he shows up at my house, I'll have him arrested.
>
> I know you can see how important, even critical, this is, and **I know you'll get the order signed, Randy or no Randy.**

Exhibit ODC-12: July 7, 2004 E-mail from Respondent to Walt Sanchez (emphasis added). Once again, Respondent misrepresented the findings and recommendations of Dr. Post, as there is nothing in Dr. Post's report to suggest that she viewed unmoderated visits between Mr. Mere and his daughters as dangerous. As discussed above, Dr. Post recommended that Daughter 1 not be required to stay overnight at her father's until she felt more comfortable with their relationship and her own anxiety level. The recommendation does not appear to have anything to do with *danger* and did not directly concern Daughters 2 and 3. By making such misrepresentations to Mr. Sanchez, Respondent created a sense of urgency which ultimately led to his Interim Joint Custody Order being erroneously signed by the Court. Respondent was quick to point out that he was hospitalized in Houston from July 5 – 9, 2004, during the time his

Interim Joint Custody Order was signed; however, the record demonstrates that Respondent was very involved in the matter even during his hospitalization.

While hospitalized in Houston, Respondent immediately set about using the erroneous order to threaten opposing counsel. On July 8, 2004, Respondent wrote a letter to Mr. Fuerst containing the following statements:

> Now that there is an order in place, I will use it, as will the family, to protect these children from their father, who is represented in seven places in Pat Post's report, to my count, as either mentally ill or unable to control his emotions. No more. If he shows up anywhere these children are, the instructions are to call the police or sheriff's office and have him arrested. There is no current order granting visitation, and he has none until the Court says he does. **On the contrary, there is an order in effect from the Court which finds, as a fact, that your client has actively violated every other order issued by the Court.**
>
> Cindy always told you Louis would kill you once Pat's report came out. She, more than anybody in the world, always knew Louis was crazy. I sure hope she's wrong about this, but you should be careful.
>
> As for me, I'm extremely pissed off at you…
>
> Just to make sure Louis knows the restrictions placed on his behavior, make sure he knows he has no visitation until further notice, make sure he doesn't show up at my house, and make sure he doesn't make a scene. I suppose, if you're just too chicken-shit to tell him yourself, I can tell him.

Exhibit ODC-1E: July 8, 2004 Letter from Respondent to Randy Fuerst (emphasis added). The letter was sent on Respondent's law firm letterhead, rather than as a personal correspondence, although he claims someone else made the choice to do that.[10] When Respondent refers in the letter to "an order in effect from the Court which finds, as a fact, that your client has actively violated every other order issued by the Court," he is aware there has been no contradictory hearing on the issue. This "finding of fact" is among the various false statements contained in Respondent's Interim Joint Custody Order.

As discussed above, Respondent claims that he drafted the order at the request of his wife's attorney. Other than drafting the Interim Joint Custody Order and "helping [his] wife

[10] *See* Hearing Transcript, p. 216, lines 15-18.

instruct her counsel on how she wanted her case to be handled,"[11] Respondent claims he had no other involvement in the case. According to the testimony of Mr. Sanchez, Respondent appears to have been more involved than he is willing to admit:

> A He had offered in a way to minimize some expenses to do some research or drafting along those lines. And because he was a lawyer, I think he would throw in suggestions or ask questions or try to give direction or advice but he was not officially co-counsel.
> Q He was not formally enrolled as counsel?
> A No.
> Q In fact, on at least one occasion he prepared a memorandum in support at your request to be used in the case? Do you recall that?
> A There was something that came up and he offered to do it. And I said, you know, it's elbow grease, you can certainly do that and save the expense from my standpoint. So I didn't object to it. It seemed to me to be, given the context, that was appropriate.

Hearing Transcript, pp. 162-163, lines 16-14. Respondent's level of involvement is further illustrated in various communications with Mr. Sanchez. For example, on July 9, 2004, Respondent wrote:

> Walt, I can't confirm you got my response to your email, but what I said, essentially, was mea culpa, mea culpa, mea maxima culpa. Won't happen again. I don't know if I'm going to turn him in or not, but one ingredient of that is the order regarding medical records which requires him to disclose names and addresses of people to whom he's communicated Cindy's private information. I know of one or two, but here are probably more. If it's widespread, that makes it more egregious, in my book, and would influence my decision. It might also give rise to a privacy lawsuit against Randy (and possibly Louis). **If you wouldn't mind signing some discovery in the pending case addressed to that issue, I'll prepare it.**

Exhibit ODC-13: July (emphasis added). Then, on July 12, 2004, Respondent wrote:

> Walt, I just wanted you to know again how sorry I am for the poor way I handled that stuff last week in Cindy's matter, and to say in my defense that, in the position I was in at the time, I was worried about the kids at my house and **leaned over a little too far in the "threatening" range, relying in part on my rep as a "flamethrower" to push Randy away from advising his client**, as he has in the past... to ignore agreements or orders and throw these kids' lives into turmoil... **I truly am going to butt out of this and let you deal with it.**

[11] Exhibit ODC- 4, Respondent's April 24, 2007 Letter to ODC in Response to Disciplinary Complaint.

Exhibit ODC-14 (emphasis added). Mr. Sanchez may have put it best when he stated, "Jim the not so silent co-counsel/chief strategist in his wife's case complicates an already difficult situation and then complains when it's expensive fixing his judgment calls. Exhibit ODC-15: August 8, 2004 E-mail from Walt Sanchez to Respondent.

In summary, the Board finds that there is sufficient evidence in the record to establish that Respondent violated Rules of Professional Conduct 3.3(a) and 8.4(c) with respect to his involvement in his wife's legal matter. Although Respondent never officially served as counsel for Cynthia Doyle, and did not make any appearances before the court, the record clearly demonstrates that he was very involved in her case. Respondent drafted a proposed Interim Joint Custody Order that he knew or should have known contained false statements of material fact to be submitted to the Court for consideration. Respondent then engaged in additional misconduct involving misrepresentations and caused the Interim Joint Custody Order he drafted to be erroneously signed by the Court. Once Respondent's Order was signed, he used it to threaten the opposing party. Such conduct constitutes professional misconduct and warrants discipline.

II. THE APPROPRIATE SANCTION

A. Application of Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, §10(C) states that in 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 a duty to the public by failing to maintain the standards of personal integrity upon which the community relies. He knowingly drafted an Interim Joint Custody Order that contained false statements and misrepresentations with respect to Dr. Post's findings and recommendations as well as certain "findings" of the Court. When the Interim Order was erroneously signed, Respondent used it to threaten and harm the opposing party. Respondent also violated a duty to the legal system by causing the fallacious order to be submitted to the Court, regardless of whether it was done in accordance with District Court Rule 9.5.[12] As the record shows, he intended to "get the order signed, Randy or no Randy."

While the Committee did not consider aggravating or mitigating factors, the record supports a finding that the following aggravating factors were present: (a) dishonest or selfish motive; (b) refusal to acknowledge the wrongful nature of conduct; and (c) substantial experience in the practice of law (admitted in 1976). The only mitigating factor supported by the record is absence of a prior disciplinary record.

B. The ABA Standards and Case Law

The Committee found that Respondent did not engage in professional misconduct; therefore, it did not discuss applicable ABA Standards or case law. A review of the ABA Standards reveals that Standards 6.12, 6.13, and 5.13 are applicable to this matter. Standard 6.12 provides that "[s]uspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceedings, or causes an adverse or potentially adverse effect on the legal proceedings."

[12] If presented later, the responsible attorney or the unrepresented party shall circulate the proposed judgment, order, or ruling to counsel for all parties and to unrepresented parties and allow at least three working days for comment before presentation to the court. When submitted, the proposed judgment, order, or ruling shall be accompanied by a certificate regarding the date of mailing, hand delivery, or other method of delivery of the document to other counsel of record and to unrepresented parties, stating whether any opposition was received.

Standard 6.13 states that "[r]eprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld and causes injury or potential injury to a party to the proceeding, or causes an adverse or potentially adverse effect on the legal proceeding." Here, Respondent knowingly drafted an Interim Joint Custody Order that contained false statements with respect to Dr. Post's findings and recommendations as well as certain "findings" of the Court. He then knowingly, or at least negligently, caused the fallacious order to be presented to Judge Bradberry for his signature. Respondent's conduct caused actual injury to Mr. Mere, who was prevented from having any visitation with his children while the erroneous order was in effect. The total length of time was only eight days, but Mr. Mere lost a weekend with his children and could have lost more. Mr. Mere also incurred additional legal fees to have his attorney rectify the situation.[13] In addition, Respondent's conduct caused injury to the legal system by requiring his Interim Joint Custody Order to be vacated.

Standard 5.13 is also applicable to this matter. It states that "[r]eprimand is generally appropriate when a lawyer knowingly engages in conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law." Here, Respondent stated various "findings" of the Court in his Interim Joint Custody Order when he knew there had not been a hearing on the merits or any such findings made by the Court. Respondent then used the erroneously-signed order to threaten Mr. Mere and his attorney, which adversely reflects on Respondent's fitness to practice law.

The ABA Standards indicate that reprimand is the baseline sanction for the misconduct at issue here. Since the Committee found that Respondent did not violate the Rules of Professional Conduct, it did not discuss the Louisiana jurisprudence. There is little, if any case

[13] Hearing Transcript, p. 193, lines 4-7.

law that is specifically on point with the present matter. A review of cases involving similarly alleged rule violations indicates that the Court has followed the ABA Standards. An appropriate sanction for Respondent's misconduct would be a public reprimand or a suspension of short duration.

One such case is *In re Landry*, 934 So.2d 694, 2005-1871 (La. 2006). In this case, the Court imposed a six-month suspension, with all but 30 days deferred, based on the respondent notarizing and then filing into court two affidavits that he knew or should have known contained false information. While the Court found that the respondent was largely negligent with regard to the first affidavit, it found that he notarized the second affidavit even though he knew the affiants lacked the requisite personal knowledge to execute the document. In deciding what sanction to impose, the Court recognized that there were substantial mitigating factors and not one aggravating factor present. *Supra* at 699, 700. One of the mitigating factors was the lack of improper motive. The Court reasoned that the respondent's actions were intended to expedite the proceedings on behalf of his client where time was of the essence. Nevertheless, the respondent's conduct in *In re Landry* caused actual harm. It should also be noted that both the hearing committee and the Board recommended a public reprimand for the respondent's misconduct.

Another case is *In re Tobin*, 99-DB-015 (10/12/2000). In this case, the Board issued a public reprimand after finding that the respondent violated Rules of Professional Conduct 3.3(a), 8.4(a), and 8.4(d) as well as S.C. Rule XIX, §8(c). The respondent falsely certified that he had circulated a pleading to another party in the litigation. In addition, ODC's investigation into the matter was delayed by nearly two years as a result of the respondent's failure to update his mailing address with the Louisiana State Bar Association.

Several other cases worth mentioning are *In re Downing*, 2005-1553 (La. 05/17/2006), 930 So.2d 897; *In re Young*, 2003-0274 (06/27/2003), 849 So.2d 25; and *In re Greenburg &*

Lewis, 2008-B-2878 (La. 5/5/2009), 9 So.3d 802. These cases involve issues similar to those of the instant matter and may provide further guidance with respect to sanction.

In re Downing is similar to the instant matter in that it, too, involved an improperly filed motion in a child custody proceeding that contained misrepresentations. In this case, the respondent filed an *ex parte* motion without service or notice to the opposing party or her counsel. The respondent's motion contained numerous defects and misrepresentations that were based solely on what he had been told by his client. The hearing committee and the Board found that the representations made in the respondent's motion were inaccurate and misleading; however the Court determined that the respondent acted negligently based on his lack of understanding of relevant procedures in custody cases. Nevertheless, the Court found that the respondent's failure to research the law resulted in actual harm and imposed a fully-deferred three-month suspension for his misconduct. It is worth noting that, in his defense, the respondent implied that he had done nothing wrong because the judge who signed the order had reviewed the motion and had not denied it for being improper. This claim is strikingly similar to Respondent's argument here—that he was unaware of any stipulation having been made, and that he merely drafted the judgment at the request of his wife's counsel who was actually responsible for presenting it to the court, unedited.

In determining the appropriate sanction in *In re Downing*, the Court relied upon the prior matter of *In re Young*, which involved some similar allegations[14] but multiple counts of misconduct. In *In re Young*, the Court imposed a six-month suspension with all but two months deferred. In discussing its decision, the Court stated:

> While respondent's motivation may have been to protect the interests of his client, he may not violate his professional obligations as an officer of the court under the guise of being a zealous advocate. Respondent had a duty to present the facts to

[14] *In re Young* involved allegations of Rule 1.1(a) (incompetence) and 8.4(d) (engaging in conduct prejudicial to the administration of justice) violations.

> the trial court and allow the trial court to make an informed ruling on the continuance issue. In the event of an adverse ruling, respondent could then have sought review in a higher court. His failure to follow these basic rules demonstrates he engaged in conduct prejudicial to the administration of justice, in violation of Rule 8.4(d).

The same can be said for Respondent's conduct in the instant matter. His motivation may have been to protect his wife and her children, as well as his own children who were living with them at the time; however, he cannot ignore his professional duty as an officer of the court. It is worth noting that Justice Knoll concurred in *In re Young* with reasons, expressing a belief that the respondent's misconduct was not due to incompetence, a lack of understanding of professional rules, or his belief that he was acting in the best interest of his client. Rather, it was the result of "a conscious attempt to manipulate the judicial system to the advantage of himself and his clients." Arguably, here, Respondent's actions may have been based on a conscious attempt to manipulate the system to his own advantage and that of his wife in the ongoing battle with her ex-husband.

Finally, *In re Greenburg & Lewis* is a case in which two attorneys were found to have committed professional misconduct by exhibiting unacceptable behavior in the courtroom. The respondents, who were representing opposing parties in a bitterly contested succession matter, exchanged profanities in open court and then engaged in a scuffle. Both parties were held in contempt, but Greenburg was also charged with simple battery because he was the aggressor in the incident. The respondents' lack of decorum and civility was found to be in violation of the professional standards that lawyers are required to uphold, specifically Rules 3.5(d) and 8.4(d) of the Rules of Professional Conduct. Greenburg was also found to have violated Rule 8.4(b), because he was convicted of simple battery upon Lewis. The Court, recognizing that suspension is the baseline sanction for the respondents' misconduct, suspended Greenburg for a period of six months, with all but 30 days deferred, due to the substantial mitigating factors present, on the

condition that he successfully completed anger management counseling. Since Lewis's misconduct was found to be less egregious, it was decided that a downward deviation to a public reprimand was appropriate.

CONCLUSION

The Board adopts the Committee's findings of fact and makes additional findings with respect to aggravating and mitigating factors as detailed above. The Board rejects the Committee's conclusion that there is insufficient evidence to clearly and convincingly establish that Respondent violated the Rules of Professional Conduct as well as the Committee's recommendation that the matter be dismissed. The Board finds that there is sufficient evidence to support the conclusion that Respondent engaged in professional misconduct as charged. Therefore, the Board rules that Respondent be publicly reprimanded for his misconduct. In addition, the Board orders that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1(A).

RULING

For the foregoing reasons, the Board hereby rules that Respondent, James B. Doyle, be publicly reprimanded for engaging in professional misconduct. In addition, the Board orders that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

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George L. Crain, Jr.
FOR THE ADJUDICATIVE COMMITTEE

Edwin G. Preis, Jr. – Recused.