

**ORIGINAL**

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: CHRISTIAN M. GOUDEAU**

**10-DB-072**

<b>FILED</b>
<b>DISCIPLINARY BOARD</b>
Date: <u>Feb. 14, 2012</u>
Clerk: <u>C. Martin</u>

**RULING OF THE DISCIPLINARY BOARD**

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This is a disciplinary proceeding based upon the filing of formal charges against Christian M. Goudeau ("Respondent"), Louisiana Bar Roll No. 06186, by the Office of Disciplinary Counsel ("ODC"). For the reason stated below, the Disciplinary Board orders that Respondent be publicly reprimanded for his misconduct.

**PROCEDURAL HISTORY**

On November 2, 2010, the ODC filed formal charges against Respondent. In the formal charges, which consist of one count, ODC alleges that Respondent violated Rules of Professional Conduct 4.1 (making a false statement of material fact or law to a third person); Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and 8.4(a) (violating or attempting to violate the Rules of Professional Conduct).<sup>1</sup> The charges were served on Respondent on or about November 12, 2010, via certified mail. On December 6, 2010, Dane S. Ciolino enrolled as counsel for Respondent and filed an answer on his behalf. In the answer,

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<sup>1</sup> RULE 4.1. TRUTHFULNESS IN STATEMENTS TO OTHERS

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

(a) make a false statement of material fact or law to a third person; or

(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;

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

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Respondent admitted to some of the basic allegations in the formal charges but denied violating the Rules. This matter was assigned to Hearing Committee No. 44 (the "Committee").<sup>2</sup>

This matter was originally set for hearing on Wednesday, March 23, 2011, but on January 27, 2011 Respondent's counsel moved for a continuance. After the continuance was granted, the matter was re-set for hearing on May 6, 2011. ODC filed its pre-hearing memorandum on April 26, 2011. On April 27, 2011, Respondent filed his pre-hearing memorandum.

The hearing was held as scheduled on May 6, 2011. After the hearing, the committee chairman issued an order requesting that Respondent redact several exhibits which contained sensitive information.<sup>3</sup> Respondent complied with the order on June 29, 2011.

The Committee issued its report on July 7, 2011. The Committee found that ODC carried its burden of clear and convincing evidence as to some of the allegations, and recommended that Respondent be suspended for six (6) months, fully deferred subject to particular conditions.<sup>4</sup> ODC filed an objection to the Committee's report on July 22, 2011. In this pleading, ODC argued that the Committee's report erroneously failed to find rule violations with respect to Respondent's distributing estate funds prior to opening a succession and disbursing estate funds without court authority. ODC also objected to the leniency of the sanction. On August 4, 2011, Respondent filed an objection to the Committee report, objecting to the Committee's sanction

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<sup>2</sup> Hearing Committee No. 44 is composed of committee chairman attorney Jere Jay Bice, attorney member Kendrick J. Guidry and public member John C. Hixson.

<sup>3</sup> Specifically, the social security number of Shanta Cazes and Respondent's financial account number appeared on three of the Respondent's exhibits. See 06/08/11 Board Order.

<sup>4</sup> The conditions outlined by the Committee are as follows:

- (1) Respondent shall attend the LSBA's Ethics School and/or CLE programs geared toward solo practitioners;
- (2) Respondent shall establish and maintain an effective dictation system / method to insure that all correspondence sent to clients and third parties is accurately dated;
- (3) Respondent shall pay all costs and expenses of the disciplinary proceedings; and
- (4) This deferred suspension may become executory in the event of misconduct by the Respondent during the deferred suspension period; any violations during that period of time of ethics rules will be grounds for the ODC to pursue revocation.

recommendation. Pre-hearing briefs were filed on August 22, 2011 by ODC, and on September 6, 2011 by Respondent.

Oral argument of this matter was heard on September 22, 2011, before Panel "A" of the Adjudicative Committee of the Disciplinary Board. Deputy Disciplinary Counsel Tammy P. Northrup appeared on behalf of ODC. Respondent appeared with his attorney, Dane Ciolino.

### **THE FORMAL CHARGES**

The formal charges read, in pertinent part:

#### **COUNT I**

Complainant, an attorney representing the Louisiana Patient's Compensation Fund, filed a complaint against Respondent. Respondent represented the husband of a woman named Shanta Aymond Cazes who was injured as a result of the negligence of a health care provider.<sup>5</sup> Respondent settled the matter against the health care provider but because the plaintiff sought additional damages it was necessary to name the Louisiana Patient's Compensation Fund as an additional defendant. Respondent began settlement negotiations with the Louisiana Patient's Compensation Fund and sent a letter dated March 14, 2006 confirming a settlement agreement with a fund adjustor, Kurt Loop. The settlement was subject to board approval. Respondent's client died on February 14, 2006, and Respondent attended the wake. Respondent never informed the Louisiana Patient's Compensation Fund that his client passed away, and continued settlement negotiations which included an amount for future medical expenses several months after his client had died. Respondent led the Louisiana Patient's Compensation Fund to believe that he represented all interested parties in Ms. Cazes' medical malpractice action. Another attorney, Kathy Fontenot Myers who represented Ms. Cazes' minor child, notified the Louisiana Patient's Compensation Fund of Ms. Cazes' death. Respondent never discussed any settlement negotiations with Ms. Myers and attempted to settle the matter with the Louisiana Patient's Compensation Fund without her knowledge and without properly opening a succession proceeding. Attorney Myers filed a Petition for a Temporary Restraining Order and Preliminary Injunction to stop the Respondent from settling the matter with the Louisiana Patient's Compensation Fund. Upon learning that Respondent had never informed the Louisiana Patient's Compensation Fund of Ms. Cazes' death, the court enjoined the settlement. The actions of Respondent in this matter constitute making a false statement of material fact or law to a third person, in violation of Rule 4.1; engaging in

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<sup>5</sup> The Respondent represented Jeffrey L. Cazes (both individually and as a curator of his interdicted wife, Shanta Cazes) in medical malpractice claims against Louisiana Patient's Compensation Fund ("PCF") arising out of injuries suffered by Shanta Cazes.

conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c); and, violating or attempting to violate the Rules of Professional Conduct, in violation of Rule 8.4(a) of the Rules of Professional Conduct.

### **THE HEARING COMMITTEE REPORT**

As stated above, the hearing of this matter was held on May 6, 2011. Deputy Disciplinary Counsel Tammy P. Northrup appeared on behalf of ODC. Respondent appeared with his counsel, Dane S. Ciolino. Testifying on behalf of the ODC was Nadia de la Houssaye, counsel for the Patient Compensation Fund ("PCF"), Milo Nickel, also counsel for the PCF, Kurt Loup, senior adjustor for the PCF, and attorney Kathy Fontenot Meyers, counsel for Mary J. Fontenot and David Bordelon, Jr.<sup>6</sup> ODC introduced exhibits 1-9 which were admitted into evidence. ODC also submitted a proffer which was marked as Proffer 1. Respondent testified on behalf of himself, and submitted exhibits 1-36 which were admitted into evidence.

The Committee provided the following findings, analysis and conclusions:

#### **FINDINGS OF FACT**

The Respondent represented Jeffrey L. Cazes (both individually and as a curator of his interdicted wife, Shanta Cazes) in medical malpractice claims against Louisiana Patient's Compensation Fund ("PCF") arising out of injuries suffered by Shanta Cazes. She suffered severe brain damage during a gastroendoscopic procedure at Savoy Medical Center in Evangeline Parish on October 6, 2003. The brain damage rendered Mrs. Cazes in an irrevocable semi-comatose state, and as a result, Jeffrey Cazes, was appointed to be curator. Mrs. Cazes ultimately passed away on February 14, 2006.

The health care providers admitted liability and tendered the maximum amount required (\$100,000) to the plaintiffs. Prior to that time, Mary Janell Fontenot was appointed to be the tutrix of David Bordelon, Jr., Mrs. Cazes's son. Ms. Fontenot was represented by attorney Kathy Meyers. On March 9, 2005, the parties, both Jeffrey L. Cazes and Mary Janell Fontenot, executed an agreement wherein they agreed to cooperate fully in prosecuting their respective claims as well as the apportionment between the parties of any recovery from the pursuit of a medical malpractice action<sup>7</sup>. It was a two-tiered agreement as it related to the

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<sup>6</sup> David Bordelon, Jr. is the deceased's child from her first marriage who at the time of her death was a minor. Mary Janell Fontenot is the grandmother and tutrix of David Bordelon, Jr.

<sup>7</sup> Exhibit R-4.

initial recovery of \$100,000 (the underlying health care providers' maximum), and the remaining \$400,000 under the statutory cap.

In December 2005, the Respondent filed suit in the 13<sup>th</sup> Judicial District Court, Parish of Evangeline, against the PCF on behalf of Mr. Cazes. Joined as co-petitioner in this lawsuit was Mary J. Fontenot, the tutrix of David Bordelon, Jr. Kathy Fontenot Meyers was co-counsel of record.<sup>8</sup>

On February 8, 2006, Respondent met with Kurt Loup, a senior adjuster with the PCF, and provided him with copies of all of Mrs. Cazes's medical bills, which totaled approximately \$1.6 million. As previously mentioned, on February 14, 2006, Mrs. Cazes passed away.<sup>9</sup> The Respondent attended her wake thereafter. On March 14, 2006, one month after Mrs. Cazes's death, Respondent sent correspondence to Mr. Loup with a settlement offer in the amount of \$6.2 million which specifically included a claim for medical expenses.<sup>10</sup> The correspondence specifically stated on page 2 as follows:

"My client is amenable to a settlement of all claims for past *and* future medical costs, as this seems to be the preferred format."

The letter further indicated that any settlement had to be structured in a two-tiered fashion with the PCF remitting the sum of \$400,000 (the remainder of the statutory cap) to both Mr. Cazes, Mrs. Cazes's curator, and Mary Janell Fontenot, as the dative tutrix of Mrs. Cazes's minor, David Bordelon, Jr. and their respective attorneys.

According to the Respondent, he did not look at the date on the March 14, 2006, letter but rather just signed it. He was adamant that he dictated the letter when he returned from the February 8, 2006, visit with Kurt Loup when he provided the medical records. The Respondent attributed this delay to an antiquated procedure utilizing a "signature book" to transfer drafted dictation in final letters. This paralegal supposedly was taught in school to date a letter on the date it was actually mailed, which is what she supposedly did in this particular situation. He also blamed the discrepancy on being out of the office for a tremendous amount of time, which caused the delay on the letter.

According to the Respondent, he typically writes correspondence and signs his name with fountain pens that use "wet ink." He has a large "signature book" which contains blotter paper for blotting wet fountain pen ink. When a document needs to be signed, his secretary inserts the document between the pages of the "signature book" so the signature ink will not smear. Sometimes the first page in the book would stick to the cover. The Respondent assumed that he signed the March 14, 2006, letter "inadvertently while signing a number of other documents in the signature book."

According to the Respondent, he met with Kurt Loup in person on May 3, 2006. Prior to that time, he was reviewing his file in preparation for the meeting and that is when he noticed that the letter which he supposedly dictated on

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<sup>8</sup> Exhibit R-9.

<sup>9</sup> Exhibit R-14.

<sup>10</sup> Exhibits R-16, ODC-5.

February 8 or 9, 2006, was actually dated March 14, 2006. He met with Kurt Loup on May 3, 2006, and provided additional medical records. However, he did not inform Mr. Loup of the death of Shanta Cazes, even though he was fully aware and knowledgeable that his March 14, 2006, letter was untruthful, as it sought a settlement of future medical for the deceased, Mrs. Cazes. The Respondent's excuse for not mentioning the death of Mrs. Cazes was because he was "embarrassed beyond belief."

The Respondent also dictated a letter on May 10, 2006, to Kurt Loup confirming their conference on May 3, 2006. In this correspondence, Respondent did not inform Mr. Loup that Mrs. Cazes had passed away.<sup>11</sup>

On June 26, 2006, the Respondent sent correspondence to Kurt Loup confirming a tentative settlement agreement in the amount of \$400,000 for general damages as well as an additional \$1,850,000 for medical expenses "incurred" by Mrs. Cazes. The tentative settlement was subject to approval of the PCS Oversight Board.<sup>12</sup>

In June of 2006, attorney Kathy Meyers learned of the Respondent's actions as it related to reaching a tentative settlement with the PCF without informing it that Mrs. Cazes had died. On July 7, 2006, she spoke to Kurt Loup with the PCF and informed him of Mrs. Cazes's death, which had occurred in February of 2006. On July 7, 2006, Ms. Meyers corresponded to Kurt Loup and confirmed that Mrs. Cazes was deceased. While she indicated that her client agreed to the amount tendered by the PCF, she also requested that any settlement disbursement should include her name as well as her client's name, Mary Janell Fontenot, on behalf of David Bordelon, Jr.<sup>13</sup> She also sent correspondence to Christian Goudeau dated July 13, 2006<sup>14</sup> where she agreed that a settlement of all claims for \$2.5 million would be adequate. She confirmed that Kurt Loup had not been informed of Shanta Cazes's death until she did so and that he was still willing to honor the settlement proposal. She also proposed a mediation of the apportionment of the recovery as it related to their clients as well as attorney fees.

According to the Respondent, he told Mr. Loup that he had no problem with him contacting attorney Meyers as it related to the settlement negotiations. Respondent conceded that he never spoke to Meyers about the proposed settlement (in regards to the June 26, 2006, letter) and never led anyone to believe he had authority to settle the entire claim on behalf of all claimants.

A dispute then arose as to the proper venue for the succession of Shanta Cazes. Respondent filed proceedings in St. Landry Parish while attorney Meyers did the same in Evangeline Parish. Ultimately, St. Landry was deemed to be the proper Parish. The PCF ultimately paid the sum of \$2.5 million which was a \$250,000 increase from the tentative agreement of \$2.25 million because of interest. Because Jeffrey Cazes had been adjudicated the administrator of the estate, the settlement proceeds were paid to him individually, and as administrator

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<sup>11</sup> Exhibits R-18, ODC-6.

<sup>12</sup> Exhibits R-20, ODC-7.

<sup>13</sup> Exhibit ODC-8.

<sup>14</sup> Exhibit R-22.

of the Estate of Shanta Cazes and the Respondent, Christian Goudeau.<sup>15</sup> The Respondent deposited this money into his trust account and disbursed a portion of his attorney fees to himself and \$60,000 to Mr. Cazes. He did not obtain any court authority to disburse this money because he did not think he needed to.

Attorney Nadia de la Houssaye negotiated the final settlement of the malpractice claim related to Shanta Cazes wherein it [the PCF] paid the sum of \$2,500,000 to Jeffrey Cazes, individually and as the administrator of the estate of Shanta Fontenot Cazes on or about October 15, 2008. According to Ms. de la Houssaye, she was aware that a dispute over the proper venue for the succession had occurred and that the Judge ruled that Mr. Cazes had the right to pursue the action. It was always her intention, and it was always communicated to the Respondent, that the rights of David Bordelon, Jr. had to be protected at all costs, and he specifically agreed to do so. After the PCF learned of Mrs. Cazes's death, it reviewed all the medicals and agreed that it was a sizeable claim and it was still very much worth settling for the amount tentatively agreed to. She stated that the PCF was not prejudiced by the negotiations it had with Mr. Goudeau when it thought Mrs. Cazes was alive.

An action was filed in the succession proceeding in St. Landry Parish to enjoin the Respondent from disbursing any further money. A hearing was conducted in November of 2008, at which time the Judge agreed to maintain the TRO for an additional ten (10) days. It was also agreed that a succession checking account would be opened. Eventually, Judge Don Hebert ruled that the amount of \$1,330,000 was to remain in the trust account and all sums above that were to be disbursed to Mr. Cazes.<sup>16</sup>

#### **The March 14, 2006 Letter**

The Respondent violated Rules 4.1 and 8.4 (a) and (c) of the Rules of Professional Conduct. He knowingly made a false statement of material fact (failure to disclose the death of Shanta Cazes) and did engage in conduct involving dishonesty, fraud, deceit or misrepresentation. The Hearing Committee was not impressed with the Respondent's excuses for his March 14, 2006, correspondence being inaccurate as it related to the failure to report the death of Shanta Cazes. While he was adamant that the letter was dictated on February 7 or 8, 2006, shortly after his meeting with Kurt Loup, and prior to the death of Mrs. Cazes (February 14, 2006), he was responsible for insuring that the correspondence was accurate prior to signing and sending it to Mr. Loup. He could only speculate as to how the discrepancy and delay occurred as it related to the use of his "signature book" system as well as being out of the office for a tremendous amount of time.

Even assuming arguendo that Respondent did not have knowledge that the letter he sent to the PCF on March 14, 2006, was false as it related to seeking money for future medical expenses for a deceased person, he had numerous opportunities thereafter to set the record straight. However, he simply chose not to do so because he was "embarrassed beyond belief." The Respondent supposedly

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<sup>15</sup> Exhibit R-24.

<sup>16</sup> Exhibit R-38.

learned that his March 14, 2006, letter was a misrepresentation in early May of 2006 when he was preparing for an in-person conference with Kurt Loup. The conference actually occurred on May 3, 2006, at which time the Respondent provided Mr. Loup with additional medical records. However, the Respondent did not inform Mr. Loup of the death of Shanta Cazes. Also, he dictated a letter on May 10, 2006, to Kurt Loup confirming their conference of May 3, 2006. Once again, he chose not to inform Mr. Loup that Mrs. Cazes had passed away. Apparently, additional settlement negotiations occurred in May and June of 2006, which ultimately led to a tentative settlement agreement in the amount of \$400,000 for general damages as well as an additional \$1,850,000 for "medical expenses "incurred" by Mrs. Cazes. On none of these occasions either via correspondence or by any other source of communication did the Respondent inform Kurt Loup or the PCF that Mrs. Cazes had died. These actions clearly indicate that the Respondent had knowledge that he had made a false statement of material fact which was dishonest, deceitful and a misrepresentation.

#### **Future Medical Expenses**

Following the Respondent's March 14, 2006, correspondence to the PCF, it does not appear that he attempted to collect money for future medical expenses. Apparently, he had submitted past medical expenses of approximately \$1.8-2.1 million. The Respondent ultimately reduced the initial settlement offer of \$6.2 million to \$2.5 million. This reduced offer was supposedly based on the remaining \$400,000 payable under the cap in addition to the \$2.1 million in past medical bills. It does not appear that after his March 14, 2006, correspondence, he ever again referred to future medicals in any of his communications with the PCF and never attempted to recover more than Mrs. Cazes's past medical expenses plus general damages. In fact, when a tentative settlement was reached on June 26, 2006, the settlement amount did not exceed the total of Mrs. Cazes's past medical expenses and the remaining portion of recoverable general damages of \$400,000. There was a discrepancy in the Respondent's testimony as it related to the total medical expenses, but in either case, they were between \$1,850,000 to \$2.1 million.

Nadia de la Houssaye, counsel for the PCF, testified that it was not prejudiced by the negotiations it had with the Respondent when it thought Mrs. Cazes was alive. At the time the tentative settlement agreement was made, Ms. de la Houssaye did believe that the PCF thought it was settling all future medicals. After the PCF learned that Mrs. Cazes had died, it reevaluated all the medicals and agreed that her claim was "sizeable enough" such that it was still very much worth settling for the agreed amount plus interest (\$2,225,000 plus \$250,000 in interest).

#### **Other Issues**

The ODC also makes reference to the Respondent leading the PCF to believe that he had the authority to settle the medical malpractice claims on behalf of all plaintiffs and that he failed to open a succession and settle plaintiffs' claims without court approval. He also disbursed a portion of the settlement proceeds without court approval.



It does not appear that the Respondent represented to the PCF that he represented all the claimants. In fact, according to attorney Kathy Meyers who represented Mary Janell Fontenot, her negotiations were with counsel for the PCF, who included Nadia de la Houssaye and Milo Nickel. The Respondent did not send a copy of the tentative settlement agreement to Kathy Meyers. However, in her correspondence dated July 7, 2006, attorney Meyers informed Kurt Loup with the PCF that her client agreed to the amount tendered by the PCF, which apparently referenced the \$2,250,000 tentative agreement that was reached between the Respondent and Kurt Loup.<sup>17</sup> Ms. Meyers also confirmed to Respondent as per her correspondence dated July 13, 2006, that she agreed that "an adequate settlement of this case would be \$2.5 million."<sup>18</sup>

With respect to the failure to open a succession and obtain court authority to either settle the case or disburse any funds, it appears that these issues were adjudicated by Judge John Hebert on December 29, 2008, when he signed a judgment which allocated the disbursement of the settlement proceeds among the claimants.<sup>19</sup>

Hearing Committee Report pp. 3-11.

Based on the foregoing, the Committee concluded that Respondent violated Rules 4.1 and 8.4(a) and (c) with regards to the March 14, 2006 letter. The Committee found the following aggravating circumstances: dishonest or selfish motive, refusal to acknowledge the wrongful nature of his conduct, and substantial experience in the practice of law. The Committee found one mitigating factor: absence of a prior disciplinary history. With regards to the appropriate sanction, the Committee relied on ABA Standard 5.1 "Failure to Maintain Personal Integrity". Without citing case law, the Committee applied Standard 5.13, which specifies that a reprimand is appropriate when a lawyer knowingly engages in any other (non-criminal) conduct that involves dishonesty, fraud, deceit or misrepresentation and that adversely reflects on a lawyer's fitness to practice law. Ultimately, the Committee recommended a six (6) month fully deferred suspension, subject to four conditions: (1) Respondent shall attend the LSBA's Ethics School and/or CLE programs geared toward solo practitioners; (2) Respondent shall establish and

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<sup>17</sup> Exhibit ODC-8.

<sup>18</sup> Exhibit R-22.

<sup>19</sup> Exhibit R-38.

maintain an effective dictation system / method to insure that all correspondence sent to clients and third parties is accurately dated; (3) Respondent shall pay all costs and expenses of the disciplinary proceedings; and (4) This deferred suspension may become executory in the event of misconduct by the Respondent during the deferred suspension period; any violations during that period of time of ethics rules will be grounds for the ODC to pursue revocation.

## 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 review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and prepare and forward to the court its own findings, if any, and recommendations.” Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of “manifest error.” *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So.2d 840 (La. 1989). The Board conducts *de novo* review of the hearing committee’s application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004 (La. Atty. Disc. Bd. 1/22/92).

The factual findings of the Committee are detailed and thorough. The findings do not appear to be manifestly erroneous, with two exceptions. With regard to the evidence in support of *when* Respondent stopped negotiating future medicals on behalf of his deceased client, the Committee stated, “It does not appear that after his March 14, 2006, correspondence, he ever again referred to future medicals in any of his communications with the PCF and never attempted to recover more than Mrs. Cazes's past medical expenses plus general damages.” H.C.

Rpt., p. 10. The record reveals, however, that this is not the case. On or near March 16, 2006, Respondent spoke to adjuster Kurt Loup on the phone regarding the settlement and specifically reminded the adjuster that he would still consider an offer to “cash out” future medical bills. See ODC Proffered Exhibit 1, p. 8, entry date 3/16/2006.<sup>20</sup> The PCF adjuster’s notes reflect that future medicals were broached by Respondent in a telephone conference with adjuster Kurt Loup on or near March 16, 2006, one month *after* his client’s death. *Id.* Mr. Loup also provided direct testimony that Respondent did indeed discuss future medicals in that phone conversation with Mr. Loup after Ms. Cazes had passed away. See 05/06/11 H.C. transcript, p. 219. Mr. Loup also stated that he creates his adjuster notes “generally the day that the action was taken,” which is further evidence that Respondent was discussing future medicals with the PCF on or near March 16, 2006, one month after his client’s death. See 05/06/11 H.C. Transcript, p. 210, ln. 9-17.

Additionally, contrary to the Committee’s findings, it does appear that the Respondent failed to involve attorney Kathy Fontenot Myers in the settlement negotiations and failed to make it clear to the PCF that he did not represent all of the claimants. See H.C. Rpt. p. 11. Respondent admittedly did not notify Ms. Myers, attorney for Ms. Cazes’ minor child and the child’s grandmother, that he was settling the claim with the PCF on behalf of all parties. See 05/06/11 H.C. Transcript p. 100, ln. 10-25; p. 107, ln. 8-17. Attorney Myers filed a Petition for a Temporary Restraining Order and Preliminary Injunction to stop the Respondent from settling the matter with the PCF. See 05/06/11 H.C. Transcript pp. 267-68. Upon learning that Respondent had never informed the PCF of Ms. Cazes’ death, the court enjoined the settlement. PCF adjuster Kurt Loup testified at the hearing that he was led to believe that Respondent was

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<sup>20</sup> The transcript indicates that this exhibit was proffered by ODC. See H.C. transcript, pp. 201- 206. Proffered Exhibit 1 is the PCF adjuster’s log, wherein adjuster Kurt Loup noted his telephone conversation with Respondent. Given the Court’s direction in *In re Quaid*, 94-1316 (La. 11/30/94); 646 So.2d 343, and *In re Stamps*, 03-2985 (La. 4/14/04), 874 So.2d 113, that disciplinary hearings are to be guided but not confined by the strict application of the code of evidence, the Board reviewed and considered this proffered evidence.

representing everyone with an interest in the claim and that Respondent was the only attorney who had authority to settle the claims with the PCF. *See* 05/06/11 H.C. Transcript pp. 220-221, 281.

A *de novo* review of the record demonstrates that the Committee appropriately applied the Rules of Professional Conduct. An analysis of what Rules have been proven to be violated follows:

**Rules 4.1 and 8.4(c):** Rule 4.1 requires a lawyer to be truthful in statements made to others. Rule 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Mr. Goudeau was clearly not truthful when he failed to disclose the death of Ms. Shanta Cazes to the PCF during the settlement negotiations that took place after her death. Respondent's excuses for this March 14, 2006 correspondence being inaccurate as it related to the failure to report his client's death, as pointed out by the Committee, are not plausible.<sup>21</sup> While he submits that the letter was dictated on February 7 or 8, 2006, shortly after his meeting with adjuster Kurt Loup, and prior to the February 14, 2006 death of his client, he had an obligation to insure that the correspondence was accurate prior to signing and sending it to the PCF. As the Committee points out, even assuming *arguendo* that Respondent did not have knowledge that the March 14, 2006, letter was false as it related to seeking money for future medical expenses for a deceased person, he had numerous opportunities thereafter to set the record straight. Most noticeably, as discussed above, Respondent spoke to adjuster Kurt Loup on the phone on or near March 16, 2006 regarding the settlement and specifically reminded the adjuster that he would still consider an offer to "cash out" future medical bills. Respondent's purposeful omission of the material fact of his client's death during settlement negotiations was a

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<sup>21</sup> 05/06/11 H.C. Transcript, pp. 65-72.

dishonest and blatant misrepresentation of the truth. Additionally, Respondent led the PCF to believe that he was the only one with settlement authority to settle the claim on behalf of all claimants. Therefore, the Board should find that Respondent is in violation of Rule 4.1 and Rule 8.4(c).

**Rule 8.4(a):** Rule 8.4(a) states that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct, knowingly assist another to do so, or do so through the acts of another. Here, by his violations of Rules 4.1 and 8.4(c) discussed above, Respondent violated Rule 8.4(a).

Additionally, the Board adopts the Committee's position that no rules were violated with regard to ODC's allegation that misconduct occurred when Respondent disbursed settlement funds inappropriately. The record reflects that Respondent opened up Ms. Caze's succession in June of 2006. Exhibit R-21. The funds that were distributed two and a half years later were Mr. Cazes's own funds as opposed to succession funds. *See* Brief of Respondent, 09/06/11, p. 13. The Committee properly found that these issues were fully "adjudicated by Judge John Hebert on December 29, 2008." H. C. Report, p. 11. No allegations of misconduct were made nor sanctions sought or awarded in that proceeding. Exhibit R-38; H.C. Transcript, p. 291. Therefore, there is no clear and convincing evidence of misconduct in connection with Respondent's handling of the succession funds.

## **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.

Respondent has violated duties owed to his clients, the public and the legal system by failing to disclose the death of Shanta Cazes to the PCF during the time period that he was negotiating a settlement with them on Ms. Cazes' behalf. His omission was knowing and intentional. Although there does not appear to have been any negative impact on the recovery of settlement funds negotiated with the PCF, the PCF itself was forced to incur unnecessary legal fees when they specifically hired a lawyer to defend their interest in the matter once they became aware of Respondent's misrepresentation. Mr. Loup of the PCF testified directly that were it not for Respondent's omission of fact, it would have negotiated settlement and closed the file without incurring unnecessary legal fees. *See* 05/06/11 H.C. Transcript, p. 247, ln. 2-10.

Aggravating and mitigating factors must next be considered under the § 10(C) analysis. The record supports the aggravating circumstances found by the Committee: dishonest or selfish motive, refusal to acknowledge the wrongful nature of his conduct, substantial experience in the practice of law; and the one mitigating factor found by the Committee: absence of a prior disciplinary history. Thus, the Board therefore adopts these findings.

#### **B. The ABA Standards and the Case Law**

In its brief, ODC does not cite to the *The ABA Standards for Imposing Lawyer Discipline* ["the ABA Standards"], in support of its recommendation to sanction Respondent with a lengthy suspension. Given that Respondent did not engage in criminal conduct, it appears that the baseline standard applicable to Respondent is Standard 5.13, which calls for a "reprimand" when a lawyer "knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law." *See id.* Std.

5.13. The Committee expressly found that Standard 5.13 fits the Respondent's conduct. See H.C. Report at p. 13.

The case of *In re Roger C. Sellers*, 95-2764 (La. 3/15/96), 669 So.2d 1204, similarly involved an attorney who was publically reprimanded for his failure to disclose a material fact to a third party. In this case, the respondent failed to disclose the existence of a collateral mortgage to a third party and notarized mortgage certificates verifying that the property was free and clear of liens and encumbrances. The Court found that respondent was in violation of Rule 4.1(b) and ordered a public reprimand as he had no prior discipline and received no monetary benefit from the transaction. *Id.* at 1206.

Worth noting are two consent discipline cases - *In re Lorna Perez Turnage*, 08-0359 (La. 3/14/08), 976 So.2d 705 and *In re Kenneth A. Doggett*, 04-0349 (La. 3/26/04), 869 So.2d 792. While these cases are of limited jurisprudential value, the consent discipline accepted by the Court is consistent with discipline it has imposed for similar misconduct in other proceedings. In *In re Turnage*, the Court imposed a six-month, fully-deferred suspension with one year of unsupervised probation upon the respondent. There, the respondent notarized a pleading that contained the forged signature of her client and then filed it into the public record. In *In re Doggett*, the Court imposed a public reprimand upon the respondent who relied upon an improper power of attorney clause in his contingency agreement to sign his client's name to settlement checks and negotiate them without the client's informed consent. There was found to be little or no resulting harm to the client.

In *In re Pardue*, 93-2865 (La. 3/11/94), 633 So.2d 150, prescription ran on a client's personal injury claim as a result of respondent's untimely filing of a petition. Respondent failed to disclose this fact to the client. The Court ruled that respondent's failure, for a period of

several months, to disclose the fact that the suit was not timely filed constituted violations of Rule 1.4 and 8.4(c), warranting a public reprimand. *Id.* at 151.

The line between overt misrepresentation and mere lack of disclosure is not always clear, and there is not a large body of cases analyzing the distinction. The Supreme Court of New Hampshire found that lawyers are obligated to correct statements they make that are subsequently discovered to be false since remaining silent is considered equivalent to misrepresentation. *See, e.g., In re Carpenito*, 651 A.2d 1 (N.H. 1994). Mr. Carpenito was publically reprimanded for violating New Hampshire's Rule 4.1(a) which provides, "In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person."

Respondent's failure to advise the PCF of his client's death during settlement negotiations and his failure to make it clear to the PCF that he was not representing all of the claimants appears to be intentional conduct. Although in the end Respondent did not personally gain from his misrepresentation to the PCF,<sup>22</sup> his misguided actions tarnish the respect of the legal profession in general. Respondent's omissions of fact to third parties is similar to the omissions made in *In re Sellers* and *In re Pardue*, in which the Court ordered public reprimands.

In support of ODC's recommendation of a suspension, ODC cites several disciplinary cases in support of a harsher sanction in this matter.<sup>23</sup> However, all of these cases involved more egregious misconduct or more significant aggravating factors than the present matter. Given the facts of this case and the reprimands ordered by the Court in the cases discussed above which

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<sup>22</sup> A final settlement was reached on November 20, 2008, in the amount of \$2,500,000.00. The settlement amount did not exceed the total amount of Ms. Cazes' past medical expenses and recoverable general damages. *See* ODC Exhibit 9; 05/06/11 H.C. Transcript p. 88, ln. 10-21.

<sup>23</sup> *In re Warner*, 03-0486 (La. 6/27/03), 851 So. 2d 1029; *In re Simpson*, 07-0070 (La. 6/29/07), 959 So. 2d 836; *In re Wahlde*, 98-2742 (La. 1/15/99), 728 So. 2d 837; *In re Stephens*, 94-1924 (La. 11/18/94), 645 So. 2d 1133; *Louisiana State Bar Ass'n v. Boutall*, 91-2692 (La. 4/20/92), 597 So. 2d 444; *In re Hensley*, 96-0425 (La. 9/13/96), 679 So.2d 384.



involve omissions or misrepresentations, the Board finds no reason to deviate from ABA Standard 5.13 which calls for a reprimand when a lawyer "knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law." *See* Standard 5.13.

### **CONCLUSION**

The Board adopts the factual findings and legal conclusions of the Committee with the exceptions discussed above. However, the Board recommends a public reprimand, rather than a suspension, as the appropriate sanction for Respondent's conduct.

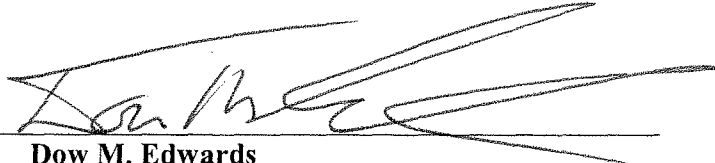
### **RECOMMENDATION**

The Board orders that Respondent, Christian M. Goudeau, be publically reprimanded for his professional misconduct. The Board also orders that Respondent be assessed with the costs and expenses of this proceeding pursuant to Rule XIX, § 10.1.

### **LOUISIANA ATTORNEY DISCIPLINARY BOARD**

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BY:



**Dow M. Edwards  
FOR THE ADJUDICATIVE COMMITTEE**