IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 2130 Disciplinary Docket No. 3
	:	No. 204 DB 2014
v.	:	
	:	Attorney Registration No. 205395
NEWTON B. SCHWARTZ, SR., Respondent	:	(Out Of State)

ORDER

PER CURIAM

AND NOW, this 25th day of February, 2015, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated January 28, 2015, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Pa.R.D.E. 215(g), and it is

ORDERED that Newton B. Schwartz, Sr., is suspended on consent from the Bar of this Commonwealth for a period of three years retroactive to February 14, 2014, and he shall comply with all the provisions of Pa.R.D.E. 217.

A True Copy Patricia Nicola
As Of 2/25/2015

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

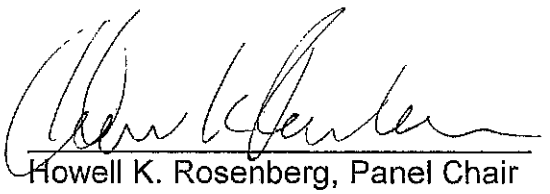
OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 204 DB 2014
v.	:	Attorney Registration No. 205395
NEWTON B. SCHWARTZ, SR Respondent	:	(Out of State)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Howell K. Rosenberg, Stefanie B. Porges, MD., and Andrew J. Trevelise has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on December 18, 2014.

The Panel approves the Joint Petition consenting to a three year suspension retroactive to February 14, 2014 and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.



Howell K. Rosenberg, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: January 28, 2015

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	
	:	No. 204 DB 2014
NEWTON B. SCHWARTZ, SR.	:	
	:	ODC File No. C1-14-165
	:	
	:	Atty. Reg. No. 205395
	:	
	:	(Out of State)

JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT UNDER RULE 215(d), Pa.R.D.E.

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Robert P. Fulton, Esquire, Disciplinary Counsel, and Respondent, Newton B. Schwartz, Sr., file this Joint Petition In Support of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.") and respectfully represent that:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania 17106, is vested, pursuant to Pa.R.D.E. 207, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Newton B. Schwartz, Sr., was born in 1930 and was admitted to practice law in the Commonwealth on August 27, 2007. At all times relevant hereto, Respondent's registered office address was 1911 Southwest Freeway, Houston, Texas 77098. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ADMISSIONS AND RULES OF PROFESSIONAL CONDUCT VIOLATED

3. Respondent stipulates that the following factual allegations are true and correct and that he violated the Rule of Professional Conduct set forth in paragraph 23, *infra*.

4. Respondent has never been admitted to the Bar of the State of Louisiana.

5. In or about December 2004, Respondent was retained by Jay Watts ("Watts") to represent Watts for injuries Watts sustained in a diving accident off the coast of Louisiana while Watts was in the employ of Superior Diving Company, Inc. ("Superior").

6. In January 2005, Superior instituted a declaratory judgment action by filing a complaint against Watts in the United States District Court for the Eastern

District of Louisiana ("the District Court") under caption of ***Superior v. Watts***, 05-cv-0197 ("Superior Action").

7. Seth Cortigene ("Cortigene") was co-counsel with Respondent in the Superior Action and was a member of the Louisiana Bar.

8. Respondent entered his appearance in the Superior Action as "of counsel" for Watts.

9. Respondent and Cortigene submitted an Answer to Superior's Complaint in the Superior Action.

10. Respondent was listed on the docket entries as counsel of record and received notices from the District Court.

11. Respondent assisted in preparing answers to interrogatories and participated in the deposition of Watts taken by the attorneys for Superior.

12. Although Respondent had worked with Cortigene on approximately 25 cases in the Louisiana courts and had previously sought to be admitted *pro hac vice* in those matters, Respondent failed to do so in the Superior Action.

13. Respondent knew that he was required to file a motion to be admitted *pro hac vice* in the Superior Action.

14. On July 19, 2011, the Louisiana Office of Disciplinary Counsel ("LA ODC") filed Formal Charges against Respondent for violation of, *inter alia*, Louisiana

Rule of Professional Conduct ("LA RPC") 5.5 (engaging in the unauthorized practice of law) ("Louisiana Matter").

15. At the time of the misconduct, LA RPC 5.5 stated, in part, that a lawyer shall not: "(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

16. Respondent defended the charges against him in the Louisiana Matter.

17. Louisiana's disciplinary system requires that allegations of misconduct be established by clear and convincing evidence.

18. By Order dated February 14, 2014, the Louisiana Supreme Court determined that Respondent had violated LA RPC 5.5 by engaging in the unauthorized practice of law.

19. The Louisiana Supreme Court determined that the appropriate sanction for Respondent's violation would have been a three-year suspension if Respondent were a member of the Louisiana Bar; however, as Respondent was not a member of that bar, the Louisiana Supreme Court imposed as a sanction an injunction on Respondent "from seeking full admission to the Louisiana bar or from seeking admission to practice in Louisiana on any temporary or limited basis, including, but not limited to, seeking *pro hac vice* admission before a Louisiana court pursuant to Supreme

Court Rule XVII, § 13 or seeking limited admission as an in-house counsel pursuant to Supreme Court Rule XVII, § 14," for a period of three years. A true and correct copy of the Louisiana Supreme Court's Order is attached hereto, made a part hereof, and marked "Appendix A."

20. Pennsylvania Rule of Disciplinary Enforcement 216(d) dictates that "a final adjudication in another jurisdiction that an attorney, whether or not admitted in that jurisdiction, has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Commonwealth."

21. Respondent has practiced law in Texas for over sixty years.

22. Respondent is eighty-four years old.

23. Respondent admits that by the conduct as detailed in Paragraphs 4 through 20 above, Respondent has violated the following Louisiana Rule of Professional Conduct ("RPC"):

a. RPC 5.5, which states that a lawyer shall not: "(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a three-year suspension retroactive to February 14, 2014, the date of the Order of the Louisiana Supreme Court. ODC and Respondent jointly recommend that the suspension be retroactive to February 14, 2014 because Respondent has not practiced in Pennsylvania for several years. Respondent hereby consents to the discipline being imposed upon him. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are the following mitigating circumstances:

a. Respondent has voluntarily offered to enter into this agreement; and

b. Respondent has no history of discipline in Pennsylvania.

WHEREFORE, Petitioner and Respondent respectfully request that:

a. Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., a three-member panel of the Disciplinary Board review and approve the above Joint Petition In Support of Discipline On Consent for the imposition of a three-year suspension retroactive to February 14, 2014, the date of the Order of the Louisiana Supreme Court.

b. Pursuant to Rule 215(i), the three-member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation of this matter

as a condition to the grant of the Petition and that all expenses be paid by Respondent before the imposition of discipline under Rule 215(g), Pa.R.D.E.

Respectfully submitted,
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

15 DEC 2014
Date

By: _____
Robert P. Fulton, Esquire
Disciplinary Counsel
Attorney Regis. No. 37935
Seven Penn Center, 16th Floor
1635 Market Street
Philadelphia, PA 19103
(215) 560-6296

and

12-8-2014
Date

By: _____
Newton B. Schwartz, Sr., Esquire
Attorney Regis. No. 205395
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:
	: No. DB 2014
NEWTON B. SCHWARTZ, SR.	:
	: ODC File No. C1-14-165
	:
	: Atty. Reg. No. 205395
	:
	: (Out of State)

VERIFICATION

The statements contained in the foregoing Joint Petition In Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E., are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

15 DEC 2014
Date

Robert ~~P.~~ Fulton, Esquire
Disciplinary Counsel

12-8-2014
Date

Newton B. Schwartz, Sr., Esquire
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	
	:	No. DB 2014
NEWTON B. SCHWARTZ, SR.	:	
	:	ODC File No. C1-14-165
	:	
	:	Atty. Reg. No. 205395
	:	
	:	(Out of State)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

Respondent, Newton B. Schwartz, Sr., hereby states that he consents to the imposition of a three-year suspension, retroactive to February 14, 2014, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; and he is fully aware of the implications of submitting the consent;

2. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has knowingly and voluntarily chosen not to retain counsel in connection with his decision to consent to discipline;

3. He is aware that there is presently pending an investigation at ODC File No. C1-14-165 into allegations

that he has been guilty of misconduct as set forth in the Joint Petition;

4. He acknowledges that the material facts set forth in the Joint Petition are true; and

5. He consents because he knows that if charges predicated upon the matter under investigation were filed, he could not successfully defend against them.

Newton B. Schwartz, Sr.
Respondent

Sworn to and subscribed
before me this 8th day
of December, 2014.

Notary Public

PAMELA D. HOLMAN
NOTARY PUBLIC
STATE OF TEXAS
MY COMMISSION EXPIRES
AUGUST 25, 2018

SUPREME COURT OF LOUISIANA

NO. 13-B-2022
NO. 13-B-2172

FEB 14 2014

IN RE: SETH CORTIGENE
AND NEWTON B. SCHWARTZ, SR.

ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM

These consolidated disciplinary proceedings arise from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondents, Seth Cortigene and Newton B. Schwartz, Sr. Mr. Cortigene is an attorney licensed to practice law in the States of Texas and Louisiana, but currently ineligible to practice in Louisiana due to his failure to comply with his professional obligations.[1] Mr. Schwartz is licensed to practice law only in Texas and Pennsylvania; however, the ODC asserts jurisdiction over him in this matter pursuant to Supreme Court Rule XIX, § 6(A) and Rule 8.5 of the Rules of Professional Conduct, which together extend this court's disciplinary authority to lawyers who provide or offer to provide legal services in Louisiana.

[1] Mr. Cortigene has been ineligible to practice law in Louisiana since September 9, 2009 for failure to pay his bar dues and the disciplinary assessment. He is also ineligible for failure to file a trust account registration statement and for failure to comply with the mandatory continuing legal education requirements.

In 2011, we considered a reciprocal discipline proceeding against Mr. Cortigene arising out of the same client matter as is at issue here. For Mr. Cortigene's failure to abide by his client's decision whether to accept a settlement offer and failure to communicate with his client, we imposed a fully deferred three-year suspension, based upon the discipline imposed against Mr. Cortigene in a default proceeding in Texas. *In re: Cortigene*, 11-1564 (La. 10/14/11), 72 So. 3d 828.

Knoll, J., dissents in part with reasons.

SUPREME COURT OF LOUISIANA
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORD
Edwin C. Gonzales, Jr.
Deputy Clerk of Court

Appendix A

SUPREME COURT OF LOUISIANA

NO. 13-B-2022
NO. 13-B-2172

FEB 14 2014

IN RE: SETH CORTIGENE
AND NEWTON B. SCHWARTZ, SR.

ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM

These consolidated disciplinary proceedings arise from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondents, Seth Cortigene and Newton B. Schwartz, Sr. Mr. Cortigene is an attorney licensed to practice law in the States of Texas and Louisiana, but currently ineligible to practice in Louisiana due to his failure to comply with his professional obligations.[1] Mr. Schwartz is licensed to practice law only in Texas and Pennsylvania; however, the ODC asserts jurisdiction over him in this matter pursuant to Supreme Court Rule XIX, § 6(A) and Rule 8.5 of the Rules of Professional Conduct, which together extend this court's disciplinary authority to lawyers who provide or offer to provide legal services in Louisiana.

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Knoll, J., dissents in part with reasons.

UNDERLYING FACTS AND PROCEDURAL HISTORY

The facts of this case are rather complex, but for purposes of this opinion, it is only necessary to observe that respondents represented Jay Watts in connection with litigation over a work-related diving accident. Mr. Watts' employer filed suit in the United States District Court for the Eastern District of Louisiana. The undisputed facts reveal that Mr. Schwartz attended and participated in the deposition of Mr. Watts taken in New Orleans, although he was not licensed or admitted to practice *pro hac vice* in Louisiana at any time during the litigation. Moreover, as the litigation progressed, Mr. Schwartz knew that he was listed on the federal court's docket as an attorney of record, yet he still did not seek *pro hac vice* admission or even notify the federal court that he was not admitted as counsel of record.

The ODC subsequently charged Mr. Schwartz with several violations of the Rules of Professional Conduct, including the unauthorized practice of law. Mr. Schwartz answered the formal charges and asserted that Louisiana has no jurisdiction over him because he has not been licensed or admitted to practice *pro hac vice* in Louisiana at any time pertinent hereto, and he did not provide or offer to provide any legal services in this state. Mr. Schwartz also contended that formal charges cannot be filed against him in Louisiana arising out of the Watts case because he was acquitted by a jury of similar charges of misconduct in a Texas disciplinary proceeding premised upon alleged violations of the Texas Disciplinary Rules of Professional Conduct,[2] and that judgment should be given full faith and credit in Louisiana.

[2] Pursuant to the Texas Rules of Disciplinary Procedure, a lawyer against whom formal charges of misconduct have been filed may elect to have the formal charges heard in a district court of proper venue, with or without a jury, or by a grievance committee evidentiary panel. Mr. Schwartz elected a jury trial in the Texas disciplinary proceeding against him for providing improper financial assistance to Mr. Watts and improperly soliciting his professional employment, and the jury unanimously found no professional misconduct on the part of Mr. Schwartz.

The ODC charged Mr. Cortigene with facilitating Mr. Schwartz's misconduct and failing to report it to disciplinary authorities. Mr. Cortigene answered the formal charges and admitted that he was co-counsel in the Watts case and handled certain aspects of the litigation; however, he denied any violation of the Rules of Professional Conduct.

The matter proceeded to a hearing. The hearing committee recommended that Mr. Cortigene be disbarred, and that Mr. Schwartz be publicly reprimanded for his misconduct and enjoined from the practice of law in this state.

The disciplinary board largely adopted the committee's findings and recommendations. With regard to Mr. Cortigene, the board recommended he be disbarred. This recommendation was lodged in this court under docket number 13-B-2022. Neither Mr. Cortigene nor the ODC has objected to the board's recommendation of disbarment.

As to Mr. Schwartz, the board agreed that disbarment would be the appropriate sanction for his misconduct; however, because he is not a member of the Louisiana bar, the board ordered that Mr. Schwartz be publicly reprimanded and permanently enjoined from the practice of law in this state. Mr. Schwartz filed an appeal of the board's ruling objecting to the exercise of any jurisdiction over him in this matter. In response to Mr. Schwartz's appeal, the board lodged the record of the matter in this court's docket number 13-B-2172. The ODC has likewise objected, asserting that the board erred in concluding that Mr. Schwartz cannot be disbarred in Louisiana.

On September 13, 2013, we ordered that 13-B-2172 and 13-B-2022 be consolidated for purposes of briefing and argument, and that the consolidated matters be scheduled on the next available docket for oral argument.

DISCUSSION

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

Mr. Schwartz

At the outset, we note the ODC has charged Mr. Schwartz with multiple violations of the Rules of Professional Conduct stemming from his representation of Mr. Watts. The most serious of these charges relates to the allegation that Mr. Schwartz engaged in the unauthorized practice of law in Louisiana. Because the magnitude of an unauthorized practice of law finding would eclipse any lesser misconduct, our focus will be on this charge.

The hearing committee made a finding of fact that Mr. Schwartz engaged in the practice of law in this state by appearing at and participating in a deposition. The record supports this finding. In particular, the record shows that Mr. Schwartz participated in the deposition of Mr. Watts taken in New Orleans by another party. Mr. Schwartz admitted that he advised Mr. Watts "once or twice" to either answer or not answer a particular question, although he stated that Mr. Cortigene "predominantly did the questioning and the objecting." Our jurisprudence establishes that participation in out-of-court proceedings such as depositions and

sworn statements constitutes the practice of law. *See In re: Jackson*, 02-3062 (La. 4/9/03), 843 So.2d 1079; *In re: Williams*, 02-2698 (La. 4/9/03), 842 So.2d 353. Additionally, we find the record establishes that Mr. Schwartz knew he was listed on the federal court's docket as an attorney of record in the *Watts* case, yet he still did not seek *pro hac vice* admission or even notify the federal court that he was not admitted as counsel of record.

Finding clear and convincing evidence that Mr. Schwartz engaged in the unauthorized practice of law,[3] we now turn to consideration of an appropriate sanction for this misconduct. We have consistently found the unauthorized practice of law to be very serious misconduct. *In re: Lindsay*, 07-1813 (La. 3/7/08), 976 So. 2d 1261; *In re: Patrick*, 07-1222 (La. 12/14/07); 970 So. 2d 964; *In re: Jefferson*, 04-0239 (La. 6/18/04), 878 So. 2d 503; *In re: Callahan*, 02-2960 (La. 5/20/03), 846 So. 2d 728. Our legislature has made it a felony to engage in such conduct. La. R.S. 37:213. Likewise, we have listed the unauthorized practice of law by a suspended or disbarred attorney as a possible ground for permanent disbarment under the Guidelines Depicting Conduct Which Might Warrant Permanent Disbarment contained in Supreme Court Rule XIX, Appendix E.

Nonetheless, we have observed that "not all instances of the unauthorized practice of law warrant the most severe sanction." *Jackson*, 02-3062 at p. 5, 843 So. 2d at 1083. Rather, in cases of the unauthorized practice of law, our jurisprudence has reserved the most severe sanctions for those attorneys who have "manifested a conscious intent to flout the authority of this court by practicing after being prohibited from doing so." *Jackson*, 02-3062 at p. 5, 843 So. 2d at 1082. In

[3] Based on this finding, we pretermit discussion of the remaining charges, including allegations Mr. Schwartz engaged in solicitation and provided improper financial assistance to a client. As a result, we need not address Mr. Schwartz's argument that we must give full faith and credit to the Texas judgment acquitting him of similar charges in that state. Additionally, because Mr. Schwartz's unauthorized practice of law unquestionably took place in Louisiana, we need not discuss his jurisdictional objections.

cases where the unauthorized practice of law is a product of negligence rather than intent, we typically impose lesser sanctions than disbarment. *See e.g., In re: Ellis*, 99-2483 (La. 9/15/99), 742 So. 2d 869 (imposing a ninety-day suspension on a previously suspended attorney who failed to remove the "attorney at law" designation from his office).

In the instant case, it cannot be said that Mr. Schwartz manifested a conscious intent to flout the authority of this court by practicing after being prohibited from doing so, as he was never admitted to the bar of this state, nor has he ever been the subject of any disciplinary orders from this court. Indeed, Mr. Schwartz could have acted as counsel in the Watts matter if he had simply filed a motion for *pro hac vice* admission with the federal district court, as he had done in prior cases. Therefore, to the extent he has not violated any direct orders from this court, we do not find Mr. Schwartz's conduct warrants the highest level of discipline.

However, the record establishes Mr. Schwartz's conduct was not purely negligent, as in those cases imposing the lowest range of discipline. Mr. Schwartz's testimony reveals he was aware of his obligation to seek *pro hac vice* admission and consciously chose not to do so. Although he did not violate any specific court orders, he manifested a lack of candor toward the federal district court.

Under such circumstances, we find Mr. Schwartz's conduct, while not warranting disbarment, still calls for a substantial suspension. Accordingly, we conclude the appropriate sanction for such misconduct would be a three-year suspension.

Having determined discipline is appropriate under these facts, we now turn to the *res nova* issue presented by this case – namely, whether this court may impose discipline on an attorney not admitted to the bar of this state. Supreme

Court Rule XIX, § 10(A) sets forth the list of available sanctions.[4] The board concluded the majority of these sanctions impact the attorney's license and are therefore inapplicable to an attorney not admitted in this state. Rather, the board reasoned the only sanction applicable to a non-Louisiana attorney would be a public reprimand.

We disagree. While Supreme Court Rule XIX, § 10(A) lists the sanctions we typically impose in disciplinary cases, it was not intended to represent an exclusive list, nor does it represent a limitation on our plenary authority to regulate the practice of law. In *Succession of Wallace*, 574 So. 2d 348 (La. 1991), we stated:

> This court has exclusive and plenary power to define and regulate all facets of the practice of law, including the admission of attorneys to the bar, the professional responsibility and conduct of lawyers, the discipline, suspension and disbarment of lawyers, and the client-attorney relationship. *LSBA v. Edwins*, 540 So. 2d 294 (La. 1989); *Saucier v. Hayes Dairy Products, Inc.*, 373 So. 2d 102, 109, 115 (La. 1979); *LSBA v. Connolly*, 201 La. 342, 9 So. 2d 582 (1942); *Ex Parte Steckler*, 179 La. 410, 154 So. 41 (1934); *Meunier v. Bernich*, 170 So. 567 (La. App. 1936). The sources of this power are this court's inherent judicial power emanating from the constitutional separation of powers, La. Const. 1974, Art. II; *Saucier v. Hayes Dairy Products, Inc., supra*; *Ex Parte Steckler, supra*; *Meunier v. Bernich, supra*, the traditional inherent and essential function of attorneys as officers of the courts, *Ex Parte Steckler, supra*; *Meunier v. Bernich, supra*; and this court's exclusive original jurisdiction of attorney disciplinary proceedings. La. Const. 1974, Art. V, § 5(B); *Saucier v. Hayes Dairy Products, Inc., supra.*

In the exercise of this plenary power to define and regulate the practice of law, we have the right to fashion and impose any sanction which we find is necessary and appropriate to regulate the practice of law and protect the citizens of

[4] Supreme Court Rule XIX, § 10(A) lists eight sanctions in disciplinary cases. These sanctions are: (1) disbarment; (2) suspension; (3) probation; (4) reprimand; (5) admonition; (6) restitution; (7) limitation on the nature and extent of the respondent's future practice; and (8) diversion.

this state. This power is broad enough to encompass persons not admitted to the bar who attempt to practice law in this state. *See In re: Jordan*, 12-0551 (La. 4/9/12), 85 So. 3d 683 (permanently enjoining a bar applicant from seeking admission in this state based on a finding that she repeatedly engaged in the unauthorized practice of law). Applying the reasoning of *Jordan*, we find that in the exercise of our plenary authority, we may enjoin a non-Louisiana lawyer from seeking the benefits of a full or limited admission to practice in this state.

Accordingly, we hereby adjudge Mr. Schwartz guilty of conduct which would warrant a three-year suspension from the practice of law if he was a member of our bar. Recognizing that he is not a member of the bar, we order that Mr. Schwartz shall be enjoined for a period of three years from the date of this order from seeking full admission to the Louisiana bar or seeking admission to practice in Louisiana on any temporary or limited basis, including, but not limited to, seeking *pro hac vice* admission before a Louisiana court pursuant to Supreme Court Rule XVII, § 13 or seeking limited admission as an in-house counsel pursuant to Supreme Court Rule XVII, § 14. We will further direct the ODC to report our judgment to all jurisdictions in which Mr. Schwartz is currently admitted.

Mr. Cortigene

The ODC charged Mr. Cortigene with facilitating Mr. Schwartz's misconduct and failing to report it to disciplinary authorities. The hearing committee and disciplinary board both recommended Mr. Cortigene be disbarred. He has not objected to that recommendation in this court.

Our review indicates the findings and recommendations of the hearing committee and disciplinary board are supported by the record. Considering the presence of aggravating factors, particularly Mr. Cortigene's prior disciplinary

record, we will adopt the disciplinary board's recommendation and order that Mr. Cortigene be disbarred.

DECREE

Upon review of the findings and recommendation of the hearing committee, the findings, recommendation, and ruling of the disciplinary board, and considering the record, briefs, and oral argument, the court hereby renders the following orders of discipline:

It is ordered that Seth Cortigene, Louisiana Bar Roll number 19528, be and he hereby is disbarred. Mr. Cortigene's name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked.

It is further ordered that Newton B. Schwartz, Sr. shall be enjoined for a period of three years from seeking admission to the Louisiana bar or seeking admission to practice in Louisiana on a temporary or limited basis, including, but not limited to, seeking *pro hac vice* admission before a Louisiana court pursuant to Supreme Court Rule XVII, § 13 or seeking limited admission as an in-house counsel pursuant to Supreme Court Rule XVII, § 14. The Office of Disciplinary Counsel is directed to report this judgment to all jurisdictions in which Mr. Schwartz is currently admitted.

All costs and expenses in the matter are assessed against respondents in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

SUPREME COURT OF LOUISIANA

NO. 13-B-2022
NO. 13-B-2172

FEB 14 2014

IN RE: SETH CORTIGENE
AND NEWTON B. SCHWARTZ, SR.

ATTORNEY DISCIPLINARY PROCEEDINGS

Knoll, J., dissenting.

I agree with the majority that clear and convincing evidence clearly shows Mr. Schwartz not only knowingly engaged in the unauthorized practice of law in Louisiana, but also acted with deceit. In my view, this intentional and indefensible conduct merits the harshest of sanctions, thus I disagree with the sanction imposed by the majority.

As the majority astutely noted, we have consistently found the unauthorized practice of law very serious, felonious misconduct and even grounds for permanent disbarment. *In re: Lindsay*, 07-1813 (La. 3/7/08), 976 So. 2d 1261; *In re: Patrick*, 07-1222 (La. 12/14/07); 970 So. 2d 964; *In re: Jefferson*, 04-0239 (La. 6/18/04), 878 So. 2d 503; *In re: Callahan*, 02-2960 (La. 5/20/03), 846 So. 2d 728; La. Rev. Stat. § 37:213; *see also* Guidelines Depicting Conduct Which Might Warrant Permanent Disbarment contained in Supreme Court Rule XIX, Appendix E. While we have never addressed the question of the appropriate sanction for a non-admitted lawyer who engages in the unauthorized practice of law, I, unlike the majority, find guidance in our recent decision of *In re: Jordan*, 12-0551 (La. 4/9/12), 85 So. 3d 683. In that case, the petitioner previously sought admission to the bar and was denied. Thereafter, while working as a paralegal, petitioner engaged in the unauthorized practice of law. Considering these facts, we permanently enjoined petitioner from seeking admission to the bar:

> **Standing alone, the unauthorized practice of law conclusively demonstrates that petitioner lacks the moral fitness to be admitted to the bar.** The improper fee-sharing and the conduct arising out of the incident in law school simply serve to underscore the conclusion that petitioner possesses serious and fundamental character flaws.
>
> Given the egregious nature of petitioner's wrongdoing, as well as her pattern of conduct occurring over many years, we can conceive of no circumstance under which we would ever grant her admission to the practice of law in this state. Accordingly, we will deny her application for admission. Furthermore, no applications for admission will be accepted from petitioner in the future.

Jordan, 12-0551 at pp. 4-5, 85 So.3d at 685-86 (emphasis added; footnote omitted.)

Like Mr. Schwartz, the petitioner in *Jordan* was not a member of the Louisiana bar. Nonetheless, we sanctioned her by prohibiting her from seeking admission to the bar in the future. Following this reasoning, I find the appropriate sanction in the instant case is to adjudge Mr. Schwartz guilty of conduct warranting permanent disbarment.

Though I acknowledge we cannot disbar an attorney who is not a member of the Louisiana bar, I believe we must take steps to protect the citizens of this state from any future misconduct by Mr. Schwartz. Accordingly, I would order Mr. Schwartz be permanently enjoined from seeking admission to the Louisiana bar or seeking admission to practice in Louisiana on any temporary or limited basis, including, but not limited to, seeking *pro hac vice* admission before a Louisiana court pursuant to Supreme Court Rule XVII, § 13 or seeking limited admission as an in-house counsel pursuant to Supreme Court Rule XVII, § 14. Additionally, I would order the ODC to give notice of this judgment to the disciplinary authorities of any state in which Mr. Schwartz is admitted to practice. For these reasons, I respectfully dissent.

ORIGINAL

FILED by: [illegible]
Docket# 11-DB-075 | Filed-On 10/16/2012

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: SETH CORTIGENE AND NEWTON B. SCHWARTZ, SR.

DOCKET NO. 11-DB-075

REPORT OF HEARING COMMITTEE #24

INTRODUCTION

This consolidated attorney discipline matter arises out of related formal charges filed by the Office of Disciplinary Counsel ("ODC") against Seth Cortigene[1] and Newton B. Schwartz, Sr.[2] The ODC alleges that Respondent Cortigene is guilty of violating the following Rules of Professional Conduct ("Rule(s)"): Rule 5.1(c)(1) (ratifying another lawyer's violation of the Rules of Professional Conduct); Rule 5.5 (assisting another to engage in the unauthorized practice of law); Rule 8.3(a) (failing to report violations of the Rules of Professional Conduct); and Rule 8.4(a) (knowingly assisting another to violate the Rules of Professional Conduct). ODC alleges that Respondent Schwartz is guilty of violating the following Rules of Professional Conduct ("Rule(s)"): Rule 1.8(e) (improperly providing financial assistance to a client); Rule 1.8(i) (acquiring a propriety interest in the cause of action); Rule 5.5 (engaging in the unauthorized practice of law); Rule 7.3(a) (soliciting professional employment); Rule 8.4(a) (knowingly assisting or inducing another to violate the Rules of Professional Conduct or doing so through the acts of another); and 8.4(c) (engaging in conduct involving dishonest, fraud, deceit or misrepresentation).[3]

[1] At the time of the alleged violations, Mr. Cortigene was admitted to practice in both Louisiana and Texas. Mr. Cortigene has been ineligible to practice law in Louisiana since September 9, 2009, due to his failure to pay bar dues and disciplinary assessments, failure to meet mandatory continuing legal education requirements, and failure to file mandatory trust account disclosure statements. He remains ineligible.

[2] Mr. Schwartz is admitted to the Texas bar. He is not a member of the Louisiana bar, nor was he admitted *pro hac vice* by the Louisiana federal court for the representation at issue in these proceedings.

[3] The cited rules are quoted in the attached Appendix.

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PROCEDURAL HISTORY

The formal charges were filed on July 19, 2011, and were served via certified mail. Respondent Schwartz answered the charges on August 12, 2011, objecting to the Louisiana Attorney Disciplinary Board's jurisdiction over him because he is not a member of the Louisiana Bar and purportedly - by design - had very little contact with the State of Louisiana. Respondent Cortigene answered the charges on September 16, 2011, denying that he violated the Rules of Professional Conduct.

After delays resulting from the filing of several motions, including Respondent Schwartz's motion to dismiss objecting to the Louisiana Attorney Disciplinary Board's jurisdiction, which was denied, and related to Respondent Cortigene's health issues, the matter was heard on April 24 and 25, 2012.[4] At the hearing, Respondent Schwartz appeared *pro se* and Deputy Disciplinary Counsel G. Fred Ours appeared on behalf of the ODC. Respondent Cortigene did not appear, but testified via telephone.[5]

For the following reasons, the Committee finds that Respondent Schwartz improperly solicited professional employment, improperly provided financial assistance to a client, engaged in the unauthorized practice of law, knowingly assisted or induced another to violate the Rules, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. The Committee finds that Respondent Cortigene ratified another lawyer's violation of the Rules, assisted another to engage in the unauthorized practice of law, failed to

[4] The regrettable inordinate delay in issuing the Committee's recommendations is due to several factors, primarily involving the difficulty in obtaining a corrected transcript of the proceeding. After the hearing and submission of the transcript from the court reporter, Respondent Schwartz properly noted multiple errors in the transcript. The transcript was reviewed further and, with some difficulty, a corrected and accessible copy finally was received.

[5] On April 17, 2012, Mr. Cortigene was ordered to submit to the Committee documentation from his physician that his medical condition would prevent him from appearing at the hearing and defending against the charges, without which Mr. Cortigene would be expected to appear at the hearing to present his defense. Mr. Cortigene did not provide the documentation.

report violations of the Rules, and knowingly assisted another to violate the Rules.[6] The Committee recommends that Respondent Seth Cortigene be disbarred and that Respondent Newton B. Schwartz, Jr., who is not a member of the Louisiana Bar, be enjoined from practicing law in Louisiana. The Committee also recommends that Respondent Schwartz be sanctioned by public admonishment for his violations of the Louisiana Rules of Professional Conduct and that notice of these sanctions be provided to the Texas bar.

FORMAL CHARGES

1. Mr. Jay Watts, a Mississippi resident, was injured in a diving accident. Respondent Schwartz had no prior dealings with Mr. Watts, and knew that Mr. Watts was not seeking representation. Nevertheless, Respondent Schwartz contacted Mr. Watts and met with Mr. Watts in Mississippi to discuss the possibility of representing Mr. Watts to recover for his personal injuries.

2. At that first meeting, Respondent Schwartz offered Mr. Watts $9,000 and financial support in the form of a loan, if Mr. Watts retained Respondent Schwartz. Mr. Watts declined.

3. Mr. Watts subsequently retained Respondent Schwartz, was paid the $9,000, and given the financial assistance in the form of a loan, to be repaid with interest. Over the course of the representation, the payments totaled $70,000.

4. Anticipating that the lawsuit might be filed in Louisiana, Respondent Schwartz enlisted Respondent Cortigene as co-counsel.

5. Both Respondent Schwartz and Respondent Cortigene, with knowledge that Respondent Schwartz was not a member of the Louisiana bar nor admitted *pro hac vice*, engaged in the practice of law in the United States District Court, Eastern District of Louisiana, representing Mr. Watts in an action to attempt to recover his personal injury damages.

6. Respondent Schwartz's conduct violated the following Louisiana Rules of Professional Conduct: Rule 1.8(e) – improperly providing financial assistance to a client; Rule 1.8(i) – acquiring a propriety interest in the cause of action; Rule 5.5 - engaging in the unauthorized practice of law; Rule 7.3(a) - soliciting professional employment; and Rule 8.4(a) - knowingly assisting or inducing another to violate the Rules of Professional Conduct or doing so through the acts of another; 8.4(c) - engaging in conduct involving dishonest, fraud, deceit or misrepresentation.

[6] Although the proceedings were completed on April 25th, and no party requested or was asked to file post hearing briefs, on June 15, 2012, Respondent Schwartz submitted a ten-page untitled memorandum with exhibits. The memorandum attempted to revisit the issues and evidence addressed fully at the hearing, and thus was not considered.

7. Respondent Cortigene's conduct violated the following Louisiana Rules of Professional Conduct: Rule 5.1(c)(1) - ratifying another lawyer's violation of the Rules of Professional Conduct, specifically Respondent Schwartz's improper financial assistance of a client, his unauthorized practice of law, and his solicitation of professional employment; Rule 5.5 - assisting another to engage in the unauthorized practice of law; Rule 8.3(a) - failing to report Respondent Schwartz's violations of the Rules of Professional Conduct; and Rule 8.4(a) - knowingly assisting another to violate the Rules of Professional Conduct, or doing so through the acts of another, specifically Respondent Schwartz's improper financial assistance to a client, his unauthorized practice of law, and his solicitation of professional employment.

PRELIMINARY LEGAL ISSUES

1. Jurisdiction.

Respondent Schwartz contends that the Louisiana Attorney Disciplinary Board has no jurisdiction to enforce this State's disciplinary rules against him because he is not licensed to practice law in Louisiana. This reasoning flies in the face of logic. If Respondent Schwartz's position were correct, any attorney not licensed to practice law in Louisiana could violate every one of the Louisiana Rules of Professional Conduct with impunity. The Louisiana Supreme Court, without doubt, has jurisdiction to enforce its rules on attorneys who purport to practice law in Louisiana, with or without admission to the Louisiana bar.[7]

The fact that Respondent Schwartz is not a member of the Louisiana bar does present a novel issue for this Committee, and the Committee found no Louisiana case exactly on point. The ODC suggests that disbarment is the appropriate sanction for Respondent Schwartz's actions, but Respondent Schwartz is not a member of the bar of the State of Louisiana. Thus, "disbarment" does not appear to be an option. *But see In the Matter of Kingsley*, No. 138,2008 (Del. 6/4/2008). ("Disbarment in the context of an attorney not admitted in Delaware means 'the

[7] Mr. Schwartz also contends that he has intentionally limited his contacts with Louisiana to avoid jurisdiction. As discussed herein, the facts demonstrate that at a minimum Mr. Schwartz's contacts with Louisiana by his representation of Mr. Watts in a Louisiana court, are sufficient to provide the Louisiana Attorney Disciplinary Board and the Louisiana Supreme Court with jurisdiction to address his alleged violations of the Louisiana Rules of Professional Conduct.

unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State."'; report was made public and respondent ordered to pay all costs of the proceedings).

Based upon analogous situations in other states, it appears that the appropriate sanction could include enjoining Respondent Schwartz from practicing law in Louisiana and/or public admonishment for his violations in Louisiana. *See Yazdchi v. Unauthorized Practice of Law Committee,* No. 01-09-00065 (Tex. App. July 1, 2010) (attorney without a license to practice law in Texas found to have improperly practiced law in Texas; permanently enjoined him from the practice of law in Texas); *In Re Soto*, 840 A.2d 1291 (D.C. 2004) (attorney practicing law in Maryland, when not a member of the Maryland bar, received a public reprimand in Maryland and public censure in the District of Columbia as reciprocal discipline); *In Re Roel*, 165 N.Y.S.2d 31, 3 N.Y.2d 224, 144 N.E.2d 24 (N.Y. 1957) (lawyer admitted to practice law in Mexico, but not a member of the New York bar, held in contempt and enjoined from practicing law in the State of New York); *Unauthorized Practice of Law Committee v. Bodhaine*, 738 P.2d 376 (Colo. 1987) (attorney licensed to practice law in California, but not in Colorado, engaged in the unauthorized practice of law in Colorado; permanently enjoined from the practice of law in Colorado). In addition, the Louisiana Supreme Court also is within its authority to notify the Texas bar of its findings, should the Louisiana Attorney Disciplinary Board and the Louisiana Supreme Court agree with this Committee's recommendations. Thus, Respondent Schwartz's contention that the Louisiana Supreme Court cannot impose sanctions upon him must fail.

2. Full Faith and Credit.

Respondent Schwartz also contends that because he was exonerated in a proceeding conducted by the Texas State Commission for Lawyers Discipline arising out of his handling of the Watts representation, the charges against him in Louisiana should be dismissed

based upon principles of Full Faith and Credit. We disagree. The documentation of the issues raised and the rulings in the Texas proceeding, *see* Respondent's Exhibits 43 and 44, do not support this conclusion. First, the Texas disciplinary proceeding involved only the solicitation of employment and payments to Mr. Watts. It did not involve the unauthorized practice of law in the state of Louisiana, Rule 5.5, or the charges arising out of the unauthorized practice of law (i.e., alleged violations of Rules 8.4(a) and 8.4(c)). Thus, at a minimum, the charges under Rules 5.5, 8.4(a), and 8.4(c) are not affected by the final judgment in Texas. Moreover, it appears that the Texas disciplinary rules addressed by the judgment are not identical to the Louisiana disciplinary rules implicated here. Thus, the Committee is not constrained to recommend a dismissal of the charges related to the solicitation of Respondent Watts and payments to Mr. Watts, the charges under Rules 1.8(e), 1.8(i), and 7.3(a).

FINDINGS OF FACT

1. Respondent Cortigene was admitted to the Texas bar on November 8, 1985, and to the Louisiana bar on October 6, 1989. He has been ineligible to practice law in Louisiana since September 9, 2009, due to failure to pay bar dues and disciplinary assessments, failure to meet mandatory continuing legal education requirements, and failure to file mandatory trust account disclosure statements

2. Respondent Schwartz is admitted to the Texas bar. He has not been licensed, or admitted to practice pro hac vice, in Louisiana at any time pertinent hereto. The Louisiana lawyer disciplinary system has jurisdiction over him under La.S.Ct. Rule XIX, Section 6A, and Rule of Professional Conduct 8.5(a).

3. On November 12, 2004, Jay Watts was injured in a diving accident off the coast of Louisiana while in the course and scope of his employment with Superior Diving Company, which is located in Louisiana.

4. Mr. Watts' co-worker, Tom Smith, had been involved in a diving accident and told Mr. Watts about his attorneys, Respondent Schwartz and Respondent Cortigene. [April 24, 2012 Transcript ("TR1") pp.139-140].

5. At that time, Mr. Watts was not interested in hiring an attorney. [TR1 p. 140].

6. After Mr. Smith talked to Mr. Watts, Mr. James Tweedle contacted Mr. Watts and told Mr. Watts that "he was an investigator . . . like a scout or some sort like that." [TR1 pp. 141-142].

7. Mr. Tweedle asked Mr. Watts if Respondent Schwartz could contact him. Mr. Watts advised Mr. Tweedle that he did want to hire an attorney, but that Respondent Schwartz could contact him. [TR1 p. 142].

8. Respondent Schwartz met with Mr. Watts at his home in Mississippi on December 10, 2004, and offered Mr. Watts a check for $9,000 and living expenses while the lawsuit was going on, if Mr. Watts would retain Respondent Schwartz as his attorney. Mr. Watts declined. [TR1 pp. 145-146].

9. Respondent Schwartz told Mr. Watts that he would be charged interest on the payments. At that time, Mr. Watts declined. [TR1 pp. 147-148].

10. Mr. Tweedle, a former client of Respondent Schwartz, provided services to Respondent Schwartz as a courtesy to Respondent Schwartz's current clients, including driving clients to and from appointments. Mr. Tweedle was paid a fee, essentially operating as an independent contractor. [April 25, 2012 Transcript ("TR2") pp. 20, 22].

11. Mr. Tweedle also contacted witnesses and took witness statements for Respondent Schwartz and Respondent Cortigene. [TR2 pp. 22-23].

12. Respondent Schwartz learned that Mr. Watts might be a potential client from a current client, Mr. Tom Smith. [TR2 pp. 32, 33, 73-74].

13. Respondent Schwartz initiated contact with Mr. Watts through Mr. Tweedle, and met with Mr. Watts at his home in Mississippi on December 10, 2004 for the purpose of soliciting the representation of Mr. Watts for a lawsuit involving his diving accident. [*See* Exhibit ODC 6, Respondent 1; TR2 pp. 46-47, 49].

14. Respondent Schwartz's visit with Mr. Watts in Mississippi was not a visit to interview Mr. Watts about the Smith case, but rather was strictly a visit to solicit Mr. Watts as a client for his diving accident claim. [TR2 pp. 75-76].

15. Respondent Schwartz went to the Watts' home knowing that Mr. Watts was not interested in hiring lawyer. [TR2 p. 51].

16. While at the Watts' home on December 10, 2004, Respondent Schwartz completed a "contract" and offered Mr. Watts a check for $9,000.00, which Mr. Watts did not accept. [TR2 pp. 50-52].

17. Mr. and Mrs. Watts both told Respondent Schwartz that they did not want to hire a lawyer and they did not sign the contract. [TR2 p. 52].

18. Respondent Schwartz received a phone call from Mr. Watts within a week advising that he was interested in retaining Respondent Schwartz. [TR2 pp. 54-55].

19. Anticipating that the Watts lawsuit could be filed in Louisiana, Respondent Schwartz enlisted Respondent Cortigene to serve as co-counsel. Respondent Cortigene then met with Mr. Watts in Mississippi to have the contract signed and to introduce himself to Mr. Watts as a lawyer who would be representing him in Louisiana. [TR2 pp. 55-56, 177].

20. Upon being formally retained, Respondent Schwartz provided Mr. Watts with the promised $9,000 and began making monthly payments to Mr. Watts. Mr. Watts was advised that he would be charged interest on those advance payments at rates of 12% to 15%. From December of 2004 through December of 2006, Respondent Schwartz made client "loans" to Mr. Watts totaling over $72,000. [*See* ODC 15,17; TR1 pp. 124-125; TR2 pp. 55-56, 177].

21. In January 2005, Mr. Watts' employer, Superior Diving, filed a preemptive declaratory judgment action in federal court in Louisiana to resolve Mr. Watts' potential personal injury claims. [TR2 56].

22. When Respondent Cortigene filed his first appearance in response to the Superior Diving declaratory judgment action, Respondent Schwartz was listed on the pleading as "of Counsel," and at that time Respondent Cortigene knew that Respondent Schwartz had not been admitted *pro hac vice*. [TR2 pp. 95-96, 185-186].

23. Respondent Schwartz and Respondent Cortigene began working together in the mid-1980s. [TR2 pp. 83-84].

24. Respondent Cortigene knew that Respondent Schwartz was not licensed to practice law in Louisiana. [TR2 pp. 88, 185].

25. Neither Respondent Cortigene nor Respondent Schwartz ever considered filing a motion to admit Respondent Schwartz *pro hac vice* in the Watts case. [TR2 pp. 91-92].

26. Respondent Schwartz knew the need to be admitted *pro hac vice* because in prior cases appearing in Louisiana he had taken steps to be admitted *pro hac vice*. [TR2 pp. 94-95].

27. In April 2005, Respondent Schwartz and Respondent Cortigene both participated in the deposition of Mr. Watts taken by Superior Diving in New Orleans. [TR2 pp. 56-57, 191].

28. Respondent Schwartz admitted that he "advised [Mr. Watts] to either answer or don't answer once or twice, but Mr. Cortigene predominantly did the questioning and the objecting." In addition, Respondent Schwartz "helped prepare the answers to the interrogatories [that] were a predicate for [the deposition]." [TR2 pp. 57-58].

29. Respondent Schwartz intentionally avoided any appearance of practicing law in Louisiana, including avoiding petitioning for admission *pro hac vice*, and attempted to avoid personal jurisdiction in Louisiana. [*See* TR2 pp. 76-79, 92-93, 188-89, 195-96].

30. Respondent Schwartz and Respondent Cortigene were on a "fee sharing basis" for the Watts case. [TR2 pp. 85, 111].

31. Respondent Schwartz testified that he knew he had not been admitted *pro hac vice*, and that he would have made a decision whether to be admitted only if the Judge noticed that he was practicing law before the Louisiana court without being admitted to practice in Louisiana. [TR2 pp. 97-99].

32. Respondent Schwartz appeared at hearings before the Louisiana court in the Watts case. [TR2 pp. 99-100].

33. As the Watts case progressed, Respondent Schwartz reviewed the court docket sheet, noticed that he was listed as attorney of record on the docket sheet, yet still did not file a motion to be admitted *pro hac vice*. [TR2 pp. 102-103].

34. In November 02 2006, a third attorney was retained to assist in the Watts case, Mr. Eb Garrison. During the time that Mr. Garrison was involved in the case, from November 2006 through January 2007, Respondent Schwartz was actively involved in working on the case filed in the Louisiana court. [TR1 pp. 204-205].

35. Respondent Schwartz was receiving notices from the court as an attorney of record in the Watts matter but did not participate in e-filing because he was not on the PACER system, and he was not concerned. [TR2 pp. 104-105].

36. Respondent Schwartz admitted that he provided financial assistance to Mr. and Mrs. Watts, but believed that it was not improper under the Texas Disciplinary Rule allowing payment of both "reasonably necessary living and medical expenses." [TR2 p. 121].

37. Respondent Schwartz admitted that he traveled to Mississippi to interview a person considered to be a potential client, armed with a check, when he knew that the "potential client" had no intention of hiring a lawyer at that time. [TR2 p. 124].

38. On November 22, 2010, Respondent Schwartz filed a pleading in the Watts matter, ostensibly *pro se*, but on behalf of himself and as Trustee of the Kemper, Queen, and Schwartz Jr. Trust. Thus, his appearance with this filing was not merely *pro se* [*See* ODC 14(note 2), TR2 pp. 130-131].

39. Respondent Cortigene, as lead counsel in Watts, was in charge of a mediation conducted with Mr. Watts and Superior Diving. Respondent Cortigene had full authority at the mediation to act alone for Respondent Schwartz. The mediation was not successful. However, after the mediation, Respondent Cortigene, acting alone, agreed to a settlement without the authority of Mr. Watts. [TR2 pp. 107-109, 113-116].

40. Respondent Cortigene estimated that he and Respondent Schwartz had worked together on approximately twenty-five cases in Louisiana courts, and Respondent Schwartz never enrolled *pro hac vice* in any of those case. [TR2 p. 158].

41. Respondent Cortigene testified that he was not aware that Respondent Schwartz was charging interest on the advances to Mr. Watts because Respondent Schwartz handled all the finances. [TR2 pp. 172-173].

42. The interest-bearing loans to Mr. and Mrs. Watts were not made from "financial institutions in which the lawyer has no ownership, control and/or security interest." But rather from Respondent Schwartz's children's Trust, known as the Kemper, Queen, Schwartz Trust, and the interest charged was for the benefit of that Trust. [*See* TR2 pp. 222-223].

RULES VIOLATED

1. **Respondent Newton B. Schwartz, Sr. violated the following Rules of Professional Conduct:**

a. Rule 1.8(e) (improperly providing financial assistance to a client). Although Respondent Schwartz testified that he carefully interviewed Mr. and Mrs. Watts to determine their financial needs (ostensibly to confirm necessitous circumstances), Respondent Schwartz also admitted that he offered $9,000 and continuing financial aid at a time when he was attempting to induce Mr. Watts to retain him as his attorney. This violates Rule 1.8(e)(4)(ii) and (iii).

In addition, Respondent Schwartz violated Rule 1.8(e)(5) by charging interest on the advances made, not from any of the listed authorized financial institutions, but rather from what appears to be a trust set up for the benefit of Respondent Schwartz's family. Although due to the issues surrounding unauthorized settlement by Respondent Cortigene, the advances and interest were forgiven, Respondent's Schwartz's interest-bearing advances violated Rule 1.8(e)(5) from the onset.

b. Rule 5.5 (engaging in the unauthorized practice of law). The facts demonstrate that, notwithstanding Respondent Schwartz's protestations to the contrary, clearly he practiced law in Louisiana by representing Mr. Watts in the litigation in the United States District Court for the Eastern District of Louisiana. He not only enrolled in the litigation (or at least allowed himself to remain enrolled in the matter, consciously deciding that he would not file a motion to

be admitted to practice *pro hac vice*), he also actively participated in at least one deposition and oversaw pleadings, accepting the benefits of an enrolled attorney by receiving pleadings served by the court.

c. Rule 7.3(a) (soliciting professional employment). Respondent Schwartz had no family or prior professional relationship with Mr. Watts - and knew that Mr. Watts was not looking for an attorney - when Respondent Schwartz made an appointment with Mr. Watts and met with Mr. and Mrs. Watts at their home in Mississippi. Respondent Schwartz met with Mr. and Mrs. Watts knowing that the case could be filed in Louisiana, which is why he made a point of sending Respondent Cortigene to meet Mr. Watts to sign the contract, once Mr. Watts decided to retain him. Thus, the fact that the meeting occurred in Mississippi is of no relevance in considering the application of the Louisiana Rules. Respondent Schwartz violated Rule 7.3(a) by "solicit[ing] professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain."

d. Rule 8.4(a) (knowingly assisting or inducing another to violate the Rules of Professional Conduct or doing so through the acts of another). Respondent Schwartz induced Respondent Cortigene to assist him in his unauthorized practice of law, resulting in Respondent Cortigene's violations listed below.

e. Rule 8.4(c) (engaging in conduct involving dishonest, fraud, deceit or misrepresentation). Respondent Schwartz admitted that he knew that he was not admitted *pro hac vice* in the Watts case, but decided not to bother unless and until the Judge noticed that he was appearing before the court improperly. This alone constitutes "conduct involving dishonest,

fraud, deceit or misrepresentation," if not also a violation of the rule requiring candor toward the court.

2. **Respondent Seth Cortigene violated the following Rules of Professional Conduct:**

a. Rule 5.1(c)(1) (ratifying another lawyer's violation of the Rules of Professional Conduct), Rule 5.5 (assisting another to engage in the unauthorized practice of law), and Rule 8.4(a) (knowingly assisting another to violate the Rules of Professional Conduct). Respondent Cortigene ratified Respondent Schwartz's improper dealings with Mr. Watts (including the improper solicitation, monetary inducement, and interest-bearing advances) when Respondent Cortigene made the follow-up visit to Mr. Watts to deliver the $9,000 check and obtain Mr. Watts' signature on the contract completed by Respondent Schwartz on December 10, 2004. In addition, the evidence is clear that Respondent Cortigene knew that Respondent Schwartz was practicing law in Louisiana without authority, and Respondent Cortigene not only ratified, but also assisted Respondent Schwartz's ongoing violation by continuing to file pleadings in the case listing Respondent Schwartz as co- counsel.

b. Rule 8.3(a) (failing to report violations of the Rules of Professional Conduct). Mr. Cortigene made no attempt to correct the ongoing violations, much less report it to the Louisiana Attorney Disciplinary Board.

SANCTION

Louisiana Supreme Court Rule XIX, Section 10(C) provides 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;

Respondent Schwartz's solicitation of and monetary advances to Mr. Watts, as well as his unauthorized practice of law in Louisiana, and Respondent Cortigene's role in facilitating that conduct, represent flagrant disregard for the authority - indeed the responsibility - of the Louisiana Supreme Court to regulate the practice of law within this state. The solicitation and financial aid rules and the specific requisites for the privilege of practicing law in Louisiana are in place for the protection of the clients, the public, the legal system, and the profession. Thus, Respondents have violated duties to all.

2. whether the lawyer acted intentionally, knowingly, or negligently;

Both Respondent Schwartz and Respondent Cortigene knew that Respondent Schwartz was not a member of the Louisiana bar and was not admitted to practice *pro hac vice*.

3. the amount of actual or potential injury caused by the lawyer's misconduct;

Mr. Watts was harmed by the failure of Respondent Schwartz to enroll *pro hac vice* and thus take a more active role in the litigation. According to Respondent Schwartz, although he was in fact taking a role in representing Mr. Watts in the case, he intentionally kept that role to a *minimum*, knowing that he had not enrolled *pro hac vice* (and the Judge had not yet caught that transgression). If Respondent Schwartz had not been consciously trying to fly beneath radar, he might have had a large enough role in the case to avoid the unauthorized settlement of the case by Respondent Cortigene (a charge not before this Committee) and resulting harm to the client. In addition, the integrity of the profession was harmed by Respondent Schwartz's scheme and Respondent Cortigene's assistance in the ruse.

4. the existence of any aggravating or mitigating factors.

Neither respondent appears to acknowledge that what they did was wrong.

Respondent Schwartz attempted to "game" the system, thinking that he could push the envelope to the very edge, but not go over. He failed. This conscious effort to evade the jurisdiction of the Louisiana Supreme Court by - admittedly - not enrolling *pro hac vice* unless and until the court noticed that he was not admitted to practice in Louisiana is, without doubt, an aggravating factor. Respondent Schwartz testified that he thought he could bring the case in Texas. This does not mitigate his actions in Louisiana. Once he knew that the case was proceeding in Louisiana, he was duty bound to comply with the rules and enroll *pro hac vice*.

Respondent Cortigene also was fully aware of what was going on and did nothing to correct the situation. Although Respondent Cortigene's health later played a role in the harm to the client, the violations noted had already occurred by then. Further aggravating factors include Respondent Cortigene's failure to fulfill his CLE, trust account, and dues requirements since 2009, as well as failure to

comply with the Committee's order to provide documentation of his medical condition or appear at the hearing.

The Louisiana Supreme Court also relies on the *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards") to determine the baseline sanction. This case presents factors that do not readily fit into the guidelines. The reasoning of the Louisiana Supreme Court in the case of *In re Stamps*, 2003-2985 (La. April 14, 2004) 874 So.2d 113, is instructive. Mr. and Mrs. Stamps likewise attempted to circumvent the requisites for practicing law within a state. The violations extended from North Carolina (where they practiced law without authority) to Louisiana,(where they concealed their North Carolina conduct in their bar applications). They too objected to the jurisdiction of the Louisiana Supreme Court (in that case, to impose sanctions for their conduct in North Carolina). They too asserted defenses plainly contrary to the facts ("Considering the overwhelming evidence, it simply flies in the face of logic and common sense for respondents to assert that they did not believe [that they were employed in North Carolina practicing law]"). A similar aggravating factor was noted by the court, in that the respondents likewise continued to refuse to acknowledge that what they did was wrong. The lack of candor and the misrepresentations led the court to disbar the respondents. Although the underlying violation resulting in disbarment was the failure to disclose the information on their application to the Louisiana bar, the similarities in the respondents' mindsets leads this Committee to recommend sanctions consistent with the conclusion in *Stamps*.

Based upon *In re Stamps* and the noted aggravating and mitigating factors, the Committee recommends that Respondent Cortigene be disbarred and that Respondent Schwartz be enjoined from practicing law in Louisiana and publically reprimanded. The Committee also recommends that the Texas bar be notified of these proceedings and the outcome.

CONCLUSION

For the foregoing reasons, the Committee recommends that Respondent Seth [illegible] disbarred. Respondent Newton B. Schwartz, Sr. is not a member of the Louisiana Bar. Thus, the Committee recommends that Respondent Schwartz be enjoined from the practice of law in Louisiana and publicly reprimanded, and that the Texas Bar Association be advised of the ultimate outcome of these proceedings, should the Board and Louisiana Supreme Court agree that Respondent Schwartz violated one or more of the Louisiana Rules of Professional Conduct.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized its chairman, Mary L. Dumestre, to sign on their behalf.

New Orleans, Louisiana, this 16th day of October, 2012

Louisiana Attorney Disciplinary Board
Hearing Committee #24
Mary L. Dumestre, Committee Chair
Jaime C. Waters, Lawyer Member
Shawn Clancy-Lee, Public Member

Mary L. Dumestre

By: MARY L. DUMESTRE
FOR THE COMMITTEE

APPENDIX

RULE 1.8. CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

• • •

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.

With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.

With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

(4) In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.

(i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.

(ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.

(iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.

(iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.

(5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.

(i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.

(ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to any federally insured bank, savings and loan association, savings bank, or credit union where the lawyer's ownership, control and/or security interest is less than 15%. Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith efforts to procure a favorable interest rate for the client.

(iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.

(iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such

loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.

(v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.

(vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.

(vii) For purposes of Rule 1.8(e), the term "financial institution" shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

. . .

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

RULE 5.1. RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

. . .

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; . . .

RULE 5.5. UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro *hac vice* admission and that are provided by an attorney who has received a limited license to practice law pursuant to La. S. Ct. Rule XVII, §14; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) (1) A lawyer shall not:

(i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice

of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or

(ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court. .

• • •

(3) For purposes of this Rule, the practice of law shall include the following activities:

(i) holding oneself out as an attorney or lawyer authorized to practice law;

(ii) rendering legal consultation or advice to a client;

(iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;

(iv) appearing as a representative of the client at a deposition or other discovery matter;

(v) negotiating or transacting any matter for or on behalf of a client with third parties;

(vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

RULE 7.3. DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(as amended 3/1/2004 and in effect at the time of the contact with Mr. Watts)

(a) A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

RULE 8.3. REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Disciplinary Counsel.

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;

• • •

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

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: SETH CORTIGENE & NEWTON B. SCHWARTZ, SR.

NUMBER: 11-DB-075

RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD AND RECOMMENDATION TO THE LOUISIANA SUPREME COURT

This is a disciplinary proceeding based upon the filing of formal charges by the Office of Disciplinary Counsel ("ODC") against Seth Cortigene, Louisiana Bar Roll Number 19528, and Newton B. Schwartz, Texas Bar Card Number 17869000, ("Respondents"). The charges allege that Cortigene violated the following Rules of Professional Conduct ("Rule(s)"): 5.1(c)(l) (ratifying another lawyer's violation of the Rules of Professional Conduct); 5.5 (assisting another to engage in the unauthorized practice of law); 8.3(a) (failing to report violations of the Rules of Professional Conduct); and 8.4(a) (knowingly assisting another to violate the Rules of Professional Conduct). The charges further allege that Schwartz violated Rules 1.8(e) (improperly providing financial assistance to a client); 1.8(i) (acquiring a propriety interest in the cause of action); 5.5 (engaging in the unauthorized practice of law); 7.3(a) (soliciting professional employment); 8.4(a) (knowingly assisting or inducing another to violate the Rules of Professional Conduct or doing so through the acts of another); and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).[1]

The hearing committee assigned to this matter concluded that Respondents violated the majority of the Rules with which they were charged; however, the committee did not make any findings or conclusions with respect to the Rule 1.8(i) violation additionally alleged by ODC. As

[1] The text for the Rules at issue is provided in the attached Appendix. Please note that the text reflects the Rules as they appeared at the time of the misconduct at issue.

sanctions for Respondents' misconduct, the committee recommended that Cortigene be disbarred from the practice of law and Schwartz be publicly reprimanded and permanently enjoined from practicing law in Louisiana. For the reasons set forth below, the Board adopts the hearing committee's factual findings and legal conclusions as well as its sanction recommendations. Additionally, the Board makes its own findings and conclusions as detailed below with respect to the 1.8(i) violation contained in the formal charges.

PROCEDURAL HISTORY

The formal charges in this matter were filed by ODC on July 19, 2011. They were sent via certified mail to Cortigene and Schwartz on July 21 and July 26, 2011, respectively. Service upon Schwartz was perfected on July 27, 2011. The charges sent via certified mail to Cortigene at 232 North Forrest Avenue, La Porte, LA 77571 were returned to sender marked "unclaimed/unable to forward." Ultimately, service was perfected upon Cortigene on September 2, 2011 through his bankruptcy attorney in Houston, Texas.

On August 12, 2011, Schwartz enrolled as counsel *pro se* and filed an answer to the charges in which he objected to the Louisiana attorney disciplinary system's jurisdiction over him and asserted that the filing of charges against him in Louisiana is barred by the doctrine of *res judicata*. On August 24, 2011, ODC filed its response to the dispositive exceptions raised by Schwartz.

Notice of a committee hearing was issued to all parties involved on August 26, 2011, and re-issued September 1, 2011. The matter was assigned to Hearing Committee #24 ("Committee") and preliminarily set for hearing on November 21, 2011. Cortigene filed his answer to the formal charges on September 16, 2011, partially admitting and partially denying the allegations contained therein.

On September 20, 2011, a scheduling conference was held with Cortigene, Schwartz, and Deputy Disciplinary Counsel, G. Fred Ours, during which the parties agreed to reschedule the hearing. Another scheduling conference was held on October 21, 2011, during which the hearing was reset for February 8, 2012.

ODC and Schwartz each filed a pre-hearing memorandum on January 1, 2012. Cortigene filed a motion for continuance on January 18, 2012 citing neurological problems. Schwartz filed a motion to dismiss for lack of jurisdiction on January 19, 2012. On January 20, 2012, the Committee Chair, Mary L. Dumestre, ruled that Coritgene's motion for continuance would be heard at the pre-hearing conference call set for January 25, 2012. On January 24, 2012, ODC filed its response to Schwartz's motion for lack of jurisdiction arguing that there is no procedural basis for such and asserting that the Louisiana attorney disciplinary system does, in fact, have jurisdiction over him. Following the pre-hearing conference on January 25, 2012, Ms. Dumestre signed an Order granting Cortigene's motion for continuance and resetting the hearing for April 24-26, 2012. The order further stated that due to Cortigene's poor health, the potential for permanent disability status, and the possibility of events in the future that could result in ODC proceeding separately against Schwartz, the parties agreed that Cortigene would submit to a preservation deposition for use at a separate hearing on the claims against Schwartz.

On January 27, 2012, Schwartz notified Ms. Dumestre in writing that he did not and would not agree to any severance of the proceeding except upon the death of Cortigene. Schwartz further informed the Committee that he would not agree to a video deposition in lieu of Cortigene's appearance at a hearing on Schwartz's claims.

On February 3, 2012, Schwartz requested an evidentiary hearing on the issue of jurisdiction and moved for the disqualification and sanctioning of Mr. Ours. ODC filed its

opposition on February 10, 2012. By Order signed on March 6, 2012, Ms. Dumestre denied Schwartz's request for a separate hearing on his motion to dismiss for lack of jurisdiction; denied his motion to dismiss for lack of jurisdiction; and denied his motion for the disqualification and sanctioning of Mr. Ours.

On April 4, 2012, Schwartz filed a motion for continuance as well as a motion to strike the deposition of Mr. and Mrs. Watts. On April 5, 2012, ODC filed an amended pre-hearing memorandum. On April 11, 2012, ODC objected to Schwartz's motions. On April 18, 2012, the motions were denied, and a notice of committee hearing was issued to all parties.

The hearing in this matter was ultimately held on April 24, 2012 before Hearing Committee No. 24.[2] At the hearing, ODC was represented by Mr. Ours. Corigene participated in the hearing via telephone, and Schwartz appeared *pro se*. The Committee issued its report on October 18, 2012, having concluded that Cortigene violated the Rules as charged and Schwartz violated the majority of Rules with which he was charged. The Committee did not address or make any findings with respect to the Rule 1.8(i) violation contained in the formal charges. As sanctions, the Committee recommended that Cortigene be disbarred and that Schwartz be publicly reprimanded and permanently enjoined from practicing law in Louisiana.

ODC filed its pre-argument brief on December 27, 2012, in which it concurs with the findings of fact and legal conclusions of the Committee and objects only to the Committee's conclusion that Schwartz cannot be disbarred since he is not a member of the Louisiana bar. ODC submits that disbarment is both permissible and warranted here, particulary for purposes of creating a sufficient basis for an appropriate level of reciprocal discipline in those jurisdictions where Schwartz is licensed, Texas and Pennsylvania. On December 28, 2012, Schwartz filed his

[2] The Committee was composed of Mary L. Dumestre (Chairman), Jaime C. Waters (Lawyer Member), and Shawn Clancy-Lee (Public Member).

pre-argument brief in which he reargued Louisiana's lack of jurisdiction over him as well as the constitutionality of these proceedings.

Oral argument in the matter was held on Thursday, January 31, 2013 before Panel "A" of the Disciplinary Board.[3] Mr. Ours appeared on behalf of ODC, and the Respondents appeared *pro se*.

FORMAL CHARGES

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

> Mr. Cortigene was admitted to the Texas bar on November 8, 1985, and to the Louisiana bar on October 6, 1989. He has been ineligible to practice law in Louisiana since September 9, 2009, due to failure to pay bar dues and disciplinary assessments, failure to meet mandatory continuing legal education requirements, and failure to file mandatory trust account disclosure statements.
>
> Mr. Schwartz is admitted to the Texas bar. He has not been licensed, or admitted to practice *pro hac vice*, in Louisiana at any time pertinent hereto. The Louisiana lawyer disciplinary system has jurisdiction over him under La.S.Ct. Rule XIX, Section 6A, and Rule of Professional Conduct 8.5(a).
>
> On November 12, 2004, Jay Watts was injured in a diving accident off the coast of Louisiana while in the course and scope of his employment with Superior Diving Company, which is located in Louisiana. Thereafter, Respondent Mr. Schwartz initiated contact with Mr. Watts and met with Mr. Watts at his home in Mississippi for the purpose of soliciting Mr. Schwartz's employment as a lawyer in a claim against Superior. During their first meeting, Mr. Schwartz offered Mr. Watts an advance payment of $9,000 plus additional payments thereafter of $1,000 to $2,000 per month in living expenses. Mr. Watts initially declined but ultimately did retain Mr. Schwartz. Mr. Schwartz enlisted Mr. Cortigene to serve as co-counsel. Upon being formally retained, Mr. Schwartz provided Mr. Watts with a $9,000 check and began making monthly advance payments to Mr. Watts. Mr. Watts was advised that he would be charged interest on those advance payments at rates of 12% to 15%. From December of 2004 through December of 2006, Mr. Schwartz made advance payments to Mr. Watts totaling about $70,000.
>
> Both Mr. Schwartz and Mr. Cortigene engaged in the practice of law in Mr. Watts's case as it was litigated in the United States District Court, Eastern District of Louisiana. In describing his own involvement in the case, Mr. Schwartz has stated that he (1) tracked the solvency of Superior Diving and its

[3] Board Panel "A" is composed of Carl A. Butler (Chair), R. Steven Tew (Lawyer Member), and R. Lewis Smith (Public Member).

insurers; (2) kept the clients reasonably informed about the status of their case by sending them copies of all pleadings, depositions, correspondence, and communication; (3) explained all matters to the clients to the extent reasonably necessary to permit them to make informed decisions regarding their representation; (4) did all the accounting and payment of expenses; (5) advised the client on the unique particulars of diving laws; (5) discussed comparable cases and range of verdicts with Mr. Watts; (6) advised Mr. Watts and co-counsel on other legal problems with the case; (7) micromanaged and supervised the case; (8) obtained and paid experts; and (9) macromanaged the case especially when Mr. Cortigene began to shirk his duties in preparation, including interviewing witnesses, taking necessary depositions, and. misrepresenting the current status of the case to him and the client. Mr. Schwartz also attended at least one deposition, and his name and address along with a designation of "Of Counsel" appeared on court pleadings filed on behalf of Mr. Watts. Mr. Cortigene's actions in the representation of Mr. Watts included drafting and filing pleadings, conducting investigation and discovery including handling written discovery requests and taking depositions, and representing Mr. Watts at mediation.

On January 23, 2007, the eve of a hearing on a motion for summary judgment filed by Superior, Mr. Cortigene accepted an offer to settle all of Mr. Watts's claims against Superior for $125,000. This was done despite the fact that Mr. Watts had rejected that offer when Mr. Cortigene discussed it with him earlier in the day. After learning of the unauthorized settlement, Mr. Watts discharged Mr. Cortigene and Mr. Schwartz and retained new counsel. The court ultimately set aside the settlement, granted Superior's motion for summary judgment, and entered judgment in Superior's favor on June 24, 2008.

Mr. Schwartz's conduct violates the Louisiana Rules of Professional Conduct: Rule 1.8(e) - improperly providing financial assistance to a client; Rule 1.8(i) - acquiring a propriety interest in the cause of action; Rule 5.5 - engaging in the unauthorized practice of law; Rule 7.3(a) - soliciting professional employment; and Rule 8.4(a) -knowingly assist or induce another to violate the Rules of Professional Conduct or do so through the acts of another; 8.4(c) – engage in conduct involving dishonest, fraud, deceit or misrepresentation.

Mr. Cortigene's conduct also violates the Louisiana Rules of Professional Conduct: Rule 5.1(c)(1) - ratifying another lawyer's violation of the Rules of Professional Conduct, specifically Mr. Schwartz's improper financial assistance of a client, unauthorized practice of law, and solicitation of professional employment; Rule 5.5 - assisting another, Mr. Schwartz, to engage in the unauthorized practice of law; Rule 8.3(a) - failure to report Mr. Schwartz's violations of the Rules of Professional Conduct; and Rule 8.4(a) - knowingly assisting another to violate the Rules of Professional Conduct, or do so through the acts of another, specifically Mr. Schwartz's improper financial assistance to a client, unauthorized practice of law, and solicitation of professional employment.

THE HEARING COMMITTEE'S REPORT

As noted above, the Committee issued its report on October 16, 2012. Based upon the testimony presented at the hearing and the evidentiary record, the Committee made the following findings of fact:

FINDINGS OF FACT

1. Respondent Cortigene was admitted to the Texas bar on November 8, 1985, and to the Louisiana bar on October 6, 1989. He has been ineligible to practice law in Louisiana since September 9, 2009, due to failure to pay bar dues and disciplinary assessments, failure to meet mandatory continuing legal education requirements, and failure to file mandatory trust account disclosure statements.

2. Respondent Schwartz is admitted to the Texas bar. He has not been licensed, or admitted to practice pro hac vice, in Louisiana at any time pertinent hereto. The Louisiana lawyer disciplinary system has jurisdiction over him under La.S.Ct. Rule XIX, Section 6A, and Rule of Professional Conduct 8.5(a).

3. On November 12, 2004, Jay Watts was injured in a diving accident off the coast of Louisiana while in the course and scope of his employment with Superior Diving Company, which is located in Louisiana.

4. Mr. Watts'[s] co-worker, Tom Smith, had been involved in a diving accident and told Mr. Watts about his attorneys, Respondent Schwartz and Respondent Cortigene. [April 24, 2012 Transcript ("TR1") pp.139-140].

5. At that time, Mr. Watts was not interested in hiring an attorney. [TR1 p. 140].

6. After Mr. Smith talked to Mr. Watts, Mr. James Tweedle contacted Mr. Watts and told Mr. Watts that "he was an Investigator ... like a scout or some sort like that." [TR1 pp.141-142].

7. Mr. Tweedle asked Mr. Watts if Respondent Schwartz could contact him. Mr. Watts advised Mr. Tweedle that he did want to hire an attorney, but that Respondent Schwartz could contact him. [TR1 p. 142].

8. Respondent Schwartz met with Mr. Watts at his home in Mississippi on December 10, 2004, and offered Mr. Watts a check for $9,000 and living expenses while the lawsuit was going on, if Mr. Watts would retain Respondent Schwartz as his attorney. Mr. Watts declined. [TR1 pp. 145-146].

9. Respondent Schwartz told Mr. Watts that he would be charged interest on the payments. At that time, Mr. Watts declined. [TR1 pp. 147-148].

10. Mr. Tweedle, a former client of Respondent Schwartz, provided services to Respondent Schwartz as a courtesy to Respondent Schwartz's current clients, including driving clients to and from appointments. Mr. Tweedle was paid a fee, essentially operating as an independent contractor. [April 25, 2012 Transcript ("TR2") pp. 20, 22].

11. Mr. Tweedle also contacted witnesses and took witness statements for Respondent Schwartz and Respondent Cortigene. [TR2 pp. 22-23].

12. Respondent Schwartz learned that Mr. Watts might be a potential client from a current client, Mr. Tom Smith. [TR2 pp. 32,33,73-74].

13. Respondent Schwartz initiated contact with Mr. Watts through Mr. Tweedle, and met with Mr. Watts at his home in Mississippi on December 10, 2004 for the purpose of soliciting the representation of Mr. Watts for a lawsuit involving his diving accident. [*See* Exhibit ODC 6, Respondent 1; TR2 pp. 46-47, 49].

14. Respondent Schwartz's visit with Mr. Watts in Mississippi was not a visit to interview Mr. Watts about the Smith case, but rather was strictly a visit to solicit Mr. Watts as a client for his diving accident claim. [TR2 pp. 75-76].

15. Respondent Schwartz went to the Watts[es]' home knowing that Mr. Watts was not interested in hiring lawyer. [TR2 p. 51].

16. While at the Watts[es]' home on December 10, 2004, Respondent Schwartz completed a "contract" and offered Mr. Watts a check for $9,000.00, which Mr. Watts did not accept. [TR2 pp. 50-52].

17. Mr. and Mrs. Watts both told Respondent Schwartz that they did not want to hire a lawyer and they did not sign the contract. [TR2 p. 52].

18. Respondent Schwartz received a phone call from Mr. Watts within a week advising that he was interested in retaining Respondent Schwartz. [TR2 pp. 54-55].

19. Anticipating that the Watts[es'] lawsuit could be filed in Louisiana, Respondent Schwartz enlisted Respondent Cortigene to serve as co-counsel. Respondent Cortigene then met with Mr. Watts in Mississippi to have the contract signed and to introduce himself to Mr. Watts as a lawyer who would be representing him in Louisiana. [TR2 pp. 55-56, 177].

20. Upon being formally retained, Respondent Schwartz provided Mr. Watts with the promised $9,000 and began making monthly payments to Mr. Watts. Mr. Watts was advised that he would be charged interest on those advance payments at rates of 12% to 15%. From December of 2004 through December of 2006,

Respondent Schwartz made client "loans" to Mr. Watts totaling over $72,000. [*See* ODC 15, 17; TRI pp. 124-125; TR2 pp. 55-56, 177].

21. In January 2005, Mr. Watts'[s] employer, Superior Diving, filed a preemptive declaratory judgment action in federal court in Louisiana to resolve Mr. Watts'[s] potential personal injury claims. [TR2 56].

22. When Respondent Cortigene filed his first appearance in response to the Superior Diving declaratory judgment action, Respondent Schwartz was listed on the pleading as "of Counsel," and at that time Respondent Cortigene knew that Respondent Schwartz had not been admitted *pro hac vice.* [TR2 pp. 95-96, 185-186].

23. Respondent Schwartz and Respondent Cortigene began working together in the mid1980s. [TR2 pp. 83-84].

24. Respondent Cortigene knew that Respondent Schwartz was not licensed to practice law in Louisiana. [TR2 pp. 88, 185].

25. Neither Respondent Cortigene nor Respondent Schwartz ever considered filing a motion to admit Respondent Schwartz *pro hac vice* in the Watts[es'] case. [TR2 pp. 91-92].

26. Respondent Schwartz knew the need to be admitted *pro hac vice* because in prior cases appearing in Louisiana he had taken steps to be admitted *pro hac vice.* [TR2 pp. 94-95].

27. In April 2005, Respondent Schwartz and Respondent Cortigene both participated in the deposition of Mr. Watts taken by Superior Diving in New Orleans. [TR2 pp. 56-57, 191].

28. Respondent Schwartz admitted that he "advised [Mr. Watts] to either answer or don't answer once or twice, but Mr. Cortigene predominantly did the questioning and the objecting." In addition, Respondent Schwartz "helped prepare the answers to the interrogatories [that] were a predicate for [the deposition]." [TR2 pp. 57-58].

29. Respondent Schwartz intentionally avoided any appearance of practicing law in Louisiana, including avoiding petitioning for admission *pro hac vice,* and attempted to avoid personal jurisdiction in Louisiana. [*See* TR2 pp. 76-79, 92-93, 188-89, 195-96].

30. Respondent Schwartz and Respondent Cortigene were on a "fee sharing basis" for the Watts[es'] case. [TR2 pp. 85, 111].

31. Respondent Schwartz testified that he knew he had not been admitted *pro hac vice,* and that he would have made a decision whether to be admitted only if the Judge noticed that he was practicing law before the Louisiana court without being admitted to practice in Louisiana. [TR2 pp. 97-99].

32. Respondent Schwartz appeared at hearings before the Louisiana court in the Watts[es'] case. [TR2 pp. 99-100].

33. As the Watts[es'] case progressed, Respondent Schwartz reviewed the court docket sheet, noticed that he was listed as attorney of record on the docket sheet, yet still did not file a motion to be admitted *pro hac vice.* [TR2 pp. 102-103].

34. In November 02, 2006, a third attorney was retained to assist in the Watts[es'] case, Mr. Eb Garrison. During the time that Mr. Garrison was involved in the case, from November 2006 through January 2007, Respondent Schwartz was actively involved in working on the case filed in the Louisiana court. [TR1 pp. 204-205].

35. Respondent Schwartz was receiving notices from the court as an attorney of record in the Watts[es'] matter but did not participate in e-filing because he was not on the PACER system, and he was not concerned. [TR2 pp. 104-105].

36. Respondent Schwartz admitted that he provided financial assistance to Mr. and Mrs. Watts, but believed that it was not improper under the Texas Disciplinary Rule allowing payment of both "reasonably necessary living and medical expenses." [TR2 p. 121].

37. Respondent Schwartz admitted that he traveled to Mississippi to interview a person considered to be a potential client, armed with a check, when he knew that the "potential client" had no intention of hiring a lawyer at that time. [TR2 p. 124].

38. On November 22, 2010, Respondent Schwartz filed a pleading in the Watts[es'] matter, ostensibly *pro se,* but on behalf of himself and as Trustee of the Kemper, Queen, and Schwartz Jr. Trust. Thus, his appearance with this filing was not merely *pro se* [*See* ODC 14(note 2), TR2 pp. 130-131].

39. Respondent Cortigene, as lead counsel in *Watts*, was in charge of a mediation conducted with Mr. Watts and Superior Diving. Respondent Cortigene had full authority at the mediation to act alone for Respondent Schwartz. The mediation was not successful. However, after the mediation, Respondent Cortigene, acting alone, agreed to a settlement without the authority of Mr. Watts (emphasis added). [TR2 pp. 107-109, 113-116].

40. Respondent Cortigene estimated that he and Respondent Schwartz had worked together on approximately twenty-five cases in Louisiana courts, and

Respondent Schwartz never enrolled *pro hac vice* in any of those case. [TR2 p. 158].

41. Respondent Cortigene testified that he was not aware that Respondent Schwartz was charging interest on the advances to Mr. Watts because Respondent Schwartz handled all the finances. [TR2 pp. 172-173].

42. The interest-bearing loans to Mr. and Mrs. Watts were not made from "financial institutions in which the lawyer has no ownership, control and/or security interest." But rather from Respondent Schwartz's children's Trust, known as the Kemper, Queen, Schwartz Trust, and the interest charged was for the benefit of that Trust. [*See* TR2 pp.222-223].

Hearing Committee Report, pp. 6-10.

Based upon these findings, the Committee concluded that Cortigene violated Rules 5.1(c)(1), 5.5, 8.3(a), 8.4(a) and Schwartz violated Rule 1.8(e), 5.5, 7.3(a), 8.4(a), and 8.4(c) of the Rules of Professional Conduct. As noted above, the Committee did not address the Rule 1.8(i) violation additionally alleged by ODC with respect to Schwartz's conduct.

Once the Committee determined that Respondents had engaged in professional misconduct, it undertook consideration of the factors set forth under Rule XIX, Section 10(C). First, the Committee determined that Respondents violated duties owed to their client, the public, the legal system, and the profession. The Committee also found that Respondents acted knowingly and their conduct resulted in actual harm.

Next, the Committee considered the existence of aggravating and mitigating factors and found the following aggravating factors to be present: Respondents' refusal to acknowledge the wrongful nature of their conduct; Schwartz's attempt to "game" the system in an effort to evade jurisdiction; Cortigene's complicit participation in the scheme and his failure to fulfill his CLE, trust account and dues requirements since 2009; and Cortigene's failure to comply with the Committee's order to produce documentation of his medical condition or physically appear at the hearing. The Committee did not identify any mitigating factors.

In determining the appropriate sanction, the Committee acknowledged that the Louisiana Supreme Court relies upon the ABA's *Standards for Imposing Lawyer Sanctions* but noted that this matter presents factors that do not readily fit these guidelines. The Committee found the Court's reasoning in *In re Stamps*, 2003-2985 (La. 4/14/2004), 874 So.3d 113 to be instructive.

Based upon *In re Stamps* and the aggravating factors found to be present, the Committee recommended that Cortigene be disbarred and that Schwartz be publicly reprimanded and permanently enjoined from practicing law in Louisiana. The Committee also recommended that the Texas bar be notified of these proceedings and the sanctions being imposed.

ANALYSIS

I. The Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Rule XIX, §(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges...and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/1992).

A. The Manifest Error Inquiry

The factual findings of the Committee are not manifestly erroneous. The Committee's findings are supported by the testimony and documentary evidence in the record.

B. *De Novo* Review

The Committee correctly applied the Rules of Professional Conduct to the facts to conclude that Cortigene violated Rules 5.1(c)(1), 5.5, 8.3(a), and 8.4(a) and Schwartz violated Rules 1.8(e), 5.5, 7.3(a), 8.4(a), 8.4(c). Although the Committee did not discuss the Rule 1.8(i) violation additionally alleged by ODC with respect to Schwartz's conduct, the Board concludes that this Rule was indeed violated. Each of these Rule violations is addressed below by Respondent, beginning with Schwartz:

1. Schwartz

Rule 1.8(e): Rule 1.8(e) generally restricts the circumstances under which an attorney can lend money to his clients. As the record reflects, Schwartz made financial advances to the Wattses beginning in December 2004 and lasting through December 2006. During this timeframe, Rule 1.8(e) underwent revision. Therefore, two different versions of the Rule are applicable to Schwartz's ongoing misconduct. More particularly, Rule 1.8(e) as amended on May 1, 2004 governs his actions from December 2004 to April 2006, and Rule 1.8(e) as amended on April 1, 2006 governs the advances made from April to December 2006.

From December 2004 to April 2006, Rule 1.8(e) provided that "[a] lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client." Prior to the enactment of this Rule, the Louisiana Supreme Court issued an opinion on the issue of advancements in *LSBA v. Edwins*, 329 So.2d 437 (La. 02/23/1976). The Court held that advancements or guarantees by a lawyer to a client (who has already retained him) of minimal

living expenses, of minor sums necessary to prevent foreclosures, or of necessary medical treatment were not automatically precluded. The Court held that such advances were permissible so long as: (a) the advances were neither promised as an inducement to obtain professional employment, nor made until after the employment relationship was commenced; (b) the advances were reasonably necessary under the facts; (c) the client remained liable for repayment of all funds, whatever the outcome of the litigation; and (d) the attorney did not encourage public knowledge of this practice as an inducement to secure representation of others.

The Court's decision in *LSBA v. Edwins* and the provisions of Rule 1.8(e) were reconciled in *Chittenden v. State Farm Mutual Automobile Insurance Co.*, 2000-0414 (La. 5/15/2001), 788 So.2d 1140:

> It is evident that although Rule 1.8(e) was promulgated after [the Louisiana Supreme Court's] decision in *Edwins*, it did not incorporate the gloss which that decision placed on former Disciplinary Rule 5-103(B). Rather, Rule 1.8(e) unambiguously prohibited the advancement of funds and financial assistance in connection with litigation except in the limited cases of court costs and actual litigation expenses. Notwithstanding the wording of Rule 1.8(e), the current practice of law in our State follows the *Edwins* policy of allowing an attorney to advance funds under the constraints enunciated in *Edwins*.

Here, Schwartz testified that he meticulously interviewed the Wattses on December 10, 2004 to determine their financial need. However, the record reveals that Schwartz promised the Wattses $9,000 and ongoing financial assistance at a time when he was attempting to induce them to retain his professional services.[4] Such conduct clearly violates the letter of Rule 8.1(e) as well as the constraints established by the Court in *Edwins*.

With respect to the financial advancements made by Schwartz from April 2006 to December 2006, Rule 1.8(e) as amended on April 1, 2006 is applicable. As amended, Rule 1.8(e)(5)(i) provides that "any financial assistance provided directly from the funds of the lawyer

[4] Hearing Transcript 1, pp. 145-146.

to a client shall not bear interest, fees or charges of any nature." Rule 1.8(e)(5)(ii) states that "financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest..." The purpose of these restrictions is to prevent the lawyer from profiting and avoid a potential conflict of interest.

The record establishes that the loans to the Wattses totaled over $72,000.[5] The record also establishes that the funds originated from the Kemper, Queen, Schwartz Trust, a trust established for the benefit of Schwartz's children.[6] The record further establishes that Schwartz told the Wattses at the initial meeting that interest would be charged on the advancements.[7] Notwithstanding the unfavorable verdict, Schwartz would have called upon them to pay this interest. Therefore, regardless of the origin of the advancements (his own funds or a loan obtained on behalf of the Wattsses), Schwartz violated Rule 1.8(e) as amended in 2006. If the funds were considered his own, Schwartz violated Rule 1.8(e)(5)(i) by charging interest on the advancements. If the funds were obtained through a loan on behalf of the Wattses, Schwartz violated Rule 1.8(e)(5)(ii) by borrowing from his children's trust rather than from a financial institution in which he had no ownership, control, and/or security interest.

Rule 1.8(i): Rule 1.8(i) provides that a "lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and (2) contract with a client for a reasonable contingent fee in a civil case." Although this violation was initially alleged in the formal charges, it was not asserted by ODC in its briefs or argued before the Committee. A review of the record establishes that Respondent violated this Rule as well.

[5] *See* Exhibit ODC #15 & 17.
[6] Hearing Transcript 2, pp. 222-223.
[7] Hearing Transcript 1, pp. 147-148.

When a lawyer takes a stake in a client's litigation, through financial assistance in violation of Rule 1.8(e), the potential for conflict exists. As explained in the American Bar Association/Bureau of National Affairs (ABA/BNA) Lawyer's Manual on Professional Conduct,

> Client loans can place a lawyer in the conflicting roles of advocate and creditor, tempting the lawyer to steer the litigation to his own advantage, favor his own financial interests over those of his client, and try to control settlement decisions. The prohibition against providing financial assistance is thought to help attorneys maintain their independent judgment about what is best for the client. *Kentucky Bar Ass'n v. Mills*, 808 S.W.2d 804 (Ky. 1991); *State ex rel. Oklahoma Bar Ass'n v. Smolen*, 17 P.3d 456, 16 Law. Man. Prof. Conduct 698 (Okla. 2000); *Shea v. Virginia State Bar*, 374 S.E.2d 63 (Va. 1988); Restatement (Third) of the Law Governing Lawyers §36 cmt. c (2000); Arizona Ethics Op. 03-05, 19 Law. Man. Prof. Conduct 515 (2003).

Conflicts of Interest, Financial Assistance Practice Guide, ABA-BNA-MOPC 51:801, 20XX WL 1956835 (ABA/BNA), 3. "The underlying concern is that an attorney who possesses an ownership interest in a client's cause of action may be tempted to assert control over settlement decisions or favor his own interests over those of the client. Restatement §36 cmt. b." *Id* at 5. In other words, the lawyer may be more risk-adverse, favoring settlement over going to trial.

By loaning the Wattses over $72,000 in funds obtained from his children's trust, and charging interest in favor of the trust, Schwartz acquired an impermissible proprietary interest in the litigation, placing himself in the conflicting roles of advocate and creditor, in violation of Rule 1.8(i).

Rule 5.5: Rule 5.5 generally prohibits a lawyer from engaging in the unauthorized practice of law. The record reveals that Schwartz is admitted to the Texas bar but has never been licensed in Louisiana or admitted to practice *pro hac vice* in this state. Although Schwartz was aware of the possibility of the suit being filed in Louisiana when he undertook the representation,[8] he never

[8] *Id.* at 177.

considered filing a motion to be admitted *pro hac vice*.[9] As the record demonstrates, Schwartz participated in a deposition, admitted to advising his client during the deposition, and helped prepare answers to interrogatories that were necessary for the deposition.[10] Schwartz also received notices from the court as an attorney of record[11] and appeared at hearings in Louisiana.[12] Furthermore, Schwartz admitted knowing that he had not properly enrolled as counsel *pro hac vice* but decided to wait until the judge actually noticed he was unauthorized to practice in Louisiana before pursuing the proper course of action.[13] Such conduct clearly violates Rule 5.5.

Rule 7.3(a): At the time of the alleged misconduct, Rule 7.3(a) provided as follows:

> A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

Clearly, Schwartz had no prior familial or professional relationship with the Wattses. He learned of Mr. Watts's injury through another of his clients[14] and had one of his employees contact Mr. Watts to request permission for a meeting with Schwartz. During this conversation, Mr. Watts advised that he was not interested in hiring an attorney but, nevertheless, authorized Schwartz's contact.[15] The record shows that Schwartz visited the Wattses knowing they were not interested in hiring an attorney for the sole purpose of persuading them to retain his services.[16] Such conduct constitutes solicitation of professional employment as prohibited by this Rule.

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[9] *Id.* at 91-92.
[10] *Id.* at 56-58.
[11] *Id.* at 104-105.
[12] *Id.* at 99-100.
[13] *Id.* at 97-99.
[14] *Id.* at 32-33, 73-74.
[15] Hearing Transcript 1, p. 142.
[16] Hearing Transcript 2, pp. 46-49; *See* Exhibits ODC #6, Respondent #1.

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, knowingly assist or induce another to do so, or do so through the acts of another." Schwartz enlisted Cortigene to serve as co-counsel and to introduce himself to Mr. Watts as Louisiana counsel. Cortigene met with Mr. Watts and had him sign the initial representation agreement.[17] The record is clear that Schwartz and Cortigene were sharing fees in the Watts matter.[18] Cortigene estimated that he and Schwartz worked together on approximately twenty-five cases in Louisiana in which Schwartz had never enrolled *pro hac vice*.[19] Schwartz violated Rule 8.4(a) by inducing Coritgene to violate the Rules of Professional Conduct and by engaging in additional misconduct as addressed herein.

Rule 8.4(c): Rule 8.4(c) forbids a lawyer from engaging "...in conduct involving dishonesty, fraud, deceit or misrepresentation." Schwartz's scheme, in which he attempted to practice law while minimizing his footprint to avoid jurisdiction, clearly violates this Rule. Admittedly, Schwartz knew he had not been admitted *pro hac vice* and chose to ignore this fact unless or until the judge noticed he was appearing improperly.

2. **Cortigene**

Rule 5.1(c)(1), 5.5, 8.3(a), & 8.4(a): According to Rule 5.1(c)(l), a lawyer shall be held responsible for another lawyer's violation of the Rules of Professional Conduct if the lawyer ratifies the conduct involved. As the record demonstrates, Cortigene ratified Schwartz's improper solicitation and financial dealings with Mr. Watts when he made the follow-up visit to Mr. Watts on December 10, 2004 to deliver the $9,000 check and obtain Mr. Watts's signature on the contract drafted by Schwartz.[20] Rule 5.5 bars an attorney from assisting another to engage

[17] Hearing Transcript 2, pp. 55-56.
[18] *Id.* at 85, 111.
[19] *Id.* at 158.
[20] *Id.* at 55-56, 177.

in the unauthorized practice of law. The evidence is clear that Cortigene knew Schwartz was improperly engaging in the practice of law in Louisiana.[21] Cortigene not only ratified Schwartz's ongoing misconduct, he perpetuated it by continuing to file pleadings in the case listing Schwartz as co-counsel.[22] Rule 8.3(a) places a duty upon lawyers to report violations of the Rules of Professional Conduct. At no point did Cortigene attempt to correct the ongoing violations[23] or report the misconduct to the Office of Disciplinary Counsel or the Louisiana Attorney Disciplinary Board. Rule 8.4(a) states that it is misconduct if an attorney knowingly assists another to violate the Rules of Professional Conduct. By violating Rules 5.1(c)(1), 5.5, and 8.3(a), Cortigene also violated Rule 8.4(a).

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, Respondents knowingly violated duties owed to their client, the public, the legal system, and the profession. Schwartz's solicitation of employment and monetary advances to Mr. Watts along with his unauthorized practice of law in Louisiana, and Cortigene's facilitation of

[21] *Id.* at 88.
[22] *Id.* at 95-96, 185-186.
[23] *Id.* at 91-92.

such conduct are a flagrant disregard for the authority of the Louisiana Supreme Court in regulating the practice of law within this state.

Schwartz harmed Mr. Watts by failing to enroll *pro hac vice* and taking a more active role in the litigation. If he would have pursued a more responsible role, Schwartz may have been able to prevent the unauthorized settlement of Mr. Watt's case by Cortigene and the resulting harm. Cortigene is also answerable for this harm because he ratified and facilitated the misconduct. Respondents also violated duties to the public and the profession by failing to maintain the high standards of personal integrity upon which the public relies. Such conduct undermines the public's confidence in the legal profession and the integrity of officers of the court.

The record supports the following aggravating factors with respect to Schwartz: dishonest or selfish motive, a pattern of misconduct,[24] refusal to acknowledge wrongful nature of his conduct, vulnerability of the victim, and substantial experience in the practice of law.[25] No mitigating factors are found to be present.

In the case of Cortigene, the following aggravating factors are supported by the record: prior disciplinary offenses,[26] dishonest or selfish motive, a pattern of misconduct, refusal to acknowledge the wrongful nature of his conduct, vulnerability of the victim, failing to comply with the rules or orders of the disciplinary agency,[27] and substantial experience in the practice of law.[28] Again, no mitigating factors are found to be present.

B. The ABA Standards and Case Law

[24] Schwartz participated in an estimated 25 cases in Louisiana without enrolling *pro hac vice*. *See* Hearing Transcript 2, p.158.
[25] He received his law degree from the University of Texas in 1954.
[26] He has been ineligible to practice law in Louisiana since September 9, 2009 for failure to pay his bar dues and disciplinary assessments, failure to attend MCLE, and failure to file mandatory trust account disclosure statements.
[27] He failed to comply with the Committee's order directing him to provide documentation of his medical condition or appear at the hearing.
[28] Cortigene was admitted to the Texas bar on November 8, 1985 and the Louisiana bar on October 8, 1989.

The ABA's *Standards for Imposing Lawyer Sanctions* indicates that disbarment is the appropriate baseline sanction for Respondents' misconduct. Standards 5.11, 6.21, and 7.1 are relevant here:

> **Standard 5.11(b):**
>
> [A] lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
>
> **Standard 6.21:**
>
> Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.
>
> **Standard 7.1:**
>
> Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Respondents intentionally engaged in a scheme involving dishonest and deceitful conduct so that Schwartz could evade Louisiana's jurisdiction while practicing law without authorization in its courts. Schwartz intentionally violated the rules of the Louisiana Supreme Court, and Cortigene willfully assisted and participated in the misconduct. Furthermore, Respondents conduct in soliciting Mr. Watts and the subsequent unauthorized practice constitute a violation of the duties they owe as professionals. Respondents' actions caused serious injury to the Wattses. Their claim was settled without authorization; and after subsequent withdrawal of the settlement, they were left without compensation and owing a large debt to Schwartz.

Case Law Applicable to Cortigene's Misconduct:

In *In re: Garrett*, 2008-2513 (La. 5/5/2009), 12 So.3d 332, an attorney was disbarred for facilitating the unauthorized practice of law after hiring a legal assistant whom he knew

graduated from law school, passed the Louisiana bar examination, but had not been admitted to the practice of law. The Court held that:

> The baseline sanction for the facilitation of the unauthorized practice of law by a nonlawyer is disbarment. *See Sledge, supra; In re: Brown,* 01-2863 (La.3/22/02), 813 So.2d 325; *Louisiana State Bar Ass'n v. Edwins,* 540 So.2d 294 (La.1989). In cases involving fee sharing with a nonlawyer, we have imposed a suspension of one year and one day. *In re: Watley,* 01-1775 (La.12/7/01), 802 So.2d 593. For respondent's misconduct involving both facilitation of the unauthorized practice of law and fee sharing, the overall baseline sanction is disbarment.

Id, 345. The Court found that Garret facilitated his assistant's unauthorized practice of law by allowing her to negotiate personal injury settlements on behalf of his clients and by representing clients during recorded statements with insurance companies. This conduct warranted disbarment.

In the matter of *In re: Brown*, 2001-2863 (La. 3/22/2002), 813 So.2d 325, an attorney was disbarred for violating Rules 5.3, 5.5, 8.4(a) and 8.4(c). The evidence established that Brown aided one of his employees in the unauthorized practice of law, deceived clients into thinking the employee was an attorney, and failed to make any effort to supervise the employee.

Based on these cases, the ABA's *Standards for Imposing Lawyer Sanctions*, and the aggravating factors found to be present, disbarment from the practice of law is the appropriate sanction for Cortigene's misconduct.

Case Law Applicable to Schwartz's Misconduct:

In *In re Fenasci*, 2009-1665 (La. 11/20/2009), 21 So.3d 934, an attorney was suspended for three years for engaging in misconduct involving violations of Rules 1.8(a), 1.8(e), and 1.15(a). Applying the standards established in *LSBA v. Edwins*, the Court examined the violations within the context of Rule 1.8(e). The Court found that Fenasci engaged in misconduct

on numerous occasions by advancing living expenses to a client without communicating that the funds would have to be reimbursed. He also failed to properly disclose, describe, or otherwise impose any conditions for repayment of the numerous sums of money he advanced to the client as litigation "advances" for living expenses. The Court found that such misconduct warranted a lengthy suspension from the practice of law.

Another case worth mentioning is the reciprocal proceeding *In re Aulston*, 2005-1546 (La. 1/13/2006), 918 So.2d 461. In this case, the Supreme Court of Illinois had recommended a three year suspension as a result of Aulston violating Rules 3.3(a)(1) (making false statements of material fact or law to a tribunal), 5.5(a) (engaging in the unauthorized practice of law), 8.4(a)(3) (commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), 8.4(a)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.5(a)(5) (engaging in conduct prejudicial to the administration of justice) of the Illinois Rules of Professional Conduct. The petition further alleged that the respondent violated Illinois Supreme Court Rule 770 (engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute). In deciding the case, the Louisiana Supreme Court opined:

> In reciprocal discipline cases, this court imposes a disciplinary sanction for conduct for which a lawyer has been disciplined in another state. The primary issue to be addressed in such cases is the extent of the sanction to be imposed. In answering this question we are not required to impose the same sanction as that imposed by the state in which the misconduct occurred. Nevertheless, only under extraordinary circumstances should there be a significant variance from the sanction imposed by the other jurisdiction.

Id, 464. Although ODC argued that Aulston should be permanently disbarred, the Court determined that no extraordinary circumstances were present which would warrant a variance from the Illinois sanction.

In *In re Richard*, 00-1418 (La. 8/31/2000), 767 So.2d 36, an attorney was disbarred for conduct in violation of Rules 1.4 (failure to communicate with a client), 5.5 (engaging in the unauthorized practice of law), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). According to the record, the respondent had not paid bar dues or attended continuing legal education for more than five years. When confronted with the complaint alleging that he continued to practice law during his ineligibility, the respondent took no steps to investigate the matter. Instead, he simply continued to practice law. As a result of his misconduct, the Court ordered that the respondent's name be stricken from the roll of attorneys and that his license to practice law in the State of Louisiana be revoked.

Similarly, in *In re Stamps*, 2003-2985 (La. 4/14/2004), 874 So.2d 113, two attorneys who were married and practicing law together were disbarred for violating Rules 8.1, 8.4, and 5.5. In this case, the Court found that the attorneys violated Rules 8.1 and 8.4 by failing to disclose their employment with a North Carolina law firm on their applications for admission to the Louisiana bar. Additionally, the Court found that the Stamps had engaged in the unauthorized practice of law in North Carolina.[29]

Solicitation of clients constitutes serious misconduct under Louisiana's disciplinary jurisprudence. In *In re D'Amico,* 1994-3005 (La. 2/28/1996), 668 So.2d 730, the Court found that clear and convincing evidence of solicitation was lacking but nevertheless stated:

> While dismissing these particular charges, we emphasize that direct solicitation of professional employment from a prospective client in violation of Rule 7.3 is a very serious disciplinary violation that undermines the reputation of lawyers generally and the public's attitude toward the profession. While solicitation is seldom reported and is difficult to prove under the heightened standard in these proceedings, we encourage Disciplinary Counsel to utilize fully his investigative staff and his resources to pursue any reports and to bring proof of such behavior to this court for punishment sufficient to deter further misconduct.

[29] ODC had been advised by the North Carolina State Bar that Stamps may have engaged in the unauthorized practice of law in the State of North Carolina, and the Court found that this violation was supported by the record.

Id, 733. Notably, Justice Victory dissented from the majority's conclusion that ODC failed to prove by clear and convincing evidence that the respondent solicited professional employment. Rather, he agreed with the unanimous conclusion of the hearing committee and the Board that solicitation had in fact occurred.

Although rulings in consent discipline matters are not binding, the Court considered a petition for consent discipline involving a runner-based solicitation scheme in *In re Lockhart*, 2001-1645 (La. 9/21/2009), 795 So.2d 309. Under the facts of this case, the respondent encountered severe economic problems due to a lack of clients and income after several months of practicing as a solo practitioner. He was introduced to two "investigators" who would refer cases to him. The "investigators" were in fact runners (not lawyers) who solicited personal injury clients for lawyers in exchange for payment. The Court found that "[the r]espondent's admission that he paid runners to solicit personal injury clients constitutes serious ethical and criminal misconduct. We have not hesitated to disbar attorneys for engaging in such conduct."[30] However in taking into consideration the mitigating factors, the short period of time the respondent was involved in the runner scheme, and his limited role in the scheme, the Court decided to deviate from the baseline of disbarment in favor of a three-year suspension.

In *In re Cuccia*, an attorney was disbarred for misconduct including the solicitation of prospective clients. 99-3041 (La. 12/17/1999), 752 So.2d 796. Within a few years of commencing his practice, Cuccia began to employ runners to solicit personal injury clients. Cuccia paid approximately two dozen runners the sum of $500 for each personal injury client solicited following an automobile accident. Prior to the filing of formal charges, Cuccia filed a petition for consent discipline. Cuccia admitted to violating Rules 1.4 (failure to communicate

[30] *See, e.g., In re Cuccia*, 99-3041 (La.12/17/99), 752 So.2d 796, and *In re Castro*, 99-0707 (La.6/18/99), 737 So.2d 701.

with a client), 1.8(k) (solicitation of a power of attorney authorizing the attorney to enter into a binding settlement agreement on behalf of the client), 1:15 (safekeeping property of a client or third person), 1:16 (termination of the representation), 5.3 (failure to supervise non-lawyer assistants), and 7.2 (improper solicitation of prospective clients). He stipulated, and the Court agreed, that disbarment was the appropriate sanction for his misconduct.

Here, the fact that Schwartz is not a member of the Louisiana bar presents a novel issue for the Board's consideration, and there are no Louisiana cases specifically on point. ODC suggests that disbarment is the appropriate sanction for Schwartz's misconduct; however, since he is not a member of the bar of the State of Louisiana, "disbarment" does not appear to be an available sanction. In the case of *In the Matter of Kingsley,* No. 138,2008 (Del. 6/4/2008), the Deleware Court defined disbarment in the context of an attorney not admitted in Delaware as "the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State." The court additionally made the report public and ordered him to pay all costs of the proceedings.

Based upon *Kingsley* and analogous cases from other jurisdictions, it is appropriate to enjoin Schwartz from practicing law in Louisiana and/or publicly reprimand him for his misconduct in this state. In *Yazdchi* v. *Unauthorized Practice of Law Committee,* an attorney without a license to practice law in Texas was found to have improperly practiced law in that state. No. 01-09-00065 (Tex. App. July 1, 2010). As a result, the attorney was permanently enjoined from the practice of law in Texas. In *In re Soto,* an attorney practicing law in Maryland without a license received a public reprimand in the State of Maryland and public censure in the District of Columbia as reciprocal discipline. 840 A.2d 1291 (D.C. 2004). In *In re Roel,* an attorney admitted to practice law in Mexico, but not a member of the New York bar, was held in

contempt and enjoined from practicing law in the State of New York. 165 N.Y.S.2d 31, 5 N.Y.2d 224, 144 N.E.2d 24 (N.Y. 1957). In *Unauthorized Practice of Law Committee* v. *Bodhaine*, an attorney licensed to practice law in California engaged in the unauthorized practice of law in Colorado. As a result of this misconduct, he was permanently enjoined from the practice of law in Colorado. 738 P.2d 376 (Colo. 1987).

Based on the case law, ABA's *Standards for Imposing Lawyer Sanctions*, and the aggravating factors found to be present, disbarment would be the appropriate baseline sanction for Schwartz's misconduct. However, since he is not a member of the Louisiana bar, the Board adopts the Committee's sanction recommendation of public reprimand and permanent injunction from the practice of law in Louisiana.

CONCLUSION

The Board adopts the Committee's factual findings and legal conclusions as well as its sanction recommendations. Additionally, as discussed above, the Board makes its own findings and conclusions with respect to the 1.8(i) violation additionally alleged by ODC in the formal charges pertaining to Schwartz. For Schwartz's misconduct, the Board orders that he be publicly reprimanded and permanently enjoined from practicing law in Louisiana. For Cortigene's misconduct, the Board recommends that he be disbarred from the practice of law.

RECOMMENDATION

For the foregoing reasons, the Board recommends that Respondent, Seth Cortigene, be disbarred from the practice of law and assessed with half of the costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1(A). Additionally, the Board orders that Respondent, Newton B. Schwartz, be publicly reprimanded for his misconduct in this matter and permanently enjoined from practicing law in Louisiana. Finally, the Board orders that Mr.

Schwartz be assessed with half of the costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Stephen F. Chiccarelli
George L. Crain, Jr.
Jamie E. Fontenot
Tara L. Mason
Edwin G. Preis, Jr.
R. Lewis Smith, Jr.
Linda P. Spain
R. Steven Tew

BY: _____
CARL A. BUTLER
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

RULE 1.8. Conflict of Interest: Current Clients: Specific RulesA

(In effect at the time of the misconduct)
In pertinent part:

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, and

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

***

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

Following 4/1/2006 amendment
In pertinent part:

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.

With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.

With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

(4) In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.

(i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.

(ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.

(iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.

(iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.

(5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.

(i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.

(ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest;

provided, however, that this prohibition shall not apply to publicly traded financial institutions where the lawyer's ownership, control and/or security interest is less than 15%. Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith efforts to procure a favorable interest rate for the client.

(iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.

(iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.

(v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.

(vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.

(vii) For purposes of Rule 1.8(e), the term "financial institution" shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

Following 5/19/2006 amendment:
In pertinent part:

1.8(e) (5)(ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to any federally insured bank, savings and loan association, savings bank, or credit union where the lawyer's ownership, control and/or security interest is less than 15%. Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith efforts to procure a favorable interest rate for the client.

RULE 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers
In pertinent part:

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved.

RULE 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law
In pertinent part:

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro *hac vice* admission and that are provided by an attorney who has received a limited license to practice law pursuant to La. S. Ct. Rule XVII, '14; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e)(1) A lawyer shall not:

(i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or

(ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.

(e)(2) The registration form provided for in Section (e)(I) shall include:

(i) the identity and bar roll number of the suspended or transferred attorney sought to be hired

(ii) the identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney, or the attorney transferred to disability inactive status, throughout the duration of employment or association;

(iii) a list of all duties and activities to be assigned to the suspended attorney, or the attorney transferred to disability inactive status, during the period of employment or association;

(iv) the terms of employment of the suspended attorney, or the attorney transferred to disability inactive status, including method of compensation;

(v) a statement by the employing attorney that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment or association of the suspended attorney, or the attorney transferred to disability inactive status; and

(vi) a statement by the employing attorney certifying that the order giving rise to the suspension or transfer of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney, or the attorney transferred to disability inactive status.

(e)(3) For purposes of this Rule, the practice of law shall include the following activities:

(i) holding oneself out as an attorney or lawyer authorized to practice law;

(ii) rendering legal consultation or advice to a client;

(iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;

(iv) appearing as a representative of the client at a deposition or other discovery matter;

(v) negotiating or transacting any matter for or on behalf of a client with third parties;

(vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

(e)(4) In addition, a suspended lawyer, or a lawyer transferred to disability inactive status, shall not receive, disburse or otherwise handle client funds.

(e)(5) Upon termination of the suspended attorney, or the attorney transferred to disability inactive status, the employing attorney having direct supervisory authority shall promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

RULE 7.3. DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(In effect at the time of the misconduct)

Prior to 12/1/2008 amendment
In pertinent part:

(a) A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

Following 12/1/2008 amendment:

RULE 7.3. [Reserved - intentionally left blank]

RULE 7.4. Direct Contact with Prospective Clients

(a) **Solicitation.** Except as provided in subdivision (b) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior lawyer-client relationship, in person, by person to person verbal telephone contact, through others acting at the lawyer's request or on the lawyer's behalf or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this Rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this Rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6. For the purposes of this Rule 7.4, the phrase "prior lawyer-client relationship" shall not include relationships in which the client was an unnamed member of a class action.

RULE 8.3. Reporting Professional Misconduct
In pertinent part:

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Disciplinary Counsel.

RULE 8.4. Misconduct

In pertinent part:

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;

* * *

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