

Supreme Court of Louisiana

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NEWS RELEASE #005

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 27th day of January, 2023 are as follows:

PER CURIAM:

2022-B-01338

IN RE: W. JAMES SINGLETON

SUSPENSION IMPOSED. SEE PER CURIAM.

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

Crichton, J., additionally concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

NO. 2022-B-1338

IN RE: W. JAMES SINGLETON

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, W. James Singleton, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

In 2011, Nicholas Johnson and Brandon Hewitt were hit by a Federal Express freight truck while changing a flat tire on the shoulder of I-20 in Bossier Parish. Mr. Hewitt was killed in the accident, and Mr. Johnson suffered serious injuries. On September 1, 2011, Mr. Johnson hired respondent to represent him in a claim for damages against Federal Express.

Respondent filed suit on Mr. Johnson’s behalf in federal district court in Shreveport. In 2012, the parties participated in mediation and reached a \$750,000 settlement. On May 24, 2012, Federal Express issued a settlement check in the amount of \$750,000 payable to Mr. Johnson and respondent. Both Mr. Johnson and respondent endorsed the check, and on June 7, 2012, respondent deposited \$640,000 of the settlement funds into his client trust account. Respondent split the remaining \$110,000 between two non-trust bank accounts, placing \$80,000 into an “expense” account and \$30,000 into his operating account. On July 3, 2012, the balance of

respondent's client trust account dropped below the amount he was required to hold on behalf of Mr. Johnson.¹

Under the contingency fee agreement signed by Mr. Johnson, respondent was entitled to 40% of the gross amount of any recovery obtained after the filing of a lawsuit, or \$300,000. In addition, respondent was due reimbursement for costs and sums he advanced to Mr. Johnson during the representation. According to a March 18, 2021 audit report prepared by the ODC's forensic auditor, these reimbursements totaled \$47,840.75, leaving the sum of \$402,159.25 available to be distributed to Mr. Johnson and to third parties on his behalf. The audit report indicates that of this sum, the third parties were collectively owed \$112,183.35, and Mr. Johnson was entitled to \$289,975.90.

Respondent did not disburse the settlement proceeds in a prompt and timely manner. At least one of the third-party medical providers, Med-Trans, was not paid.² Furthermore, respondent failed to provide Mr. Johnson with a settlement disbursement statement, as required by the Rules of Professional Conduct. The ODC's audit report reflects that respondent paid Mr. Johnson a total of \$283,295.10 in twelve payments made between June 21, 2012 and September 23, 2016. Therefore, respondent still owes \$6,680.80 to Mr. Johnson. Finally, the audit report indicates that respondent paid himself a total of \$428,700 in attorney's fees, well in excess of the \$300,000 fee due to him under the contingency fee agreement.

In December 2016, Mr. Johnson filed a complaint against respondent with the ODC. During its investigation of the complaint, the ODC requested that respondent

¹ The balance of the trust account was less than the amount held on Mr. Johnson's behalf for a total of 402 days between June 7, 2012 and April 30, 2017. At one point, the shortfall was as much as \$125,255.47, but it typically ranged from \$10,000 to \$50,000.

² Med-Trans was responsible for transporting Mr. Johnson by helicopter from the accident scene to a nearby hospital. Its invoice totaled \$15,000. Respondent testified in his sworn statement that he did not pay Med-Trans at the time of settlement because he was not provided with the invoice until Mr. Johnson brought it to his attention in 2014. However, Med-Trans sent respondent the invoice prior to the 2012 settlement in response to a specific request from his office.

provide financial records related to his trust account. Respondent provided some records, but the documentation was incomplete, necessitating the issuance of a subpoena to Capital One Bank to obtain the trust account records.

DISCIPLINARY PROCEEDINGS

In August 2020, the ODC filed formal charges against respondent. The ODC alleged that respondent's conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.5(c) (upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination), 1.15(a) (safekeeping property of clients or third persons; complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation), 1.15(d) (a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request, shall promptly render a full accounting regarding such property), 8.1(a) (a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent answered the formal charges and denied the allegations of misconduct. In light of respondent's answer, the matter proceeded to a formal hearing on the merits.

Formal Hearing

The hearing committee conducted a formal hearing on March 29-30, 2021. Both respondent and the ODC introduced documentary evidence. The ODC called

Mr. Johnson and its forensic auditor, Angelina Marcellino, to testify before the hearing committee. Respondent called his son's former business partner, Jason Bruno, who runs a tax service and does accounting work for respondent. Respondent also testified on his own behalf and on cross-examination by the ODC.

At the hearing, the testimony and evidence highlighted respondent's "shabby accounting procedures," including the following matters that were not specifically mentioned in the formal charges: (1) respondent attempted to charge \$60,000 in "incentive payments" to his employees as "expenses" to Mr. Johnson; (2) respondent made a \$5,000 "donation" to Christ Center Church – whose pastor referred Mr. Johnson to respondent – which Mr. Johnson contends he did not approve; (3) respondent made disbursements from his client trust account to or on behalf of Mr. Johnson before he deposited any settlement funds into the account; (4) MyCom, a business owned by respondent's son, made a loan to Mr. Johnson without the appropriate disclosures; (5) respondent procured a release from Mr. Johnson without the appropriate disclosures; and (6) respondent purchased furniture for Mr. Johnson and paid for hotels and televisions without making any inquiry into whether his client was in "necessitous circumstances."

Hearing Committee Report

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

1. The committee found Mr. Johnson and Ms. Marcellino to be credible witnesses.
2. Ms. Marcellino concluded that (a) Mr. Johnson is still owed money from his settlement; (b) some disbursements claimed by respondent are not supported as paid, are non-allowable, or are duplicative; (c) respondent collected excessive attorney's fees; (d) the balance of respondent's trust account fell

below the amount he was holding on behalf of Mr. Johnson; and (e) respondent converted client funds. These conclusions are supported by the evidence in the record.

3. The committee did not find respondent or Mr. Bruno to be credible witnesses.

In particular, Mr. Bruno's conclusion that respondent had actually overpaid Mr. Johnson is not supported by the evidence in the record. Furthermore, respondent contends Mr. Johnson asked him not to disburse all of the settlement proceeds until he could decide where to place the funds, but there is no documentation of this request.

4. On June 7, 2012, respondent deposited settlement funds of \$750,000 into three different bank accounts, only one of which was a designated client trust account.

5. Thereafter, respondent paid Mr. Johnson \$90,000, which was less than Mr. Johnson was owed.

6. There was no contemporaneous disbursement sheet itemizing the deduction of fees and expenses, as required by the Rules of Professional Conduct. Respondent claimed he prepared disbursement sheets but they are missing from Mr. Johnson's file.³ He also claimed he could not provide any backup copies from his computer because it "went blank" and crashed. Respondent did not provide any testimony or evidence to corroborate his assertions regarding this strange confluence of events.

7. Med-Trans, a known medical provider of Mr. Johnson's, was not paid the \$15,000 it was owed. Respondent admitted that when Mr. Johnson discovered

³ At the hearing, respondent implied that Christopher Sices, a former associate attorney employed in his office, had a motive to take the missing information. The committee rejected this contention because Mr. Sices left respondent's employ in 2015, well before Mr. Johnson filed a complaint in this matter. In 2020, Mr. Sices was permanently disbarred for serious attorney misconduct, including abandonment of his clients' legal matters, failure to communicate with his clients, conversion of client and third-party funds, and failure to cooperate with the ODC in its investigation. *In re: Sices*, 19-1875 (La. 2/18/20), 289 So. 3d 1013.

this unpaid medical bill, he issued three separate checks to Mr. Johnson totaling \$15,000.⁴

8. In June and July 2012, respondent withdrew \$428,700 in identifiable attorney's fees from the gross settlement proceeds, although he was only entitled to receive a \$300,000 fee.
9. On August 1, 2012, respondent gave Mr. Johnson a second check in the amount of \$148,000. Mr. Johnson did not receive a disbursement sheet, and respondent falsely advised him (and wrote in the memo section of the check) that this was all he was owed from the settlement.
10. Respondent failed to disburse the entirety of Mr. Johnson's portion of the settlement in a prompt and timely manner, and converted client funds to his own use. Mr. Johnson is still owed at least \$6,680.80 from his settlement.
11. Respondent did not cooperate with the ODC, forcing the agency to subpoena and reconcile bank records.

Based on these facts, the committee found respondent violated the Rules of Professional Conduct as charged in the formal charges.

The committee determined respondent knowingly violated duties owed to his client and the legal profession. Respondent's misconduct caused actual harm to his client.

The committee found the following aggravating factors are present: a dishonest or selfish motive, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, substantial experience in the practice of law (admitted 1986), and indifference to making restitution. The

⁴ The committee specified in its report that these checks were drawn on respondent's personal account. However, the copies of the checks in the record reflect that they were drawn on respondent's client trust account.

committee determined the only applicable mitigating factor is the absence of a prior disciplinary record.

For his misconduct, the committee recommended respondent be disbarred. The committee also recommended that respondent be required to provide Mr. Johnson with a full accounting and restitution, and that he be assessed with the costs and expenses of this matter.

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

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and adopted same. The board also made additional factual findings, as follows:

1. Respondent's conduct was both knowing and intentional, not only knowing as found by the committee.
2. Respondent knowingly and intentionally made a false statement of fact during his 2017 sworn statement, when he falsely stated that his office was not provided with the Med-Trans invoice prior to the 2012 settlement in Mr. Johnson's case.
3. Respondent presented a Capital One trust account check in the amount of \$6,181 (check number 3679) in support of a "paid" expense to Car Depot on behalf of Mr. Johnson. However, this check was never deposited or negotiated by Car Depot. The receipt presented by respondent in support of his assertion that the check was negotiated is not sufficient proof that respondent paid the expense.

Based on the factual findings, the board made the following determinations concerning respondent's violation of the Rules of Professional Conduct:

Rule 1.5(c) – Respondent did not provide Mr. Johnson with a disbursement sheet for the settlement funds he received. Therefore, he violated Rule 1.5(c) as charged.

Rule 1.15(a) – Respondent commingled Mr. Johnson’s funds with his personal funds when he deposited \$80,000 of the settlement funds into his expense account and \$30,000 of the settlement funds into his operating account. Moreover, respondent converted funds belonging to Mr. Johnson totaling \$6,680.80. Therefore, he violated Rule 1.15(a) as charged.

Rule 1.15(d) – Respondent failed to promptly deliver to Mr. Johnson the funds he was entitled to receive. Respondent received a \$750,000 settlement check from Federal Express dated May 24, 2012. On June 7, 2012, the settlement funds were deposited into respondent’s trust, operating, and expense accounts. Between June 21, 2012 and September 23, 2016, Mr. Johnson received twelve payments from respondent totaling \$283,295.10, but respondent still owes his client a significant amount of funds in the amount of \$6,680.80.

Respondent also failed to render a proper accounting to Mr. Johnson, despite his requests. In September 2016 – more than four years after the settlement – respondent gave Mr. Johnson an Excel spreadsheet which purported to detail the disbursement of the settlement funds. Mr. Johnson testified that he did not understand the spreadsheet and did not know if the information contained in it was true.⁵

Therefore, respondent violated Rule 1.15(d) as charged.

Rule 8.1(a) – Respondent knowingly and intentionally gave false information to the ODC during his 2017 sworn statement. To explain his failure to pay the Med-Trans invoice at the time of settlement, respondent insisted that he did not receive

⁵ The ODC’s auditor also noted numerous discrepancies in the spreadsheet.

the invoice until two or three years after Mr. Johnson's case settled. However, a review of Mr. Johnson's file, produced by respondent in response to the ODC's subpoena, shows that Med-Trans provided the invoice to respondent before the 2012 settlement. Therefore, respondent violated Rule 8.1(a) as charged.

Rule 8.4(c) – Respondent's actions in connection with the Med-Trans invoice and the Car Depot check constitute misleading conduct. Therefore, he violated Rule 8.4(c) as charged.

Rule 8.4(a) – By violating the foregoing rules, respondent also violated Rule 8.4(a) as charged.

The board determined respondent violated duties owed to his client and the profession. His actions were knowing and intentional. The amount of actual injury to Mr. Johnson was great; he remains deprived of \$6,680.80 owed to him from his accident settlement which was finalized in 2012. Moreover, harm to the profession and the disciplinary system has occurred in that the ODC was forced to spend its limited resources and an excessive amount of time unraveling respondent's accounting related to Mr. Johnson's settlement.

The board determined that the following aggravating factors are present: a dishonest or selfish motive, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution. The board determined that the sole mitigating factor present is the absence of a prior disciplinary record.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be disbarred. The board further recommended that respondent be required to make restitution to Mr. Johnson in the

amount of \$6,680.80, and that he be assessed with the costs and expenses of this matter.

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

DISCUSSION

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

The record establishes by clear and convincing evidence that respondent grossly mishandled Mr. Johnson's settlement. The entire amount of the settlement proceeds respondent received on behalf of Mr. Johnson should have been deposited into a client trust account. These proceeds then should have been disbursed in accordance with Rule 1.15 of the Rules of Professional Conduct and the written contingency fee contract signed by Mr. Johnson. Moreover, respondent was required by Rule 1.5(c) to provide Mr. Johnson with a written settlement statement showing the remittance to the client and an itemization of the fees and expenses incurred. However, respondent did none of these things. As a result, there is no proof of exactly where Mr. Johnson's settlement money went. Respondent's attempts to explain where the money went fail because there is nothing to

corroborate his claims. His breach of the duty to create a disbursement sheet creates an adverse evidentiary presumption that the disbursement sheet would not have been in his favor.

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

Respondent acted knowingly and intentionally, and violated duties owed to his client and the legal profession. Respondent caused actual injury to Mr. Johnson. Respondent also caused harm to the profession and the disciplinary system, in that the ODC was forced to spend its limited resources and an excessive amount of time unraveling respondent's shoddy accounting. The aggravating and mitigating factors found by the board are supported by the record.

Considering the record of this matter, we find the appropriate sanction for respondent's misconduct is a one year and one day suspension from the practice of law. This sanction will require respondent to apply for reinstatement pursuant to the provisions of Supreme Court Rule XIX, § 24 and demonstrate to our satisfaction that he has remedied the problems that caused his misconduct before we will permit reinstatement.

DECREE

Upon review of the findings and recommendations of the hearing committee and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that W. James Singleton, Louisiana Bar Roll number 17801, be and he hereby is suspended from the practice of law for a period of one year and one day. All costs and expenses in the matter are assessed against respondent in accordance 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. 2022-B-01338

IN RE: W. JAMES SINGLETON

ATTORNEY DISCIPLINARY PROCEEDING

WEIMER, C.J., concurring in part and dissenting in part.

I respectfully dissent as to the sanction imposed.

The facts of this case are egregious as detailed in the majority opinion. The record indicates that respondent has shown no remorse but rather has offered excuses and engaged in perpetrating falsehoods. The only mitigating factor found is a lengthy career without a prior ethical complaint, which is offset by a host of aggravating factors, which the majority opinion recognizes are supported by the record. See In re: Singleton, 22-1338, pp. 9-11 (La. 1/___/23), ___ So.3d. ___, ___.

Respondent caused harm to the profession and the disciplinary system in that the Office of Disciplinary Counsel (ODC) was required to spend its limited resources and an excessive amount of time unraveling the accounting nightmare respondent created while withholding an amount in excess of the agreed fee and withholding the client's money for a lengthy period of time. I agree with the majority's significant and important finding that violating "the duty to create a disbursement sheet creates an adverse evidentiary presumption that the disbursement sheet would not have been in [respondent's] favor." See Id., 22-1338 at 11, ___ So.3d. at ___.

Based on the ABA's *Standards for Imposing Lawyer Sanctions*, the hearing committee and the disciplinary determined the baseline sanction is disbarment. I very respectfully dissent as, based on the record, I would follow the unanimous recommendations of the hearing committee and disciplinary board and impose disbarment as the sanction in this case.

SUPREME COURT OF LOUISIANA

No. 2022-B-01338

IN RE: W. JAMES SINGLETON

Attorney Disciplinary Proceeding

CRICHTON, J., additionally concurs and assigns reasons:

I agree with the majority that respondent has violated the Rules of Professional Conduct. I write separately to note that, in my view, respondent’s principal mistake was his association with and seemingly unfettered reliance on a young lawyer in his firm, Chris Sices. Through respondent’s failure to adequately supervise Mr. Sices, the underlying matter giving rise to the charges of misconduct spiraled out of control, resulting in delinquent record-keeping and mismanagement of settlement funds.¹

By way of background, Mr. Sices was permanently disbarred in 2020 by a majority of this Court for multiple violations of the Rules of Professional Conduct, including six separate instances of conversion over four years (2014-2017), constituting criminal acts which caused actual harm to clients, the public, and the legal profession.² *See In re: Sices*, 2019-1875 (La. 2/18/20) 289 So.3d 1013. A majority of this Court agreed with the Hearing Committee and the Disciplinary Board that Mr. Sices’ misconduct warranted permanent disbarment:

¹Respondent was not charged with a Rule 5.1(b) violation (“A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.”).

²By amended Bill of Information in August of 2019, Mr. Sices was charged with using the tax identification number of Shandrika Jackson, signing checks in Ms. Jackson’s name, forging a check in the name of Dana Walker, and theft of an amount in excess of \$1,000 belonging to Dana Walker and Advanced Chiropractic. In January 2020, subsequent to his departure from respondent’s law office, Mr. Sices pled guilty in Caddo Parish to identity theft, a violation of La. R.S. 14:67.1(C)(1)(a), and felony theft, a violation of La. R.S. 14:67. *See State of Louisiana v. Christopher Lee Sices*, 1st Judicial District Court for the Parish of Caddo, Docket No. 352895. *See also*, La. C.E. art. 201(B) (allowing for judicial notice of adjudicative facts if they are “generally known within the territorial jurisdiction of the trial court;” or “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”).

The record further supports a finding that respondent violated duties owed to his clients, the public, and the legal profession. His misconduct was knowing and intentional, and caused significant actual harm. The baseline sanction for this type of misconduct is disbarment. The record supports the aggravating and mitigating factors found by the disciplinary board.

In their respective reports, the hearing committee and the disciplinary board have concluded respondent's offenses are so egregious that he should be permanently prohibited from applying for readmission to the bar. We agree.

In re: Sices, 19-1875, p. 12 (La. 2/18/20), 289 So. 3d 1013, 1022 (emphasis added).
(Johnson, C.J. and Hughes, J., dissented and would impose regular disbarment.).

In relation to the instant charges, respondent represented that Mr. Sices handled the underlying matter through settlement, “from A to Z.” Further, at the last meeting between Singleton and the complainant, complainant was seemingly “represented” by Mr. Sices, who at that time was no longer employed by respondent’s law firm at all. During this meeting, Mr. Sices was “advising or consulting” with complainant, despite having assisted complainant in crafting a disciplinary complaint against respondent a mere six days prior. Such timing is not a coincidence and, again, I find Mr. Sices’ continued involvement in the underlying matter muddies the unique facts presented here.³

I also have grave concerns over the impeachment evidence of complainant Nicholas Johnson, as set forth in his pre-hearing deposition and which, in my view, should have been admitted in accordance with La. Code of Civil Procedure 1450.⁴

³Despite Mr. Sices’ involvement in the present underlying matter, I find it significant that respondent’s name does not appear at all in this Court’s opinion that permanently disbarred Mr. Sices. *See In re: Sices, supra*.

⁴La. C.C.P. art. 1450 provides in pertinent part:

A. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Louisiana Code of Evidence applied as though the witnesses were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

But, the Hearing Committee, comprised of two lawyers and a psychologist, refused to admit or even consider the impeachment evidence, ignoring La. S. Ct. Rule XIX, Sec. 18(B), which provides that “[t]he Louisiana Code of Evidence shall guide, but not restrict the development of a full evidentiary record.”⁵ The deposition was instead filed in the record as an offer of proof, the Hearing Committee “let[ting] it in as a proffer.”

As set forth below, complainant’s deposition (as well as his testimony at the hearing) demonstrates a stunning lack of credibility and manipulation of the

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Article 1442 or 1448 to testify on behalf of a public or private corporation, partnership, or association, or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(a) That the witness is unavailable;

(b) That the witness resides at a distance greater than one hundred miles from the place of trial or hearing or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(c) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(emphasis added).

⁵Regarding evidentiary matters in disciplinary cases, this Court has held:

. . . [T]he purpose of rules of evidence primarily intended to govern jury trials, particularly the hearsay rules, are less compelling in the context of imposing discipline on members of the legal profession. This Court retains power to determine the ultimate question of admissibility under its original jurisdiction as the triers of fact in disciplinary proceedings, and it may well be more appropriate in disciplinary proceedings to be guided but not confined by strict application of the Code of Evidence. *See In re Huddleston*, 595 So.2d 1141, 1148 (La.1992) (concurring opinion). We observe that such an approach has been taken in other jurisdictions. *See, e.g., In re Kennedy*, 605 A.2d 600, 603 (D.C.App.1992); *The Florida Bar v. Vannier*, 498 So.2d 896, 898 (Fla.1986); *Werner v. State Bar*, 24 Cal.2d 611, 150 P.2d 892, 893–94 (1944).

In re Quaid, 94-1316 (La. 11/30/94), 646 So.2d 343 (fn. 2). *See also In re David J. Mitchell*, 13-2688 (La. 5/7/14), 145 So.3d 405 (“ . . . [D]isciplinary proceedings are guided by the Code of Evidence, but our unique constitutional role as triers of fact in these cases permits us to consider evidence which might otherwise be inadmissible.”); and *In re: John H. Clegg*, 10-323 (La. 7/6/10), 41 So.3d 1141 (citing *Quaid, supra*, noting “[a]s the trier of fact in disciplinary proceedings, we retain the power to determine the admissibility of evidence pursuant to our original jurisdiction.”).

circumstances, apparently engineered by the now-permanently disbarred Mr. Sices. For example, complainant indicated that Mr. Sices told him respondent was not trustworthy, testifying: “[w]ell, after Pastor Ashley saying it’s a possibility and then me talking to Chris, then I started to question it.”⁶ However, complainant also stated towards the end of his testimony that “Mr. Singleton did all he could for me, I can say that, but I just had some doubts, you know, and I wanted to find out the truth. That’s all.” In my view, however, complainant’s self-professed noble intention of seeking the truth is belied by his own actions which toe the line of extortion.⁷

During his deposition, complainant admitted he had “no personal knowledge” of how much money respondent presently owes him:

MR. DAVIS:⁸ My question again was, as we sit here this afternoon, do you have any personal knowledge whether or not Mr. Singleton still owes you any money from this lawsuit?

MR. JOHNSON: No. I do not.

MR. DAVIS: Okay. As we sit here today, this afternoon, do you know the amount of money that you have received from Mr. Singleton, the total amount, any personal knowledge? Do you know that?

MR. JOHNSON: I do not.⁹

⁶Pastor Alvin Ray Ashley was the leader at Christ Center Church, where complainant was previously employed.

⁷During cross examination at the hearing, claimant admitted that although his complaint had not yet been filed with ODC yet (in October of 2016), he communicated to respondent: “Paperwork has been turned into the Bar. Good luck.” Shortly thereafter, complainant stated in a communication to respondent: “[d]o you want me to call the Bar and tell them to discard that package if you can agree?” Complainant also stated, “[b]ecause, once they receive it, it’s nothing I can do. You don’t have much time.”

In reference to these messages, Mr. Schiff [counsel for respondent] asked complainant whether he was “trying to get some money” through those communications, and he said “yes, sir.”

⁸Mr. S.P. Davis, Sr. represented respondent Mr. W. James Singleton. Mr. Kennedy represented ODC.

⁹During his testimony at the hearing, ODC asked complainant about “what happened to the first ninety-thousand that you got[?]”, complainant stated “I blew it. I did a lot of stuff that I never – you know, I never had coming up. So I got a lot of stuff I always wanted.” Mr. Kennedy’s follow-up question was “[w]hen you blew it, was that the reason you went back to Mr. Singleton?” Complainant answered: “Yes, sir.” ODC also asked complainant, “[w]hat happened to the rest of it, the hundred and forty-eight thousand that you had?” Complainant answered: “Same thing.” Mr. Kennedy asked him: “You blew it?” Complainant answered: “Yes, sir.”

Regarding the purchase of a car during respondent's representation of complainant, complainant indicated only his girlfriend/ex-wife at the time (Vanessa Adger) purchased the car (which he confirmed was with money received from respondent Singleton), but a few questions later, admitted it was his signature was on the Car Depot form as well:

MR. DAVIS: Okay. What about you purchased a car from Car Depot. Is that correct?
MR. JOHNSON: Vanessa did.
MR. DAVIS: You did too. Did you not?
MR. JOHNSON: [NEGATIVE NOD].
MR. DAVIS: You're shaking your head. Is that a yes or a no?
MR. JOHNSON: No. Vanessa did.
MR. DAVIS: You never signed any papers at Car Depot to purchase a vehicle?
MR. JOHNSON: I don't recall.¹⁰

MR. DAVIS: I see several signatures on there, Nicholas Johnson. Are those your signatures? Take your time and look back through. I count one, two, three, four signatures of Nicholas Johnson. Are those your signatures?
MR. JOHNSON: Yes, sir.
MR. DAVIS: Okay, and they are from Car Depot. Is that correct?
MR. JOHNSON: Yes, sir.
MR. DAVIS: Vanessa Adger's name is on there. That's correct.
MR. JOHNSON: That's correct.
MR. DAVIS: And that's the purchase of a 2006 Pontiac four-door, gray. Is that correct?
MR. JOHNSON: Yes, sir.
MR. DAVIS: Is that the vehicle y'all got?
MR. JOHNSON: Yes, sir.
MR. DAVIS: So are you denying that you didn't sign these documents?
MR. JOHNSON: It's been so long ago. I didn't – couldn't remember, but my signature is there. So I signed it.
MR. DAVIS: Correct. So when you made the statement before you did not, that was not true. Is that correct?

¹⁰At this point, Mr. Davis showed Mr. Johnson a copy of the Car Depot Invoice and asked him to review it.

MR. JOHNSON: Correct.

Also during his deposition, when asked whether complainant conferred with anyone else about filing his complaint against respondent, he answered “I don’t want to give that information.” He refused a second time to give the information but eventually reluctantly answered it was the pastor at his place of employment (Pastor Alvin Ray Ashley at Christ Center Church).¹¹

The deposition also reveals that at some point prior to the filing of the complaint, Mr. Johnson emailed respondent indicating “his attorney” asked him to reach out and obtain copies of documents, but admitted in his deposition he did not have counsel at that time but was trying to “find out some information.” Specifically, complainant admitted he was lying and stated he did this “because me [sic] and Mr. Singleton were going back and forth and I wasn’t pleased with his answers, and I was trying to make him tell me the truth.”

Finally, I note that respondent, a well-respected lawyer since 1986, has never had a disciplinary complaint filed against him or had any sanction imposed upon him by this Court. He has served as a member of the Louisiana Law Institute and as a representative to the Louisiana Legislature from 1983 to 1996, during which time he chaired the House Committee on the Judiciary. In short, respondent’s history of service to his profession constitutes compelling mitigation evidence, which, in my view, has allowed this Court to depart from the more serious sanction as recommended by the ODC.

Again, while I take respondent’s misconduct seriously, I do not find the recommended sanction by the Disciplinary Board appropriate under these circumstances. Accordingly, I agree with the majority’s imposition of a less severe sanction in this matter.

¹¹During complainant’s testimony at the hearing, when asked about what the Pastor said to him, complainant testified: “His exact words was [sic], ‘If you want that house and that car you always dreamed of you, you’ll go with Willie Singleton.’”