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United States Court of Appeals
for the Fifth Circuit

No. 22-30231

JONATHAN B. ANDRY, LOUISIANA BAR ROLL NO. 20081,

Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:15-MC-2478

ON PETITION FOR PANEL REHEARING

(Filed Feb. 3, 2023)

Before STEWART, WILLETT, and OLDHAM, *Circuit Judges*.

DON R. WILLETT, *Circuit Judge*:

The petition for panel rehearing is GRANTED. We withdraw our prior opinion of November 29, 2022, and substitute the following:

This case concerns attorney misconduct in the Court-Supervised Settlement Program established in the wake of the 2010 Deepwater Horizon oil rig disaster. Jonathan Andry, a Louisiana attorney representing oil spill claimants in the settlement program, was accused of funneling money to a settlement program staff attorney through improper referral payments.

In a disciplinary proceeding, the en banc Eastern District of Louisiana found that Andry's actions violated the Louisiana Rules of Professional Conduct and suspended him from practicing law before the Eastern District of Louisiana for one year. Andry appeals, arguing that the en banc court misapplied the Louisiana Rules of Professional Conduct and abused its discretion by imposing an excessive sanction. Finding that some, but not all, of Andry's arguments have merit, we REVERSE the en banc court's order in part, AFFIRM in part, and REMAND for further proceedings.

I

This matter comes to us for the third time,[1] bringing with it a nearly ten-year procedural history. In the months following the 2010 Deepwater Horizon disaster, hundreds of individual and class actions were filed in state and federal courts on behalf of the thousands of victims. Many of those claims were consolidated in the Eastern District of Louisiana Deepwater Horizon multi-district litigation (MDL).[2] In 2012, BP reached a settlement with the MDL plaintiffs, which established the Court-Supervised Settlement Program (CSSP) to

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[1] *See In re Deepwater Horizon*, 824 F.3d 571 (5th Cir. 2016) (per curiam); *In re Andry*, 921 F.3d 211 (5th Cir. 2019).

[2] Transfer Order from the Judicial Panel on Multidistrict Litigation, *In re Oil Spill by Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, No. 2:10-MD-217 (E.D. La. Aug. 10, 2010).

evaluate and award the payment of economic damages to individuals and businesses affected by the oil spill.

In 2013, misconduct by several attorneys in connection with the CSSP process came to light. Specifically, Lionel Sutton, a Louisiana attorney who had been representing CSSP claimants with his wife Christine Reitano through their law firm, Sutton Reitano, accepted a job as a staff attorney with the CSSP, subsequently withdrawing from representation of claimants in the CSSP. Sutton and Appellant Andry were friends from law school, and Sutton referred one of his prior CSSP clients, Casey Thonn, to Andry Lerner LLC ("AndryLerner"), the law firm Andry owned in partnership with attorney Glen Lerner.[3] Sutton then communicated to Lerner that he was expecting a portion of the fee earned by AndryLerner from its representation of Thonn. Andry later directed another AndryLerner attorney to send an "Attorney Referral Agreement" to Sutton and Reitano providing that all attorney fees recovered in the Thonn matter would be divided equally between Sutton Reitano and AndryLerner. This agreement was never executed. Lerner then transferred portions of the contingency fees that AndryLerner received in the Thonn matter to Sutton, sending him three payments totaling more than $40,000 over the course of six months.

Upon receiving an anonymous tip concerning improprieties in the CSSP process, the MDL district court

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[3] Sutton continued to represent Thonn in an unrelated civil matter.

appointed Louis Freeh as special master to investigate the misconduct. The special master's report recommended that Andry be prevented from representing CSSP claimants. Judge Barbier, the district court judge overseeing both the M D L and CSSP, ordered Andry to show cause as to why he should not adopt the recommendation. Following an evidentiary hearing and an opportunity to respond in writing, Judge Barbier determined that Andry violated the Louisiana Rules of Professional Conduct and disqualified him from participating further in the CSSP or collecting fees.

Andry then appealed to this court in his first of three appeals.[4] Appealing with Lerner, Andry argued that the district court misapplied the Louisiana Rules of Professional Conduct and abused its discretion by imposing a one-year suspension.[5] We disagreed, holding that the district court "did not abuse its discretion in finding that Andry and Lerner violated the Louisiana Rules of Professional Conduct or in fashioning an appropriate sanction."[6]

At the district court's direction, the special master filed a disciplinary complaint against Andry with the en banc court of the Eastern District of Louisiana (EDLA). The disciplinary complaint was referred to the EDLA's Lawyer Disciplinary Committee, which submitted a confidential report to the en banc court.

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[4] *See In re Deepvater Horizon*, 824 F.3d 571.

[5] *Id*. at 577.

[6] *Id*. at 586.

Concluding that a hearing was unnecessary given the prior extensive investigation and hearing in the MDL, the en banc court filed an order finding Andry violated the Louisiana Rules of Professional Conduct and suspending him from practicing law before the EDLA for one year. Andry appealed to this court for the second time.[7] This time, we agreed with him, holding that Andry was entitled to a disciplinary hearing under the EDLA Rules for Lawyer Discipline.[8]

On remand, the en banc court directed the EDLA's Lawyer Disciplinary Committee to prosecute the matter. Following discovery and evidentiary hearings, the en banc court found that Andry clearly violated duties owed to the legal system, the court, and the profession through his violation of the Louisiana Rules of Professional Conduct. Specifically, the en banc court held that Andry violated:

> (1) Rule 1.5(e) which governs the division of fees between attorneys at different firms;
>
> (2) Rule 8.4(a), which prohibits assisting another attorney in violating the Rules of Professional Conduct;
>
> (3) Rule 8.4(c), which prohibits engaging in conduct involving dishonesty, deceit, and misrepresentation; and

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[7] *In re Andry*, 921 F.3d 211.

[8] *Id*. at 215 ("Thus, we conclude that the EDLA Rules require that Andry receive a Rule 7 hearing before discipline is imposed by the Eastern District.").

> (4) Rule 8.4(d), which prohibits conduct that is prejudicial to the administration of justice.

The en banc court suspended Andry from practicing law in EDLA for one year (three concurrent one-year suspensions) for violating Rules 1.5(e), 8.4(a), and 8.4(d). For Andry's violation of Rule 8.4(c), the court ordered a public reprimand.

In this third appeal to this court, Andry argues that the en banc court misapplied Louisiana Rules of Professional Conduct 1.5(e), 8.4(a), and 8.4(d). Andry also contends that the en banc court abused its discretion by imposing a too-harsh sanction. Andry does not challenge the en banc court's application of Rule 8.4(c).

II

A federal court may hold attorneys accountable to the state code of professional conduct. *Resolution Trust Corp. v. Bright*, 6 F.3d 336, 341 (5th Cir. 1993). "Whether an attorney's conduct is subject to sanction under a specific rule of professional responsibility is a legal issue which this court reviews de novo." *In re Mole*, 822 F.3d 798, 802 (5th Cir. 2016) (per curiam). "Sanctions imposed against an attorney by a district court are reviewed for abuse of discretion." *United States v. Brown*, 72 F.3d 25, 28 (5th Cir. 1995) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991)). "That discretion is abused if the ruling is based on an 'erroneous view of the law or on a clearly erroneous assessment of the evidence.'" *Id*. (quoting *Chaves v. M/V Medina Star*, 47 F.3d 153, 156 (5th Cir. 1995)).

III

A

Andry first argues that Rule 1.5(e) of the Louisiana Rules of Professional Conduct does not apply to payments between successive attorneys. We hold that the rule is ambiguous as to whether it applies in these circumstances. Therefore, the en banc court erred in failing to apply the rule of lenity in Andry's favor.

Rule 1.5(e) says:

> A division of fee between lawyers who are not in the same firm may be made only if:
>
> > (1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;
> >
> > (2) the total fee is reasonable; and
> >
> > (3) each lawyer renders meaningful legal services for the client in the matter.

La. R. Prof'l Conduct 1.5(e).

Andry contends that the rule solely applies where two or more attorneys remain jointly responsible to a client, not in situations where a successor attorney splits a fee with a predecessor. Andry's interpretation is not unreasonable based on the rule's text. Rule 1.5(e)(1)'s requirement that the client agree to representation by all of the lawyers *involved* can reasonably be understood to mean all lawyers *presently involved*

in the matter. Similarly, 1.5(e)(3) is written in present, not past, terms: "[E]ach lawyer *renders* meaningful legal services." This too implies that the rule was intended to apply when multiple attorneys render legal services *at the same time*.

At minimum, the text of the rule leaves some ambiguity as to whether it applies in this context. This ambiguity is seemingly resolved in Andry's favor by advisory opinions from both the Louisiana State Bar Association (LSBA) and American Bar Association (ABA). In a footnote of a publicly published advisory opinion, the LSBA Rules of Professional Conduct Committee stated: "Rule 1.5(e) would not apply" "where lawyers never worked together simultaneously on the case." Louisiana State Bar Ass'n Rules of Pro. Conduct Comm., Public Op. 12-RPCC-018, at 2 n.3 (2012). Similarly, the ABA's Committee on Ethics and Professional Responsibility issued a formal advisory opinion discussing Rule 1.5(e) of the Model Rules of Professional Conduct, which similarly governs attorney fee sharing.[9] The opinion stated that the rule "is limited to

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[9] Louisiana's Rule 1.5(e) of Professional Conduct mirrors Rule 1.5(e) of the Model Rules of Professional Conduct, but the two are not identical. The model rule says a division of fee between lawyers who are not in the same firm may be made only if:

> (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
>
> (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

situations where two or more lawyers are working on a case simultaneously—not sequentially." ABA Comm. on Ethics & Pro. Resp., Formal Op. 487 (2019).

Still, there are factors that muddy the water. The single strongest factor weighing against Andry's interpretation is that, when faced with identical facts, the same party, the same application of Rule 1.5(e), and a similar proceeding below in Andry's first appeal of the MDL court's sanctions order, we held squarely that "the district court properly applied Rule 1.5(e). "*In re Deepwater Horizon*, 824 F.3d at 582.[10] As support, we cited the district court's statement during its oral findings in the MDL that Rule 1.5(e) is intended to ensure that attorneys "can't just get a fee for referring a case to another lawyer without doing some work." *Id*. at 581.

Precedent from Louisiana courts, while not conclusive, also weighs against Andry. For instance, in *Bertucci v. McIntire*, the court applied Rule 1.5(e)'s close

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(3) the total fee is reasonable.

MODEL RULES OF PRO. CONDUCT r. 1.5(e) (AM. BAR ASS'N 2020).

[10] Andry's argument has evolved slightly. Appealing his initial sanctions, Andry argued that the case "was not a referral fee . . . but instead, was a *quantum meruit* fee," which does not trigger Rule 1.5(e). In this case, Andry drops the implication that the specific type of fee matters, arguing instead that Rule 1.5(e) *never* applies to payments between successive firms when there is no joint representation. Despite this subtle difference, our holding in *In re: Deepwater Horizon* was broad enough to address both arguments. 824 F.3d at 582.

predecessor[11] to a referral fee situation in which the referring attorney "maintained an attorney client relationship" after referral to another attorney but only performed a small proportion of tasks on the matter. *Bertucci v. McIntire*, 96-933 (La. App. 5 Cir. 3/25/97), 693 So.2d 7. And in *Dukes v. Matheny*, the court went a step further, indicating that Rule 1.5(e)'s predecessor rule[12] would apply to a fee arrangement in a situation where "the attorneys ha[d] not been jointly involved in the representation of the client." *Dukes v. Matheny*, 2002-0652, p. 5 (La. App. 1 Cir. 2/23/04), 878 So.2d 517, 520. These cases suggest that the current version of Rule 1.5(e) would apply to fee splitting between successive attorneys.

The principal cases Andry relies on are not particularly illuminating in either direction. *Saucier v. Hayes Dairy Products, Inc.* and *O'Rourke v. Cairns* together stand for the proposition that when a predecessor attorney signs a contingency-fee contract with a

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[11] In 1997, Rule 1.5(e) of the Louisiana Rules of Professional Conduct stated that division of fees between lawyers who are not in the same firm may be made only if:

> (1) The division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
>
> (2) The client is advised of and does not object to the participation of all the lawyers involved; and
>
> (3) The total fee is reasonable.

LA. R. PROF'L CONDUCT 1.5(e) (1997).

[12] *Dukes v. Matheny* applied the version of Rule 1.5(e) detailed in note 11.

client before being discharged, he is entitled to share in the contingency fee that a successor attorney earns, with the fee apportioned based on several factors, including the work performed by the predecessor attorney. *See Saucier*, 373 So.2d 102 (La. 1979); *O'Rourke*, 95-3054 (La. 11/25/96), 683 So.2d 697 (La. 1996). This holding is not necessarily inconsistent with the application of Rule 1.5(e) to fee splitting between successive attorneys. In fact, neither *Saucier* nor *O'Rourke* mentions Rule 1.5(e). And there is no clear indication that the fee splitting between successive attorneys mandated by the court in those cases failed to comply with Rule 1.5(e), as it existed at the time.

Given the compelling arguments on both sides, we conclude that Rule 1.5(e) is ambiguous as applied to this set of facts. "Because attorney suspension is a quasi-criminal punishment in character, any disciplinary rules used to impose this sanction on attorneys must be strictly construed resolving ambiguities in favor of the person charged." *United States v. Brown*, 72 F.3d 25, 29 (5th Cir. 1995) (citing *Matter of Thalheim*, 853 F.2d 383, 388 (5th Cir. 1988)). Thus, we hold that the en banc court erred by failing to apply the rule of lenity in favor of Andry.

B

Andry next argues that the en banc court misapplied Louisiana Rule of Professional Conduct Rule 8.4(a) which states, in relevant part, that it is professional misconduct for a lawyer to "knowingly assist or

induce another to [violate or attempt to violate the Louisiana Rules of Professional Conduct], or do so through the acts of another[.]" La. R. Prof'l Conduct 8.4(a). The en banc court held that Andry violated this rule by "facilitat[ing] the payment of Thonn attorneys' fees to Sutton despite the lack of a written fee splitting agreement between Thonn and the various firms involved," thereby assisting Lerner and Sutton in violating the Rules. This holding is dependent on the underlying proposition that payments between successor law firms with no joint representation can violate Rule 1.5(e). Since we hold that the en banc court misapplied Rule 1.5(e), we also hold that the en banc court erred in its application of Rule 8.4(a).

C

Next, Andry argues that the en banc court erred in holding his conduct violated Rule 8.4(d), which prohibits attorneys from "[e]ngag[ing] in conduct that is prejudicial to the administration of justice." La. R. Prof'l Conduct 8.4(d). Andry contends that because the payments between Lerner and Sutton were "permissible under Louisiana law and did not violate Rule 1.5(e)," they do not constitute misconduct. Andry asserts that underlying misconduct, not merely "the appearance of impropriety" is necessary for an 8.4(d) violation.

Here, we disagree. Andry's argument ignores that it was not just the appearance of misconduct, but *actual misconduct* that the en banc court uncovered.

Andry's underlying misconduct was the "payment or facilitation of payments" to a CSSP staff attorney while representing claimants in the CSSP process. It was these payments, not merely the perception they created, that violate Rule 8.4(d).[13] And damningly, the en banc court found that Andry did not act blindly, concluding that "Andry acted intentionally and knowingly to his own financial advantage." Courts, including this one, have regularly applied 8.4(d) in cases where attorneys attempt, or create the appearance of attempting, to influence impartial decisionmakers improperly. *See In re Mole*, 822 F.3d 798 (holding that attorney hiring another attorney for the purpose of motivating judge's recusal is prejudicial to the administration of justice and implies an ability to improperly influence a judge in violation of Louisiana Rules of Professional Conduct 8.4(d)); *In re LeBlanc*, 2007-1353 (La. 11/27/07), 972 So.2d 315 (per curiam) (holding that attorney giving money to judge for his niece's campaign for state legislature is prejudicial to the administration of justice in violation of Louisana Rules of Professional Conduct 8.4(d)). This case is no different.

Rule 8.4(d), more than Rule 1.5(e), gets to the heart of Andry's misconduct. The core of the wrongdoing was not the way fees were split between attorneys, but the fact that money was sent to an attorney

[13] It is true that in its application of Rule 8.4(d), the en banc court heavily emphasized the negative perception that Andry's behavior created rather than Andry's underlying misconduct. However, "we may affirm for any reason supported by the record, even if not relied on by the district court." *United States v. Gonzalez*, 592 F.3d 675 (5th Cir. 2009).

involved in the claims administration process by an attorney representing claimants. Thus, the en banc court did not err in finding that Andry violated Rule 8.4(d).

D

Andry's final argument is that the en banc court abused its discretion in choosing suspension as its sanction. As we have already held that Rule 1.5(e) and 8.4(a) do not apply to Andry's conduct, we only review the en banc court's imposition of a one-year suspension for the 8.4(d) violation.

Andry first contends that the en banc court abused its discretion in using a 12-month suspension as the baseline sanction for his rule violations. The Supreme Court of Louisiana, referring to conduct prejudicial to the fair administration of justice, has said "[t]he baseline sanction for this type of misconduct is a period of suspension. . . ." *In re Ruffin*, 2010-2544, p. 6 (La. 1/14/11), 54 So.3d 645, 648 (per curiam). And, as Andry's brief itself points out, courts have often imposed a 12-month suspension for misconduct creating the appearance of impropriety. *See In re Mole*, 822 F.3d 798. "The question before us is not whether we would [impose the same punishment] but, rather, whether the district court abused its discretion in doing so." *In re Sealed Appellant*, 194 F.3d 666, 673 (5th Cir. 1999). We hold the en banc court did not abuse its discretion in using a one-year suspension as a baseline sanction for Andry's Rule 8.4(d) violation.

Andry next argues that the en banc court abused its discretion by weighing too many aggravating and too few mitigating factors. When imposing sanctions against an attorney, "a court should consider the duty violated, the attorney's mental state, the actual or potential injury caused by the attorney's misconduct, and the existence of aggravating or mitigating factors." *Id*. Louisiana courts have typically looked to the ABA's Standards for Imposing Lawyer Sanctions for direction on which aggravating and mitigating factors to consider. *La. State Bar Ass'n v. Perez*, 550 So.2d 188 (La. 1989). Here, the en banc court considered the ABA standards in detail, accounting for both aggravating and mitigating factors. Andry may not agree with the way the en banc court weighed the factors, but we cannot say that the sanctions were based on an erroneous view of the law or the facts. "Because the en banc court considered and applied the ABA standards before imposing discipline, and because the sanction imposed is consistent with Louisiana precedent, we hold that the en banc court did not abuse its discretion in imposing its chosen sanction." *In re Mole*, 822 F.3d at 807.

IV

The en banc court misapplied Louisiana Rules of Professional Conduct Rule 1.5(e) and 8.4(a) but not Rule 8.4(d). Additionally, the en banc court did not abuse its discretion by imposing a one-year suspension on Andry for his violation of 8.4(d).

Accordingly, we REVERSE the en banc court's order suspending Andry from the practice of law for one year each for violations of Rule 1.5(e) and 8.4(a). We AFFIRM the en banc court's holding that Andry violated Rule 8.4(d). Finally, we REMAND to the en banc court for further proceedings. On remand, the court is free to impose on Andry whatever sanction it sees fit for the 8.4(d) violation, including but not limited to its previous one-year suspension.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF JONATHAN B. ANDRY **MISCELLANEOUS ACTION NO. 15-2478**

ORDER

(Filed Aug. 20, 2021)

For the reasons set forth in the en banc court's August 19, 2021 Findings,

IT IS ORDERED that Jonathan B. Andry is hereby suspended from the practice of law before the United States District Court for the Eastern District of Louisiana for a period of twelve months, effective immediately.

IT IS FURTHER ORDERED that this record will be made public by the clerk in accordance with Rule 10.1.2 of the Rules of Lawyer Disciplinary Enforcement.

New Orleans, Louisiana, this 20th day of August, 2021.

/s/ Nannette Jolivette Brown
NANNETTE JOLIVETTE BROWN
CHIEF JUDGE
FOR THE EN BANC COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF	**MISCELLANEOUS ACTION**
JONATHAN B. ANDRY ATTORNEY-RESPONDENT	**NO. 15-2478**

FINDINGS

Pursuant to Rule 7 of the Rules for Lawyer Disciplinary Enforcement for the Eastern District of Louisiana, the en banc court issues its findings in this disciplinary action on the basis of the record, an evidentiary hearing held on February 8 and 9, 2021,[1] the memorandums of counsel,[2] and the law.

PROCEDURAL BACKGROUND

This proceeding initially arose from the conduct of attorney Jonathan B. Andry and others in connection with the case captioned *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 2:10-MD-2179 ("MDL 2179"), the Deepwater Horizon multi-district litigation.[3] The Court

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[1] Minute entries, R. Docs. 103, 104. The case was randomly allotted to the Honorable Susie Morgan, who conducted the hearing. Judge Morgan drafted this opinion and made this recommendation for discipline to the en banc court. The en banc court adopted her recommendation and supporting written findings.

[2] R. Docs. 112, 113.

[3] The procedural background is based on the record in MDL 2179 and Special Master Louis J. Freeh's complaint. R. Doc. 1.

Supervised Settlement Program ("CSSP") was created in MDL 2179 to supervise the payment of economic damages claims following the Deepwater Horizon oil rig disaster.[4] On March 8, 2012, Judge Barbier appointed Patrick Juneau as the Claims Administrator of the CSSP.[5] Shortly thereafter, Patrick Juneau retained Michael Juneau to assist as special counsel to the CSSP.[6]

On May 28, 2013, an anonymous whistleblower conveyed a tip to David Welker, the Director of Fraud, Waste, and Abuse at the Claims Administration Office of the CSSP, prompting Patrick Juneau to initiate an internal investigation into potential improprieties in the CSSP.[7] On June 18, 2013, counsel for BP hand-delivered a letter to Patrick Juneau informing him that two whistleblowers had incriminating information and documents concerning corruption at the CAO.[8] In a July 1, 2013 letter to Judge Barbier, Patrick Juneau detailed the whistleblower's allegations as "(1) Mr. Sutton had been referring claims to the Andry Law Firm in exchange for "kickbacks" from any recovery on those claims paid by the Program to the Andry

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[4] R. Doc 1 at p. 2.

[5] MDL 2179, R. Doc. 5988.

[6] R. Doc. 105, Transcript of Michael Juneau video deposition, at p. 9. On October 23, 2015, Michael Juneau was appointed Claims Administrator for the parties' settlement agreements under Federal Rule of Civil Procedure 23(d) and the inherent case management authority of the court. MDL 2179, R. Doc. 15481.

[7] R. Doc. 81-1 at p. 5.

[8] *Id.* at p. 7.

Law Firm; (2) Some claims may have been initially filed by Mr. Sutton or Ms. Reitano and were later transferred to the Andry Law Firm; (3) Mr. Sutton had recently opened a separate checking account to place the money received from the Andry Law Firm; (4) Mr. Sutton and John Andry had been in business together in the past and continued to own a business together; (5) Mr. Sutton was writing policies within the Program that ultimately may benefit himself and his friends who are attorneys; and (6) Mr. Sutton attempted to influence a claim filed by the Andry Law Firm."[9]

Without objection, on July 2, 2013 Judge Barbier appointed Louis J. Freeh, of the Freeh Group International Solutions, L.L.C., as a Special Master in MDL 2179 under Federal Rule of Civil Procedure 53 to investigate whether there was any misconduct within the CSSP.[10] In his order, Judge Barbier clarified that the duties of Special Master Freeh would "not involve traditional special master roles involving mediation, discovery, fact finding, or substantive law.[11] Instead, Judge Barbier limited the appointment to:

> (1) [P]erforming the aforementioned independent external investigation;
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> (2) fact-finding as to any other possible ethical violations or other misconduct within the CSSP; and, (3) examining and evaluating the internal compliance program and

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[9] R. Doc. 81-5 at p. 2.

[10] MDL 2179, R. Doc. 10564.

[11] *Id.* at p. 2.

> anti-corruption controls within the CSSP, and making any necessary recommendations to design and to implement additional such controls, policies, procedures, and practices to ensure the integrity of the CSSP.[12]

In compliance with this directive, over the following two months Special Master Freeh and his investigatory team reviewed documents, conducted over eighty interviews, and took sworn testimony from several individuals, including Andry.[13]

On September 6, 2013, Special Master Freeh produced a report ("the Freeh report") detailing Andry's actions, along with the actions of other lawyers and associated law firms.[14] Special Master Freeh found Andry made improper referral payments to Lionel H. Sutton, III[15] and that Andry had been untruthful during the investigation.[16] Accordingly, Special Master Freeh recommended the court impose sanctions and prevent Andry from further representation of claimants in the CSSP.[17] Special Master Freeh also recommended his report be referred to the U.S. Department of Justice, the U.S. Attorney's Office for the Eastern District of

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[12] *Id.*

[13] MDL 2179, R. Doc. 11287 at pp. 17-19.

[14] MDL 2179, R. Doc. 11287. The Freeh report was admitted into evidence at the show cause hearing in MDL 1279 as Special Master's Exhibit 3. This report did not address the third mandate listed by Judge Barbier.

[15] Sutton is also known as "Tiger."

[16] MDL 2179, R. Doc. 11287 at pp. 86-93.

[17] *Id.* at p. 14.

Louisiana, and the State Bar of Louisiana for a determination of whether Andry violated any criminal statutes or attorney disciplinary rules.[18]

The day he received Special Master Freeh's report, Judge Barbier ordered Andry, Sutton, Christine Reitano, and Glen Lerner (the "show cause parties") to show cause why they should not be disqualified from representing or collecting fees from CSSP claimants under the unclean hands doctrine.[19] Judge Barbier held an evidentiary hearing on the show cause order on November 7, 2014.[20] The show cause parties called six witnesses and offered 39 exhibits.[21] After the hearing, Judge Barbier found Andry had violated (i) Rule 1.5(e) regarding the division of fees between lawyers who are not in the same firm; (ii) Rule 3.3 by making false statements during the course of the Special Master's investigation; (iii) Rule 8.4(a) by assisting others in the violation of the Rules of Professional Conduct; (iv) Rule 8.4(c) by engaging in conduct involving dishonesty, deceit, and misrepresentation; and (v) Rule 8.4(d) by causing damage to the integrity of the CSSP which was prejudicial to the administration of justice.[22] Andry

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[18] *Id.* at pp. 90-91.

[19] MDL 2179, R. Doc. 11288.

[20] The transcript is in the record of MDL 2179 at R. Doc. 13675. Only the testimony of Chris Mancuso and Leslie Tate Ingram are included in LDC Exhibit 17. See R. Doc. 103.

[21] MDL 2179, R. Doc. 13689, Exhibit List for show cause hearing.

[22] MDL 2179, R. Doc. 14221 at p. 4; LDC Exhibit 18. The Court held Judge Barbier's findings of fact on the rule to show cause filed in MDL 2179 are not preclusive on the issue of whether

appealed Judge Barbier's sanctions order, which was affirmed by the Fifth Circuit Court of Appeal on June 2, 2016.[23]

Judge Barbier ordered the Special Master to file a disciplinary complaint based on his findings:

> The Special Master shall report this matter to the appropriate disciplinary authorities in Louisiana and in Nevada. Additionally, the Special Master shall file a report or complaint to the Chief Judge of the Eastern District of Louisiana and the court's disciplinary committee. In connection with such reports, the Special Master shall furnish the entire record in this matter, including the Special Master's report, documentary evidence, the official transcript of the evidentiary hearing and any other evidence adduced at said hearing, and a copy of this Order imposing sanctions.[24]

Freeh transmitted a disciplinary complaint against Andry to the en banc court of the Eastern District of Louisiana on April 10, 2015, which was filed on the record on July 8, 2015.[25] This is the proceeding now before this Court. Andry filed a response to the complaint

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Andry violated the Louisiana Rules of Professional Conduct. *Matter of Andry*, 2020 WL 375599 (E.D.La. January 23, 2020).

[23] *In Re: Deepwater Horizon*, 824 F.3d 571 (5th Cir. 2016).

[24] MDL 2179, R. Doc. 14221 at p. 6; Lawyer Disciplinary Committee ("LDC") Exhibit 18,

[25] R. Doc. 1.

dated June 15, 2015 and filed into the record on July 8, 2015.[26]

The disciplinary complaint was referred to the Lawyer Disciplinary Committee for the United States District Court for the Eastern District of Louisiana (the "Committee"), which submitted its confidential report to the en banc court. In light of the extensive investigation and hearing on this matter in the Deepwater Horizon multi-district litigation, the en banc court found that a hearing was not necessary nor warranted under the Rules for Lawyer Disciplinary Enforcement for the Eastern District of Louisiana. On October 24, 2018, the en banc court imposed discipline on Andry in the form of a suspension from the practice of law before this court for a period of twelve months, effective immediately.[27] Andry objected to the en banc court's order and requested that the matter be docketed for hearing pursuant to Rule 6.5(2) of the Rules for Lawyer Disciplinary Enforcement.[28] The en banc court denied the objection explaining the matter had been thoroughly investigated and Andry had been afforded an evidentiary hearing at which the proper standard of proof was applied.[29] Andry appealed the en banc court's October 24, 2018 order,[30] and the Fifth Circuit Court of Appeals reversed the decision of the en

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[26] R. Doc. 4.

[27] R. Doc. 17.

[28] R. Doc. 18.

[29] R. Doc. 21.

[30] R. Doc. 19.

banc court and remanded the matter holding that Andry is entitled to a hearing under Rule 7 of the Rules for Lawyer Disciplinary Enforcement.[31] The en banc court appointed the Committee to prosecute the matter under Rule 7.3 of the Rules for Lawyer Disciplinary Enforcement for the Eastern District of Louisiana.[32] The matter was randomly allotted to a judge of this court and a hearing was held on February 8 and 9, 2021.[33]

COMMITTEE'S CHARGES

The Committee brought charges against Andry for violations of the following Louisiana Rules of Professional Conduct:

Violating Rule 1.5(e) of the Louisiana Rules of Professional Conduct by improperly dividing fees between lawyers who are not in the same firm;

Violating Rule 3.3 of the Louisiana Rules of Professional Conduct by making false statements during the course of the Special Master's investigation;

Violating Rule 8.4(a) of the Louisiana Rules of Professional Conduct by assisting others in violating the Rules of Professional Conduct;

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[31] *In Re: Jonathan B. Andry*, 921 F.3d 211 (5th Cir. 2019).

[32] R. Doc. 29.

[33] Minute entries, R. Docs. 103, 104.

Violating Rule 8.4(c) of the Louisiana Rules of Professional Conduct by engaging in conduct involving dishonesty, deceit, and misrepresentation; and

Violating Rule 8.4(d) of the Louisiana Rules of Professional Conduct by engaging in conduct that caused damage to the integrity of the CSSP and was prejudicial to the administration of justice.[34]

FACTUAL FINDINGS

In disciplinary proceedings we act as triers of fact to determine whether the alleged misconduct has been proven by clear and convincing evidence. As set forth in Rule 3 of the Rules for Lawyer Disciplinary Enforcement for the Eastern District of Louisiana, the en banc court may impose discipline on a lawyer practicing in the Eastern District of Louisiana only if it finds clear and convincing evidence of misconduct.[35] Rule 1.2 of the Rules for Lawyer Disciplinary Enforcement for the Eastern District of Louisiana adopts the Louisiana Rules of Professional Conduct. Under Rule XIX, Section 18D of the Louisiana Rules for Lawyer Disciplinary Enforcement, the Committee bears the burden of proof. Clear and convincing does not necessarily mean direct evidence, which will rarely exist in cases such as this.[36] Rule 1.0(f) defines "knowingly, known or knows"

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[34] R. Doc. 112 at p. 2; R. Doc. 113 at p. 2.

[35] *Sealed Appellant I v. Sealed Appellee I*, 211 F.3d 252, 254 (5th Cir. 2000).

[36] *See*, *e.g.*, *Chapman Law Firm, LPA v. United States*, 113 Fed. Cl. 555, 598 (Fed. Cl. Ct. 2013).

as denoting actual knowledge of the fact in question, but provides a person's knowledge may be inferred from circumstances.[37]

Relationship of Andry, Sutton, and Lerner

It is undisputed that Andry is an attorney licensed to practice law in the State of Louisiana and in the United States District Court for the Eastern District of Louisiana. Andry, Sutton, and Glen Lerner first met while students at Tulane Law School, where they became close friends.[38] During the 2000's, Andry and Sutton worked together on a number of cases.[39] In or around October 2009, Andry and Sutton had a "falling out" over the division of fees in a civil matter and stopped working together.[40] Sutton and Lerner remained friends and also were business partners in an entity known as Crown, L.L.C ("Crown").[41] Andry has no ownership interest in Crown, and has no signature authority over any bank account belonging to Crown.[42]

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[37] Bruno v. Medley, 310 So.3d 580, 587 (La. App. 4th Cir. 2020).

[38] R. Doc. 108 at p. 40.

[39] R. Doc. 107 at p. 199.

[40] *Id.*

[41] R. Doc. 108 at p. 93.

[42] *Id.* at p. 94.

***Deepwater Horizon*, Sutton Reitano firm, AndryLerner, L.L.C., and Referral of the Thonn Claim**

On April 20, 2010, the Deepwater Horizon/BP Oil disaster occurred in the Gulf of Mexico. Numerous lawsuits regarding the disaster were filed almost immediately, and in August 2021, BP agreed to fund a $20 billion trust to pay claims. The Gulf Coast Claims Facility was established to administer the claims. In 2011, Sutton was practicing law with his wife, Christine Reitano, as the Sutton Reitano firm.[43] The Sutton Reitano firm accepted Gulf Coast Claims Facility claimants as clients.[44] In early 2011, a claimant, Casey Thonn, signed a retainer agreement with Christine Reitano.[45]

In February 2012, Andry and Lerner, who had previously worked on several tort cases together, formed Andry Lerner, L.L.C., a Louisiana limited liability corporation engaging in the practice of law ("AndryLerner").[46] One of the goals of the firm was to represent claimants in the CSSP process.[47] At the time AndryLerner was formed, Lerner was licensed to practice law in the State of Nevada, where he specialized in tort

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[43] R. Doc. 107 at p. 201.

[44] *Id.*

[45] R. Doc. 108 at p. 9; Andry Exhibit 5, Bates #000016.

[46] *Id.* at pp. 40-41.

[47] *Id.*

litigation.[48] Andry and Lerner executed an operating agreement which, among other things, provided for the division of money.[49] Initially, this agreement provided for a 60/40 division of fees between Andry and Lerner. Subsequently, it was modified so that Lerner would receive fifty percent of all the attorneys' fees generated by cases he "originated" or "referred into the firm."[50]

In early 2012, as part of the resolution of the class-action lawsuit, the Gulf Coast Claims Facility was replaced by the CSSP. On March 8, 2012, Judge Barbier appointed Patrick Juneau as the Claims Administrator of the CSSP.[51] As the Claims Administrator, Patrick Juneau was responsible for staffing the program. In or around March 2012, Patrick Juneau offered a position with the program to Sutton's wife, Reitano, which she accepted. Reitano began working at the CSSP in April 2012.[52] Sutton began working for the CSSP on November 1, 2012.[53]

On March 30, 2012, Reitano sent a letter to Thonn notifying him that the Sutton Reitano firm could no longer represent him with respect to the CSSP.[54] At the

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[48] LDC Exhibit 27, Sworn Statement of Glen Lerner, Bates #000739-42.

[49] Andry Exhibit 22, Bates #000058-71.

[50] *Id*.; LDC Exhibit 27, Sworn Statement of Glen Lerner, p. 15; Bates #000747.

[51] MDL 2179, R. Doc. 5988.

[52] R. Doc. 108 at p. 11.

[53] R. Doc. 107 at p. 207; Transcript of the testimony of Christina Mancuso, taken in MDL 2179, Doc. 13675, p. 57.

[54] R. Doc. 107 at p. 39; Andry Exhibit 10, Bates #000029.

time the Sutton Reitano firm withdrew from the representation of Thonn, Reitano gave Thonn the names of several law firms he might retain, including AndryLerner.[55] Sutton continued to represent Thonn with regard to an unrelated civil matter.[56]

On March 29, 2012, Sutton emailed Lerner saying that he (Sutton) did not want to refer Thonn to Andry, because he didn't "want Jon stealing my client [Casey Thonn] for other cases."[57] Sutton did not want to send the Thonn case to the AndryLerner "office," and told Lerner: "No, I'm not sending it to the office. I'm referring it to you because Jon screwed me on the *BellSouth* fee."[58] Thonn signed a contingent fee contract with AndryLerner on April 28, 2012.[59] Sutton did not speak with Andry, or communicate with Andry by email or text, about Thonn at the time Thonn entered a contract with the AndryLerner firm.[60] Sutton did not tell his wife, Reitano, that he was seeking a fee in the *Thonn* case.[61] Reitano had no knowledge of any fees received by her husband, Sutton, until after the Freeh Report was issued.[62]

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[55] R. Doc. 108 at p. 11; R. Doc. 107 at p. 211.

[56] R. Doc. 107 at p. 205.

[57] Andry Exhibit 13, Bates #000035.

[58] LDC Exhibit 27, Sworn Statement of Glen Lerner, p.31; Bates #000762.

[59] Andry Exhibit 19, Bates #00049-50.

[60] R. Doc. 107 at pp. 243-244.

[61] *Id.* at p. 213.

[62] R. Doc. 108 at p. 20.

On May 8, 2012 Christina Mancuso sent an "Attorney Referral Agreement," which Andry referred to in the hearing as a joint participation agreement, to Sutton and Reitano.[63] The agreement is captioned "Attorney Referral Agreement" with signature blocks for Jonathan B. Andry, Esq. and Christine Reitano, Esq.[64] Mancuso discussed the agreement with Andry and he told her to send it to Reitano.[65] The agreement was never signed or returned to Andry or AndryLerner.[66] Andry testified that, at the time the agreement was sent, both Reitano and Sutton were employed by the CSSP, but this is incorrect as Sutton was not employed by the CSSP until November 1, 2012.[67] The proposed agreement provides in Section 5 that the "Participating Firms agree that any attorney's fees recovered shall be divided between them as follows: fifty percent (50%) of the fee shall be disbursed to Reitano and fifty percent (50%) of the fee shall be disbursed to Andry.[68] No attorney filed a lien on the Thonn fee under La. R.S. 37:218. The Attorney Referral Agreement makes no reference to the division of fees being based on the work done by the respective attorneys or firms and,

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[63] Transcript of the testimony of Christina Mancuso, taken in MDL 2179, Doc. 13675, p. 62; LDC Exhibit 4, Bates #000160-165.

[64] LDC Exhibit 4, Bates #000164.

[65] Transcript of the testimony of Christina Mancuso, taken in MDL 2179, Doc. 13675, p. 62.

[66] R. Doc. 108 at p. 55; Transcript of the testimony of Leslie Ingram taken in MDL 2179, Doc. 13675, p. 177.

[67] R. Doc. 107 at p. 207.

[68] LDC Exhibit 4, Bates #000162.

instead, provides for a fifty-fifty split. No evaluation was done at any time of the time and effort expended by Sutton and Reitano and AndryLerner.[69]

Around the time the Thonn case was referred to Lerner in March or April 2012, Lerner and Sutton discussed the referral in a brief conversation in Sutton's car, a conversation that lasted 15 to 30 seconds.[70] There was no explicit discussion of a fee being paid to Sutton during that conversation but Lerner was aware Sutton was expecting a portion of the fee.[71]

Leslie Tate, also known as Leslie Ingram, worked as a paralegal for AndryLerner on the CSSP.[72] Her last day working full-time day was October 31, 2012, but she worked as a contract employee between November 1 and November 15, 2012.[73] During the period when she was working as contract labor, Andry said to her, "Can you believe Tiger wants a fee on the Thonn case?"[74]

On December 14, 2012, Lerner and Andry communicated by email regarding the fee to be paid to Sutton.[75] Andry told Lerner he was going to send Lerner the money and Lerner could do what he wanted with

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[69] R. Doc. 108 at p. 65.

[70] LDC Exhibit 27, Bates #000761-000766.

[71] *Id.*, Bates #000766-000767.

[72] Transcript of the testimony of Leslie Ingram, taken in MDL 2179, Doc. 13675, pp. 169, 175.

[73] *Id.* at p. 174.

[74] *Id.* at p. 180.

[75] Andry Exhibit 32, Bates #000120-000121.

it.[76] Lerner believed Andry wanted to be "like Pontius Pilot (sic): I'll take your money but you go take the liability for payment."[77] Andry told Lerner, "Well, you just got paid. Pay him out of yours. If it's so important for you to pay him, pay him out of yours. I'm Pontius Pilate."[78]

The initial CSSP payment to Thonn was received by AndryLerner on October 10, 2012, in the amount of $49,400.00.[79]

Andry's Conversation with Michael Juneau on June 17, 2013

In March 2012, Pat Juneau was appointed as the Claims Administrator for the CSSP.[80] Patrick Juneau retained Michael Juneau to assist as special counsel to the CSSP.[81] At all times relevant hereto, Michael Juneau was employed by the firm of Juneau David and received his paycheck from the law firm.[82] At all times relevant hereto, Michael Juneau did not hold any appointment by Judge Barbier nor was he ever paid

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[76] *Id.* at Bates #000769; LDC Exhibit 27.

[77] *Id.*

[78] R. Doc. 108 at p. 49.

[79] Andry Exhibit 24, Bates #000075.

[80] MDL 2179, R. Doc. 5988.

[81] R. Doc. 105, Transcript of Michael Juneau video deposition, at p. 9. Several years later, on October 23, 2015, Michael Juneau was appointed Claims Administrator for the parties' settlement agreements under Federal Rule of Civil Procedure 23(d) and the inherent case management authority of the court. MDL 2179, R. Doc. 15481.

[82] R Doc. 105 at p. 28.

directly by the CSSP.[83] There was no formal designation by the court of Michael Juneau as a "Special Counsel" to the Claims Administrator.[84]

On May 29, 2013, David Welker, an investigator with the CSSP, received a "tip" that Sutton, who was by then an employee of the CSSP, was referring claims to Andry in exchange for "kickbacks." Welker reported this tip to Patrick Juneau.[85] Sutton was interviewed by Patrick Juneau and Michael Juneau on June 17, 2013.[86] In the course of that interview, Sutton told Michael Juneau that he (Sutton) wasn't going to get any money from any claim, including the Thonn claim.[87] Michael Juneau interviewed Andry to verify or contradict that statement—was there or was there not money going to Sutton on the Thonn claim.[88] On June 17, 2013, Michael Juneau interviewed Andry by telephone. The conversation lasted about ten minutes.[89] Michael Juneau inquired of Andry, in broad terms, whether Sutton had "any money coming in any way, a referral fee or any money of any kind" in the Thonn case.[90] Michael Juneau did not restrict his inquiry to whether Sutton had a "financial interest."[91] Andry told

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[83] *Id.*

[84] *Id.* at p. 43.

[85] *Id.* at p. 11.

[86] *Id.* at p.14; LDC Exhibit 23, Bates #000634.

[87] *Id.* at p. 16.

[88] *Id.*

[89] *Id*. at pp. 15-17.

[90] *Id.* at p. 18.

[91] *Id.*

Michael Juneau that Sutton absolutely did not have any money coming to him from the Thonn fee.[92] Shortly after the conversation, Michael Juneau made notes to his file.[93] Those notes reflect the substance, and scope of his conversation with Andry. In response to Michael Juneau's questioning, Andry said, "Tiger/Christine have no interest in anything. Absolutely certain about that."[94]

During his testimony at the disciplinary hearing, Andry testified that, in response to the question from Michael Juneau about rumors that Sutton *did* have an interest in an AndryLerner case, he told Michael Juneau "That's absolutely incorrect."[95] At the disciplinary hearing, Andry testified he believed this was and is a true statement, because neither Sutton nor Reitano had executed a "referral agreement," and neither Sutton nor Reitano had recorded a lien, as required by La. R.S. 37:218, to preserve an interest in any attorney's fees earned.[96]

Andry was aware in June 2013, prior to his interview with Michael Juneau, that Sutton was expecting a fee in the Thonn case and Lerner was planning to pay Sutton.[97] At the disciplinary hearing, Andry admitted that, in the interest of full disclosure, he should have

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[92] *Id.*

[93] *Id.* at pp. 34-35; R. Doc. 105-2.

[94] R. Doc. 105 at p. 45.

[95] R. Doc. 108 at p. 76.

[96] *Id.* at pp. 61-62, 77-79.

[97] R. Doc. 108 at p. 79.

told Michael Juneau that Sutton was calling Lerner and asking for money.[98] Andry testified, "Yes, ma'am, I understand that now. And I think back, it's, like, to me, it's inconsistent to say 'He doesn't have an interest, but, oh, by the way, Glen gave him money.' "[99] Nevertheless, Andry told Michael Juneau, "No, he [Sutton] doesn't have an interest because that's the position I'm taking with Glen, and that was the AndryLerner position and my position."[100] Clearly, Andry knew prior to his conversation with Michael Juneau that Lerner was forwarding the funds he received from the Thonn settlement to Sutton.[101]

The Court finds the Committee has proven by clear and convincing evidence that on June 17, 2013, Andry knowingly made false statements to Michael Juneau when he told Michael Juneau that "Tiger/ Christine have no interest in anything. Absolutely certain about that."[102]

Andry's Sworn Testimony on July 30, 2013

On July 30, 2013, during his deposition taken as a part of the Freeh investigation, Andry was questioned about whether Sutton called Andry asking that funds

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[98] *Id.* at p. 81.

[99] *Id.*

[100] *Id.*

[101] *Id.* at pp. 72-73; Andry Exhibit 3, Bates #000010.

[102] R. Doc. 105 at p. 45.

from the Thonn settlement be paid to Lerner. Andry testified during the following exchange:

> Q. [by Mr. Dolan] Had Tiger Sutton had any conversations with you – when you had received payment from the claims administration on *Thonn* claims, had he contacted you ever saying, hey, get Lerner's share to him?
>
> A. No.
>
> Q. He never had any conversations, never seemed to know when the payments were made?
>
> A. I never had any conversations. I don't know if he . . . [k]new when payments – I don't know. But I never had any conversations like the one's you're describing.[103]

Andry denied in the deposition that he and Sutton discussed the payments from Lerner to Sutton. At the Disciplinary Hearing, Andry again denied that any such conversations ever took place.[104] Sutton also denied that any such conversations took place.[105] The Committee points to an email from Sutton to Jeff Cahill on March 15, 2013, in which Sutton writes, "Jon told me that he just disbursed so you won't get it for a few days,"[106] as proof that Andry and Sutton did discuss the fee being paid to Sutton. Although the Court agrees this evidence raises some doubt as to the

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[103] LDC Exhibit 29, Bates #000941.

[104] R. Doc. 108 at p. 48.

[105] R. Doc. 107 at p. 235.

[106] Andry Exhibit 55, Bates # 000202.

veracity of Landry and Sutton, the Court finds the Committee has not shown by clear and convincing evidence that Andry's answer to Dolan's question, as worded, was false.

During the July 20, 2013, deposition taken by Special Master Freeh, Andry testified he did not learn there would be payments to Sutton until "all this broke":

> I have learned subsequent to all – when all of this broke, I talked with Glen about it and I learned that Glen had a relationship with Tiger and that Tiger asked Glen for the fee, and that Glen said, okay, I'll pay you the fee. And that they put the money into – it was a wire transfer into the Crown account because that's what Tiger asked for.[107]

"All this broke" is a reference to the disclosures that occurred during June 2013 with respect to allegations of wrongdoing in the CSSP and payments to Sutton. There were newspaper articles at this time recounting claims that Sutton was receiving kickbacks and had an interest in the Thonn case.[108] Andry admitted at the disciplinary hearing he knew in March of 2013 that Sutton was expecting to receive a portion of the funds collected on the Thonn claim and understood that Sutton had been having discussions with Lerner to that effect.[109]

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[107] LDC Exhibit 29, Bates #000907.

[108] R. Doc. 108 at p. 68.

[109] *Id.* at pp. 48, 72-73; see Andry Exhibit 3, Bates #000010.

Andry told Leslie Tate between November 1 and November 15, 2012, that Sutton wanted a referral fee.[110] Email communications between Andry and Lerner in December 2012 reflect Andry knew at that time Sutton was requesting a payment for the Thonn case and Sutton was planning to pay him. On December 14, 2012, the following email exchange occurred between Andry and Lerner:

> On Dec 14, 2012, at 1:23 PM, John Andry <johnandry@yahoo.com> wrote:
> did you talk with Tiger about Thonn?
>
> From: Glen Lerner <glenlerneresq@aol.com>
> To: John Andry <johnandry@yahoo.com>
> Sent: Friday, December 14, 2012 2:54 PM
> Subject: Re: GQ
> Thonn?
> Sent from my iPhone.
>
> On Dec 14, 2012, at 2:44 PM, John Andry wrote:
> I spoke with Susan and told her that we needed to figure out what to do and how to do..she determined that it would be better to wait until the total thon was done as the initial amount was relatively low. Tiger sent me a text this am and i tried to call him but he didnt answer. He subsequently told Susan that he was in hospital because Joey had a heart attack. I will try to call him again. We need to talk about this . . .

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[110] Transcript of the testimony of Leslie Ingram, taken in MDL 2179, Doc. 13675, p. 180.

> From: glen lerner <glenlerneresq@aol.com>
> To: John Andry <johnandry@yahoo.com>
> Sent: Friday, December 14, 2012 3:58 PM
> Subject: Re: GQ
> what is thon?
>
> On Dec 14, 2012, at 3:25 PM, John Andry wrote:
> it is Casey Thon the case that Tiger referred.
>
> From: glen lerner <glenlerneresq@aol.com>
> To: John Andry <johnandry@yahoo.com>
> Sent: Friday, December 14, 2012 4:27 PM
> Subject: Re: GQ
> We were going to pay Thon but only once I'm paid,. Not paying out of my pocket
>
> On Dec 14, 2012, at 3:51 PM, John Andry wrote:
> you just got paid a disbursment . . . pay it out of that.[111]

It is clear Andry and Lerner were referring to Sutton's requests for payment of a referral fee in the Thonn case and Andry's position was, not that it not be paid, but that it was up to Lerner to pay it.

The Court finds the Committee has proven by clear and convincing evidence that Andry knowingly made a false statement to Special Master Freeh with respect to when he learned that Sutton was asking Lerner for a fee in the Thonn case and when he learned that Lerner agreed to pay Sutton a fee. Andry was aware of these facts at least as early as November 15,

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[111] Andry Exhibit 32, Bates #000120-21.

2012 but he told Special Master Freeh on July 30, 2013, that he learned of this "after all this broke," which was in June 2013.

The Thonn payments

At the time payments were made in connection with the Thonn claim, Sutton and Reitano were not in the same firm as Andry or Lerner. There was no agreement signed by Thonn regarding his being represented by Sutton Reitano and AndryLerner at the same time. The twenty percent attorneys' fee on the Thonn claim was paid to AndryLerner and then was distributed fifty percent to Lerner and fifty percent to Andry. Lerner transferred the fifty percent he received to Sutton by transfers into the Crown account. There was no determination of the amount of work done by Sutton Reitano or the amount of work done by AndryLerner.

The initial CSSP payment to Thonn was received by AndryLerner on October 10, 2012, in the amount of $49,400.00.[112] In accordance with the 20% contingency fee agreement between Thonn and AndryLerner, the AndryLerner firm's fee was $9,880. Pursuant to the operating agreement between Andry and Lerner, Andry's share of the fee was $4,940.00 and Lerner's share of the fee was $4,940.00.[113] Lerner's share of the attorneys' fee was sent to Lerner on February 14, 2012.[114] Lerner paid Sutton by causing money to be wired to

[112] Andry Exhibit 24, Bates #000075.

[113] Andry Exhibit 22, Bates # 000059-60, 70.

[114] Andry Exhibit 33, Bates #0000126.

"the old Crown account" on January 8, 2013 in the amount of $4,940.[115]

On February 28, 2013, AndryLerner received $166,652.00 from the CSSP in the Thonn matter.[116] In accordance with the 20% contingency fee agreement between Thonn and AndryLerner, the AndryLerner firm's fee was $33,330.40. Pursuant to the agreement between Andry and Lerner, Andry's share of the fee was $16,665.21 and Lerner's share of the fee was $16,665.21.[117] $16,665.21 was sent to Lerner on March 11, 2013.[118] In March 28, 2013, Lerner caused money to be wired to Sutton, via "the old Crown account," in the amount of $16,665.21.[119] On April 29, 2013, AndryLerner received an additional settlement for Thonn from the CSSP in the amount of $190,350.25.[120] In accordance with the 20% contingency fee agreement between Thonn and AndryLerner, the AndryLerner firm's fee was $38,070.05. Pursuant to the agreement between Andry and Lerner, Andry's share of the fee was $19,035.02, and Lerner's share of the fee was $19,035.02.[121] $19,035.02 was sent to Lerner on May

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[115] Andry Exhibit 38, Bates #000145.

[116] Andry Exhibit 46, Bates #000170.

[117] Andry Exhibit 22, Bates #000059-60, 70.

[118] Andry Exhibit 53, Bates #000190.

[119] Andry Exhibit 63, Bates #000226.

[120] Andry Exhibit 65, Bates #000230.

[121] Andry Exhibit 22, Bates #000059-60, 70.

14, 2013.[122] On June 05, 2013, Lerner caused $19,035.02 to be wired to Sutton, via "the old Crown account."[123]

The Court finds the Committee has proven by clear and convincing evidence that Lerner transferred the attorneys' fees he received for the Thonn case to Sutton through deposits into the Crown bank account. Lerner did not receive attorneys' fees in the Thonn case over and above the fifty percent he received and then transferred to Sutton.[124]

GROUNDS FOR DISCIPLINE

I. Louisiana Rule of Professional Conduct Rule 1.5(e) – Division of Fees between lawyers who are not in the same firm.

Louisiana Rule of Professional Conduct 1.5(e) provides:

> A division of fee between lawyers who are not in the same firm may be made only if:
>
> (1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;
>
> (2) the total fee is reasonable; and
>
> (3) each lawyer renders meaningful legal services for the client in the matter.

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[122] Andry Exhibit 69, Bates #000240.

[123] Andry Exhibit 72, Bates #000247.

[124] R. Doc. 108 at pp. 70-71.

In the Committee's responses to Andry's "First Set of Interrogatories; and First Requests for Production of Documents," with regard to the allegation that "Andry . . . violated Rule 1.5(e) regarding the division of fees between lawyers who are not in the same firm," the Committee alleged the Rule was violated because "Jonathan Andry failed to produce a written fee splitting/referral agreement after Mr. Thonn's case was referred to AndryLerner from Mr. Sutton and as such no written agreement was secured from Mr. Thonn in violation of 1.5(e)(1). Jonathan Andry knew that Mr. Sutton wanted a fee for the referral and did not produce written documentation of such a fee."[125]

After the show cause hearing in MDL 2179, Judge Barbier found Andry, Lerner, and Sutton violated Rule 1.5(e) regarding the division of fees between lawyers who are not in the same firm when they paid fees to Sutton for the Thonn claim.[126] On appeal, Lerner and Andry argued to the Fifth Circuit that Judge Barbier abused his discretion because his decision that Lerner and Andry violated Rule 1.5(e) was based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Lerner and Andry argued

> (1) the evidence showed that the work actually performed on the Thonn claim by Sutton & Reitano before referral was substantial; (2) Rule 1.5(e) is satisfied if an antecedent 50-50 fee sharing agreement turns out to

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[125] Andry Exhibit #83, Bates #000525-526

[126] Andry Exhibit #80, Bates #000514; LDC Exhibit 18, Bates #000556.

> reflect the proportionate division of labor; and (3) there was no evidence that the division of labor in this case between Andry and Sutton & Reitano was not 50-50. Andry argues that Rule 1.5(e) is inapplicable because "[t]his was not a referral fee case as a matter of fact and law, but, instead, was a *quantum meruit* fee agreed to by Sutton and Lerner," making this "a case of successive law firms as opposed to a situation involving a referral fee agreement."[127]

The Fifth Circuit affirmed Judge Barbier's ruling finding he had not abused his discretion and holding:

> The district court properly applied Rule 1.5(e) and characterized this as a referral fee arrangement after it found that AndryLerner "sent a letter to Ms. Reitano enclosing a referral fee agreement, which she says she sent at the request of Jon Andry, and it provided for a 50/50 split or a 50 percent referral fee, which as it turned out is exactly what occurred in this case." The district court did not err in finding that the 50-50 division of fees "wasn't based on any kind of assessment of how much work Ms. Reitano had done compared to how much AndryLerner had done." Nor was the district court's implicit conclusion that the actual work performed by Reitano and AndryLerner was disproportionate based on a clearly erroneous assessment of the evidence. Accordingly, the district court did not abuse

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[127] 824 F.3d at 581.

> its discretion in determining that Lerner and Andry violated Rule 1.5(e).[128]

In this disciplinary matter, Andry raises the same arguments rejected by Judge Barbier and by the Fifth Circuit, as well as others.

Andry argues Rule 1.5(e)'s prohibition on attorneys in different firms splitting fees unless the client has consented in writing has not been violated because Sutton and Reitano did not file a lien on Thonn's recovery under La. R.S. 37:218 and, as a result, had no "fee interest" in the Thonn claim.[129] Andry relies on *Saucier v. Hayes Dairy Products*,[130] but this is not what the *Saucier* case held. *Saucier* dealt with the fee due to counsel discharged *without cause* and discussed the factors to be considered for determining the reasonableness of a fee under Rule 1.5(a). *Saucier* is cited for its holding that a client is not liable for more than one contingency fee, but instead the client is liable only the highest ethical contingency fee agreed to, apportioned between lawyers according to the Rule 1.5(a) *Saucier* factors. *O'Rourke* addressed the fee to be awarded an attorney who is discharged *for cause.* The Louisiana Supreme Court did not rely on the use of *quantum meruit* for apportioning compensation to an attorney retained under a contingency fee contract and subsequently dismissed without cause. Instead, "[t]he amount prescribed in the contingency fee contract, not

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[128] *Id.* at 582 (footnote omitted).

[129] R. Doc. 108 at pp. 54-65; R. Doc. 112 at p. 19.

[130] 373 So.2d 102 (La. 1978).

quantum meruit, is the proper frame of reference for fixing compensation for the attorney prematurely discharged without cause."[131] In *Saucier*, the court explained that La. R.S. 37:218 allows a lawyer who is a party to an employment contract to secure an interest in his client's claim but the interest is "no more than a privilege granted to aid the attorney's collection of a fully earned fee out of the fund which the satisfaction of the client's claim yields."[132] *Saucier* does not hold that a lien must be filed under La. R.S. 37:218 for Rule 1.5(e) to apply and, in fact, does not even mention Rule 1.(e). As a practical matter, Andry's actions reveal he is aware Rule 1.5(e) applies. Andry sent an Attorney Referral Agreement to Sutton and Reitano, even though no lien had been filed, and he testified he sent the Referral Fee Agreement in an attempt to comply with Rule 1.5(e).[133]

Andry also argued at the Fifth Circuit that Rule 1.5(e) was not violated because the proposed fifty-fifty split in the Attorney Referral Agreement fortuitously turned out to reflect the exact proportionate division of labor between Sutton and Reitano and AndryLerner. Even if this were true, Rule 1.5(e) would still be violated. But, in this case there is no evidence to support this argument; there was no attempt to evaluate the percentage of the work performed by Sutton and Reitano as opposed to the percentage of the work done

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[131] *Id.* at 118.

[132] *Id.* at 117.

[133] R. Doc. 108 at pp. 58-59.

by AndryLerner. There is no way to know whether the division of the fees exactly or inexactly matched the division of labor.

Alternatively, Andry argued at the Fifth Circuit and in this proceeding that the Thonn fee is not a referral fee arrangement at all and, instead, is a quantum meruit arrangement making this "a case of successive law firms as opposed to a situation involving a referral fee agreement."[134] Andry argues Louisiana law recognizes two situations in which attorneys' fees may be shared between lawyers who are not in the same firm:

> a. The situation in which the first lawyer no longer represents the client, but has a claim for compensation for services already rendered, on a *quantum meruit* basis, and the second lawyer recognizes that claim, either voluntarily, or because the first lawyer filed a lien (the "successive lawyers" situation); and
>
> b. The situation in which the first lawyer has referred the client to another lawyer, but the first lawyer continues to render meaningful legal services on behalf of the client (the "concurrent lawyers" situation, or "joint participation" situation).[135]

Andry argues the relationship between the Sutton Reitano firm and the AndryLerner firm is that of

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[134] 824 F.3d at 581.

[135] R. Doc. 112 at p. 18

"successive lawyers" and Rule 1.5 does not apply to successive lawyers as a matter of law, again citing *Saucier*[136] and adding *O'Rourke v. Cairns*.[137] The Andry disciplinary proceeding is a disciplinary proceeding examining whether Rule 1.5(e) has been violated, and *Saucier* and *O'Rourke* do not apply.

Andry also cites *Louisiana State Bar Association, Rules of Professional Conduct Committee*, PUBLIC Opinion 12-RPCC-018, fn. 3 (January 30, 2012) as standing for the proposition that Rule 1.5(e) does not apply to successive representation. The comments and opinions of the Committee are not binding on any person or tribunal, even though public comments may be cited. In any event, the opinion deals with the ethical issue raised when a lawyer wishes to share legal fees with another lawyer who has been suspended or disbarred or has resigned from the practice of law. The opinion describes the threshold inquiry in any instance involving an agreement for the division of legal fees between lawyers who are not in the same firm as whether the agreement complies with Rule 1.5(e), which requires the agreement to be in writing. Although the opinion discusses consideration of quantum meruit fees for work performed before the suspension, in light of *Saucier* and *O'Rourke* the approach sanctioned by the Louisiana Supreme Court is to apportion the fee considering the *Saucier* factors under Rule 1.5(a). But,

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[136] 373 So.2d 102 (La. 1978).

[137] 683 So.2d 697 (La. 1996).

in any event, the opinion does not hold that Rule 1.5(e) does not apply to successive representation.

There was no agreement signed by Thonn with respect to the division of the fees resulting from his claims. Neither was there consideration of the *Saucier* factors and Rule 1.5(a) when the fees were divided. Instead, the entire fee went to the AndryLerner firm and then was split fifty-fifty by the AndryLerner partners in accordance with the terms of their operating agreement. One of those partners, Lerner, then transferred all of the funds he received to Sutton with the knowledge and acquiescence of Andry.[138] Andry knew that Sutton expected a fee for the referral and that Lerner was transferring funds to Sutton.[139] Andry was aware at the time of the transfers to Sutton that Sutton was employed by the CSSP. Andry was aware that at no time was there a written agreement signed by Thonn with respect to the sharing of the fee. Andry knew there has been no consideration of the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly by the two firms, as required by Rule 1.5(a).

The fact that the funds went from AndryLerner to Lerner and then to the Crown account controlled by Sutton does not cure any violation of Rule 1.5(e). Rule

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[138] Andry argues money is fungible so the funds paid by AndryLerner to Lerner were not paid by Lerner to Sutton. R. Doc. 108 at pp. 44-45, 47. The Court rejects this argument as specious.

[139] Andry Exhibit #83, Bates #000525-000526

8.4(a) provides it is professional misconduct for a lawyer to violate the Rules of Professional Conduct or to do so through the acts of another.[140] Andry cannot do through Lerner what he or AndryLerner cannot do directly. Andry's position that he was like Pontius Pilate, and washed his hands of the affair, does not insulate him from responsibility for violation of Rule 1.5(e).

The Court finds the Committee has proven by clear and convincing evidence that Andry violated Rule 1.5(e)(1) and Rule 8.4(a).

II. Louisiana Rule of Professional Conduct 3.3 – Candor Toward the Tribunal.

Louisiana Rule of Professional Conduct 3.3(a) provides:

> A lawyer shall not knowingly:
>
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
>
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered

[140] Rule 8.4(a).

> material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

With regard to the allegation that " . . . Andry violated Rule 3.3 by making false statements during the course of the Special Master's investigation," the Committee specifically alleged that Andry made the following false statements to Special Master Freeh on July 3o, 2013 and to Michael Juneau on June 17, 2013:

a. "'I never had any conversations. I don't know if he knew – I mean, whether he new [*sic*] when payments – I don't know. But I never had any conversations like the ones you're describing.' Jonathan Andry Transcript at 32-33 (July 30, 2013). Statement by Jon Andry made to Special Master Investigators."[141]

b. '"I have learned subsequent to all – when all of this broke, I talked with Glen about it and I learned that Glen had a relationship with Tiger and that Tiger asked Glen for the fee, and that Glen said, okay, I'll pay you the fee. And that they put the money into – it was a wire transfer into the Crown account because that's what Tiger asked for.' Jonathan Andry

[141] Andry Exhibit #83, Bates #000529.

Transcript at 33 (July 30, 2013). Statement by Jon Andry made to Special Master Investigators."[142]

c. "All statements made to Mr. Michael Juneau by Jon Andry on June 17, 2013 indicating that Sutton and Reitano had zero interest in Mr. Thonn's pending claim with Andry."[143]

Andry does not dispute that on July 30, 2013 he made the first two statements quoted above under oath as a part of the sworn statement he gave Special Master Freeh during the investigation.[144] With respect to the first statement above, the Court has found that Andry did not knowingly make a false statement to Special Master Freeh with respect to whether he had conversations with Sutton about paying Sutton a referral fee for the Thonn case. With respect to the second allegation above, the Court has found that Andry knowingly made a false statement to Special Master Freeh with respect to when he learned that Sutton was asking Lerner for a fee in the Thonn case and when he learned that Lerner agreed to pay Sutton a fee. In reality, Andry was aware of these facts at least as early as November 15, 2012 but he told Special Master Freeh on July 30, 2013 that he learned of this "after all this broke," which was in June 2013. The Court also has found that on June 17, 2013 Andry knowingly made false statements to Michael Juneau when he told

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[142] *Id.*, Bates #000529-000530

[143] *Id.*, Bates #000530.

[144] LDC Exhibit 29.

Michael Juneau that "Tiger/Christine have no interest in anything Absolutely certain about that."[145]

To be a violation of Rule 3.3, the knowingly false statement must be made to a "tribunal." The Court must determine whether Special Master Freeh or Michael Juneau is a tribunal within the meaning of this rule. Rule 1.0(m) defines a tribunal as:

> a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Special Master Freeh was appointed by Judge Barbier under Federal Rule of Civil Procedure 53 to investigate whether there was any misconduct within the CSSP.[146] In his order, Judge Barbier clarified that the duties of Special Master Freeh would "not involve traditional special master roles involving mediation, discovery, fact finding, or substantive law.[147] Instead, Judge Barbier limited the appointment to:

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[145] LDC Exhibit 26, Bates #000729.

[146] MDL 2179, R. Doc. 10564.

[147] *Id.*

> (1) [P]erforming the aforementioned independent external investigation; (2) fact-finding as to any other possible ethical violations or other misconduct within the CSSP; and, (3) examining and evaluating the internal compliance program and anti-corruption controls within the CSSP, and making any necessary recommendations to design and to implement additional such controls, policies, procedures, and practices to ensure the integrity of the CSSP.[148]

Patrick Juneau retained Michael Juneau to assist as special counsel to the CSSP.[149] Not until October 23, 2015 was Michael Juneau appointed Claims Administrator for the parties' settlement agreements under Federal Rule of Civil Procedure 23(d) and the inherent case management authority of the court.[150]

Special Master Freeh and Michael Juneau clearly are not arbitrators, legislative bodies, or administrative agencies or other bodies acting in an adjudicative capacity and rendering a binding legal judgment. The only question is whether Special Master Freeh or Michael Juneau is a "court."[151] Andry cites *In re*

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[148] *Id.* at p. 2. Special Master Freeh's later report in response to topic three is not relevant to this proceeding.

[149] R. Doc. 105, Transcript of Michael Juneau video deposition, at p. 9. On October 23, 2015, Michael Juneau was appointed Claims Administrator for the parties' settlement agreements under Federal Rule of Civil Procedure 23(d) and the inherent case management authority of the court. MDL 2179, R. Doc. 15481.

[150] MDL 2179, R. Doc. 15481.

[151] Judge Barbier found that, because Michael Juneau was a court appointed claims administrator, making a false statement

Brigandi[152] in which the Louisiana Supreme Court declined to find a violation of Rule 3.3 because the Louisiana Office of Disciplinary Counsel is not the type of "tribunal" contemplated by the professional rules. Unfortunately, in *In Re Brigandi* the Supreme Court addresses this issue in a footnote and does not expound on the definition of a tribunal. The Court has found no cases, and the Committee has cited none, holding that a special master appointed to perform the first two tasks enumerated by Judge Barbier is a tribunal under Rule 3.3. Neither is there any support for the argument that Michael Juneau, a private attorney retained by the Claims Administrator at the time of Andry's statement, is a tribunal under Rule 3.3.[153]

Suspending an attorney is a "quasi-criminal punishment" and "any disciplinary rules used to impose this sanction . . . must be strictly construed resolving ambiguities in favor of the person charged."[154] The Court finds that, strictly construing Rule 1.0(m), Special Master Freeh and Michael Juneau are not courts and, as a result, do not fit within the definition of a tribunal.

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to him was the same as making a false statement to the court. In reality, at the time these statements were made, Michael Juneau was not a court appointed claims administrator.

[152] 843 So.3d 1083, 1088 fn.4 (La. 2003).

[153] Michael Juneau is now a United States District Judge for the Western District of Louisiana. At the time of this conversation, Michael Juneau was an attorney in private practice.

[154] *In Re: Good*, 821 F.3d 553 (5th Cir. 2016) (citing *United States v. Brown*, 72 F.3d 25 (5th Cir. 1995)).

The Court finds, as a matter of law, the false statements knowingly made by Andry to Special Master Freeh and Michael Juneau were not made to a "tribunal" as defined by Rule 1.0(m). The Committee has not proven by clear and convincing evidence that Andry violated Rule 3.3.

III. Louisiana Rule of Professional Conduct 8.4(a) – assisting others in violating the Rules of Professional Conduct.

Louisiana Rule of Professional Conduct 8.4(a) provides:

> 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.

With regard to the allegation that Andry violated Rule 8.4(a) by "assisting [Sutton and Lerner] in violating the Rules of Professional Conduct," the Committee alleged that "[s]pecifically, Andry's misrepresentations to Leslie Ingram and Christina Mancuso facilitated the payment of Thonn attorneys' fees to Sutton despite the lack of a written fee splitting agreement between Thonn and the various firms involved. *See* specific

documents referenced in response to Interrogatory No. 7."[155]

The Court finds Andry violated Rule 8.4(a) because he personally violated the Rules of Professional Conduct and also knowingly assisted Lerner and Sutton in doing so.[156]

IV. Louisiana Rule of Professional Conduct 8.4(c) – engaging in conduct involving dishonesty, deceit and misrepresentation.

Louisiana Rule of Professional Conduct 8.4(c) provides:

> It is professional misconduct for a lawyer to:
>
> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

With regard to the allegation that " . . . Andry . . . violated Rule 8.4(c) by engaging in conduct involving dishonesty, deceit and misrepresentation," the Committee specifically alleged that "[i]n addition to the acts alleged as violations of Rules 1.5(e) and 3.3, it is contended that Jonathan Andry further violated Rule 8.4(c) by misrepresenting his knowledge and/or intention that Mr. Sutton would be paid a fee for work

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[155] Andry Exhibit 83, Bates #000534-535. The Court has found Andry violated Rule 8.4(a) in connection with the payments from Lerner to Sutton.

[156] It is not necessary for the Court to find that Andry made misrepresentations to Leslie Ingram and Christina Mancuso to find a violation of Rule 8.4(a).

completed on the Thonn claims to the Special Master investigative team as well as other employees of either the CAO and/or the AndryLerner firm, the Glen Lerner Associates firm and any other employee of any firm that was the recipient of Andry's misrepresentations. Specifically, Andry misrepresented to former employee Leslie Ingram that he could not believe that Sutton was requesting a fee for work completed on the Thonn claims prior to it being transferred to AndryLerner. *See* Direct of Leslie Ingram pp. 171-72; cross of Leslie Ingram pp. 177-80 of Transcript of Evidentiary Hearing (November 7, 2014). Additionally, Andry misrepresented the nature of the transfer of the Thonn claims to AndryLerner and his knowledge or lack thereof of a referral agreement to AndryLerner staff attorney Christina Mancuso. *See* Cross of Christina Mancuso, pp. 62-65 of Evidentiary Hearing (November 7, 2014). The circuitous route in which Sutton was paid was also facilitated through the dishonesty, fraud, deceit, and/or misrepresentation of Andry in concert with Glen Lerner and/or other employees of their firm(s). *See* Freeh Special Master Report, pp. 29-33; pp. 34-36 & Exhibit A; Evidentiary Hearing November 7, 2014, particularly the examinations of Lionel Sutton, III."[157]

The Court has found that Andry knowingly make a false statement to Special Master Freeh with respect to when he learned that Sutton was asking Lerner for a fee in the Thonn case and when he learned that Lerner agreed to pay Sutton a fee. In reality, Andry was

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[157] Andry Exhibit 83, Bates #000533-000534.

aware of these facts at least as early as November 15, 2012 but he told Special Master Freeh on July 30, 2013 that he learned of this "after all this broke," which was in June 2013. The Court also has found that on June 17, 2013 Andry knowingly made false statements to Michael Juneau when he told Michael Juneau that "Tiger/Christine have no interest in anything. Absolutely certain about that."[158]

The Court finds Andry has engaged in dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

V. Louisiana Rule of Professional Conduct 8.4(d) – engaging in conduct that caused damage to the integrity of the CSSP and was prejudicial to the administration of justice.

Louisiana Rule of Professional Conduct 8.4(d) provides:

> It is professional misconduct for a lawyer to:
>
> (d) Engage in conduct that is prejudicial to the administration of justice.

The "[p]roscription against conduct that is prejudicial to the administration of justice is most often applied to litigation-related misconduct; however, it also reaches the conduct that is uncivil, undignified, or

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[158] LDC Exhibit 26, Bates #000729.

unprofessional, regardless of whether it is directly connected to a legal proceeding."[159]

With regard to the allegation that each of these attorneys "engaged in conduct that caused damage to the integrity of the CSSP and was prejudicial to the administration of justice, [in] violation of Rule 8.4(d)," the Committee specifically alleged that "Jonathan Andry engaged in conduct that was prejudicial to the administration of justice because his actions produced the perception of impropriety in the administration of claims by the CAO. Specifically, his payment or facilitation of payments to Sutton regarding the Thonn claims while Sutton was a staff attorney for the CAO created the perception that the claims administration process was compromised and that certain claims were receiving preferential treatment due to the undisclosed fee arrangement between Andry and Sutton. Andry had multiple claims pending with the CAO from a variety of clients while Sutton was employed at the CAO, and Andry's conduct with Sutton, including going to lunch and the volume of calls and texts to Sutton in Spring 2013, furthered the perception of impropriety in the administration of claims at the CAO."[160]

The Committee argues that, even if the Court were to determine the rules have not been violated or are not applicable in this context, Rule 8.4(d) has been violated because Andry's conduct caused damage to

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[159] *In Re: Downing*, 930 So.2d 897 (La. 2006).

[160] Andry Exhibit #83, Bates #000537.

the CSSP and was prejudicial to the administration of justice.

The CSSP was created in MDL 2179 to supervise the payment of billions of dollars of economic damage claims following the Deepwater Horizon oil rig disaster. Following the Freeh report, Judge Barbier ordered Andry, Sutton, Reitano, and Lerner to show cause why they should not be disqualified from representing or collecting fees from CSSP claimants under the unclean hands doctrine. At the conclusion of the show cause hearing, Judge Barbier, the person with the most extensive knowledge regarding the CSSP, strongly rejected the argument that no harm had been done to the CSSP. In announcing his oral findings, Judge Barbier explained that:

> [Andry's attorney] said one thing that I have to strongly disagree with here when [he] said despite all of this there was no harm done. The harm that's been done by all that's occurred in this case here is to the integrity of this Court Supervised Settlement Program, to the integrity of the legal system.
>
> The fallout from what started with Mr. Sutton's misconduct and mushroomed from there has caused or created a tremendous injury to what we are doing here. It ultimately led to much of what's happened since then in the sense of claims being delayed, the claims program being shut down for a period of time, a tremendous amount of adverse publicity, criticisms of Mr. Juneau, of the claims facility,

> of the Court, of everybody concerned with this.[161]

Michael Juneau also believed harm had been done to the CSSP. He testified the allegations of misconduct "subjected us to criticism and it called into question whether the program was biased or not, that was the issue for us."[162] Special Master Freeh testified the settlement process was "tremendously disadvantaged and stymied during the period of our inquiry."[163] In his words, "the claims process ground to a halt. Claimants were not able to pursue their – process claims. The administrator's office shut down, in effect, all of its work while we conducted a very intrusive investigation, interviewing all of the people in the administrator's office, including many people who worked outside – lawyers, claimants, other stakeholders."[164]

The Court finds the Committee has established by clear and convincing evidence that Andry engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

IMPOSITION OF DISCIPLINE

The en banc court has found that Andry clearly violated duties owed to the legal system, the court, and the profession through his violation of Rules of

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[161] Andry Exhibit #79, Bates #000505.

[162] R. Doc. 105 at p. 27.

[163] R. Doc. 107 at p. 156.

[164] *Id.*

Professional Conduct 1.5(e), 8.4(a), 8.4(c), and 8.4(d). Having found professional misconduct, the en banc court considers the appropriate sanction, mindful that the "purpose of disciplinary proceedings is not primarily to punish the lawyer, but rather to maintain the appropriate standards of professional conduct, to preserve the integrity of the legal profession, and to deter other lawyers from engaging in violations of the standards of the profession."[165] "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 or mitigating circumstances."[166]

In imposing a sanction after a finding of lawyer misconduct, the court 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 the actual or potential injury caused by the lawyer's misconduct; and

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[165] *In Re: Reihlmann*, 04-0680 (La. 1/19/05), 891 So.2d 1239, 1249 (citing *In Re: Vaughan*, 00-1892 (La. 10/27/00), 772 So.2d 87; *In re: Lain*, 00-0148 (La.5/26/00), 760 So.2d 1152; *Louisiana State Bar Ass'n v. Levy*, 400 So.2d 1355 (La. 1981)).

[166] *In Re: Reihlmann*, 891 So.2d at 1249 (citing *In re: Redd*, 95-1472 (La. 9/15/95), 660 So.2d 839; *Louisiana State Bar Ass'n v. Whittington*, 459 So.2d 520 (La. 1984)).

(4) the existence of any aggravating or mitigating factors.[167]

Section 3.0 of the *ABA Standards for Imposing Lawyer Sanctions* sets out the aggravating[168] and mitigating[169] factors the court should consider when determining an appropriate sanction.

Aggravating factors in this case are Andry's thirty-one years of experience in the practice of law, the existence of multiple violations, a dishonest or selfish motive, deceptive practices during the disciplinary

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[167] Rules of the Supreme Court of Louisiana, Rule XIX. Rules for Lawyer Disciplinary Enforcement. Section 10.C. Factors to be Considered in Imposing Sanctions.

[168] Those aggravating factors are identified in § 9.2 of the *ABA Standards* as including: (a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution; and (k) illegal conduct, including that involving the use of controlled substances.

[169] Those mitigating factors are identified in § 9.3 of the *ABA Standards* as including: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency including alcoholism or drug abuse; (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (l) remorse; (m) remoteness of prior offenses.

process, injury to the CSSP and claimants, and his refusal to acknowledge the wrongful nature of the misconduct.

The only mitigating factor identified by the Court is that Andry has not been disciplined by the Louisiana Supreme Court since his admission to the bar in 1990.

The en banc court imposes discipline on Andry in the form of a suspension from the practice of law before the United States District Court for the Eastern District of Louisiana for a period of twelve months, effective immediately.

CONCLUSION

It is the finding of the Court that Jonathan B. Andry's misconduct violated Rules 1.5(e), 8.4(a), 8.4(c), and 8.4(d) of the Louisiana Rules for Professional Conduct.[170] A separate order imposing discipline will be entered.

New Orleans, Louisiana, this 19th day of August, 2021.

/s/ Nannette Jolivette Brown
NANNETTE JOLIVETTE BROWN
CHIEF JUDGE
FOR THE EN BANC COURT

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[170] The Honorable Jay Zainey is recused from this action and did not participate in this decision.