FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE # 9

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **22nd day of February, 2006**, are as follows:

PER CURIAM:

2005-B -1082 IN RE: JAMES K. GAUDET
(Disciplinary Proceedings)

Retired Judge Philip C. Ciaccio, assigned as Justice pro tempore, sitting for Associate Justice Catherine D. Kimball.

Upon review of the findings and recommendations of the hearing committees and the disciplinary board and considering the record, briefs, and oral argument, it is ordered that James K. Gaudet, Louisiana Bar Roll number 5970, be suspended from the practice of law for six months. Three months of this suspension shall be deferred. Following the completion of the active portion of his suspension, respondent shall be placed on unsupervised probation for a period of six months, during which time he must successfully complete the Louisiana State Bar Association's Ethics School program. Any failure of respondent to comply with this condition, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, §10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

TRAYLOR, J., dissents and assigns reasons.
WEIMER, J., concurs in part and dissents in part and assigns reasons.

02/22/2006

SUPREME COURT OF LOUISIANA

NO. 05-B-1082

IN RE: JAMES K. GAUDET

ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM*

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

UNDERLYING FACTS AND PROCEDURAL HISTORY

The ODC filed three sets of formal charges against respondent. The first set, disciplinary board docket number 99-DB-107, was filed on October 22, 1999 and consists of two counts. The second set, disciplinary board docket number 00-DB-032, was filed on March 2, 2000 and consists of one count. The third set, disciplinary board docket number 02-DB-095, was filed on September 3, 2002 and consists of one count. The three sets of formal charges were considered by separate hearing committees, then consolidated by order of the disciplinary board. On April 26, 2005, the board filed in this court a single recommendation of discipline encompassing all three sets of formal charges.

99-DB-107

Counts I & II – Respondent's Conduct as a Judicial Candidate

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* Retired Judge Philip C. Ciaccio, assigned as Justice *pro tempore*, sitting for Associate Justice Catherine D. Kimball.

In early 1999, respondent was a candidate for a seat on the 24th Judicial District Court. During his campaign, respondent assisted in planning a continuing legal education program at a Mississippi hotel. In several conversations with the hotel staff, respondent misrepresented himself as a "judge" and "soon to be judge." He also made lewd and inappropriate comments to the hotel staff.

Furthermore, during a political forum for judicial candidates, respondent was asked his views on imposing the death penalty, to which he commented, "I'll press the needle in myself." This remark was published in *The Times-Picayune* on February 24, 1999.

The ODC alleges respondent violated the following Rules of Professional Conduct: Rules 8.2(b) (lawyers who are judicial candidates shall comply with the Code of Judicial Conduct), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Furthermore, the ODC alleges respondent violated the following Canons of the Code of Judicial Conduct: Canons 7B(1)(a) (a judicial candidate shall maintain the dignity appropriate to judicial office), 7B(1)(d) (a judicial candidate shall not make pledges, promises, or commitments with respect to cases, controversies, or issues that are likely to come before the court, nor shall the candidate knowingly make a false statement concerning his identity, qualifications, present position, or other fact), and 7G (lawyers who are unsuccessful judicial candidates are subject to lawyer discipline for campaign misconduct).[1]

Respondent answered the formal charges and generally denied any misconduct. The matter then proceeded to a formal hearing on the merits, which was conducted

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[1] Respondent's misconduct was first investigated by the Judiciary Commission of Louisiana, but when respondent was not elected to judicial office, the Commission lost jurisdiction. We approved the Commission's request to submit the file to the ODC for further investigation.

by the hearing committee on October 18, 2000. Following the hearing, the hearing committee issued its report, finding that respondent violated Rules 8.4(a) and 8.4(c) of the Rules of Professional Conduct, as well as Canons 7B(1)(a), 7B(1)(d), and 7G of the Code of Judicial Conduct,[2] when he misrepresented himself as a judge or soon-to-be judge. Furthermore, his lewd comments to the hotel staff did not maintain the dignity appropriate to judicial office. However, the ODC failed to prove by clear and convincing evidence that respondent violated Canon 7B(1)(d) in his remark about the death penalty. Respondent's comment may have been insensitive, but it cannot be read as a pledge or promise of conduct in office. According to the newspaper article, all of the candidates responded to the question, and the question was apparently posed in an abstract context not tied to any case, controversy, or issue.

In assessing an appropriate sanction, the committee found respondent conveyed false or misleading information and violated a duty owed to the profession. Furthermore, the committee found that although respondent's misrepresentations were not directed toward a client, his negligent and intentional failure to provide accurate and complete information caused an intangible injury to the persons to whom they were directed, to the judiciary, and to the legal profession.

As aggravating factors, the committee found, among others, a refusal to acknowledge the wrongful nature of the conduct and substantial experience in the practice of law (admitted 1960). In mitigation, the committee found, among others, the absence of a prior disciplinary record. Additionally, respondent's actions did not cause serious harm and do not reflect an inability to practice law.

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[2] The committee failed to find a violation of Rule 8.2(b), but in light of its finding of a violation of Canon 7G, this appears to be an oversight.

Based on these findings, the committee recommended that respondent be publicly reprimanded. Respondent filed an objection to the hearing committee's recommendation in 99-DB-107, seeking the dismissal of the formal charges.

00-DB-032

The Lumpkin Matter

In August 1998, Denise Lumpkin retained respondent to file a civil suit arising out of personal injuries she received from a criminal act against her. Ms. Lumpkin signed a contingency fee contract for respondent's services in the civil matter. Respondent did not represent Ms. Lumpkin in connection with the criminal case.

On October 29, 1998, respondent accompanied Ms. Lumpkin to a criminal hearing, which resulted in a criminal sentence for the tortfeasor that included $2,000 in criminal restitution to Ms. Lumpkin. That day, Ms. Lumpkin received a check for $1,000 of the victim's restitution award, which she endorsed and gave to respondent to deposit. Respondent then wrote Ms. Lumpkin a check for $500, keeping $500 for himself. Despite her repeated requests, respondent did not provide Ms. Lumpkin with an explanation or accounting for these funds. In November 1998, respondent filed suit on behalf of Ms. Lumpkin. In February 1999, respondent attempted to collect the second $1,000 restitution payment from the district attorney's office, but was unsuccessful.

On March 2, 1999, Ms. Lumpkin sent respondent a certified letter terminating his services. Respondent in turn informed opposing counsel in the civil matter to protect his fees. Thereafter, Ms. Lumpkin successfully negotiated a settlement in the civil matter for $6,800 without the assistance of counsel. In June 1999, Ms. Lumpkin filed a disciplinary complaint against respondent.

In July 1999, respondent filed a petition for intervention, which included a statement of his fees and costs as an attachment. Following an October 1999 hearing, Judge Fredericka Wicker denied respondent's petition, stating in oral reasons for judgment:

> Based upon the law and testimony presented, Mr. Gaudet was not entitled to the five-hundred ($500.00) dollars he took from Mrs. Lumpkin's receipt of one thousand ($1000.00) dollars in criminal restitution. . . . Furthermore, Mr. Gaudet's behavior with regard to the one thousand ($1000.00) dollar check . . . was far outside the appropriate behavior of an attorney-at-law. Moreover, Mr. Gaudet failed to provide Ms. Lumpkin with an accounting for either the five hundred ($500.00) dollars he took from her or the additional money he sought pursuant to the second disbursal of criminal restitution funds.
>
> The testimony of Mr. David Cambre, the insurance defense attorney involved in the . . . civil case, indicates that Mr. Gaudet's behavior for the approximate seven months he represented Ms. Lumpkin was disruptive, unprofessional, garrulous and not calculated to properly pursue a prompt and proper resolution of Ms. Lumpkin's case.
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> ***
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> Finally, Mr. Gaudet was uncommunicative with his client and displayed an unprofessional social demeanor towards Ms. Lumpkin in his representation of her and during court appearances he made on her behalf. Mrs. Lumpkin's statements regarding Mr. Gaudet's comments of a sexual nature were unrebutted.
>
> Furthermore, Mr. Gaudet's aggressive and unprofessional demeanor on the witness stand at the trial of his Petition for Intervention wholly corroborates the testimony of both Mr. Cambre and Mrs. Lumpkin regarding the manner in which Mr. Gaudet handled Mrs. Lumpkin's case.
>
> Accordingly, the Court finds that Mrs. Lumpkin discharged Mr. Gaudet as her counsel for just cause.

Respondent was also ordered to return to Ms. Lumpkin $298 of the $500 he had kept from her criminal restitution.[3] He did not make restitution to Ms. Lumpkin until August 2001, nearly two years later.

The ODC alleges respondent violated the following Rules of Professional Conduct: Rules 1.2(a) (scope of the representation), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(a)(b)(c) (fee arrangements), 1.7(b) (a lawyer shall not represent a client if the representation may be materially limited by the lawyer's own interests), 1.15(b) (safekeeping property of clients or third parties), 1.16(d) (obligations upon termination of the representation), 3.3(a)(b) (candor toward the tribunal), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.3(a) (failure to report professional misconduct), 8.4(a), 8.4(b) (commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), 8.4(c), 8.4(d) (engaging in conduct prejudicial to the administration of justice), and 8.4(e) (stating or implying an ability to influence improperly a judge, judicial officer, governmental agency, or official).

Respondent answered the formal charges and generally denied any misconduct. The matter then proceeded to a formal hearing on the merits, which was conducted by the hearing committee on September 18, 2000. Following the hearing, the hearing committee issued its report, finding that the ODC failed to prove by clear and convincing evidence that respondent violated Rules 1.2(a), 1.3, 1.4, 1.5(a)(b)(c), 1.7(b), 8.1(c), and 8.4(b)(d)(e). However, the committee found clear and convincing evidence of violations of Rules 1.15(b), 1.16(d), 3.3(a)(b), 8.3(a), and 8.4(a)(c). By retaining $500 from the first criminal restitution check, respondent failed to deliver

[3] Respondent was only required to return $298 because he had paid the $202 filing fee for Ms. Lumpkin's civil suit out of his own pocket.

funds to which Ms. Lumpkin was entitled. He further failed to render an accounting after he retained the funds, and failed to refund the $298 ordered by the court. Furthermore, the committee determined that respondent made false statements of material fact to a tribunal during the intervention hearing. Finally, respondent failed to report his own misconduct. According to the ABA's *Standards for Imposing Lawyer Sanctions*, suspension is the baseline sanction, although disbarment or reprimand may also be appropriate in some circumstances.

The committee found the following aggravating factors: multiple rule violations, dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and indifference to making restitution. In mitigation, the committee found an absence of a prior disciplinary record.

Based on these findings, the committee recommended that respondent be suspended for six months, with three months deferred if he makes restitution to Ms. Lumpkin. Both the ODC and respondent objected to the hearing committee's recommendation in 00-DB-032.

02-DB-095

The Overton Matter

In October 1997, William Overton retained respondent to handle a civil claim against his employer. Respondent filed a petition on behalf of his client first in United States District Court, which was dismissed for lack of subject matter jurisdiction, then in Civil District Court for the Parish of Orleans. Respondent also represented Mr. Overton as a potential witness for the federal government concerning environmental violations by his employer. On April 25, 2000, Mr. Overton paid respondent $2,000. On June 14, 2000, respondent terminated his representation of Mr. Overton in all matters. On July 7, 2000, Mr. Overton requested that respondent

return his entire file. Respondent failed to do so. He also failed to provide Mr. Overton with an accounting for the $2,000 payment and failed to cooperate with Mr. Overton's new attorney in substituting counsel of record.

Mr. Overton filed a disciplinary complaint against respondent on July 19, 2000. Respondent did not return Mr. Overton's requested file materials until May 29, 2001 and did not provide an accounting until November 2002.

The ODC alleges respondent violated the following Rules of Professional Conduct: Rules 1.3, 1.4, 1.15(b), 1.16(d), 8.4(a), 8.4(c), and 8.4(d).

Respondent answered the formal charges and generally denied any misconduct. The matter was set for a formal hearing on the merits, but on joint motion of the parties, the hearing committee considered only written arguments, which were limited to the issues of mitigation and whether respondent failed to provide an accounting to his client. In his submission, respondent asserted that the $2,000 payment was for services already rendered and not for future services. At the time of the payment, respondent explained this to Mr. Overton, who made no complaint regarding services already rendered, did not question the charges, and did not request a written accounting. Respondent further asserted that while he did not provide a written accounting to Mr. Overton at the termination of his services, he gave his client a verbal accounting throughout the representation. A written accounting was provided to Mr. Overton in November 2002.

In its submission, the ODC pointed out that respondent received $2,000 from Mr. Overton on April 25, 2000 and terminated his representation on June 14, 2000. However, respondent did not provide Mr. Overton with the requested accounting until after formal charges were filed. As such, the ODC argued that respondent violated Rules 1.15(b) and 8.4(a) of the Rules of Professional Conduct.

The hearing committee determined that respondent violated Rules 1.15(b) and 8.4(a) of the Rules of Professional Conduct.[4] Respondent failed to promptly render a full accounting to show if his client was due a refund when he terminated his representation in June 2000. Nor did he produce a bill or other written documentation when Mr. Overton paid him $2,000 in April 2000. Clearly, Mr. Overton had no understanding of the application of the $2,000 payment, evidenced by his repeated requests for information, yet respondent did not provide Mr. Overton and the ODC with a written accounting until November 2002.

The committee determined that respondent acted knowingly. In aggravation, the committee found prior disciplinary offenses (2001 admonition for inappropriate communications with a person represented by counsel) and substantial experience in the practice of law. In mitigation, the committee found full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings. The committee also recognized respondent has suffered from personal and emotional problems but did not weigh them in determining the appropriate discipline.

Further considering the ABA's *Standards for Imposing Lawyer Sanctions* and this court's prior jurisprudence, the committee recommended respondent be suspended for three months, fully deferred. Neither respondent nor the ODC filed an objection to the hearing committee's recommendation in 02-DB-095.

Disciplinary Board Recommendation

99-DB-107, 00-DB-032, & 02-DB-095

The disciplinary board determined that the hearing committees' factual findings were not manifestly erroneous and adopted same. In 97-DB-107, the board found that

[4] The committee did not consider the other allegations of the formal charges in light of the joint motion to limit the hearing to the issue of whether respondent failed to provide an accounting.

respondent's conduct in Count I violated Canons 7B(1)(a), 7B(1)(d), and 7G of the Code of Judicial Conduct and Rules 8.2(b), 8.4(a), and 8.4(c) of the Rules of Professional Conduct. However the board found that Canon 7B(1)(d) was not violated by respondent's conduct in Count II. With respect to 00-DB-032, the board found that respondent did not violate Rules 1.2(a), 1.3, 1.4, 1.5(a)(b)(c), 1.7(b), 8.1(c), 8.3(a), and 8.4(b)(d)(e). However, the board found that respondent did violate Rules 1.15(b), 1.16(d), 3.3, 8.4(a), and 8.4(c). In 02-DB-095, the board found that respondent violated Rules 1.15(b) and 8.4(a) but dismissed the other allegations because the ODC did not pursue same.

The board determined that respondent knowingly violated duties owed to his clients, the public, and as a professional. His conduct harmed Ms. Lumpkin and, while there was no actual harm to Mr. Overton, the grossly delayed accounting defies explanation and reasonable delays.

Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the baseline sanction is suspension. As aggravating factors, the board recognized prior disciplinary offenses, dishonest or selfish motive, multiple rule violations, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution. In mitigation, the board recognized full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, personal or emotional problems, and physical illness.

Further considering this court's prior jurisprudence, the board determined that a period of actual suspension is appropriate. Accordingly, the board recommended respondent be suspended for six months, with three months deferred, followed by six months of probation and Ethics School.

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

DISCUSSION

Bar disciplinary matters come within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Quaid*, 94-1316 (La. 11/30/94), 646 So. 2d 343; *Louisiana State Bar Ass'n v. Boutall*, 597 So. 2d 444 (La. 1992). While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The record of the consolidated matters supports the following findings:

99-DB-107

In Count I, respondent violated Rules 8.2(b), 8.4(a), and 8.4(c) of the Rules of Professional Conduct. Canons 7B(1)(a), 7B(1)(d), and 7G of the Code of Judicial Conduct were also violated. Respondent misrepresented himself as a judge or soon-to-be judge and made lewd, suggestive remarks to third persons.

In Count II, respondent testified that his death penalty comment was taken out of context and was intended as a personal, not judicial, opinion. Furthermore, he asserted all candidates responded to the same question, which appears to be supported by the newspaper article. The ODC produced no evidence to contradict respondent. As such, there is not clear and convincing evidence of violations of either the Rules

of Professional Conduct or the Code of Judicial Conduct in connection with this count.

00-DB-032

In this matter, respondent violated Rules 1.2(a), 1.4, 1.5(b), 1.15(b), 1.16(d), 3.3(a)(b), 8.4(a), and 8.4(c) of the Rules of Professional Conduct. He expanded the scope of the representation without Ms. Lumpkin's authority by inserting himself into the criminal matter. Thereafter, he failed to communicate his fee arrangement to Ms. Lumpkin in writing or even explain his hourly rate. He failed to provide adequate status reports to Ms. Lumpkin and did not provide his client with an accounting of the $500 he kept from the criminal restitution check. He also failed to return the unearned fee as ordered by Judge Wicker.

02-DB-095

In this matter, respondent violated Rules 1.15(b) and 8.4(a) of the Rules of Professional Conduct when he failed to provide Mr. Overton with an accounting of the $2,000 payment.[5]

Discipline

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La.

[5] Because the parties agreed to limit this matter to the issue of a failure to provide an accounting, we will not consider the other allegations in the formal charges.

1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

By acting as he did in the above three matters, respondent knowingly, if not intentionally, violated duties owed to his clients, the legal system, and as a professional. His conduct caused actual harm to Ms. Lumpkin by depriving her of her funds for an extended period of time. Respondent's conduct also caused harm to the profession and had the potential to cause actual harm to Mr. Overton. The baseline sanction for such misconduct is a period of suspension.

The following aggravating factors are supported by the record: prior disciplinary offenses, dishonest or selfish motive, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, and substantial experience in the practice of law. The mitigating factors present are personal or emotional problems and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

Under these circumstances, we find the sanction recommended by the disciplinary board is appropriate. Accordingly, we will suspend respondent from the practice of law for a period of six months. We will defer three months of the suspension and place respondent on unsupervised probation for a period of six months, during which time he must successfully complete the Louisiana State Bar Association's Ethics School program. Any failure of respondent to comply with this condition, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate.

DECREE

Upon review of the findings and recommendations of the hearing committees and the disciplinary board, and considering the record, briefs, and oral argument, it is ordered that James K. Gaudet, Louisiana Bar Roll number 5970, be suspended from the practice of law for six months. Three months of this suspension shall be deferred. Following the completion of the active portion of his suspension, respondent shall be placed on unsupervised probation for a period of six months, during which time he must successfully complete the Louisiana State Bar Association's Ethics School program. Any failure of respondent to comply with this condition, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

02/22/2006

SUPREME COURT OF LOUISIANA

No. 2005-B-1082

IN RE: JAMES K. GAUDET

TRAYLOR, Justice, dissenting.

I respectfully dissent from the majority's determination that any portion of the respondent's discipline should be suspended, as I believe that a greater discipline should be imposed. In addition, I most strenuously disagree with the statement contained in the concurrence and dissent that the offensive, lewd and inappropriate sexual comments which form part of the basis of Count 1 of Formal Charge 99-DB-107 could ever be dismissed as "banter."

This belief is based on a review of the disciplinary record with regard to Count I of Formal Charge 99-DB-107. This count details the respondent's conduct as a judicial candidate during which time he allegedly made lewd and inappropriate comments to female members of the hotel staff of a Mississippi hotel. The respondent initiated this contact while assisting in planning a day trip that was to take place during a continuing legal education program for the Jefferson Parish Bar Association. The deposition testimony contained in the record shows that, in addition to identifying himself to the hotel's staff as "Judge Gaudet" or "soon-to-be-Judge Gaudet," the respondent made crude sexual comments to two of the women with whom he spoke telephonically.

The first instance occurred when the respondent spoke with Linda Spruill, a hotel sales manager for the Beau Rivage casino and hotel. After ascertaining that the respondent was calling in connection with the Jefferson Bar Association's upcoming

meeting, Ms. Spruill told the respondent that he needed to speak with Andrea Touart.[1] Ms. Spruill remembered the respondent replying, "He said, like twat, and I said, No, like Touart. And he said, well, with a name like that, she must be a very busy girl, or something along that line."[2] When subsequently asked if she became upset with the caller, Ms. Spruill responded in the affirmative.

> ODC counsel: Did you get upset with him?
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> Ms. Spruill: Oh, yeah. I mean, it was - - there was no reason for that comment to be made. I speak very clearly, I believe, and I don't think he would have misunderstood me pronouncing this young lady's name.
>
> ODC counsel: Is there any way you think you might have made a mistake about what he said?
>
> Ms. Spruill: No, huh-uh (indicating no.)
>
> ODC counsel: It's pretty clear to you?
>
> Ms. Spruill: Yeah, it's pretty clear. I mean, that's not a word that I often hear, so, you know, you kind of go, Huh?[3]

The record shows that the phone conversation with the respondent was not the end of offensive comments which Ms. Spruill had to suffer from the respondent. In questioning Ms. Spruill at her deposition, the respondent, who represented himself, made her pronounce her co-worker's name over and over again,[4] and argued with her as to what she was saying. In addition, he told her that she did not understand the meaning of the offensive word in question.[5] Finally, posturing as if he believed her

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[1] The record indicates that Ms. Touart's last name is pronounced "Towah." Exhibit ODC-3, p. 10.

[2] Exhibit ODC-3, p. 7.

[3] Exhibit ODC-3, p. 8-9.

[4] Exhibit ODC-3, p. 9-11.

[5] The deposition transcript reveals the following:

> Gaudet: You just pronounced the name Andrea Touart, and you put a T on

understanding of the term reflected some sort of regional difference, the respondent forced Ms. Spruill to relate every place she had lived from birth.[6]

ODC counsel then elicited this testimony upon further examination:

ODC counsel: Just a little the bit of redirect here. The word spelled T-w-a-t, that's what you thought you heard the gentleman say on the telephone?

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the end of it.
Ms. Spruill: I did not. I said Touart.
Gaudet: Well, then maybe it's your tongue clicking, but there was a T at the end of it. You said "Twat."
Ms. Spruill: I don't believe so.
Gaudet: Should have had my recorder on at the time, but go ahead. ...
* * *
Gaudet: Well, what did you think you heard her name pronounced as?
Ms. Spruill: Twat, T-w-a-t, or how ever you want to spell it.
Gaudet: Okay. What is - -
Ms. Spruill: That's exactly what was said back to me.
Gaudet: What is offensive about T-w-a-t, or something like that?
Ms. Spruill: It's a slang name for the feminine body. I mean, it's - - it's very offensive.
Gaudet: It's a slang name?
Ms. Spruill: Uh-huh (indicating yes), for a - -
Gaudet: Feminine body?
Ms. Spruill: Yes, uh-huh?
Gaudet: What part of the body are you referring to, ma'am?
Ms. Spruill: Well, the female genitalia. I've heard it referred to as that on bathroom walls.
Gaudet: Genitalia?
Ms. Spruill: Uh-huh (indicating yes).
Gaudet: Are you talking about sexual genitalia?
Ms. Spruill: Yes, sir. Yes, sir.
Gaudet: Ma'am, what area are you speaking of?
ODC Counsel: I think - -
Gaudet: If you're not referring to - - listen to me. Let me make this clear. If you're not referring to the derriere or gluteus maximus, the behind, so to speak - -
Ms. Spruill: Right.
Gaudet: Is that what you're referring to?
Ms. Spruill: No, sir.
Gaudet: That's not your understanding of what the word T-w-a-t pronounced "twat" means, right?
Ms. Spruill: No, its not.
Gaudet: You think it means either breast or - - I'm not - -
Ms. Spruill: It's the other. It's the other.
Gaudet: The other?
Ms. Spruill: Uh-huh (indicating yes).
Gaudet: All right, ma'am. So you don't really understand the use of the word "twat." For your information, in the connotations that I've heard it many times, it refers [to] your rear end.
Ms. Spruill: Well, I - -
Gaudet: Are you from Louisiana?

[6] Exhibit ODC-3, p. 13-15.

Ms. Spruill: That's what he did say on the telephone.

ODC counsel: Okay. And did he follow that up with any other jokes or colloquialisms?

Ms. Spruill: Yes, the thing about, well, with a last name like that, she must be a busy girl, or something along that line. I do not actually remember the actual phraseology. ***But it was enough that I hung up the phone going, Oh, my gosh, I can't believe this man just said this and he said he was a judge.*** (Emphasis added)[7]

The second instance occurred when the respondent spoke with Ann Hoff, the director of hotel marketing at the Beau Rivage casino and hotel. Ms. Hoff related her conversation with the respondent as follows:

ODC counsel: Do you remember the substance of the conversation?

Ms. Hoff: I do. I do. I remember it because it was a little unusual. There was a some specific requests. He said that he was attending the conference. He was trying to get a hold of [the hotel sales manager in charge of the Jefferson Parish Bar Association function], I believe that's what he had said, and hadn't had luck contacting him; and that he had always attended this conference and wanted to know what we were going to do for him specifically. And I said I really need for you to be more specific. What are you looking for? And he said, well, I want - - usually I have something special. And I said again, I need you to be more specific on what you're looking for, which we never really got to the bottom of, but I think that he was looking for an upgrade to a suite. He did reference that he was very important, that he was a judge. And I told him that I would need to get back with him, and he referenced - - he was making some small talk with me, and he referenced that I sounded like a nice gal, and that if my husband wasn't taking care of me, he would.

Gaudet: What's that?
ODC counsel: You'll have your opportunity to ask her questions, sir.

ODC counsel: Was that the end of the conversation?

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[7] Exhibit ODC-3, p. 16.

Ms. Hoff: I don't recall, but I believe that was pretty much the end of the conversation because when he said that, I felt like, okay, this conversation is done.

ODC counsel: Did you hang up the phone on him or anything like that?

Ms. Hoff: Oh, no, no, no. I mean, we're not in the business of doing that. We deal with lots of unique situations in the sales department every day. That one, I must say, was most unique, which is why I remember it. But, no, it wasn't a harsh or abrupt end to the conversation.[8]

As with Ms. Spruill, the respondent took his opportunity of cross-examining Ms. Hoff at her deposition as another opportunity for harassment. He argued with her regarding the purpose of his phone call until she responded as follows:[9]

Ms. Hoff: Mr. Gaudet - - Mr. Gaudet, there are very few people that I've spoken to on a professional level that have ever referenced my being married or implying that my husband is not taking care of me.

Gaudet: Including myself.

Ms. Hoff: I remember that specifically.

Gaudet: You created that specifically.

Ms. Hoff: I am perfectly willing to say that the details of pottery[10] I don't recall because, you're right, I get lots of requests. However, we did not discuss transportation. We did not.

Gaudet: You did not hear it, you mean?

Ms. Hoff: But I did hear your other comments, no question. No question. And that's why I remember it so clearly.[11]

Even reviewing a cold deposition record, it is obvious that the respondent was

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[8] Exhibit ODC-4, p. 6-7.

[9] *See also* Exhibit ODC-4, p. 11-12.

[10] In earlier questioning, the respondent asked Ms. Hoff if she remembered that he was trying to set up a day trip to a pottery shop in the area. Upon her memory being refreshed as to that point, Ms. Hoff did recall that part of the conversation. Exhibit ODC-4, p. 11.

[11] Exhibit ODC-4, p. 14.

argumentative, insulting, inappropriate and rude to Ms. Hoff, the deponent. His demeanor was far from professional after eliciting the information from Ms. Hoff that she called the contact person from the Jefferson Parish Bar Association to complain about his actions:

> Gaudet: Did you suggest anything to the person you spoke to at the bar association about what you might want to try to be done as a result of what you heard or described?
>
> Ms. Hoff: No. I just told them that we had a situation with an attendee from their group who was difficult and who was giving some members of my staff a difficult time and embarrassing them and that it was inappropriate and they agreed.
>
> Gaudet: And this embarrassing and all this sort of stuff is coming from hearsay. You didn't hear any of that, did you? Your staff or whatever would have told you something that you passed on?
>
> Ms. Hoff: Oh, they told me. They told me.
>
> Gaudet: They testified here today.
>
> Ms. Hoff: Uh-huh (indicating yes). And it was - - it all revolved around - - the call revolved primarily Andrea Touart.
>
> Gaudet: Wrong, but that's okay. You've made it revolve around that. ...[12]

The respondent informed Ms. Hoff during the deposition that he did not, in fact, attend the bar conference.

> Gaudet: So when you said I was an attendee, you assumed that I would be an attendee; is that right?
>
> Ms. Hoff: That's correct.
>
> Gaudet: Is it possible you could have assumed a whole bunch of other things?
>
> Ms. Hoff: Oh, I doubt. I certainly didn't assume what you said to me about my husband.

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[12] Exhibit ODC-4, p. 22-23.

Gaudet: Well, ma'am, I don't say anything to people about husbands. But in any event, that's all I have.

Ms. Hoff: I'm not assuming what you said about being a judge either.

Gaudet: You didn't assume that I was a judge?

Ms. Hoff: No.

Gaudet: Then that meant nothing to you, correct?

Ms. Hoff: Frankly, what your status is meant nothing to me then; it means nothing to me now.

Gaudet: So does yours mean to me. That's all I have, ma'am.[13]

The record shows that the respondent in one instance made a lewd play on a crude word normally used as a derogatory term for a part of a woman's anatomy.[14] The respondent's protestations that he meant a less known use of the term to mean "buttocks" is disingenuous, at best. In correspondence during the early investigation of this matter, the respondent stated he thought Ms. Spruill had said the last name as "Trueart" and that he "did not have any true art."[15] This dovetails with earlier reports that the respondent had said, in explaining his joke to Ms. Spruill, that "he didn't have one."[16] Thus, his protestations that he said the words "true art" or meant the lesser known definition of the offensive word do not ring true.

In another, separate instance, the respondent intimated to a woman that "if [her] husband wasn't taking care of [her], he would." This is a patently offensive remark. As the father of three daughters, I cannot fathom how these offensive comments could ever be dismissed as "banter."

The respondent made these comments while he was a judicial candidate and

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[13] Exhibit ODC-4, p. 24.

[14] "Twat"- 1:Vulva - usu. considered vulgar. Webster's Third New International Dictionary (1976).

[15] Exhibit ODC-6, p. 2.

[16] Exhibit ODC-5.

either intimated he was, or was about to be, a judge. The crude comments alone would be bad enough, but coming from a bar member running for judicial office, the comments reflect poorly on all members of the bar and judiciary. Lawyers running for judicial office are held to the same standard as judges. "As a public official, a judge's behavior both on and off the bench must comply with the highest of standards delineated in the Canons." *In re: Ellender*, 2004-2123 p. 9 (La. 12/13/04), 889 So.2d 225, 231. "Judges are held to a higher standard by virtue of their position and authority they have over citizens and must avoid any action which would cause the citizens to question their integrity or the integrity of the bench." *Id.*

This court properly finds that the respondent violated Canons 7B(1)(a) and 7G of the Code of Judicial Conduct in connection with this conduct. However, I believe that no portion of the respondent's suspension from the practice of law should be deferred. Moreover, I believe that a harsher period of suspension is in order.

02/22/2006

SUPREME COURT OF LOUISIANA

No. 2005-B-1082

IN RE: JAMES K. GAUDET

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

While not impacting the ultimate discipline imposed, and while I in no way condone the comments, I would not find the banter the respondent engaged in with a hotel employee to be sanctionable.