

**LOUISIANA ATTORNEY DISCIPLINARY BOARD****IN RE: LOUIS JEROME STANLEY****NUMBER: 14-DB-042****RULING OF THE LOUISIANA ATTORNEY DISCIPLINARY BOARD****INTRODUCTION**

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This is an attorney disciplinary matter arising out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Louis Jerome Stanley ("Respondent"), bar roll number 12400. The charges, which consist of one count, allege that Respondent violated the following Rules of Professional Conduct: 1.4 (communication), 1.15(a) (holding client's property separate from the lawyer's own property), 1.15(d) (notifying the client promptly after receiving funds on clients' behalf), and 8.4(a) (violating or attempting to violate Rules of Professional Conduct) for failing to promptly release funds owed to a client and failing to adequately communicate with that client.<sup>1</sup>

The Hearing Committee assigned to this matter concluded that Respondent violated Rules 1.4, 1.15(d) and 8.4(a) as alleged in the formal charges, but declined to find that he violated Rule 1.15(a). As a result, the Committee recommended that Respondent be publically reprimanded. For the following reasons, the Board adopts the factual findings, legal conclusions, and recommendation of the Committee. Accordingly, the Board orders that Respondent be publically reprimanded.

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<sup>1</sup> The text of the Rules is contained in the attached Appendix.

## **PROCEDURAL HISTORY**

The formal charges were filed on September 11, 2014. Respondent filed an answer to the charges on October 30, 2014, in which he denied violating the Rules of Professional Conduct. The hearing of this matter was initially scheduled on February 9, 2015, but was continued until April 13, 2015, at the request of ODC, to allow for the filing of amended formal charges. ODC filed a pre-hearing memorandum on January 22, 2015. ODC filed amended charges on April 7, 2015. Respondent filed an answer to the amended charges on April 8, 2015, in which he denied violating the Rules of Professional Conduct.

Respondent filed a pre-hearing memorandum on April 10, 2015 in advance of the hearing. The hearing was held as scheduled on April 13, 2015. Deputy Disciplinary Counsel Yolanda Cezar appeared on behalf of ODC. Respondent appeared *pro se*. The hearing committee issued its report on October 26, 2015. ODC filed a notice of no objection to the Committee's report on November 6, 2015.

In anticipation of oral argument, ODC filed a pre-argument memorandum on December 17, 2015. Respondent did not file a pre-argument memorandum. Oral argument was heard by Board Panel "A", on January 21, 2016.<sup>2</sup> Deputy Disciplinary Counsel Yolanda Cezar appeared on behalf of ODC. Respondent did not appear at oral argument.

## **FORMAL CHARGES**

The amended formal charges read, in pertinent part:

In or about August of 2002, Gayle Fernandez entered into a contingency fee contract with Respondent for representation regarding a NASD [National Association of Securities Dealers] arbitration. The matter proceeded to hearing and an award of approximately \$30,000 was granted. Respondent received the settlement proceeds in August of 2004. On December 3, 2004, Respondent

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<sup>2</sup> Board Panel "A" is composed of Carrie L. Jones (Chair), Melissa L. Theriot (Lawyer Member) and Charles H. Williamson, Jr. (Public Member).

issued a check from his client escrow account in the amount of \$9,615.18 and deposited said check into his operating account as attorney's fee. Respondent held the undisputed funds due to Ms. Fernandez for approximately one year before disbursing the funds. According to Respondent, Ms. Fernandez refused the funds until the dispute over costs had been resolved. Ms. Fernandez denies the statement and insists that Respondent held the funds against her wishes.

Respondent has violated the following Rules of Professional Conduct: Rule 1.4, Rule 1.15(a), Rule 1.15(d), and Rule 8.4(a).

### **HEARING COMMITTEE REPORT**

As noted above, the hearing took place on April 13, 2015 before Committee No. 02.<sup>3</sup> Present were Yolanda Cezar, Deputy Disciplinary Counsel, Respondent and Gayle Fernandez, Complainant. After considering the testimony and the exhibits submitted by both parties, the Committee determined that Respondent violated the Rules 1.4, 1.15(d) and 8.4(a), but declined to find a violation of Rule 1.15(a), as charged in the formal charges. The Committee specifically stated:

The hearing committee finds that Louis Jerome Stanley violated Rules of Professional Conduct 1.4 in that he did not "keep the client reasonably informed about the status of the receipt and distribution of proceeds from her lawsuit" and he did not "promptly comply with reasonable requests for information". Further, the Committee finds that he violated Rule 1.15(d) in that he did not promptly deliver to Ms. Fernandez the funds she was entitled to receive. The Committee finds that Mr. Stanley did not violate Rule 1.15(a) because he separated his attorneys fees from the remainder of the awarded funds within a reasonable time. Obviously, because the Committee believes he violated the Rules as set out, he is in violation of Rule 8.4(a).

The Committee made the following factual findings:

The Committee finds that Mr. Stanley did not keep Ms. Fernandez "reasonably informed" about the status of the matter for which he was retained; however, there is no evidence that Ms. Fernandez ever made clear to him exactly the issue with which she was concerned. She only showed handwritten notes that set forth the times she called Mr. Stanley's office. There is no information on the notes as to what she wanted to discuss with him. Certainly, there is no dispute that Mr.

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<sup>3</sup> Hearing Committee No.02 is composed of Carolyn F. Ott (Lawyer Chair), James A. Taylor (Lawyer Member), and Clarissa A. Preston (Public Member).

Stanley did not provide Ms. Fernandez with the funds belonging to her until some eleven months after receiving the proceeds. His only statement was that he thought she didn't want the money until the "costs" issue was resolved. There is no written evidence of that in the record.

It is the opinion of the Committee that Mr. Stanley should have communicated directly with Ms. Fernandez after he received her four telephone calls during the fall of 2004. The best practice for Mr. Stanley would have been to confirm in writing what was said during the telephone conversation he says they had in early September 2004. However, there is no such confirmation. It certainly would have been prudent for Mr. Stanley to confirm in writing to Ms. Fernandez that he was going to transfer his attorney fee into his operating account before he did so in December 2004. There is no doubt that after having received the proceeds from the arbitration proceeding, Mr. Stanley should have immediately transferred to Ms. Fernandez her proceeds. Instead, he waited eleven months before those funds specifically belonging to Fernandez were made available to her.

In conclusion, the Committee determined there were two applicable aggravating factors:

(1) his substantial experience in the practice of law; and (2) the injury caused to Ms. Fernandez.

The Committee did not find any mitigating factors. The Committee relied on ABA Standard 4.13 (which applies in matters where a lawyer is negligent in dealing with client property and causes injury or potential injury to a client) in recommending that Mr. Stanley be publically reprimanded for his misconduct.

## **ANALYSIS OF THE RECORD BEFORE THE BOARD**

### **I. Standard of Review**

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is “to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations.” Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of “manifest error.” *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*,

549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

Here, the committee's findings of fact are not manifestly erroneous. Further, the committee correctly found that Respondent violated Rules of Professional Conduct 1.4, 1.15(d) and 8.4(a), and correctly declined to find a violation of Rule 1.15(a). The Board adopts the Committee's recommendation and similarly declines to find a Rule 1.15(a) violation as the record supports the finding that Respondent did separate his attorney fees from the remainder of the awarded settlement funds within a reasonable time. Each rule violation is addressed below:

**Rule 1.4:** Generally, Rule 1.4 requires that a lawyer maintain adequate communication with his clients. The record indicates that Respondent failed to communicate with Ms. Fernandez, including failing to return her phone calls and failing to respond to her written correspondence for close to eleven months. The record indicates that he spoke to her once on the phone at the end of August 2004, regarding the NASD arbitration award which was issued on August 26, 2004. Although Complainant left numerous messages with his office staff after August of 2004, and communicated with him in writing as well, Respondent did not respond to her attempts to communicate with him until the summer of 2005, and not until after ODC recommended that he contact the Bar to arbitrate the fee dispute. Accordingly, the record supports the conclusion that Respondent violated Rule 1.4.

**Rule 1.15(d):** Rule 1.15(d) states that a lawyer, upon receiving funds or other property in which a client has an interest, shall promptly notify the client and promptly deliver to the client the funds that he/she is entitled to receive. Respondent received the NASD arbitration award on August 18, 2004. *See* ODC Exh 8. Respondent notified Ms. Fernandez of the award on August

26, 2004. *See* ODC Ex. 12. The record indicates that Ms. Fernandez notified Respondent's office staff that she was unhappy with the award amount and her portion of the litigation expenses in August and September 2004. Respondent testified that by October or November of 2004, he believed their fee dispute needed to be arbitrated by the Bar Association. Although he obtained the necessary paperwork from the Bar, he chose not to initiate the fee dispute arbitration process. *See* H.C. Transcript, p. 32. On December 3, 2004, he issued a check from his client escrow account in the amount of \$9,615.18 and deposited the check into his operating account as his attorney fee in the matter. Respondent held the funds due Ms. Fernandez for close to eleven months, finally issuing her a check for \$8,640 in July 2005. As a result of fee dispute mediation through the Bar, Respondent eventually issued a second check for \$3,100 to Ms. Fernandez in May 2007. Accordingly, due to the length of time that Respondent withheld settlement funds due his client, the record supports the conclusion that Respondent violated Rule 1.15(d).

**Rule 8.4(a):** Rule 8.4(a) states that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct. By violating the Rules discussed above, Respondent violated Rule 8.4(a).

## **II. The Appropriate Sanction**

### **A. Rule XIX, §10(C) Factors**

Louisiana Supreme Court Rule XIX, §10(C) states that when imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct;
- and
4. the existence of any aggravating or mitigating factors.

Here, Respondent knowingly violated a duty owed to his client and caused actual harm to his client when he failed to communicate with her for an eleven month period of time after he received settlement proceeds on her behalf, and subsequently failed to promptly deliver the settlement funds that she was entitled to receive as soon as they were issued.

The following aggravating factors are supported by the record: substantial experience in the practice of law<sup>4</sup> and refusal to acknowledge the wrongful nature of his conduct. The single mitigating factor supported by the record is his absence of a prior disciplinary record.

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

The ABA *Standards for Imposing Lawyer Sanctions* (herein “Standard”) Standard 4.63 suggests a public reprimand is warranted when “a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.” Standard 7.3 states that a reprimand is generally appropriate when “a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.”

As the Committee noted, the matter of *In Re Peter Brigandi*, 02-2873 (La. 04/09/03); 843 So. 2d 1083, is somewhat similar to the case at hand however, it involved two counts of misconduct rather than one count. As to Count I, Mr. Brigandi was retained and paid a \$3,000 flat fee to handle a criminal matter. He was discharged three months later, prior to the case going to trial. At that time, the client requested a copy of his file and requested that the unearned fee be returned. Respondent failed to respond to the client’s requests. The client filed a complaint with ODC who in turn filed formal charges alleging that respondent failed to provide a timely, accurate accounting, failed to place the disputed portion of the fee in his trust account, and failed to refund the unearned portion of the fee to his client. Eventually, Mr. Brigandi

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<sup>4</sup> Respondent was admitted to the practice of law in Louisiana on October 6, 1978.

instituted a concursus proceeding and deposited \$2,500 of the fee into the registry of the Court. The Court found Mr. Brigandi's conduct caused actual harm to his client by depriving the client of his funds for a lengthy period of time. In addition, the Court found that respondent failed to place the disputed portion of the fee in trust and failed to render a timely accounting to his client. In mitigation, the Court recognized Mr. Brigandi's absence of any prior disciplinary record and inexperience in the practice of law. The Court found a single aggravating factor: the existence of multiple offenses. For his actions in Count I, the Court issued a public reprimand.<sup>5</sup>

Further, the Board notes that the Court accepted two Joint Petitions for Consent Discipline in 2014, wherein it issued public reprimands for similar misconduct as exhibited in the matter at hand. In *In re Sonceree Clark*, 14-0518 (La. 4/4/14); 137 So.3d 11, the Court issued a public reprimand after determining that the respondent neglected a legal matter, failed to communicate with a client, and failed to promptly refund an unearned fee. In *In re Robert Tucker*, 13-2820 (La. 1/27/14); 132 So.3d 395, the Court determined that the respondent neglected a legal matter, failed to adequately communicate with a client, failed to properly withdraw from representation, and failed to relinquish an unnegotiated settlement check in a timely manner. Mr. Tucker received a public reprimand.

Based on prior jurisprudence and the ABA's *Standards for Imposing Lawyer Sanctions*, a public reprimand, as recommended by the Committee, is the appropriate sanction in this matter.

## CONCLUSION

The Board adopts the factual findings of the Committee. The Board also adopts the legal conclusions of the Committee and finds that Respondent violated Rules 1.4, 1.15(d), 8.4(a), but not Rule 1.15(a). With regard to the sanction, the Board adopts the Committee's

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<sup>5</sup> In Count II, the Court found that respondent failed to uphold the integrity of the Bar when he failed to report his law partner for organizing a runner-based solicitation scheme. For his misconduct in Count II, respondent was suspended for two years, with all but six months deferred.



recommendation and orders that Respondent be publically reprimanded. Finally, the Board orders that Respondent be assessed with the costs and expenses of this matter.

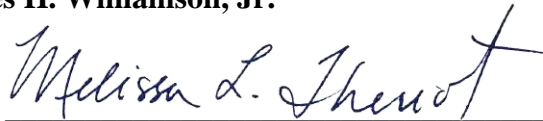
## **RULING**

Considering the foregoing, the Board orders that Respondent, Louis Jerome Stanley, be publicly reprimanded for engaging in professional misconduct. Additionally, the Board orders that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, § 10.1(A).

### **LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**Linda G. Bizzarro**  
**Laura B. Hennen**  
**Carrie L. Jones**  
**Dominick Scandurro, Jr.**  
**R. Lewis Smith, Jr.**  
**Evans C. Spiceland, Jr.**  
**Walter D. White**  
**Charles H. Williamson, Jr.**

**BY:**



**Melissa L. Theriot**  
**FOR THE ADJUDICATIVE COMMITTEE**

## **APPENDIX**

### **RULE 1.4. COMMUNICATION**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

### **RULE 1.15. SAFEKEEPING PROPERTY**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

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(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

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#### **RULE 8.4. MISCONDUCT**

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

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