

Original

LOUISIANA ATTORNEY DISCIPLINARY BOARD

NUMBER 98-DB-027

IN RE: PIERRE F. GAUDIN

RULING OF THE DISCIPLINARY BOARD

This is a disciplinary matter based on the filing of formal charges by the Office of Disciplinary Counsel against the Respondent Pierre F. Gaudin of Gretna Louisiana.

PROCEDURAL HISTORY

On May 1, 1998, the Office of Disciplinary Counsel ("ODC") instituted formal charges against the Respondent Pierre F. Gaudin consisting of one count. The formal charge alleges that the Respondent violated rules 1.2, 1.15, 8.4(a) and 8.4(d) of the Rules of Professional Conduct.

The Respondent filed an answer to the formal charges on May 26, 1998, In his answer. The Respondent admits the allegations of fact as stated in the formal charges, however he does not admit to engaging in misconduct or violating the Rules of Professional conduct. He also asked that a hearing be held for an opportunity to present mitigating circumstances.

On September 24, 1998 a hearing was held before Hearing Committee number 11, consisting of the following members: Wanda Anderson Davis, Chairperson; Richard P. Lemmler, Lawyer member; and Dr. Constance Dolese, Public Member.

On July 24, 1999 the Committee issued its findings and recommendations stating that the Respondent engaged in misconduct. The Committee recommended a sanction of three (3) months suspension, deferred and probation for three (3) months. Additionally they recommended that the Respondent place \$750.29 in the registry of the court for his formal client.

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On December 16, 1999, a panel of the Disciplinary Board reviewed this matter. Deputy Counsel William King represented the ODC. The Respondent was not present, but his attorneys Cheryl McAnespy-Smith and Pierre F. Gaudin, Jr. were present for the proceedings.

FORMAL CHARGES

Formal charges consisting of one count was filed against the Respondent on May 1, 1998. It is alleged that the Respondent was retained by Barbara and Dion Washington to represent them and their minor children in a personal injury matter. Mr. Washington, at some point during the representation, was accused of sexually abusing Mrs. Washington's two children. As a result of the accusation, Mr. Washington abandoned the family and his whereabouts are unknown. Mr. Washington was also a fugitive wanted by the local authorities.

At some later time it is alleged that the Respondent settled Mr. Washington's claim for \$4,235.00 without his authorization or consent. It is further alleged that the Respondent disbursed Mr. Washington's portion of the settlement to Barbara Washington at Mrs. Washington's demand without Dion Washington's authorization. These actions of the Respondent are alleged to violate rules 1.2, 1.15, 8.4(a) and 8.4(d) of the Rules of Professional Conduct.

FINDINGS AND RECOMMENDATION OF THE HEARING COMMITTEE

The Committee found that the Respondent had a written retainer to represent Mrs. Washington and her children, however he had no written retainer to represent Mr. Washington. Additionally the Respondent filed a petition for damages on behalf of all the plaintiffs including Dion Washington. The Committee also found that the

Respondent approved the release of the settlement funds to Mrs. Washington. They found that the Respondent did not place the funds in the registry of the court because if the defendants in the lawsuit found out that Mr. Washington was wanted by law enforcement, they would not have settled the claim.

The Committee found that the Respondent violated rule 1.2 of the RPC by failing to consult with his client and obtain permission before disbursement of the funds to Mr. Washington. They also found that the Respondent did not fail to obtain authority for the settlement as alleged by ODC because the trial judge determined the amount to be awarded to each plaintiff. The Committee established that the Respondent violated Rule 1.15 by failing to safeguard the funds of his client even though Mr. Washington could not be found. They stated that the funds should have been maintained in his IOLTA account or deposited in the registry of the court until such a time as Mr. Washington claimed them. They also found that the Respondent violated rule 8.4(a) by directing his son, who is also an attorney, to disburse the funds to Mrs. Washington without the permission of Mr. Washington.

When determining the sanction to be recommended, the Committee found the facts that the Respondent's previous disciplinary sanction in the form of an admonition and the number of years (32) that he has been practicing law to be aggravating circumstances. They did not find any mitigating factors for consideration.

The Committee recommended that the Respondent be suspended from the practice of law for three months, deferred and be placed on probation for three months. Additionally he is required to place \$750.29 in the registry of the court to be held for Mr. Washington. It should be noted that two members of the Committee agreed with the

recommendation. The lawyer member of the Committee dissented and drafted a dissenting opinion. The dissenting member would have recommended a six months suspension with no deferral and the requirement that the Respondent place the funds in the registry of the Court.

INITIAL BRIEF OF DISCIPLINARY COUNSEL

On September 17, 1999 the ODC filed its initial brief, adopting the position of the dissenting opinion of the Committee member. The ODC stated that a deferred suspension is too lenient. ODC also disagreed with, as did the dissenting member, the Committee's finding that the trial judge's pre-trial recommendation or final ruling regarding the amounts negated the need for the Respondent to obtain settlement authority from his client. Thus a finding that the Respondent did in fact violate rule 1.2(a) of the RPC.

The ODC has suggested that the Board adopts the recommendation of the dissenting member of the Committee, thus recommends a six months suspension from the practice of law.

APPLICATION OF FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

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

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

The Board agrees with the findings of the Hearing Committee in this matter. We find that the Respondent violated duties owed to his client by his failure to keep safe Mr. Washington's settlement funds as required by Rule 1.15 of the Rules of Professional Conduct. Additionally, by not safekeeping the funds, the Respondent caused injury to his client since Mr. Washington at no time authorized the Respondent to settle the matter or to disburse the proceeds of his portion of the settlement to Mrs. Washington. The fact that Mr. Washington is a fugitive from the law does not change the Respondent's responsibilities to his client or his ethical responsibilities under the Rules of Professional Conduct. As noted by the Hearing Committee, the Respondent could have placed Mr. Washington's funds in the registry of the court in the event he returns or is found. Although this Board understands the Respondent's argument that Mrs. Washington demanded he give Mr. Washington's portion of the settlement to her, that is no excuse for violating the duty he owed to his client. We find that the Respondent acted negligently, but without intent to harm his client. Nor do we find that his actions had any selfish motives.

Pursuant to the ABA Standards For Imposing Lawyer Sanctions, standard 4.12 suggest, "suspension is generally appropriate when a lawyer knows that he is dealing improperly with client property and causes injury or potential injury to a client." Standard 6.22 suggest, "suspension is appropriate when a lawyer knows that he is violating a court order or rule and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding." In the case Kenneth F. Sarama, 695 So.2d 517(La, 1997) the Court ordered Mr. Sarama suspended for six months, deferred and one year probation. In that case Mr. Sarama remitted funds

for a third party to his client upon the clients demands. The present case is very similar factually. However, the aggravating factors found by the Hearing Committee (prior discipline in the form of an admonition and substantial experience in the practice of law) are not significant enough to warrant a deferred suspension and probation. Thus this Board does not agree with the recommended sanction of the Hearing Committee. The A.B.A. Standards suggest in standard 4.13, "reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client." We agree that a public reprimand would be the appropriate sanction to address the misconduct. The Respondent should also place the amount of the settlement reserved for Mr. Washington (\$750.00) in the registry of the court.

RULING

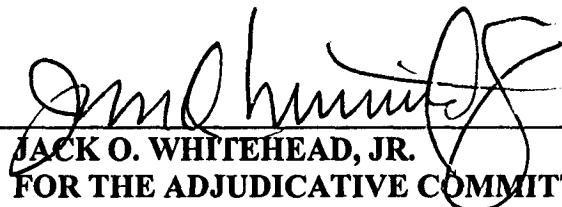
Based upon the foregoing the Disciplinary Board ORDERS a public reprimand issue against the Respondent for his misconduct as stated in the formal charges. It is further ORDERED that the Respondent placed in the registry of the Court the amount of \$750.00 for the benefit of his client Mr. Dion Washington within 30 days after the finality of this Ruling, and provide sufficient proof thereof to the Office of Disciplinary.

Finally, it is ORDERED that the Respondent be assessed with the costs and expenses of these proceeding, with legal interest commencing thirty days from the date of finality of this Ruling until paid.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

John G. Beckwith, Sr.
Donald R. Brown
Major Reginald R. Brown, Sr.
Burton E. Cestia, Jr.
Peter T. Dazzio
Clare Jupiter

BY: _____


JACK O. WHITEHEAD, JR.
FOR THE ADJUDICATIVE COMMITTEE

Robert E. Leake, Jr. – Dissent with reasons.

James L. Pate - Dissent