

## LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: KEISHA M. JONES-JOSEPH

NUMBER: 14-DB-035

## RECOMMENDATION TO THE LOUISIANA SUPREME COURT

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INTRODUCTION

This is an attorney discipline matter arising out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Keisha M. Jones-Joseph (“Respondent”), bar roll number 25736.<sup>1</sup> The charges, which consist of two counts, allege violations of the following Rules of Professional Conduct: 1.3 (lack of diligence); 1.4 (failure to communicate); 1.5(f)(5) (failure to refund unearned fee); 1.16(d) (abandonment of client, failure to comply with obligations upon termination of representation); 3.2 (failure to expedite litigation); 8.1(b) (failure to respond to a lawful demand for information); 8.1(c) (failure to cooperate with ODC in its investigation); 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); and 8.4(c) (conversion and engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation).<sup>2</sup> Respondent allowed the charges to become and remain deemed admitted pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).<sup>3</sup> The Hearing Committee assigned

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<sup>1</sup> Respondent was disbarred by order of the Louisiana Supreme Court on February 26, 2014. *In re Jones-Joseph*, 2014-0061 (La. 2/26/14), 134 So.3d 1153.

<sup>2</sup> See the attached Appendix for the text of the Rules.

<sup>3</sup> This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as

to this matter concluded that Respondent violated the Rules as alleged and recommended that she be disbarred.

The Board adopts the factual findings and legal conclusions of the Committee. Likewise, the Board adopts the sanction recommended by the Committee. However, given that Respondent is already disbarred, the Board recommends that the time period in which Respondent can apply for readmission be extended by five years.<sup>4</sup>

### **PROCEDURAL HISTORY**

ODC filed formal charges against Respondent on August 28, 2014. The charges state, in pertinent part:

#### **COUNT I**

Complainant, Patty Jo Bowers Geer, filed a complaint with the Office of Disciplinary Counsel in March 2013. ODC opened the matter for investigation under investigative file number 30415.

Ms. Geer hired Respondent on or about November 02, 2012 for a family law matter: "to get the insurance information for [her] daughter, check into ex-husband's military retirement and try to extend insurance for [her] daughter." Ms. Geer paid Respondent \$1,000.00 at that time. Ms. Geer waited about two weeks and, having heard nothing from Respondent, attempted to call her. Attempts to contact Respondent were unsuccessful. Ms. Geer continued making attempts at contacting Respondent, going by Respondent's office for several weeks, leaving messages in Respondent's mail drop, all in effort to ascertain what was happening with the representation. Then, after a few weeks, Respondent's office phone was disconnected, no longer in service. Ms. Geer attempted to contact Respondent through her home phone number, leaving several messages, but never heard back from Respondent. Ms. Geer also attempted to contact Respondent by mail, on January 11, 2013, receiving nothing back from Respondent other than the return receipt signed by Respondent. Respondent never performed the work for which she had been hired, failed to earn the fees paid to her in advance, and never accounted for nor returned any unearned fee.

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provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

<sup>4</sup> As a technical matter, someone that is already disbarred cannot be disbarred again. However, when the Louisiana Supreme Court has found that a "second" disbarment is warranted, it has extended the time period in which the disbarred lawyer can apply for readmission by five years. *See In re White*, 2000-2732 (La. 4/25/01), 791 So.2d 602.

On March 22, 2013, ODC notified Respondent by certified mail of the complaint against her, requesting a written response. ODC's notice was sent to Respondent's primary registration address on Line Avenue in Shreveport as well as an additional address on Barksdale Blvd. in Bossier City where ODC believed Respondent may receive mail. Both mailings were returned to ODC "unclaimed." ODC sent yet another certified mailing dated August 29, 2013 to Respondent notifying her of ... Ms. Geer's complaint against her and requesting a written response. On this instance, ODC received the "green card" return receipt from the United States Postal Service on September 03, 2013 signed by Arthur Joseph. Although the date of delivery was not filled-in, the postal service website showed delivery on August 31, 2014. No response was ever received by ODC from Respondent concerning Ms. Geer's complaint.

By her demonstrated acts, Respondent has engaged in conduct that violates the Rules of Professional Conduct, Rules 1.3 - lack of diligence; 1.4 - failure to communicate; 1.5(f)(5)- fail to refund unearned fee; 1.16(d) - abandonment of client, failure to comply with obligations upon termination of representation; 3.2 - failure to expedite litigation; 8.1 (b & c) - fail to respond to a lawful demand for information and fail to cooperate with ODC; 8.4(c) - conversion; engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; and, RPC 8.4(a) - violating or attempting to violate the RPC.

## COUNT II

Complainant, Jarika C. Davis, filed a complaint with the Office of Disciplinary Counsel on July 30, 2013. ODC opened the matter for investigation under investigative file number 30840.

Ms. Davis hired Respondent on or about February 13, 2013 for an expungement. Respondent told Ms. Davis that it would cost \$1,100.00 for her to do the expungement. Ms. Davis was referred to Respondent by a friend, Andrea Wells, who gave Ms. Davis Respondent's telephone number. Ms. Davis spoke with Respondent, gathered Respondent's fee, and met with Respondent at her office where she paid the \$1100 to Respondent in cash. Respondent was to contact Ms. Davis in approximately two weeks to provide status. Ms. Davis called Respondent who told Ms. Davis that she had filed for the expungement. Ms. Davis found Respondent's statement that she had filed not to be true.

Ms. Davis, after hiring Respondent, was able to successfully communicate with Respondent approximately only two more times despite repeated attempts to do so. Ms. Davis reports that the only way to communicate with Respondent was through a third party, the friend Andrea, and that that stopped when Andrea was unable to get in touch with Respondent as well. As of December 27, 2013, Ms. Davis reported that she was unable to communicate with Respondent and had been unable to do so for several months, that Respondent had told her at first that she had already filed for the expungement, that Respondent later told her that she would file the expungement, that Respondent still had not performed the work for which she had been hired, that she has left Respondent multiple messages with no return call, that she has visited Respondent's office to no avail, and that Respondent has not refunded the fee that she has failed to earn.

On August 06, 2013, ODC notified Respondent by certified mail of the complaint against her, requesting a written response. ODC's notice was sent to Respondent's primary registration address on Line Avenue in Shreveport as well as August 29, 2013 to an additional address on Barksdale Blvd. in Bossier City where ODC believed Respondent may receive mail. Both mailings were returned to ODC.

By her demonstrated acts, Respondent has engaged in conduct that violates the Rules of Professional Conduct, Rules 1.3 - lack of diligence; 1.4 - failure to communicate; 1.5(f)(5) - fail to refund unearned fee; 1.16(d) - abandonment of client, failure to comply with obligations upon termination of representation; 3.2 - failure to expedite litigation; 8.1(b & c) - fail to respond to a lawful demand for information and fail to cooperate with ODC; 8.4(c) - conversion; engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; and, RPC 8.4(a) - violating or attempting to violate the RPC.

By letters dated August 28, 2014, the formal charges were sent to Respondent's primary and secondary registration addresses via certified mail.<sup>5</sup> The charges were received and signed for at the secondary address on August 30, 2014. Respondent failed to file an answer to the charges within the time period allowed by Louisiana Supreme Court Rules XIX, §11(E)(3). Accordingly, ODC filed a motion to have the formal charges deemed admitted on November 18, 2014. The Chairman of Hearing Committee No. 60 ("the Committee")<sup>6</sup> signed an order declaring the formal charges deemed admitted and proven by clear and convincing evidence on December 16, 2014. Respondent was granted twenty days in which to file a motion to recall the order, which she failed to do. ODC filed its written argument on sanctions, with supporting exhibits, on February 9, 2015.

The Committee issued its report on April 15, 2015. The Committee concluded that Respondent violated the Rules as alleged in the formal charges. The Committee found that Respondent acted knowingly and intentionally, and caused actual injury to Ms. Geer and Ms. Davis. The Committee found the following aggravating factors to be present: prior disciplinary

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<sup>5</sup> Respondent's primary registration address is 1545 Line Ave., Ste. 140, Shreveport, LA 71101. Respondent's secondary registration address is 5068 Longstreet Pl., Bossier City, LA 71112.

<sup>6</sup> The Committee was composed of Claude W. Bookter, Jr. (Chairman), Zelda Wynee Tucker (Lawyer Member), and Margaret L. Caplis (Public Member).

offenses;<sup>7</sup> pattern of misconduct; multiple offenses; dishonest or selfish motive; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; refusal to acknowledge wrongful nature of conduct; vulnerability of the victims; substantial experience in the practice of law;<sup>8</sup> and indifference to making restitution. The Committee did not recognize any mitigating factors. Based upon the foregoing, the Committee recommended that Respondent be disbarred. The Committee recognized that Respondent was already disbarred, but found that the “additional sanction of disbarment is needed to protect the public and deter further actions in the future.” Hearing Committee Report, p. 7. On April 27, 2015, ODC filed a notice of no objection to the findings and recommendation of the Committee.

Oral argument was heard on July 2, 2015, before Board Panel “B”.<sup>9</sup> Deputy Disciplinary Counsel Eric R. McClendon appeared on behalf of ODC. Respondent did not appear.

## **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

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<sup>7</sup> Respondent was disbarred by order of the Louisiana Supreme Court on February 26, 2014. *In re Jones-Joseph*, 2014-0061 (La. 2/26/14), 134 So.3d 1153. The disbarment was based upon misconduct that is very similar to the misconduct in the present matter – neglecting client matters, failing to communicate with clients, and failing to return unearned fees. The prior discipline matter involved nine separate client matters.

<sup>8</sup> Respondent was admitted to the practice of law in Louisiana on October 9, 1998.

<sup>9</sup> Board Panel “B” was composed of Edwin G. Preis, Jr. (Chairman), Walter D. White (Lawyer Member), George L. Crain, Jr. (Public Member).

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).

**A. The Manifest Error Inquiry**

The factual allegations in the formal charges have been deemed admitted and proven pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3). The factual findings of the Committee are supported by the factual allegations asserted in the formal charges and/or by the evidence submitted in support of the allegations. *See In re Donnan*, 2001-3058 (La. 1/10/03), 838 So.2d 715.

**B. De Novo Review**

The Committee correctly applied the Rules of Professional Conduct. The record supports the conclusion that Respondent violated Rules 1.3, 1.4, 1.5(f)(5), 1.16(d), 3.2, 8.1(b), 8.1(c), 8.4(c), and 8.4(a) as alleged in both counts of the formal charges.

**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, if not intentionally, violated duties owed to her clients, the legal system, and the profession. Her conduct caused significant actual harm to Ms. Geer and Ms. Davis. Both clients paid for legal services that they did not receive. Additionally, both clients have not been able to retain other counsel to complete their legal matters because in order to do so they would need to receive a refund of the funds paid to Respondent. In fact, Ms. Geer stated that she borrowed money with interest in order to pay Respondent. *See* ODC Exhibit 10 (sworn statement of Ms. Geer), pp. 18-21.

The Board adopts the aggravating factors considered by the Committee: prior disciplinary offenses; pattern of misconduct; multiple offenses; dishonest or selfish motive; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; refusal to acknowledge wrongful nature of conduct; vulnerability of the victims; substantial experience in the practice of law; and indifference to making restitution. There are no mitigating factors supported by the record.

**B. Consideration of the facts of this matter light of *LSBA v. Chatelain***

ODC is correct in its conclusion that the facts are this matter do not fall within the scope of the Louisiana Supreme Court's holding in *La. State Bar Ass'n v. Chatelain*, 573 So.2d 470 (La. 1/22/91). In *Chatelain*, the Court held:

Since the attorney-respondent cannot control the timing of the institution of disciplinary proceedings, it is generally inappropriate to disbar a previously disbarred attorney an additional time when the violations at issue occurred before or concurrently with the violations which resulted in the initial disbarment. When a second disciplinary proceeding against an attorney involves misconduct which occurred during the same time period as the first proceeding, the overall discipline to be imposed should be determined as if both proceedings were before the court simultaneously. [Citation omitted.]

*Id.* at 471 n.2. The misconduct that was the subject of Respondent's prior disciplinary matter occurred during the 2008-2010 time period. In the present matter, the misconduct occurred

starting in late 2012 and continued through 2013. Thus, the misconduct in the present matter did not occur during the same time period as the misconduct in Respondent's prior disciplinary matter. Accordingly, the Court's holding in *Chatelain* is not applicable to this matter.

### **C. The ABA Standards and Case Law**

The *ABA Standards for Imposing Lawyers Sanctions* suggests a sanction ranging from suspension to disbarment is appropriate in this matter. Standard 4.42 states: "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client." Standard 4.41 states:

Disbarment is generally appropriate when: (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Here, Respondent knowingly failed to perform the legal services for which she was hired by Ms. Geer and Ms. Davis. Her actions caused significant harm to both clients. In fact, the facts strongly suggest that Respondent simply abandoned her law practice without notifying her clients and without taking steps to protect their interests (*e.g.* returning the unearned fees). Furthermore, Standard 4.11 states: "Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." Respondent's failure to return the unearned legal fees to her clients, despite having performed no legal services for the clients, amounts to conversion. *See In re Hawkins*, 2012-0211 (La. 5/9/12), 90 So.3d 377; *see also In re Straub*, 2008-B-2354 (La. 1/30/09), 999 So.2d 1123.

The case law of the Louisiana Supreme Court suggests that disbarment is the appropriate sanction. In *In re Decker*, the Court disbarred Mr. Decker for collecting a fee to complete a



succession then failing to do any work on the matter. 2005-1550 (La. 12/16/05), 916 So.2d 1023. Despite a demand by the client, Mr. Decker failed to return the unearned fees. Furthermore, Mr. Decker had a disciplinary history for “nearly identical” misconduct. *Id.* at 1026; see *In re Decker*, 2001-0968 (La. 6/22/01), 790 So.2d 617.

In *In re Wharton*, the Court disbarred Ms. Wharton for neglecting three client matters, failing to communicate with those clients, failing to return unearned fees, and failing to cooperate with ODC. 2007-0556 (La. 9/14/07), 964 So.2d 311. Ms. Wharton allowed the formal charges to become deemed admitted. There were several aggravating factors present, the most significant of which was Ms. Wharton’s prior disciplinary offenses. In 2003, the Court suspended Ms. Wharton for three years for neglecting client matters, failing to communicate with her clients, failing to return unearned fees, and failing to cooperate with ODC. *In re Wharton*, 2003-1816 (La. 10/17/03), 873 So.2d 459. The Court noted that Ms. Wharton’s misconduct that was the subject of the 2007 proceeding occurred while the 2003 proceeding was pending. *In re Wharton*, 964 So.2d at 316. There were no mitigating factors present.

Here, the facts are very similar to those in *Decker* and *Wharton*. Respondent collected fees from Ms. Geer and Ms. Davis. After collecting the fees, Respondent failed to communicate with her clients, failed to conduct any work on their legal matters, and failed to return the unearned fees. Furthermore, like the two cases above, Respondent has a disciplinary history for similar misconduct. In fact, Respondent’s prior discipline matter was pending at the time she engaged in the misconduct in the present matter. Accordingly, disbarment appears to be the appropriate sanction. However, given that Respondent is already disbarred, the Board recommends that the time period in which Respondent can apply for readmission be extended by five years. See *In re White*, 2000-2732 (La. 4/25/01), 791 So.2d 602.

## CONCLUSION

The Board adopts the factual findings and legal conclusions of the Committee. With regard to the appropriate sanction, the Board recommends that the time period in which Respondent can apply for readmission be extended by five years. The Board also recommends that Respondent be ordered to pay restitution to Ms. Geer with interest and reimburse the Client Assistance Fund for the payment it made to Ms. Davis. *See* ODC Exhibit 19. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this proceeding.

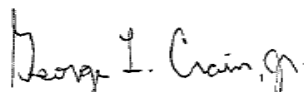
## RECOMMENDATION

The Board recommends that the time period in which Respondent, Keisha M. Jones-Joseph, can apply for readmission be extended by five years. The Board also recommends that Respondent be order to pay restitution to Patty Jo Bowers Geer with interest and reimburse the Client Assistance Fund for the payment it made to Jarika C. Davis. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

## LOUISIANA ATTORNEY DISCIPLINARY BOARD

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**Walter D. White**

**BY:**



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**George L. Crain, Jr.**  
**FOR THE ADJUDICATIVE COMMITTEE**

## **APPENDIX**

### **RULE 1.3. DILIGENCE**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **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 1.5. FEES**

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(f) Payment of fees in advance of services shall be subject to the following rules:

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(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

### **RULE 1.16. DECLINING OR TERMINATING REPRESENTATION**

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(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any

other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

### **RULE 3.2. EXPEDITING LITIGATION**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

### **RULE 8.1. BAR ADMISSION AND DISCIPLINARY MATTERS**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) ...
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or
- (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

### **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;
- (b) ...
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; ...