

ORIGINAL

Louisiana Attorney Disciplinary Board

FILED by: *Donna P. Burgess*

Docket#

Filed-On

15-DB-002

8/19/2015

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JANINNE LATRELL GILBERT

DOCKET NO. 15-DB-002

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REPORT OF HEARING COMMITTEE NO. 22

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INTRODUCTION

This attorney discipline matter arises out of formal charges consisting of three counts filed by the Office of Disciplinary Counsel (“ODC”) against Janinne Latrell Gilbert (“Respondent”), bar roll number 30249. ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3 (diligence); 1.4(a) (communication); 1.5(a) (reasonable fee); 1.5(f)(5) (return of unearned fee; disputed funds in trust account); 1.15(d) (prompt notice of receipt of third party funds, prompt delivery of client funds); 1.15(e) (prompt distribution of third party funds; holding disputed funds separate); 1.16(a)(3) (withdrawal upon discharge); 1.16(d) (obligations upon termination); 8.1(b) (failure to respond); 8.1(c) (failure to cooperate); 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonest conduct).<sup>1</sup>

PROCEDURAL HISTORY

ODC filed formal charges against Respondent on February 9, 2015. By letter dated February 23, 2015, the formal charges were sent to Respondent’s primary registration address via certified mail.<sup>2</sup> The charges were received and signed for at the primary address on or before February 27, 2015. Respondent failed to file an answer to the charges within the time period allowed by Louisiana Supreme Court Rules XIX, §11(E)(3).<sup>3</sup> Accordingly, ODC filed a motion

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<sup>1</sup> See the attached Appendix for the text of the Rules.

<sup>2</sup> Respondent’s primary registration address is 607 Adolph St., Delcambre, Louisiana 70528.

<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

to have the formal charges deemed admitted on March 25, 2015. The Hearing Committee Chair signed an order declaring the formal charges deemed admitted and proven by clear and convincing evidence on April 22, 2015. 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 June 19, 2015.

### FORMAL CHARGES

The formal charges read, in pertinent part:

#### COUNT I (ODC 0029874)

On October 12, 2012, the Office of Disciplinary Counsel received a complaint from Patrice J. Warren, and the matter was opened as investigative file number ODC 0029874. On November 1, 2012, ODC forwarded a copy of the complaint and a request for a response via certified mail to Respondent at her primary address registered with the Louisiana State Bar Association. *See* Louisiana Supreme Court Rule XIX, § 8C. The certified mail was received and signed for by Respondent on November 20, 2012, and her initial response was received by ODC on December 10, 2012.

Ms. Warren retained Respondent on or about January 24, 2012, to represent her interests in her mother's succession proceeding. The agreement was

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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 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.

reduced to writing and sets forth that legal services would begin after payment of the "flat fee" of \$1,500.00 for representation "in connection with the ... Succession." Ms. Warren signed the agreement on January 24, 2012, and Respondent signed the agreement on February 1, 2012. Ms. Warren paid the \$1,500 fee via check number 2727, which cleared on February 2, 2012.

On February 9, 2012, Respondent emailed Ms. Warren: "I will contact you as soon as I have completed the succession documents." After this email, Ms. Warren's numerous attempts at communication (telephone, email, letters) with Respondent were unsuccessful. On June 18, 2012, Ms. Warren's husband, John F. Warren, wrote Respondent inquiring about the status of the matter and requesting a refund of the fee paid. Respondent did not respond.

Due to the lack of communication and the lack of progress on the succession, on August 21, 2012, termination letters were sent by Ms. Warren to Respondent via certified mail to her home address and to her office address. The letter sent to Respondent's home address was returned "unclaimed." The letter sent to Respondent's office address was received and signed for on August 24, 2012. Despite having completed little to none of the agreed-to work, Respondent returned none of the fee paid, intentionally converting client funds.

With her initial response, Respondent forwarded an October 1, 2012, certified letter mailed to Ms. Warren that had been returned to Respondent. Respondent stated that she had prepared the necessary documents and was awaiting Ms. Warren's approval so that the documents could be executed and filed. However, at the time this letter was sent, Respondent already had been

notified that her representation had been terminated, and Ms. Warren had retained the services of another attorney to handle the succession.

On January 8, 2013, ODC wrote Respondent seeking a supplemental response in which Respondent could explain why she had not returned any of the fee paid and why she continued work on Ms. Warren's behalf after Ms. Warren had terminated the representation. Receiving no response, on February 1, 2013, a second request was sent by ODC to Respondent. On November 18, 2013, ODC again wrote Respondent requesting a supplemental response; this correspondence was sent via certified mail. The certified mail was delivered on November 22, 2013; however, no supplemental response was received by ODC. On March 27, 2014, ODC again wrote Respondent requesting information; the letter was mailed to Respondent's preferred address. Never receiving the supplemental response, on July 2, 2014, ODC Investigator Jeremy Norwood personally served Respondent with a subpoena to appear for a sworn statement on July 15, 2014. On July 14, 2014, Respondent sent a facsimile to ODC, advising that she would not be present for the sworn statement due to a medical matter. Respondent's refusal to provide a supplemental response and refusal to comply with a subpoena to appear for a sworn statement establish a knowing, if not intentional, failure to respond to and failure to cooperate with ODC.

Respondent's conduct in ODC 0029874 is in violation of Rules 1.3 (diligence); 1.4(a) (communication); 1.5(a) (reasonable fee); 1.5(f)(5) (return of unearned fee; disputed funds in trust account); 1.15(d) (prompt delivery of client funds); 1.16(a)(3) (withdrawal upon discharge); 1.16(d) (obligations upon

termination); 8.1(b) (failure to respond); 8.1(c) (failure to cooperate); 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonest conduct).

#### COUNT II (ODC 0029940)

On November 1, 2012, the Office of Disciplinary Counsel received a complaint from Carol Joseph, and the matter was opened as investigative file number ODC 0029940. On November 12, 2012, ODC forwarded to Respondent a copy of the complaint and a request for a response via certified mail to her primary address registered with the Louisiana State Bar Association. *See* La. S. Ct. Rules, Rule XIX, § 8C. The certified mail was received and signed for by Respondent on November 28, 2012, and her initial response was received on December 14, 2012.

Ms. Joseph retained Respondent for the fixed fee of \$3,850 to represent the interests of Ms. Joseph in four Louisiana successions and one act of donation. The agreement was reduced to writing and signed by Ms. Joseph and Respondent on November 10, 2010. Ms. Joseph paid Respondent \$3,850 by cashier's check number 10006574 on November 12, 2010.

It took Respondent approximately one and one-half years and several attempts to obtain a death certificate for Harriet Johnson. During this time period, Ms. Joseph repeatedly attempted contact with Respondent, asking how much longer it would be before the legal matters were complete. Respondent's first attempt at obtaining the death certificate was rejected due to the failure to pay the correct fee, as reflected in an April 26, 2011, letter from the Louisiana

Department of Health and Hospitals. On June 6, 2011, Respondent emailed Ms. Joseph advising that she had encountered complications with procuring the death certificate. On July 20, 2011, Respondent again advised Ms. Joseph that [she] did not have the death certificate. On July 22, 2011, Respondent wrote DHH making another attempt to obtain Harriet Johnson's death certificate. In response to repeated inquiries from Ms. Joseph, on February 2, 2012, Respondent wrote Ms. Joseph advising that she did not have Harriet Johnson's death certificate. On February 13, 2012, DHH wrote Respondent advising that it did not have a death certificate for "Harriet Jenkins."

On May 25, 2012, Respondent forwarded, via email to Ms. Joseph, a copy of Harriet Johnson's death certificate, and on May 26, 2012, Ms. Joseph confirmed that Respondent had received the correct death certificate. Requests by Ms. Joseph for the status of the legal matters went unanswered until July 12, 2012, when Respondent wrote Ms. Joseph, again asking her for information needed to locate Harriet Johnson's death certificate-a death certificate that Respondent already had in her possession and that Ms. Joseph already had confirmed was correct. That same day, Ms. Joseph again confirmed that Respondent had the correct death certificate. On November 19, 2012, after this complaint was received, Respondent again wrote Ms. Joseph requesting information so that she could obtain the correct death certificate for Harriet Johnson. Ms. Joseph responded, "Would you PLEASE READ my email dated 5/26/12 attached above. You should know by now that you have EVERYTHING you need to proceed with this process!"

Throughout the three years of representation, Ms. Joseph's telephone calls were unanswered or not returned; emails and letters received only sporadic responses. Despite completing little to none of the legal work for which she was hired, Respondent returned none of the fee paid, intentionally converting client funds to her own use. In February 2014, Ms. Joseph retained the services of another attorney who, for a \$2,400 fee, completed the legal services for which Respondent initially was hired.

In her initial response, Respondent stated that she did not have verification that Harriet Johnson's death certificate was correct until November 26, 2012; however, the email advising Respondent that she had the correct death certificate was sent by Ms. Joseph to Respondent on May 26, 2012, six months earlier. Seeking clarification on the inconsistencies, on January 17, 2013, and on November 18, 2013, ODC sent to Respondent requests for a supplemental response. On March 27, 2014, a third request for a supplemental response was mailed to Respondent at her preferred address. Not receiving the supplemental response, on July 2, 2014, ODC Investigator Jeremy Norwood personally served Respondent with a subpoena to appear for a sworn statement on July 15, 2014. On July 14, 2014, Respondent sent a facsimile to ODC, advising that she would not be present for the sworn statement due to a medical matter. Respondent's refusal to provide a supplemental response and refusal to comply with a subpoena to appear for a sworn statement establish a knowing, if not intentional, failure to respond to and cooperate with ODC.

Respondent's conduct in ODC 0029940 is in violation of Rules 1.3 (diligence); 1.4(a) (communication); 1.5(a) (reasonable fee); 1.5(f)(5) (return of unearned fee; disputed funds in trust account); 1.15(d) (prompt delivery of client funds); 8.1(b) (failure to respond); 8.1(c) (failure to cooperate); 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonest conduct).

### COUNT III (ODC 0032213)

On September 9, 2014, the Office of Disciplinary Counsel received a complaint from attorney Raven Nicole Matthews-Pillette, and the matter was opened as ODC investigative file ODC 0032213. On September 24, 2014, ODC forwarded a copy of the complaint and a request for an initial response via certified mail to Respondent at her primary address registered with the Louisiana State Bar Association. *See* Louisiana Supreme Court Rule XIX, § 8C. The certified mail was received and signed for by Respondent on October 8, 2014. To date, no response has been provided to ODC.

Respondent requested Matthews-Pillette's assistance in the representation of Valery Lewis in a workers' compensation matter. *Lewis v. East Ridge Nursing Home*, docket number 12-04137, Office of Workers' Compensation, District 4. The two attorneys agreed to share the attorney fee equally. Lewis approved of Matthews-Pillette's co-representation and signed an agreement to that effect. Matthews-Pillette reviewed the file, participated in a February 2013 private mediation, handled settlement negotiations, participated in court-ordered status conferences, and communicated with opposing counsel and with Respondent.



After negotiations were complete, orders of approval and dismissal were signed on February 18, 2014, and mailed to Respondent and to opposing counsel that same date. The settlement check was mailed to Respondent on February 20, 2014. On Wednesday, March 5, 2014, in response to an inquiry from Matthews-Pillette, Respondent wrote that she was "awaiting the check clearance and judgment." Matthews-Pillette's repeated attempts to recover her earned fees from Respondent have been unsuccessful. Respondent intentionally failed to forward to Matthews-Pillette her earned share of the attorney fee received, which under their agreement amounted to 50% of \$4,000.

Respondent's conduct in ODC 0032213 is in violation of Rules 1.15(d) (prompt notice of receipt of third party funds); 1.15(e) (prompt distribution of third party funds; holding disputed funds separately); 8.1(b) (failure to respond); 8.1(c) (failure to cooperate); 8.4(a) (violate or attempt to violate Rules of Professional Conduct); and 8.4(c) (dishonest conduct).

### **FINDINGS OF FACT**

Formal charges were filed against Respondent on February 9, 2015. Respondent was served with the formal charges as required by Rule XIX, Section 13(A) on three counts bearing ODC File Numbers 0029874, 0029940, and 0032213 on February 25, 2015 via certified mail to her primary address registered with the Louisiana State Bar Association. Respondent signed for receipt but failed to file an answer to the formal charges within the time period allowed by Louisiana Supreme Court rules, Rule XIX, Section 11E(3). On March 25, 2015, the Office of Disciplinary Counsel filed a motion to have the formal charges deemed admitted and proven by clear and convincing evidence. On April 22, 2015, an order was signed by the Hearing

Committee Chair declaring the formal charges deemed admitted and proven by clear and convincing evidence and allowed twenty days for Respondent to move to recall the order. Each party was allowed to file a written submission on the issue of sanctions. Respondent failed to file a motion to recall the order and failed to file a written submission on the issue of sanctions. The Office of Disciplinary Counsel filed a written submission on the issue of sanctions on June 19, 2015. Inasmuch as the procedural requirements of Louisiana Supreme Court Rule XIX, Section 11(e)(3) were met, the factual allegations alleged in the Formal Charges are proven by clear and convincing evidence.

## **RULES VIOLATED**

### **COUNT 1 (WARREN)**

The admitted facts are that Respondent accepted a \$1,500.00 fee from Ms. Warren to represent her interests in her mother's succession proceeding and failed to timely follow-up with Ms. Warren on the progress of the legal work. Ms. Warren attempted to communicate with the Respondent numerous times via telephone, email, and letters to no avail. Mr. Warren wrote Respondent on June 18, 2012 inquiring about the status of the matter and requested a refund of the fee paid. Respondent did not respond. Respondent's conduct violated Rule 1.3 (diligence) because she failed to file the succession as she was hired to do. Respondent violated Rule 1.4 (communication) by failing to respond to the clients' demand for a status on the case and ultimately their demand for a refund of fees.<sup>4</sup> Respondent was paid to file a succession in which she failed to do and she refused to return the fees. By this conduct Respondent violated Rule 1.5 (fees) and 1.16 (terminating representation), which require that a lawyer charge a reasonable fee

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<sup>4</sup> The documentary evidence filed by ODC in support of sanctions includes the Warren's complaint, in which Ms. Warren states that she had great difficulty reaching Respondent. She telephoned, emailed, and wrote letters to Respondent to no avail.

and that she provide an accounting and return advanced fees that are not earned. Despite the numerous attempts by the ODC to communicate with the Respondent and receive information from her about the complaint filed against her, the Respondent failed to be responsive, provide the supplemental information requested and failed to adequately cooperate with the ODC.<sup>5</sup> The documentary evidence filed by ODC suggests that Respondent violated 8.4(a) and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation) by continuing to work on the case after being discharged. Respondent also violated this rule by retaining the full fee paid by her clients after they had asked that the fees be returned.

As to Respondent's failure to cooperate in the disciplinary investigation, the documentary evidence shows that by letters dated January 8, 2013, February 1, 2013, November 18, 2013, March 27, 2014, Respondent was asked to provide a supplemental response to ODC to no avail. The Respondent's failure to respond to ODC's request for information constitutes a violation of Rules 8.1(b) and 8.1(c).

### **COUNT II (JOSEPH)**

The admitted facts are that Respondent accepted a \$3,850.00 fee from Ms. Joseph to represent her interest in four Louisiana successions and one act of donation. It took Respondent approximately one and one-half years and several attempts to obtain a death certificate. During this period, Ms. Joseph repeatedly attempted to contact Respondent to inquire about how much longer it would be before the legal matters were complete. Respondent's difficulty in obtaining a death certificate appeared to be the reason for the delay. Based on the facts deemed admitted, Respondent failed to pay the correct fee when requesting the birth certificate and then submitted an incorrect name of the deceased to the Department of Health and Hospitals, causing further

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<sup>5</sup> ODC EXHIBIT 6, ODC EXHIBIT 7, ODC EXHIBIT 8, ODC EXHIBIT 10, ODC EXHIBIT 12

delay. Thereafter, Respondent procured the correct birth certificate near and around May 25, 2012 but continued to request a copy of the same birth certificate and/or seek verification from Ms. Joseph after she had already confirmed this information. The Respondent failed to answer Ms. Joseph's phone calls throughout the three years of representation and emails and letters received only sporadic responses. By this conduct, Respondent violated Rules 1.3 (diligence) and 1.4(a) (communication).

After three years of representation and in completing little to none of the legal work for which the Respondent was hired, she failed to return the fee paid and intentionally converted the client's funds to her own violating Rule 1.5(a), Rule 1.5(f)(5) and Rule 1.15(d).

Respondent violated Rule 8.4(a) and Rule 8.4(c) by stating in her initial response to the ODC that she did not have verification that the deceased death certificate was correct until November 26, 2012 as the Respondent was advised in an email from Ms. Joseph on May 26, 2012, six months earlier, that she had the correct death certificate. Respondent violated Rule 8.1(b) and Rule 8.1(c) by failing to provide supplemental responses as requested by the ODC after numerous requests and failed to cooperate with ODC in their investigation.<sup>6</sup>

### **COUNT III (MATTHEWS-PILLETTE)**

The admitted facts are that Respondent requested Matthews-Pillette's assistance in the representation of Valery Lewis in a workers' compensation matter, *Lewis v. East Ridge Nursing Home*, docket number 12-04137, Office of Workers' Compensation, District 4. The two attorneys agreed to share the attorney fee equally with the consent of Ms. Lewis regarding the agreement. Following the completion of the work in the case and the completion of the negotiations, orders of approval and dismissal were signed on February 18, 2014, and mailed to the Respondent and

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<sup>6</sup> ODC EXHIBIT 20, ODC EXHIBIT 21, ODC EXHIBIT 22, ODC EXHIBIT 23, ODC EXHIBIT 24

to opposing counsel that same day. The settlement check was mailed to the Respondent on February 20, 2014. On Wednesday, March 5, 2014, Respondent replied to an inquiry from Ms. Matthews-Pillette that she was "awaiting the check clearance and judgment." Ms. Matthews-Pillette repeated attempts to recover her earned fees from Respondent have been unsuccessful. Respondent behavior constitutes a violation of Rule 1.15(d) and Rule 1.15(e).

Respondent violated Rule 8.1(b) and Rule 8.1(c) when failing to reply to ODC regarding the Ms. Matthews-Pillette complaint.<sup>7</sup>

### SANCTION

Louisiana Supreme Court Rule XIX, Section 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 Louisiana Supreme Court also relies on the *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards") to determine the baseline sanction.<sup>8</sup>

By violating Rules 1.3, 1.4(a), 1.5(a), 1.5(f)(5), 1.15(d), 1.15(e), 1.16(a)(3), 1.16(d), 8.1(b), 8.1(c), 8.4(a), 8.4(c) of the Rules of professional Conduct, the Respondent violated duties owed to his clients, to the public, to the legal profession as a whole and as a professional. The facts that have been deemed admitted and supported by the record are that clients paid Respondent legal fees for services in Count I and Count II and Respondent thereafter maintained inadequate communications with the clients and performed little to no substantial legal work. Respondent then intentionally failed to return or to protect any of the unearned fees. In failing to

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<sup>7</sup> ODC EXHIBIT 30, ODC EXHIBIT 31, ODC EXHIBIT 32

<sup>8</sup> *In re Quaid*, 94-1316 (La. 11/30/94); 646 So.2d 343, 350.

refund unearned attorney fees amounts to conversion of client funds. Her failing to refund unearned fees, provide accountings and place disputed fees in trust was knowing, inasmuch as she received requests from the client for the return of fees and she failed to take appropriate action. There can be no doubt the misrepresentations she made to the clients, her lack of response to not only the clients but also the ODC and the mishandling of funds entrusted to her in Count I, Count II, and Count III were intentional acts. Respondent's failure to cooperate in the disciplinary investigation of all three matters was knowing. She received correspondence from ODC requesting information, but failed to properly respond to request for supplemental information in Count I and Count II and to properly respond to the complaint in Count III.

Respondent's failure to perform the services she was hired to provide delayed the clients' legal matters, deprived the co-attorney of funds that was due her and no doubt caused them much frustration. In failing to return unearned fees, Respondent caused damage to her clients by depriving them of their funds. In one case, the client hired and paid another attorney to complete the work that Respondent was hired to complete. It appears to date that Respondent has not returned any fees to Ms. Warren, Ms. Joseph or the attorney fees earned by Ms. Matthews-Pillette.

Pursuant to the ABA Standards disbarment is the appropriate baseline sanction and Louisiana jurisprudence supports this sanction.<sup>9</sup> The intentional dishonesty and deceit to the clients, co-attorney and ODC is the type of conduct that destroys the trust and confidence of the public in the legal profession and the legal system. The facts deemed admitted supports the following aggravating circumstances:

- 1) Dishonest and selfish motive
- 2) Pattern of misconduct
- 3) Multiple offenses

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<sup>9</sup> *In re Poirrier*, 2001-1116, 2001-1118 (La. 6/29/01); 791, So.2d 94

- 4) Refusal to acknowledge the wrongful nature of conduct
- 5) Indifference in making restitution

The one mitigating circumstance of Respondent not having a prior disciplinary record is outweighed substantially by the number and severity of the complaints made against the Respondent and the inadequate and/or lack of a defense raised by the Respondent.

Considering the conduct of the Respondent, the ABA Standards, the outweighed one mitigating factor and the jurisprudence, disbarment is the appropriate sanction.

### CONCLUSION

Considering the forgoing, the committee finds the factual allegations to have been admitted and the Respondent violated the Rules of Professional Conduct. It recommends that Janinne Latrell Gilbert be disbarred. The committee also recommends that Respondent provide an accounting to Ms. Warren and Ms. Joseph and that she refunds all unearned fees. The committee further recommends that Respondent submits to Ms. Matthews-Pillette the attorney fees owed to her. The committee further recommends that the Respondent be charged with all costs and expenses of these disciplinary proceedings.

This opinion is submitted by the committee chair on behalf of the committee.

Lafayette, Louisiana, this 20<sup>th</sup> day of July, 2015.

**Louisiana Attorney Disciplinary Board  
Hearing Committee #22**

**Franchesca Hamilton-Acker, Committee Chair  
Michael Corry, Lawyer Member  
Yvonne Olivier-Hample, Public Member**

By:

  
FRANCHESCA L. HAMILTON-ACKER