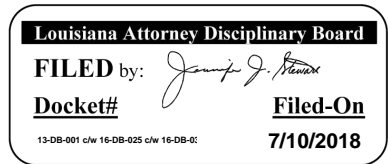


**ORIGINAL**



LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DAVID PATRICK KEATING

NOS. 13-DB-001 c/w 16-DB-025 c/w 16-DB-031

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**REPORT AND RECOMMENDATION**

The Hearing Committee # 31 held a Hearing in the captioned matter on September 19-20,

2016. Present and representing the parties were:

Tammy P. Northrup, Deputy Disciplinary Counsel, for the Louisiana Attorney Disciplinary Board; and

Leslie J. Schiff, Attorney for Respondent, David Patrick Keating.

For the purpose of the Hearing only formal charges contained in Docket No. 13-DB-001 were considered. The consolidated Docket Nos. 16-DB-025 and 16-DB-031 were severed for the purpose of the Hearing considering pending matters relative to those charges pending before the United States District Court for the Western District of Louisiana. (Those formal charges contained in Docket Nos. 16-DB-025 and 16-DB-031 were subsequently dismissed as resolved by the Federal Court pursuant to Order dated November 15, 2017.) The only remaining charge in this consolidated matter is 13-DB-001.

***Second Amended Formal Charges***

In the Second Amended Formal Charges filed on July 21, 2014 under Docket No. 13-DB-001, said Formal Charges addresses in, "Count 1" (ODC and Investigative File No. 0027276) a Complaint filed by Thomas "Rusty" Galloway and John M. Jefcoat on behalf of Galloway Jefcoat, LLP (herein, "Complainant") against the Respondent on November 8, 2010. Said firm

supplemented their Initial Complaint with additional allegations of misconduct committed by Respondent on January 31, 2011. The allegations addressed Respondent's employment with the firm beginning on October 1, 2007, particularly with respect to the terms and conditions of an Employment Agreement between the Complainant and Respondent. (Exhibit ODC-5; R-2) The specific allegation by Complainant against Respondent was that Respondent converted attorney fees from the firm on a habitual basis by keeping fees for himself from bankruptcy files that belong to the firm.

### *Committee Hearing*

The Committee was provided a transcript of a 15<sup>th</sup> Judicial District Court for the Parish of Lafayette proceeding entitled, *Galloway Jefcoat, LLP vs. D. Patrick "Rick" Keating* bearing Docket No. 20110985 which related civil proceeding addressed issues virtually identical to the ODC charge considered herein. In fact, the Hearing Committee was requested to take notice of the Ruling and award of the District Court dated November 16, 2012, its Judgment dated February 7, 2013 and Amended Trial Judgment dated April 25, 2013, and subsequent decision by the Third Circuit Court of Appeal bearing Docket No. 13-1069. The Hearing Committee was also tendered thirty-six (36) exhibits by the ODC<sup>1</sup> and seventy-one (71) exhibits by the Respondent.<sup>2</sup> The Hearing Committee also received a Post-Hearing Memorandum by the ODC and Respondent.

During the Committee Hearing held on September 19 and 20, 2016, the Committee heard testimony from Respondent, David Patrick Keating, Complainant, John M. Jefcoat, Chris Rainey, CPA, W. Simmons Sandoz, Steven G. "Buzz" Durio, and Brenda Smith Soape.

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<sup>1</sup> Although ODC-20 through 36 pertained to the consolidated charges not considered by the Hearing Committee.

<sup>2</sup> Although several numbers were left blank intentionally, a substantial amount of Respondent's exhibits were also related to the consolidated charges that were not considered by the Hearing Committee.

### ***Burden of Proof***

The ODC and Respondent agree that, “clear and convincing evidence” is necessary for this Committee to find that Respondent has violated the Rules of Professional Conduct as charged. ODC and Respondent further agree that the civil proceeding that addressed the claims by Complainant Galloway Jefcoat, LLP was decided under the burden of proof of, “preponderance of the evidence”. The ODC argued that the Committee should provide great weight to the findings of the District Court albeit the differences in the burden of proof between how the District Judge weighed the evidence versus the burden of proof controlling how the Committee would view the evidence<sup>3</sup>.

### ***Respondent’s Employment Relationship with Complainants***

The genesis of the formal charges against Respondent is the employment arrangement between Respondent and Complainant. Respondent had been practicing in the field of bankruptcy law for most of his career and Complainant was developing a bankruptcy practice as an adjunct to the other areas of its practice. The Committee reviewed a fax from Galloway Jefcoat, LLP dated September 18, 2007 to Respondent attaching a Proposal (2 pages) outlining the terms of their proposed relationship. (R-1) On page 2 of the Proposal, particularly paragraph 13, (1) & (2), the concept of identifying cases as those which would be the Complainant’s file and those that would be deemed personal files of Respondent is outlined.

The Committee was also presented with an unsigned copy of an, “Employment Agreement-2008” submitted both by the ODC (ODC-5) as well as the Respondent (R-2). It was agreed by

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<sup>3</sup> The Committee was advised that the Lafayette Parish District Attorney refused to accept charges in this matter, which burden of proof for conviction would be, “beyond a reasonable doubt”.

both the Complainant and Respondent that this document was ultimately signed by both parties. What was disputed between the parties was whether or not the Employment Agreement-2008 superseded the terms of the Proposal with respect to Respondent maintaining ownership of his, “book of business” brought into the relationship. Paragraph 2 of the Employment Agreement-2008 reads, “All cases garnered are considered cases of Galloway Jefcoat, LLP and/or Bankruptcy Clinic of Acadiana”. Paragraph 6 of the Employment Agreement-2008 addresses fee splitting which does not differentiate between fees generated from cases brought into the firm by Respondent versus those opened by him once employed by the Firm.

The Committee heard testimony from Complainant’s representative, John Jefcoat, as well as Respondent, referable to the two agreements and the overall relationship between Complainant and Respondent. Of note, Mr. Jefcoat testified that the firm admits that Respondent’s fees from his prior clients were to be his. That testimony would suggest that the Proposal first presented to Respondent by Mr. Jefcoat on September 18, 2007 would have survived since it was not specifically addressed or contradicted in the subsequent Employment Agreement-2008. The Committee also notes that in Paragraph 9 of the Employment Agreement-2008, there is reference to files being either a “Galloway Jefcoat, LLP file or a personal file.” This language would suggest that the ownership of files addressed in the Proposal also was carried over into the employment arrangement.

Although the second agreement (ODC-5, R-2) is entitled Employment Agreement-2008, there was no testimony or evidence that there were any subsequent agreements between Complainant and Respondent. In fact, Respondent’s employment with Complainant terminated on October 10, 2010.

### *Findings of Fact*

The Committee notes that at the time that Respondent began his relationship with Complainant, he claimed to have over 240 active bankruptcy cases and Complainant had less than 70 active cases. For the first six (6) months of the employment relationship, Respondent maintained his Opelousas office and visited Complainant's premises only on occasion. The amount of files being managed by Respondent at the beginning of his relationship with Complainant, and the continued separation of the practices, most likely exacerbated the poor documentation of the relationship between the parties.

The Second Amended Formal Charges alleges in "Count 1" that Respondent violated Rule 1.15(a) of the Rules of Professional Conduct by, "failing to hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property"; a violation of Rule 8.4(c) of the Rules of Professional Conduct for, "engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation"; and a violation of Rule 8.4(a) of the Rules of Professional Conduct for, "violating or attempting to violate the Rules of Professional Conduct". Respondent summarizes the charges as, "what was the entitlement to unpaid fees that were produced by Keating's book of business as of and after October 1, 2007?" The Second Amended Formal Charges outlined 49 different instances where Complainant alleged that Respondent stole and/or converted attorneys' fees from their law firm.

It was apparent by all of the testimony at the Hearing that there was confusion, amounting to disagreement, as to the terms of Respondent's relationship with Complainant. Mr. Jefcoat testified that if Respondent filed a case after October 1, 2007 all fees generated would be owned by the firm. However, the Committee notes that the parties could not agree upon what constituted

a “filing” since bankruptcy cases are inherently fluid. Particularly, the instance that arose often in this arrangement was when Respondent had a pending Chapter 13 case that preceded his relationship with Complainant, that was later converted to Chapter 7. Was the conversion from Chapter 13 to Chapter 7 a new filing? Complainant argued that it was; Respondent argued that it was not a new filing but a development of the initial filing<sup>4</sup>.

Mr. Jefcoat also admitted in his testimony that when Respondent joined his firm, Respondent would “wind down” his book of business. As indicated hereinabove, Mr. Jefcoat has also admitted that the fees from Respondent’s prior clients were to be kept by Respondent. This arrangement is addressed in the Proposal, but not in the Employment Agreement-2008. It should also be added at this time that the term, “garnered” contained in Paragraph 2 of the Employment Agreement-2008 apparently led to the continued confusion in the relationship, the word “garnered” not being very specific but would tend to lead one to believe that it meant, “new business”.

The Committee also heard testimony from Respondent that notwithstanding his interpretation/understanding of his employment arrangement with Complainant, on several files admittedly owned by the firm and not Respondent, Respondent credited the fees to his own account. Respondent testified that it was not his intention to convert funds that he admitted were the property of the firm, and once these matters/discrepancies were brought to his attention he promptly remitted the funds in question to Complainant. The Committee heard testimony from Respondent to each and every case outlined in the Formal Charge in this regard.

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<sup>4</sup> The Committee is aware that conversion of a case from Chapter 13 to Chapter 7 requires approval by the Court and is not arbitrary.

Of the 49 specific claims contained in the Second Amended Formal Charges, there were 18 instances of receipt of fees that were in dispute. Each of those 18 instances were addressed by Respondent in what the Committee found to be candid testimony, Respondent's testimony in this regard not being specifically contradicted. There was some disagreement between Respondent's testimony and that of Brenda Smith Soape, an employee of Complainant, particularly as to how money received by Respondent would be tendered to Complainant (i.e. a dropbox).

As to the First Charge of Respondent violating Rule 1.15(a), by "failing to hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property," the Committee finds that there was no clear and convincing evidence that Respondent intentionally withheld the property of the Complainant as set forth hereinabove, the Committee finds that there was no clear understanding as to the ownership of the fees generated from Respondent's book of business brought to the firm, and how fees from that book of business would be credited during the winding down. The Committee found that in those instances where Respondent ultimately agreed that funds had been deposited in his account that were rightfully the property of the firm, those funds were either tendered to the firm or a good faith dispute as to the ownership of the fees existed.

With respect to the charge that Respondent violated Rule 8.4(c) by, "engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation" the Committee likewise finds that the ODC did not prove by clear and convincing evidence that Respondent's actions constituted dishonesty, fraud, deceit, or misrepresentation. The Committee, after hearing all of the testimony and considering all of the documentary evidence, found that Respondent's testimony was credible. The Committee also found the testimony of John Jefcoat also credible and insofar as his testimony

that the two agreements did attempt to define each party's right to fees generated from bankruptcy cases brought to the firm.

With respect to the charge of Respondent's violation of Rule 8.4(a) of, "violating or attempting to violate the Rules of Professional Conduct" the Committee also finds in favor of Respondent.

***Conclusion***

Considering the findings made by the Committee that Respondent did not violate the Rules of Professional Conduct as charged, the Committee recommends dismissal of the Formal Charges as set forth in the Second Amended Formal Charges.

Lake Charles, Louisiana this 6<sup>th</sup> day of July, 2018.

**Louisiana Attorney Disciplinary Board  
Hearing Committee # 31**

**V. Ed McGuire, III, Committee Chair  
Alan K. Breaud, Lawyer Member  
Andrew W. Vanchiere, Public Member**

BY:



**V. Ed McGuire, III, Committee Chair**