

Supreme Court of Louisiana

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NEWS RELEASE #049

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **11th day of December, 2020** are as follows:

PER CURIAM:

2020-B-00692

IN RE: JAYMESKI PULLINS-GORHAM

SUSPENSION IMPOSED. SEE PER CURIAM.

Retired Judge James H. Boddie, Jr., heard this case as Justice pro tempore, sitting in the vacant seat for District 4 of the Supreme Court. He is now appearing as an ad hoc for Justice Jay B. McCallum.

Hughes, J., dissents and assigns reasons.

Crichton, J., concurs in part, dissents in part and assigns reasons.

Crain, J., dissents and assigns reasons.

12/11/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-0692

IN RE: JAYMESKI PULLINS-GORHAM

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM*

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Jaymeski Pullins-Gorham, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

On August 17, 2016, the ODC received notice from respondent’s bank that her client trust account was overdrawn on August 3, 2016. As part of its investigation, the ODC’s forensic auditor reviewed respondent’s trust account records for the period from February 1, 2016 through August 31, 2016. The auditor also reviewed correspondence and documentation respondent provided to the ODC. The review revealed that respondent had not performed the required quarterly audits of her trust account. The auditor also identified two instances of conversion of client funds.

With respect to the overdraft, the audit revealed that, in October 2015, respondent issued two checks from her trust account to Ciji Jordan, a former client who had paid a fixed fee and a deposit for court costs. One check was in the amount of \$280 and refunded Ms. Jordan’s remaining deposit for costs. The second check

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was in the amount of \$1,575 and refunded the unearned portion of the fee. Ms. Jordan did not negotiate the checks until August 2016, at which time the \$280 check cleared the trust account. However, the \$1,575 check triggered the overdraft reported to the ODC. According to respondent, in October 2015, when she made a deposit to cover the refunds to Ms. Jordan, she only deposited \$1,600, which included funds belonging to other clients. When the bank informed her of the overdraft, she deposited \$580 into the trust account on August 4, 2016 to bring the account back to a positive balance.

The ODC's audit further revealed that, on April 26, 2016, respondent deposited into her trust account \$500 paid by her client Floyd Craig, which he designated for filing fees. Respondent never used the funds for their intended purpose and, thus, refunded the \$500 to Mr. Craig on March 23, 2017. However, on August 31, 2016, the balance of respondent's trust account dropped below the amount held on Mr. Craig's behalf.

DISCIPLINARY PROCEEDINGS

In March 2018, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.5(f)(5) (failure to refund an unearned fee), 1.15(a) (safekeeping property of clients or third persons), 1.15(f) (a lawyer shall subject all client trust accounts to a reconciliation process at least quarterly), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent filed an answer to the formal charges, in which she denied engaging in any misconduct. In light of respondent's answer, the matter proceeded to a formal hearing on the merits.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee made the following factual findings: (1) respondent's client trust account did not contain sufficient funds to pay the refund she owed Ms. Jordan; (2) respondent used Mr. Craig's \$500 deposit for filing fees to pay her obligations; (3) respondent failed to maintain written records of her trust account reconciliations; and (4) respondent knowingly engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by failing to deposit sufficient funds into her trust account to pay the refund issued to Ms. Jordan. More specifically, the committee found that respondent owed Ms. Jordan a refund of \$1,855 but only deposited \$1,600 into her trust account to cover the refund; as a result, other client funds were used to cover the balance, resulting in conversion of client funds. The committee also found that respondent failed to reconcile her trust account at least quarterly and failed to maintain records of the reconciliations she did perform; respondent admitted her reconciliation process was faulty, inaccurate, and contributed to the potential harm. Finally, the committee found respondent knowingly deposited into her trust account less than the full refund amount owed to Ms. Jordan. Based on these facts, the committee determined respondent violated Rules 1.15(a), 1.15(f), and 8.4(c) of the Rules of Professional Conduct. The committee found that respondent did not violate Rule 1.5(f)(5), as there was no evidence presented of a fee dispute.

The committee then determined respondent knowingly violated duties owed to her clients and the legal profession, causing potential harm. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

The committee found no aggravating factors present. However, in mitigation, the committee found the absence of a prior disciplinary record, personal or emotional

problems, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and remorse.

In light of the above, the committee recommended respondent be suspended from the practice of law for six months, fully deferred, subject to one year of probation with the following conditions:

1. Respondent shall submit to the ODC and at her own expense quarterly audits of her client trust account performed by a CPA;
2. Respondent shall complete at least six hours of continuing legal education in the area of law office/client trust account management;
3. During the first three months of the probationary period, respondent shall successfully complete the Louisiana State Bar Association's ("LSBA") Trust Accounting School; and
4. Respondent shall refrain from violating the Rules of Professional Conduct during the probationary period, the default of which will result in the deferred portion of the suspension being made immediately executory.

Respondent filed an objection to the committee's report, arguing that the charges against her should be dismissed.

Disciplinary Board Recommendation

After review, the disciplinary board adopted the hearing committee's factual findings. Additionally, the board found that, between October 2015 and August 2016, respondent's trust account balance was insufficient to honor financial obligations to all clients and former clients; the amount of the shortage during this time period varied but at times exceeded \$1,000. Based on these facts, the board agreed with the committee that respondent violated Rules 1.15(a), 1.15(f), and 8.4(c) of the Rules of Professional Conduct. The board also agreed that the ODC did not prove a Rule 1.5(f)(5) violation by clear and convincing evidence.

The board then determined respondent knowingly violated duties owed to her clients and the legal profession. Although her conduct resulted in conversion of client funds, it did not result in actual harm to her clients or the public. However, respondent's mishandling of her trust account and failure to perform required audits and maintain required records created the potential for harm to her clients and third parties. The board agreed with the committee's determination that the baseline sanction is suspension.

In aggravation, the board found a refusal to acknowledge the wrongful nature of the conduct based on her testimony and the tenor of her brief, in which she accused the ODC of filing fraudulent formal charges against her and deliberately deviating from normal communication practices with respondent. The board also noted that respondent believes her only mistake was one calculation error in one deposit, and she seems to ignore that the balance in her trust account was insufficient for at least ten months. In mitigation, the board found the absence of a prior disciplinary record, personal or emotional problems, and timely good faith effort to make restitution or to rectify the consequences of the misconduct relative to the overdraft.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for six months, fully deferred, subject to two years of probation with the following conditions:

1. Respondent shall obtain, at her cost and expense, quarterly audits of her trust account, to be performed by an ODC-approved CPA, and the audit reports, in a form and manner approved by the ODC, shall be promptly submitted to the ODC;
2. Within one year of the court's imposition of discipline, respondent shall take at least six hours of her mandatory continuing legal education in the area of law office/client trust account management;

3. Within one year of the court's imposition of discipline, respondent shall successfully complete the LSBA's Trust Accounting School; and
4. Any failure of respondent to comply with the above conditions, or any misconduct during the probationary period, may be grounds for making the deferred suspension executory or imposing additional discipline, as necessary.

Respondent filed an objection to the disciplinary board's recommendation.

Accordingly, the case was docketed for oral argument pursuant to Supreme Court Rule XIX, § 11(G)(1)(b).

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

In this matter, the record supports a finding that respondent mishandled her client trust account, resulting in conversion of client funds. This misconduct amounts to a violation of the Rules of Professional Conduct as found by the disciplinary board.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession,

and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent knowingly violated duties owed to her clients and the legal profession. While respondent's conduct caused no actual harm, it had the potential to harm her clients, the public, and the legal profession. The baseline sanction for this type of misconduct is suspension.

We agree with the hearing committee that no aggravating factors are present. The record supports the following factors in mitigation: the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, personal or emotional problems, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and remorse.

Under the unique circumstances of this case, we find that a six-month suspension is appropriate discipline for respondent's mishandling of her client trust account. Considering the substantial mitigating factors present, we will defer the suspension in its entirety, subject to a one-year period of probation governed by the conditions enumerated by the disciplinary board.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that Jaymeski Pullins-Gorham, Louisiana Bar Roll number 31746, be and she hereby is suspended from the practice of law for a period of six months. This suspension shall be deferred in its entirety, subject to respondent's successful completion of a one-year period of probation governed by the conditions enumerated

by the disciplinary board. The probationary period shall commence when respondent and the ODC execute a formal probation plan. Any misconduct during the probationary period may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

12/11/20

SUPREME COURT OF LOUISIANA

No. 2020-B-00692

IN RE: JAYMESKI PULLINS-GORHAM

Attorney Disciplinary Proceeding

Hughes, J., dissenting.

Respectfully, I would impose some period of actual suspension.

12/11/20

SUPREME COURT OF LOUISIANA

No. 2020-B-0692

IN RE: JAYMESKI PULLINS-GORHAM

ATTORNEY DISCIPLINARY PROCEEDING

CRICHTON, J. concurs in part and dissents in part

While I agree that respondent violated duties owed to her clients and the legal profession, I also believe that, as characterized by the majority, “under the unique circumstances of this case,” the sanction is disproportionate to the misconduct. As referenced by Justice Crain’s dissent and noted in the per curiam, there are no aggravating factors present but, instead, there exist a number of applicable mitigating factors, including the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, the presence of transient personal or emotional challenges, and finally, timely good faith efforts to make restitution and rectify consequences of the misconduct and remorse. Like any legal matter, lawyer disciplinary matters are evidence-driven. In my view, a close examination of the evidence in this disciplinary record indicates that the sanction imposed is greater than what is necessary to achieve the objectives of lawyer discipline - maintaining high standards of conduct, protecting the public, preserving the integrity of the profession, and deterring future conduct. *See In Re: Connie P. Trieu*, 19-1680 (La. 3/9/20), 290 So.3d 658 (Crichton, J., dissenting in part and concurring in part, noting the majority failed to consider the numerous mitigating factors and would therefore impose a lesser sanction).

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CRAIN, J., dissenting.

Respondent's unintentional violation of her trust account responsibilities culminated in a relatively small overdraft that she immediately rectified. Her neglect caused no harm and involved no purposeful benefit to her. Respondent is remorseful, agreed to attend the LSBA Trust Accounting School, and has no prior disciplinary record. Given these circumstances, her discipline should be limited to a public reprimand.