

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JASON DONALD ASBILL

DOCKET NO.: 23-DB-011

RULING OF THE DISCIPLINARY BOARD

Louisiana Attorney Disciplinary Board	
FILED by: <i>Kimberly Amato</i>	
Docket#	Filed-On
23-DB-011	9/4/2024



INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Jason Donald Asbill (“Respondent”), Louisiana Bar Roll Number 35634.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4(a)(b), 1.5(f)(5), 1.15(d), 3.2, 8.1(b)(c), and 8.4(a)(c).²

PROCEDURAL HISTORY

The formal charges were filed on February 16, 2023. Respondent filed an answer to the charges on March 28, 2023 and a supplemental answer on March 29, 2023. ODC’s pre-hearing memorandum was filed on July 5, 2023, and its supplemental prehearing memorandum was filed on September 28, 2023. Respondent’s pre-hearing memoranda were filed on July 7, 2023 and August 7, 2023. After two continuances, the hearing of this matter was held on November 7, 2023. Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Respondent appeared with counsel, Dane S. Ciolino.

On February 20, 2024, the Hearing Committee (“the Committee”)³ issued its report, with the majority finding that ODC did not prove by clear and convincing evidence that Respondent

¹ Respondent was admitted to the practice of law in Louisiana on October 30, 2014. Respondent is currently eligible to practice law.

² See the attached Appendix for the text of these Rules.

³ Members of the Committee included Robert E. Payton (Chair), William S. Joyner (Lawyer Member), and Paul F. Delaup (Public Member).

violated the Rules of Professional Conduct as charged. Mr. Peyton, Chair of the Committee, dissented, finding that ODC had established that Respondent violated Rules 1.3 and 1.5(f)(5).

On March 11, 2024, Respondent filed his notice of no objection to the Committee's report. On the same date, ODC filed its objection to the report. ODC's board brief was filed on April 30, 2024. Respondent's board brief was filed on May 15, 2024. After one continuance on the Board's own motion, oral argument before Panel "B" of the Disciplinary Board was held on July 11, 2024.⁴ Mr. Pendley appeared on behalf of ODC. Clare S. Roubion appeared on behalf of Respondent, who was also present.

FORMAL CHARGES

The formal charges read, in pertinent part:

The formal complaint in this matter was received by the ODC on April 1, 2022 and assigned investigative file number 0039901. Complainant, Joseph A. DiLeo, Jr., had hired Respondent to represent him pursuant to a civil matter involving property. The property appeared to be a portion of an inheritance of which the DiLeos were one of several co-heirs. There was a dispute among the co-heirs regarding what Complainant had described as a fair settlement. The property was encumbered with various fines levied by Jefferson Parish due to debris and trash that had accumulated on the property. Respondent had failed to appear at a hearing held on March 15, 2022 addressing code enforcement. Complainant advised that he had called Respondent numerous times to give him notice of the hearing but Respondent did not contact him until after the hearing had taken place. Complainant expressed his dismay that little progress had been made regarding the Jefferson Parish fines and with the dispute with the co-heirs.

Complainant appeared frustrated that contact with Respondent was difficult. Eventually, the situation escalated until Complainant asked Respondent if he was still interested in the representation. The parties agreed to meet to discuss the matter on March 30, 2022 at Respondent's office. However, Respondent failed to appear for the meeting. Complainant expressed his belief that he was going to be required to hire another attorney in order to complete the legal matter for which Respondent had originally been retained.

⁴ Members of Panel "B" included Erica J. Rose (Chair), R. Alan Breithaupt (Lawyer Member), and M. Todd Richard (Public Member).

A copy of the formal complaint was sent to Respondent. His response was received by the ODC on May 10, 2022. Respondent advised that Mr. DiLeo was not his client. However, he conceded that he represents Gloria DiLeo, who is the wife of Complainant. Respondent implied that he was in communication with Ms. DiLeo, although he provided no evidence of such contact. Complainant made no suggestion that Respondent was in contact with Ms. DiLeo. Respondent's reply contained no attachments and was, for the most part, non-responsive to the allegations in the complaint.

The ODC contacted Complainant pursuant to the investigation to determine whether or not the matter had been resolved given that there was no further communication from him. Complainant provided an update. He advised that the parties had agreed to a fee refund in the amount of \$1,315.34. These funds were due to Complainant no later than April 22, 2022. As of November 9, 2022, Respondent had not refunded the agreed-upon amount. Complainant was unable to make contact with Respondent to determine the status of the refund.

The ODC sent a letter on November 9, 2022 to Respondent's primary address registered with LSBA. The letter instructed Respondent to identify his intentions regarding the refund and to advise ODC of same within ten days. The letter was not returned to the ODC by the USPS. Respondent never responded to the letter. As of this writing, Respondent has not refunded the agreed-upon fee nor has he contacted Complainant. He has also not contacted the ODC regarding the matter.

Respondent, by engaging in the above listed behaviors, has violated Louisiana Rules of Professional Conduct Rule 1.3, Rule 1.4(a)(b), Rule 1.5(f)(5), Rule 1.15(d), Rule 3.2, Rule 8.1(b)(c) and Rule 8.4(a)(c).

THE HEARING COMMITTEE'S REPORT

In its February 20, 2024 report, the Committee detailed the testimony and exhibits presented at the hearing. The Committee stated:

EVIDENCE

ODC called to the stand Joseph DiLeo and Gloria DiLeo. The Respondent's counsel Dane Ciolino called only Jason Asbill to testify. The ODC and the Respondent both submitted Exhibit Books for the Committee's review. Exhibits ODC 1-8 and R01-17 were admitted into evidence.

The Committee then issued the following findings of fact:

FINDINGS OF FACT

The Committee found that Gloria DiLeo and Kenneth Floyd retained Jason Asbill in 2021 to handle a succession of the clients' relative in the 24th Judicial District Court. The representation was for an hourly amount with a certain upfront payment amount required at the time of engagement. Once Jason Asbill became involved, he determined that the two clients were not in agreement as to how to manage the primary property of the estate which was a house in Jefferson Parish. The house was subject to ongoing administrative hearings and penalties due to the condition of the property. Some hearings occurred during the timeframe of Mr. Asbill's representation.

On March 22, 2022, Mr. Asbill informed both clients that he must withdraw his representation because he could not simultaneously represent both clients because the interests of the clients were not in agreement. Mr. Asbill subsequently withdrew from the Succession in the 24th JDC. Mr. Asbill and the two clients agreed upon a refund for the clients in the amount of \$1,315.00.

The Committee considered numerous factors in making a determination that no Rules of Professional Conduct were violated. There are two primary elements of the complaints against the Respondent. The first grievance of the Complainants is that Joseph DiLeo made repeated attempts to notify Mr. Asbill that there were impending administrative hearings pertaining to the property of the succession and that Mr. Asbill did not respond and did not attend these hearings. The second element is that Mr. Asbill delayed several months before providing the clients with the agreed upon refund for services not yet rendered.

Regarding the first element, the ODC did not introduce documentary evidence such as missed calls or emails to establish that the Complainants attempted to reach Mr. Asbill ahead of the hearings. There was no evidence introduced that the Complainants informed Mr. Asbill that there were ongoing administrative hearings and penalties on the property when the Complainants retained Mr. Asbill. The engagement letter does not include the administrative hearings and penalties pertaining to the property in the scope of representation by Mr. Asbill. The Committee therefore determined that there was insufficient evidence to establish neglect on the part of Mr. Asbill for failing to attend the administrative hearings for the property during the representation.

Regarding the second element, there was indeed a time lapse of several months from when the parties mutually agreed upon a refund amount and when Mr. Asbill finally provided the refund payment. While the Committee feels that the Complainant should have provided the payment sooner, the Committee also finds there were reasonable grounds for the delay. The primary reasonable justification is that the two clients had conflicting interests and Mr. Asbill wanted to ensure that neither client would be dissatisfied with the refund payment which might prolong the conflict between attorney and clients.

As to the alleged rule violations, the Committee made the following findings:

RULES VIOLATED

ODC alleges that the Respondent has violated Louisiana Rules of Professional Conduct Rule 1.3, Rule 1.4(a)(b), Rule 1.5(f)(5), Rule 1.15(d), Rule 3.2, Rule 8.1(b)(c) and Rule 8.4(a)(c).

Rule 1.3 provides [the] lawyer shall act with reasonable diligence and promptness in representing a client. There was insufficient testimonial and documentary evidence that Jason Asbill was made aware, or expected to be aware, of the ongoing administrative hearings involving the property at issue and that he failed to properly deal with the ongoing administrative matters affecting the property.

With regard to promptly returning the refund of \$1,315 for services not yet rendered, the testimony of the respondent indicated that he had sufficient enough grounds for the delay in returning the refund payment to the clients.

Rule 1.4(a) provides [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.

The committee finds that there was no sufficient documentary and testimonial evidence to establish that the respondent did not maintain adequate communication with his clients. There was no documentary evidence that the clients were making repeated attempts to reach the Respondent and that the Respondent was being unresponsive.

Rule 1.4(b) provides 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.

The committee finds that the Respondent maintained an adequate amount of communication with the clients during the duration of the representation.

Rule 1.5(f)(5) provides 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.

The Committee finds the Respondent had adequate cause for the delay in returning the refund payment to the clients.

Rule 1.15(d) provides (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

The Committee finds the Respondent had adequate cause for the delay in returning the refund payment to the clients.

Rule 3.2 provides a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

The Committee finds that the Respondent made reasonable efforts to expedite litigation [consistent] with the interests of the clients. The Committee finds that the Respondent adequately attempted to advance the litigation until the Respondent determined that he could not simultaneously represent both clients due to two client's conflicting interests.

Rule 8.1 provides 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:

.....

(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.

The Committee understands that the ODC is no longer pursuing this rule violation due to stipulations regarding ODC's unsuccessful attempts to reach the Respondent during the proceeding.

Rule 8.4 provides 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; (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Committee finds insufficient evidence to determine that Respondent's acts constituted dishonesty, deceit or misrepresentation.

Finding no rule violations, the majority of the Committee recommended that the formal charges in this matter be dismissed. As stated above, Mr. Peyton, the Chair of the Committee, dissented, finding that ODC had proven violations of Rules 1.3 and 1.5(f)(5) and recommending that Respondent receive a public reprimand for these violations.

ANALYSIS OF THE RECORD BEFORE THE BOARD

The powers and duties of the Disciplinary Board are defined in Section 2 of Louisiana Supreme Court Rule XIX. Rule XIX, Section 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 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 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 findings of the Committee are not manifestly erroneous, except in one instance. Additionally, three other findings require clarification.

The Committee finds that “there was no evidence introduced that the Complainants informed Mr. Asbill that there were ongoing administrative hearings and penalties on the property when the Complainants retained Mr. Asbill.” Hrg. Comm. Rpt., p. 4. This finding is manifestly erroneous. Testimonial evidence was introduced on this issue from both Joe and Gloria DiLeo. Hrg. Tr., pp. 42-44; pp. 96-97. However, the Board notes that the discussion of Rule 1.3 below cites the testimony of Respondent on this issue, which refutes the DiLeos testimony.

The following findings warrant clarification. First, the Committee finds that “some [administrative hearings concerning the property in Jefferson Parish] occurred during the timeframe of Mr. Asbill’s representation” and refers to these hearings as “impending administrative hearings” or “hearings.” Hrg. Comm. Rpt., p. 3. The formal charges allege, and the record contains evidence of, just one hearing which was held during the timeframe of Respondent’s representation of Mrs. DiLeo and Mr. Floyd. This hearing was held on March 15, 2022 in *Parish of Jefferson v. Guiann Carpenter, et al.*, Case No. EPMZ-22-000268 in the Bureau of Administrative Adjudication For Violations of the Code of Ordinances. Respondent Exhibit 6.

Second, the Committee finds that “the two clients agreed upon a refund for the clients in the amount of \$1,315.00.” Hrg. Comm. Rpt., p. 3. The actual amount agreed upon by the parties was \$1,315.34. ODC Exhibit 5; Hrg. Tr., p. 140. Respondent’s Exhibit 12.

Third, the Committee finds that there was a time lapse of “several months” from when the parties mutually agreed upon a refund amount and when Mr. Asbill finally provided the refund payment. The record establishes that Respondent did not send the refund payment to the DiLeos until over one year after it was promised (April 20, 2022 – May 8, 2023). Respondent Exhibits 9, 12, and 13; Hrg. Tr., p. 50.

B. *De Novo* Review

The Committee correctly found that ODC failed to prove violations of Rules 1.3, 1.4(a)(b), 1.5(f)(5), 1.15(d), 3.2, 8.1(b)(c) and 8.4(a)(c). Each rule violation is discussed below.

Rule 1.3: Rule 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client. As determined by the Committee, there was insufficient testimonial and documentary evidence introduced to establish that: (1) Respondent was made aware, or expected to be aware, of the ongoing administrative hearings involving the Jefferson Parish property; and (2) Respondent failed to properly deal with the ongoing administrative matters affecting the property. While Mr. and Mrs. DiLeo both testified that they informed Respondent of the administrative hearing involving the property, Respondent testified, to the contrary, that he did not believe that he was retained to represent Mrs. DiLeo and Mr. Floyd in the administrative matter(s). Hrg. Tr., pp. 115-18. Respondent testified that he had no experience in administrative matters, so he would not have agreed to represent them in such a matter. He also testified that neither the DiLeos nor Mr. Floyd ever sent any subpoenas or court notices for proceedings to him for any administrative matter. He received no emails from the DiLeos or Mr. Floyd suggesting or wanting him to go to an administrative hearing. *Id.* at p. 116. Other than the March 2021 administrative hearing, which he learned about after the hearing was held, he was not aware of any other administrative proceedings. *Id.* at 117-18, 135. Further, the Attorney-Client Fee Agreement and

Authority to Represent document shows that Mrs. DiLeo and Kenny Floyd hired Respondent only in connection with the matter of *Guiann Carpenter v. Succession of Ruby Bourgeois, et al.*, 24th JDC No. 804-333 Div. “P.” His understanding was that the succession proceeding involved the issue of whether the plaintiff, Ms. Carpenter, was due or entitled to rents, or a portion of the rents, on the property. *Id.* at p. 147. No references to any administrative hearings are made in the fee agreement. Respondent Exhibit 1.

With regard to promptly returning the refund of \$1,315 for services not yet rendered, the testimony of Respondent indicated, and the Committee found, that Respondent had sufficient enough grounds for the delay in returning the refund payment to the clients. Respondent testified that during April of 2022, when he was preparing to send the refund check to Mrs. DiLeo, he was contacted by Mr. Floyd, who indicated that he might have been due part of the refund. At that time, Respondent felt he was conflicted; he was unsure if he should return all of the funds to Mrs. DiLeo or whether Mr. Floyd was due a portion of the funds. He, therefore, held the funds and did not send the check to Mrs. DiLeo in April of 2022. *Id.* at p. 125-26. He later tried to resolve the issue through the LSBA’s Fee Dispute Program, but Mr. Floyd would not participate in the program. He ultimately refunded the money to Mrs. DiLeo on May 8, 2023, after formal charges were filed and he had conversations with Mr. Pendley about refunding the money to her. *Id.* at pp. 126-27. Given the above, a violation of Rule 1.3 has not been proven by clear and convincing evidence by ODC.

Rule 1.4(a)(b): Rule 1.4(a) provides 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.

Rule 1.4(b) provides 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.

As to Rule 1.4(a), the Committee found that there was not sufficient documentary and testimonial evidence to establish that Respondent did not maintain adequate communication with his clients. The duration of the representation was from October of 2021 until April of 2022. There was no documentary evidence submitted which showed that the clients were making repeated attempts to reach Respondent and that he was being unresponsive. Instead, the documentary evidence showed that Respondent timely replied to the DiLeos' and Mr. Floyd's email and text communications. Respondent Exhibits 13, 15, 16, and 17. While Mr. DiLeo testified that communication with Respondent was difficult for an approximate two-week period of time (presumably in March of 2022), Respondent credibly testified that during this time period he was on vacation, and he had notified his clients beforehand that he would be on vacation. Hrg. Tr., pp. 43, 118-19. He also explained that he contacted both Mr. and Mrs. DiLeo via email when he returned from vacation. *Id.* at 119; Respondent Exhibit 16. At this time, he was having trouble with his phone, so he sent an email to Mr. DiLeo asking the DiLeos to communicate with him via email during that time. *Id.* While later email communication shows that there was also some confusion concerning an appointment on March 30, 2022 and a subsequently-rescheduled appointment on April 4, 2022, the confusion was later resolved, and Respondent and the DiLeos apparently did meet on April 6, 2022. During this time period, although Respondent's

communication with the DiLeos was not ideal due to the difficulties with his phone, he did adequately communicate with them via email. Respondent Exhibit 17. Overall, his communication with his clients was prompt and reasonable.

Further, as to Rule 1.4(b), the Committee found that Respondent maintained an adequate amount of communication with the clients during the duration of the representation. For the reasons discussed above, this finding, as well as a finding that Respondent provided sufficient information to the DiLeos, is supported by the record. Respondent Exhibits ODC 13, 15, 16, and 17; Hrg. Tr., pp. 118-21. ODC has not proven by clear and convincing evidence that Respondent violated Rule 1.4(a)(b).

Rule 1.5(f)(5): Rule 1.5(f)(5) provides 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.

Here, Rule 1.5(f)(5) is pertinent because the DiLeos paid Respondent a fee drawn from an advanced deposit, and a fee dispute arose between Respondents and his clients when Mr. Floyd claimed that he was owed part of the fee at the termination of the representation. Respondent did

not immediately refund the unearned fee to Mrs. DiLeo or Mr. Floyd because of Mr. Floyd's representations and his failure to participate in the LSBA Fee Dispute Program. He eventually (in May of 2023) returned the fee to Mrs. DiLeo, following the filing of formal charges and after consulting with ODC. Based upon the circumstances involving Mr. Floyd, the Committee found that Respondent had adequate cause for the delay in returning the refund payment to the clients. This finding is supported by the record and is adopted by the Board. Hrg. Tr., pp. 124-27. Accordingly, ODC has not established a violation of Rule 1.5(f)(5) by clear and convincing evidence.

Rule 1.15(d): Rule 1.15(d) provides that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, *a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive* and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

As explained above, Respondent had adequate cause for failing to promptly deliver to Mrs. DiLeo the unearned fee she was entitled to receive. Given this, ODC has failed to prove a violation of Rule 1.15(d) by clear and convincing evidence.

Rule 3.2: Rule 3.2 provides that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

In this matter, Respondent made reasonable efforts to expedite litigation consistent with the interests of the clients during his relatively short period of representation. The record shows that in the succession matter, Respondent enrolled as counsel of record, attended a hearing on the plaintiff's motion for leave to file a supplemental petition, filed an answer to the supplemental petition, and addressed with his clients the plaintiff's notice of deposition of Mr. Floyd. Respondent Exhibits 5, 13, 15, 16. The Committee found that the Respondent adequately attempted to advance the litigation until the Respondent determined that he could not simultaneously represent both clients due to their conflicting interests. Hrg. Tr., p. 122. This finding is supported by the record. Based on the above, ODC has not proven a violation of Rule 3.2 by clear and convincing evidence.

Rule 8.1(b)(c): Rule 8.1 provides 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:

.....

(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.

At the hearing in this matter, the parties stipulated that Respondent erroneously reported to the LSBA that his address, as of October 5, 2022 until March 15, 2023, was 1221 N Causeway Blvd., Ste. 172, Metairie, LA 70001, when it actually was 2121 N Causeway Blvd., Ste. 172, Metairie, LA 70001. Hrg. Tr., pp. 22-24; 108-09; ODC Exhibit 7.⁵

⁵ The Committee incorrectly stated in its report that ODC was no longer pursuing a violation of Rule 8.1 "due to stipulations regarding ODC's unsuccessful attempts to reach the Respondent during the proceeding." Hrg. Comm. Rpt., p. 7. As explained above, the parties stipulated only to the fact that Respondent had incorrectly reported the wrong address to the LSBA from October 5, 2022 until March 15, 2023.

Because of this error, ODC's November 10, 2022 letter to Respondent, which inquired about the status of Mrs. DiLeo's unearned fee and also directed Respondent to advise ODC within ten (10) days his intentions with regard to the refund of the client funds, was sent to the incorrect address of 1221 N Causeway Blvd., Ste. 172, Metairie, LA 70001. ODC also stated in the letter that "[f]ailure to respond will result in the ODC seeking permission to file formal charges against you for violation of the above-cited Rules, as well as for violation of, potentially, Rule 8.1(c)." ODC Exhibit 5. Respondent admitted to his unintentional error of recording the wrong address with the LSBA at the hearing. Respondent's testimony indicated that he never received ODC's November 10, 2022 letter and that he would have cooperated fully with ODC as soon as he received correspondence. Hrg. Tr., pp. 128-30. Mr. Pendley also stated at the hearing that the letter was never returned to ODC. *Id.* at pp. 108-09. Given this unintentional error by Respondent, Respondent cannot be said to have "knowingly fail[ed] to respond to a lawful demand for information from . . . [a] disciplinary authority." Further, it cannot reasonably be determined that Respondent failed to cooperate with ODC in its investigation. A violation of Rule 8.1(b)(c) has not been proven by ODC by clear and convincing evidence.

Rule 8.4(a)(c): Rule 8.4 provides 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; . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation. As determined by the Committee and explained in the discussion of the alleged rule violations above, insufficient evidence exists to determine that Respondent's acts constituted dishonesty, deceit or misrepresentation. Further, because no other rule violations have been established by ODC, a violation of Rule 8.4(a) also has not been established. ODC has not proven by clear and convincing evidence that Respondent violated Rule 8.4(a)(c).

CONCLUSION


The Board adopts the Committee’s findings of fact, except for the one finding which is manifestly erroneous. The Board also clarifies the three findings of fact explained above. The Committee correctly found that ODC failed to prove violations of Rules 1.3, 1.4(a)(b), 1.5(f)(5), 1.15(d), 3.2, 8.1(b)(c) and 8.4(a)(c), and the Board adopts these findings. As such, the Board orders that the formal charges brought against Respondent be dismissed. All costs and expenses of these proceedings are assessed to the Board.

RULING

For the foregoing reasons, the Board hereby orders that the formal charges in this matter filed against Respondent, Jason Donald Asbill, be dismissed. The Board further orders that all costs and expenses of these proceedings be assessed to the Board.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

**R. Alan Breithaupt
Todd S. Clemons
Albert R. Dennis III
Valerie S. Fields
James B. Letten
Ronald J. Miciotto
M. Todd Richard
Lori A. Waters**

By:  Erica J. Rose
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**Erica J. Rose
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.

...

Rule 1.5. Fees

...

(f) Payment of fees in advance of services shall be subject to the following rules: ... (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 1.15. Safekeeping Property

...

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property

that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

...

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:

...

(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;

...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

....