

SUPREME COURT OF LOUISIANA

No. 2008-B-0616

IN RE: KATHERINE WHEELER

ATTORNEY DISCIPLINARY PROCEEDINGS

JOHNSON, J., dissents and assigns reasons:

Respondent was charged with violating Rules 1.4 (failure to communicate with a client); 1.5 (f)(3) (failure to provide an accounting); 1.5 (f)(5) (failure to refund an unearned fee); 1.15(a)(c) (safekeeping property of clients or third persons); 1.16(d) (obligations upon termination of the representation); 8.1(c) (failure to cooperate with the ODC in its investigation); 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and 8.4(c) (engaging in conduct involving dishonest, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct. I am of the opinion that respondent should have received an actual period of suspension. Our jurisprudence includes many cases involving instances of failure to communicate with clients, failure to provide an accounting, and failure to cooperate with the ODC in its investigations, where this Court has imposed sanctions ranging from suspensions to disbarment.

In *In re Ramsey*, 2007-0006 (La. 3/16/07), 951 So.2d 1077, this Court held that actual suspension for year and a day was warranted for similar conduct. In *In re: Randolph*, 05-0125 (La.6/3/05), 905 So.2d 1069, this Court imposed a suspension of one year and one day where the attorney failed to communicate with clients, failed to account for and/or refund unearned fees, failed to return client files, and failed to cooperate with the ODC. Also, in *In re: Szuba*, 04-1571 (La.2/4/05), 896 So.2d 976, this Court imposed a one year and one day suspension on an attorney who was

practicing law while ineligible. In none of these instances was the entire suspension deferred.

More importantly, the record does not indicate that Ms. Wheeler made restitution of the \$1,800 unearned fees. Ms. Wheeler maintains that she accidentally told Key Home Health Care, her client, she would refund this amount. Nonetheless, Ms. Wheeler failed to provide an accounting of how the client's \$5,000 advanced fee was spent. This action warrants a period of actual suspension.

Considering the record as a whole, in my view, actual suspension from the practice of law for a period of at least six months is the appropriate sanction for respondent's misconduct.