

SUPREME COURT OF LOUISIANA

NO. 14-B-2427

IN RE: VIVICA D. SMITH PIERRE

KNOLL, J., dissenting

While I agree respondent's conduct warrants discipline, I would reject the petition for consent discipline on the ground the three-year suspension proposed by the parties is unduly lenient under the facts presented. Respondent's actions reveal a fundamental lack of moral fitness. As such, I believe the only appropriate sanction is disbarment.

The facts, as stipulated by the parties, reveal respondent engaged in a pattern of overbilling and fraudulent billing of her client,<sup>1</sup> as well as repeated instances of commingling, conversion and misuse of client funds. The true magnitude of respondent's conversion is unclear from the petition, but respondent acknowledges that she converted at least \$10,514.07, which was entrusted to her by the client to pay a third party. Despite this acknowledgment, respondent has not made any effort to pay restitution over the last eight years.

In the landmark case of *Louisiana State Bar Ass'n v. Hinrichs*, 486 So. 2d 116 (La. 1986), we explained that when a lawyer converts client funds, disbarment is generally appropriate when one or more of the following elements are present: the lawyer acts in bad faith and intends a result inconsistent with his client's interest; the lawyer commits forgery or other fraudulent acts in connection with the violation; the magnitude or the duration of the deprivation is extensive; the magnitude of the damage or risk of damage, expense and inconvenience caused the

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<sup>1</sup> For example, respondent billed her client for conferences with federal judges and contact with federal court law clerks which purportedly took place on Thanksgiving Day and the day after Thanksgiving in 2006 and 2007.

client is great; and the lawyer either fails to make full restitution or does so tardily after extended pressure of disciplinary or legal proceedings. *Id.* at 122. In my opinion, all of these elements are present in the case *sub judice*. Accordingly, disbarment is clearly appropriate.

For these reasons, I respectfully dissent from the majority's opinion and would reject the petition for consent discipline.