

Supreme Court of Louisiana

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NEWS RELEASE #020

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 13th day of May, 2021 are as follows:

PER CURIAM:

2020-B-01488

IN RE: KATHLEEN M. WILSON

SUSPENSION IMPOSED. SEE PER CURIAM.

Weimer, C.J., additionally concurs and assigns reasons.

05/13/21

SUPREME COURT OF LOUISIANA

NO. 2020-B-1488

IN RE: KATHLEEN M. WILSON

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 2003. In 2012, the court suspended respondent from the practice of law for one year and one day, fully deferred, subject to a two-year period of supervised probation with conditions. *In re: Wilson*, 12-0579 (La. 6/15/12), 90 So. 3d 1018 (“*Wilson I*”). The misconduct in *Wilson I* involved respondent’s gross mismanagement of her client trust account, failure to timely pay a third-party medical provider, and commingling and conversion of client and third-party funds.

Against this backdrop, we now turn to a consideration of the misconduct at issue in the present proceeding.

UNDERLYING FACTS

On the evening of October 12, 2017, respondent consumed alcohol while socializing with friends at dinner and at a club. Shortly after midnight on October

13, 2017, respondent attempted to drive herself home. On Joor Road in Baton Rouge, a sheriff's deputy observed respondent's vehicle cross the double yellow center line of the roadway, nearly hit an oncoming car head-on, and almost enter the ditch on the opposite side of the road. The deputy initiated a traffic stop and, while speaking with respondent, noted that her speech was slurred and she smelled of alcohol. Respondent agreed to submit to a field sobriety test and eventually consented to a Breathalyzer test. She performed poorly on the field sobriety test and the Breathalyzer test showed her blood alcohol level was .179g%. Respondent was arrested on charges of DWI, driving left of center, and having an expired registration certificate. Respondent was subsequently permitted to enroll in a pre-trial diversion program to resolve the criminal charges.

In November 2017, respondent self-reported her arrest to the ODC. Thereafter, the ODC referred respondent to the Judges and Lawyers Assistance Program ("JLAP") for an evaluation.

In January 2018, respondent submitted to a psychological evaluation performed by James Smith, Ph.D. Dr. Smith noted that respondent was highly defensive and that there were notable inconsistencies between her self-reports of substance use and the records he was provided. Because Dr. Smith could not rule out an alcohol use disorder based upon the information obtained during the one-day evaluation, he recommended that respondent submit to a JLAP-approved multidisciplinary inpatient professional assessment.

Respondent initially refused to obtain the recommended assessment, but on April 29, 2019, she was admitted to Palmetto Addiction Recovery Center in Rayville, Louisiana for a three-day evaluation. Palmetto's discharge report revealed that respondent began drinking to excess in law school. By 2015, she feared she had a problem and stopped drinking, but after one year, she resumed her consumption of alcohol. She further reported that she had decreased her drinking after her arrest in

October 2017 and did not drink for several months, then started drinking again after completing the diversion program. Respondent stated that her last use of alcohol was two shots of whiskey consumed six weeks prior to the evaluation.¹ Palmetto determined that respondent meets the DSM-5 criteria for alcohol use disorder, moderate,² and recommended that she complete a long-term inpatient treatment program and then sign a five-year JLAP recovery agreement.

On May 16, 2019, JLAP endorsed Palmetto's recommendation to respondent, and provided her with a list of JLAP-approved inpatient treatment facilities. She was also informed of the procedures to be followed in the event she wished to seek a second opinion. However, respondent did not seek inpatient treatment or comply with the second opinion procedures, instead choosing to obtain another one-day evaluation.

In September 2019, respondent was evaluated by Lauren Rasmussen, Psy.D. At this time, Dr. Rasmussen was not a JLAP-approved evaluator. In her report, Dr. Rasmussen noted respondent to be defensive and commented that her self-report and insight could not be fully trusted. She therefore observed that it would be "challenging" to offer a definitive diagnosis. Nevertheless, based upon the available information, Dr. Rasmussen concluded there was not sufficient evidence of a "pervasive pattern of substance use that impacts multiple aspects of" respondent's life, which Dr. Rasmussen felt was required for a diagnosis of alcohol use disorder. Dr. Rasmussen did recommend that respondent totally abstain from alcohol.

¹ Respondent's Phosphatidylethanol (PEth) blood test upon admission to Palmetto was positive at 101 ng/mL (cutoff 20 ng/mL). A positive PEth test indicates significant ingestion of alcohol within approximately four weeks prior to the test, either by binge drinking or regular consumption.

² Specifically, respondent was determined to meet the following DSM-5 criteria: failure of role obligations as an officer of the court related to her DWI arrest, use under physically hazardous conditions such as driving, important occupational activities are reduced or given up due to her delay in evaluation, inability to cut down or quit use as she consumed alcohol while being monitored during pre-trial diversion, and she continued to consume alcohol despite having a physical condition (hypertension) that could be caused or exacerbated by alcohol.

Upon learning that respondent had acted unilaterally to obtain Dr. Rasmussen's evaluation, JLAP reported to the ODC that respondent was not cooperating with the program in good faith. Respondent then agreed to participate in a second opinion evaluation facilitated by JLAP. From October 14-17, 2019, respondent was evaluated at the Professionals' Wellness Evaluation Center ("PWEC") in Alexandria, Louisiana. According to PWEC's discharge report, respondent reported to evaluators that her recent alcohol consumption was limited to a glass of wine three weeks earlier. However, her PEth test was noted to be positive and the results inconsistent with her described consumption.³ Commenting that its evaluation "was very similar to the prior evaluations done elsewhere," PWEC determined that respondent meets the criteria for alcohol use disorder, mild to moderate, and recommended she complete an inpatient residential treatment program and then sign a five-year JLAP recovery agreement. To date, respondent has not complied with this recommendation.

DISCIPLINARY PROCEEDINGS

In April 2019, the ODC filed formal charges against respondent, alleging that her conduct as set forth above violated Rule 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) of the Rules of Professional Conduct. Respondent answered the formal charges and admitted her arrest. She further represented that the criminal charges against her had been dismissed following her successful completion of the pre-trial diversion program.

Following the filing of respondent's answer, the matter was set for a formal hearing before the hearing committee. The hearing was initially set for September

³ Respondent's PEth test upon admission to PWEC was positive at greater than 80 ng/mL.

2019, but was continued on motion of respondent. The hearing was finally conducted on March 12, 2020. Both parties introduced documentary evidence, including the reports of the four evaluations to which respondent submitted.⁴ Respondent testified on her own behalf and on cross-examination by the ODC. The ODC called Buddy Stockwell, then the Executive Director of JLAP, to testify before the hearing committee.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing, the hearing committee made the following factual findings:

In the early morning hours of October 13, 2017, respondent was arrested in Baton Rouge and charged with DWI. Respondent successfully completed a pre-trial diversion program which resolved all aspects of the criminal charges stemming from her arrest. As a condition of participating in the program, respondent's vehicle was equipped with an Intoxilyzer device and she was required to undergo random urine drug screening. At no time during the diversion program did respondent's vehicle fail to start as a result of the Intoxilyzer detecting alcohol; however, respondent did test positive for ethanol on at least one occasion during the program.

After respondent self-reported her arrest to the ODC, she was advised to contact JLAP to make arrangements for a substance abuse evaluation. Respondent was initially referred for a low-level evaluation by a licensed psychologist, Dr. Smith, who recommended that she complete a JLAP-approved inpatient assessment to rule out alcohol use disorder. In January 2018, respondent was provided the

⁴ The committee accepted the reports into evidence over the objections of the parties that the documents are hearsay and there was no opportunity to cross-examine the evaluators. See Supreme Court Rule XIX, § 18(B) ("The Louisiana Code of Evidence shall guide, but not restrict the development of a full evidentiary record."); see also *In re: Mitchell*, 13-2688 (La. 5/17/14), 145 So. 3d 305 (holding that the rules of evidence are not to be strictly applied in bar disciplinary cases).

names of eleven sanctioned facilities where she could undergo the inpatient assessment, but she delayed in obtaining the assessment until April 2019, more than a year later and after formal charges had been filed against her.

Beginning on April 29, 2019, respondent underwent a three-day battery of medical, psychiatric, and psychological testing at Palmetto. Following the evaluation, she was diagnosed with alcohol use disorder, moderate, and Palmetto recommended that she complete a long-term inpatient treatment program and then sign a five-year JLAP recovery agreement.

Palmetto's discharge report was provided to Mr. Stockwell on May 15, 2019. Thereafter, this disciplinary matter was set for a hearing on September 13, 2019. In preparation for the hearing, respondent submitted to a pre-hearing deposition, which was conducted by the ODC on August 21, 2019. In her deposition, respondent did not dispute that she was driving a motor vehicle while intoxicated or that her actions violated Rule 8.4(b) of the Rules of Professional Conduct. While not in the deposition transcript, apparently during the pre- or post-deposition conversation, respondent advised the ODC that she would seek the treatment recommended by Palmetto. Accordingly, the September 13, 2019 hearing date was upset and, ultimately, rescheduled to take place on March 12, 2020.

Nevertheless, rather than proceed with a long-term inpatient treatment program, respondent instead presented for a psychological evaluation by Dr. Rasmussen. Dr. Rasmussen, while previously approved by JLAP as a clinical provider, was not a JLAP-approved provider at the time of the September 2019 evaluation. Moreover, respondent would not authorize JLAP to discuss her evaluation with Dr. Rasmussen.

For reasons that are unclear from the record, respondent subsequently presented for a second multidisciplinary inpatient professional assessment, conducted at PWEC in October 2019. After assimilating respondent's test scores,

evaluations, and other medical and clinical data, as well as interviews with four individuals identified by respondent (including her daughter), PWEC's diagnostic impression was that respondent suffers from alcohol use disorder, mild to moderate. PWEC recommended that respondent complete a long-term inpatient treatment program and then sign a five-year JLAP recovery agreement. Notably, this was the second JLAP-approved multidisciplinary assessment which directed respondent to obtain long-term inpatient treatment to address her diagnosis of alcohol use disorder.

In November 2019, JLAP advised respondent of the results of the PWEC assessment and provided her with a copy of the discharge report and recommendations. JLAP also provided respondent with a list of JLAP-approved inpatient facilities and instructed her to select a treatment center within thirty days. However, as of the date of the March 12, 2020 hearing in this matter, respondent had not complied with the recommendation that she enter a long-term inpatient treatment facility. Respondent's justification for not doing so is her belief that (1) she does not have a substance abuse issue, and (2) attending the recommended treatment would cause her financial difficulty.

Based on these findings, and respondent's admission that she was driving while intoxicated, the committee determined she violated Rule 8.4(b) of the Rules of Professional Conduct as charged.

The committee found that respondent violated duties owed to the public and the legal profession. She acted knowingly in operating a vehicle while under the influence of alcohol. Respondent's misconduct caused potential harm to the public and potential harm to the profession. The applicable baseline sanction is suspension.

In aggravation, the committee found a prior disciplinary record and respondent's repeated failure to cooperate with the ODC and JLAP. In mitigation, the committee observed that respondent is a solo practitioner with no other alcohol

or substance abuse related charges in her past. Respondent is also a small business owner, serving an at-risk clientele.

Turning to the issue of an appropriate sanction, the committee recognized that this court has imposed an actual period of suspension in DWI cases involving multiple offenses or in which the arrest stems from a substance use disorder that remains unaddressed. *See In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 3d 941. Applying this jurisprudence, the committee reasoned that an actual period of suspension is warranted in this case. Accordingly, the committee recommended that respondent be suspended from the practice of law for one year and one day. The committee also recommended that respondent be assessed with all costs of this proceeding.

Respondent filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After reviewing this matter, the disciplinary board determined that the hearing committee's factual findings are not manifestly erroneous and are supported by the record. The board adopted these findings. The board also determined that the committee correctly applied the Rules of Professional Conduct.

The board determined respondent violated duties owed to the public and the legal profession. She acted knowingly. She caused potential serious harm to herself and the public by driving while intoxicated. Additionally, respondent's public criminal behavior reflects adversely upon the profession as a whole. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the applicable baseline sanction is suspension.

In aggravation, the board found the following factors are supported by the record: a prior disciplinary record, substantial experience in the practice of law, and

illegal conduct. In mitigation, the board found the imposition of other penalties or sanctions.⁵

After further considering this court's prior jurisprudence addressing similar misconduct, the board determined that a period of active suspension is appropriate in this matter because respondent has not participated in an inpatient treatment program as recommended following two separate assessments at JLAP-approved facilities, and therefore her alcohol use disorder remains unresolved. However, the board recognized that respondent engaged in only one incident of driving under the influence, that she cooperated "to some extent" in obtaining the assessments, and that there is no evidence her misconduct had any detrimental effect on any client. Considering these circumstances, the board recommended respondent be suspended from the practice of law for one year and one day, with all but ninety days deferred, subject to the following conditions:

1. During the active period of her suspension, respondent shall enter into long-term inpatient treatment at a facility currently approved by JLAP, as recommended by Palmetto Addiction Recovery Center and Professionals' Wellness Evaluation Center.
2. Respondent shall complete the recommended long-term inpatient treatment and, thereafter, shall comply with any and all recommendations made by the treatment facility and JLAP, including, but not limited to, entering into (and remaining in compliance with) a JLAP recovery agreement for the period recommended by JLAP, with periodic reports to be provided to the ODC.
3. Deferral of respondent's suspension shall be subject to a period of probation, the term of which shall be two years or the time period of any recommended JLAP recovery agreement, whichever is longer.

⁵ The board declined to adopt the aggravating and mitigating factors cited by the hearing committee which are not specifically included in the ABA Standards.

4. Any failure of respondent to comply with any of the above conditions or the commission by respondent of any misconduct during the probationary period shall be grounds for making the deferred suspension period executory or imposing additional discipline, as appropriate.

The board further recommended respondent be assessed with the costs and expenses of this proceeding.

The ODC 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.

The undisputed facts establish that respondent was knowingly driving while intoxicated. Her actions caused potential harm to the public. Accordingly, we find she violated Rule 8.4(b) of the Rules of Professional Conduct as charged.

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).

The baseline sanction for attorneys convicted of DWI is a suspension, which may be deferred, all or in part, based on the circumstances. In *In re Baer*, 2009-1795 (La. 11/20/09), 21 So. 3d 941, 944, we observed that we “tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, **as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.**” [emphasis added].

Although respondent only had one conviction for DWI, the record reveals she has a significant unresolved substance abuse issue. Following two separate assessments at JLAP-approved facilities, the treating professionals recommended respondent participate in an inpatient treatment. She has failed to do so; therefore, the record demonstrates her alcohol use disorder remains unresolved.

In brief and argument to this court, respondent argues a fully-deferred suspension is justified because she is not refusing to follow JLAP's recommendations but, instead, disputes the accuracy of those recommendations. She urges us to impose a fully-deferred suspension, citing *In re: Lamb*, 2019-1460 (La. 11/19/19), 307 So. 3d 175.

The facts of *Lamb* are clearly distinguishable from the instant case. The respondent in that case was evaluated by JLAP and found to not suffer from a substance use disorder; as such, JLAP did not recommend any further testing or treatment. *Lamb*, 307 So. 3d at 180. These facts stand in stark contrast to the facts of the case at bar, where multiple JLAP evaluations have determined respondent suffers from an alcohol abuse disorder.

While respondent disputes the conclusions of the JLAP evaluations, this court has long accepted the expertise of JLAP in guiding our decisions. Our purpose is not to punish lawyers purely for their substance abuse disorder, but to protect the public from actual and potential harm by ensuring those members of the profession with such problems obtain suitable treatment and are placed under appropriate monitoring in order to practice law with safety. Because issues of diagnosis and treatment are issues of medical science, our decisions must necessarily be based in large part on the evaluations conducted by trained professionals under the auspices of JLAP. These experts have concluded respondent has unresolved issues of alcohol abuse that must be addressed in order for her to practice law safely.

Accordingly, we conclude the appropriate sanction in this case is a suspension for one year and one day. We will defer all but ninety days of this suspension, subject to the condition that, before being reinstated from the active period of this suspension, respondent shall produce evidence to this court that she is in compliance with all treatment recommendations of JLAP and has entered into an appropriate monitoring contract. Upon compliance with this condition, she shall be entitled to be reinstated, subject to a period of probation to coincide with the length of her monitoring contract and with the condition she fully comply with all requirements of that contract.

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 Kathleen M. Wilson, Louisiana Bar Roll number 28836, be and she hereby is suspended from the practice of law for one year and one day. It is further ordered that all but ninety days of this suspension shall be deferred, subject to the condition that, before being reinstated from the active period of this suspension,

respondent shall produce evidence to this court that she is in compliance with all treatment recommendations of the Judges and Lawyers Assistance Program and has entered into an appropriate monitoring contract. Upon compliance with this condition, she shall be entitled to be reinstated, subject to a period of probation to coincide with the length of her monitoring contract and with the condition she fully comply with all requirements of that contract. 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.

05/13/21

SUPREME COURT OF LOUISIANA

NO. 2020-B-1488

IN RE: KATHLEEN M. WILSON

ATTORNEY DISCIPLINARY PROCEEDING

WEIMER, C.J., concurs.

I concur in the opinion, believing that **In re: Baer**, 09-1795 (La. 11/20/09), 21 So.3d 941, remains the touchstone in cases involving DWI convictions.

In **Baer**, the respondent was arrested for DWI on two occasions. She signed a JLAP recovery agreement, but thereafter failed to comply with its requirements. In its opinion, the court reviewed the sanctions imposed in prior DWI cases and provided the following guidance:

We have imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, **we tend to impose an actual suspension in those instances in which multiple DWI offenses are at issue, as well as in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.** [Emphasis added.]

Baer, 09-1795 at 6, 21 So.3d at 944.

Applying these precepts to Ms. Baer, the court concluded that a one year and one day suspension, with no portion of the suspension deferred, was appropriate in light of her two DWI arrests and the fact that her substance use disorder was unresolved. This court further noted:

Should respondent wish to resume the practice of law in the future, she will be required to go through the reinstatement process set forth in Supreme Court Rule XIX, § 24 and demonstrate to our satisfaction that she is healthy enough to resume the representation of her clients in a competent fashion. [*Id.*]

Since **Baer**, this court has been consistent in deferring all or part of a one year and one day suspension in cases in which the lawyer has been arrested for DWI, but fully cooperates with JLAP in seeking an evaluation, obtaining recommended treatment, and signing a recovery agreement. Conversely, when multiple DWI's are at issue or, most significantly, if the respondent has refused to cooperate with JLAP, the court has generally determined that it is appropriate to impose a one year and one day suspension. These decisions are not intended to punish the lawyer, but to ensure the protection of the public by requiring that the lawyer comply with Supreme Court Rule XIX, § 24(E)(3) before resuming the practice of law.¹

In the decade since **Baer**'s rendition in 2009, the court has consistently imposed a year and a day suspension for attorneys convicted of DWI. However, the court has virtually always deferred all or part of the suspension in cases where the attorney fully cooperates with JLAP in seeking an evaluation, obtaining recommended treatment, and signing a recovery agreement.

¹ The court amended Supreme Court Rule XIX, § 24 in November 2019 to specifically recognize the role of JLAP in the reinstatement process. As amended, Rule XIX, § 24(E)(3) provides:

If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed. Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless all three conditions noted below are met:

(a) the lawyer has pursued and complied with the treatment recommendations of the Judge's and Lawyer's Assistance Program ("JLAP") and has complied with the conditions of the monitoring contract;

(b) the lawyer has offered evidence of sustained abstinence from addictive substances or processes and/or has offered evidence of compliance with recommended healthcare regimen prescribed by provider(s) that meet JLAP standards; and

(c) A healthcare provider or team of providers that meets JLAP standards who has been involved with the care of the lawyer indicates in writing that the lawyer's prognosis is sufficiently good to predict that the lawyer will continue to manage any condition or disability effectively.

In essence, the court has taken an approach giving the attorney the benefit of a deferred suspension, but with the potential threat of imposition of the deferred suspension in the event of noncompliance with the recovery agreement. I believe this procedure has brought a level of stability to the disciplinary jurisprudence and has proven effective in protecting the interests of both the attorney and the public.

Of course, this court has long recognized the discipline to be imposed in a particular case will depend on the seriousness and circumstances of the offense, fashioned in light of the purpose of lawyer discipline. See, e.g., Louisiana State Bar Ass'n v. Levy, 400 So.2d 1355, 1358 (La. 1981). While **Baer** forms a useful starting point for analysis of the appropriate discipline in cases arising from substance abuse issues, we do not and should not apply it in a purely mechanical fashion. Rather, each case must be evaluated to determine the unique facts and circumstances bearing on the attorney's condition. An important component of this analysis is the willingness or unwillingness of the attorney to submit to appropriate evaluation by the professionals at JLAP and to avail himself or herself of suitable treatment as recommended by these professionals. While the primary aim of the court is not to punish attorneys for their substance abuse problems, the overarching duty of this court to protect the public may justify imposition of different types of sanctions depending on the attorney's level of cooperation in addressing any substance abuse issues.