Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **10th day of December, 2021** are as follows:

PER CURIAM:

2021-B-01151 ***IN RE: DEVONNA M. PONTHIEU***

SUSPENSION IMPOSED. SEE PER CURIAM.

SUPREME COURT OF LOUISIANA

NO. 2021-B-1151

IN RE: DEVONNA M. PONTHIEU

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

By way of background, A.B. and Craig Wheelis were in a dating relationship while they both worked at Turner Industries. When their relationship ended, A. B. filed a criminal complaint against Mr. Wheelis. She also obtained a criminal protective order against Mr. Wheelis. When Mr. Wheelis lost his job because of the protective order, he hired attorney William Robert Gill, who filed an exception to the protective order. Consequently, A.B. hired respondent to represent her in the proceeding.

Mr. Gill spoke to respondent about the possibility of having the criminal protective order withdrawn and, in its place, imposing a mutual civil restraining order or injunction prohibiting each party from harassing or communicating with the other. When respondent advised A.B. of Mr. Gill's suggestion, A.B. indicated she would resolve the matter only if Mr. Wheelis paid her $100,000 in "damages," in exchange for which A.B. indicated she would withdraw the criminal charges and have the matter replaced with a mutual civil restraining order. Respondent transmitted A.B.'s offer to Mr. Gill via email on October 5, 2017, specifically stating

that, in exchange for the $100,000 payment, A.B. "also said that she will not show up at trial for the criminal matter."

DISCIPLINARY PROCEEDINGS

In May 2019, the ODC filed formal charges against respondent, alleging that her conduct 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. Specifically, the ODC alleged that respondent's offer of anything of value in exchange for not cooperating and/or refusing to show up at a criminal trial is the criminal offense of extortion and/or bribery, pursuant to *In re: Sharp*, 01-1117 (La. 12/7/01), 802 So. 2d 588. Respondent, through counsel, answered the formal charges and denied any misconduct.

The parties subsequently entered into a stipulation that the factual allegations set forth in the formal charges are true and correct. They further stipulated that respondent's conduct violated Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). Finally, they stipulated to the following additional facts:

1. A.B. and Mr. Wheelis were in a dating and intimate relationship that lasted more than one year;
2. A.B. alleges that, during the relationship, Mr. Wheelis engaged in conduct that reasonably concerned and scared A.B.;
3. Because of Mr. Wheelis' conduct, A.B. believed she had a reasonable basis to fear for her safety and to discontinue further contact and communication with him; and
4. The basis for A.B.'s concerns and fears are reflected in respondent's exhibits, to which the ODC has no objection.

Hearing in Mitigation

Based on the parties' stipulations, the formal hearing was converted into a hearing in mitigation. Respondent testified on her own behalf and on cross-examination by the ODC. She also called A.B. and Mr. Gill to testify before the committee. Mr. Wheelis did not appear in person before the committee but a transcript of his sworn statement was introduced into evidence.

CRAIG WHEELIS' SWORN STATEMENT TESTIMONY

Mr. Wheelis testified that, prior to the end of his relationship with A.B., he had given her his credit card to use during an emergency. Instead, she went on a spending spree. When they broke up, she still had his credit card. On July 3, 2017, his friend called him at home to tell him A.B. was claiming he was driving by her house. Mr. Wheelis denied doing so and indicated he was at home twenty miles away. However, he decided he should get his credit card back since A.B. was stirring up trouble. He drove to A.B.'s house but claimed he never had contact with or saw her; he did not even knock on her door.

Mr. Wheelis was subsequently arrested for stalking A.B., and A.B. obtained a protective order against him. Because of the protective order, he was fired from Turner Industries. Mr. Wheelis wanted the criminal matter concluded, so he pleaded guilty to a misdemeanor in November 2017 even though he denies doing anything wrong.

In October 2017, just prior to his guilty plea, his attorney told him about respondent's email. When he read the email, he immediately thought respondent and A.B. were trying to bribe and extort him. He wanted to take the issue to the district attorney's office to be entered into the record of his criminal case, but that never happened. Mr. Wheelis also claimed A.B. had tried to extort money from other men she had been in relationships with in the past and indicated none of the

complaints A.B. had about him were true. Mr. Wheelis further indicated he was fired by Turner Industries because A.B. told their employer he was convicted of a felony and was sentenced to five years in prison, which was not true. Efforts were made to help him resolve this matter with his former employer.

WILLIAM ROBERT GILL'S TESTIMONY

Mr. Gill testified he knew respondent professionally before he began representing Mr. Wheelis. He indicated that he and respondent have a "really good relationship" and that he respects her. He described her as professional, trustworthy, and honest. He also indicated that judges like her and that she tries to help her clients for the right reasons, even if she cannot collect much of a fee from them.

Regarding respondent's October 2017 email, Mr. Gill testified the amount requested did not bother him. However, the fact that respondent stated A.B. would not show up for Mr. Wheelis' trial in exchange for the $100,000 payment bothered him. He addressed his concerns with respondent, and respondent told him A.B. had insisted she send the email. Because Mr. Gill knows respondent so well, he did not consider the email as an extortion or bribery attempt.

A.B.'S TESTIMONY

A.B. testified that she obtained a protective order against Mr. Wheelis on her own. When Mr. Wheelis hired an attorney to file an exception to the protective order, A.B. hired respondent to represent her in the proceeding. Regarding the October 2017 email, A.B. indicated she wanted to request $100,000 from Mr. Wheelis so she could move out of state and start over far away from him. However, she never thought he would really give her that much money. She acknowledged respondent advised her she could not ask for that much money, but she still wanted respondent to send the email. Her point in asking for that amount was to show Mr.

Wheelis she was not going to drop the protective order against him. She never intended to extort or bribe Mr. Wheelis, and she does not believe that is what she did. Finally, A.B. opined that Mr. Wheelis filed a disciplinary complaint against respondent as a way to target and go after A.B. herself.

RESPONDENT'S TESTIMONY

Respondent testified that when she informed A.B. that Mr. Gill wanted to convert the protective order to a reciprocal civil restraining order, A.B. said Mr. Wheelis would have to pay her $100,000 to do so. Respondent told A.B. the amount was "crazy," and she needed to make a reasonable offer. She advised A.B. she could not get punitive damages in this type of case, and $100,000 would be punitive. However, A.B. insisted, indicating she would use the money to move far away and would not even return for Mr. Wheelis' trial. A.B.'s reasoning was that she wanted to move out of state if Mr. Wheelis was still able to possess a firearm, which he would be able to do if he had a civil restraining order against him instead of a protective order.

Under Rule 1.2 (scope of the representation) of the Rules of Professional Conduct, respondent believed she had a duty to convey A.B.'s settlement offer to Mr. Gill. A.B. was adamant about the amount. As such, respondent sent the settlement offer to Mr. Gill in an email and included the last sentence about A.B. saying she would not show up for the trial. A.B. was in respondent's office when she wrote and sent the email. In retrospect, respondent acknowledged she should not have included the last sentence. However, the last sentence was not an effort at extortion or bribery. It was just a way to reiterate A.B.'s wish to move far away. It was not meant as a quid pro quo. No such agreement was ever drafted or signed, and Mr. Wheelis only paid A.B. $1,500 total for respondent's attorney's fees and for A.B.'s purchase of a gun, a concealed carry class, and self-defense classes.

Respondent admitted the email was a violation of the Rules of Professional Conduct. She understands why it caused concern for Mr. Gill and Mr. Wheelis. She also understands she cannot do something her client wants her to do if it will violate the Rules of Professional Conduct. She expressed remorse for her conduct and stated that in hindsight, she would have told A.B. that she could not send the email.

Hearing Committee Report

After considering the testimony and evidence presented at the hearing in mitigation, the hearing committee acknowledged the stipulations agreed upon by the parties. These stipulations included facts and rule violations. Specifically, the parties stipulated that respondent's conduct, as set forth in the formal charges, violated Rules 8.4(a), 8.4(b), and 8.4(d) of the Rules of Professional Conduct.

Based on these findings, the committee determined respondent violated duties owed to the public and the legal system. According to the committee, respondent acted knowingly by sending the email, even though she may not have fully comprehended the consequences of sending the email at the time. Her misconduct caused potential harm to Mr. Wheelis and to the legal system, although there was no actual harm of any significance. Elaborating, the committee stated that respondent made a mistake when she sent the email to Mr. Wheelis' attorney and that she was trying to convey the wishes of her client. Thus, the committee determined respondent did not intentionally interfere with the administration of justice, although she did knowingly send the email. Furthermore, during the mitigation hearing, respondent expressed remorse and indicated she understood that she made a mistake when she sent the email. According to the committee, it does not appear as if there was a scheme beyond the sending of the email.

After then considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension. The committee also

found the following mitigating factors to be present: absence of a prior disciplinary record, absence of a dishonest or selfish motive, character or reputation, and remorse. The committee did not indicate whether any aggravating factors are present.

On the issue of an appropriate sanction, the committee found guidance from *In re: Sharp*, 01-1117 (La. 12/7/01), 802 So. 2d 588, wherein an attorney assisted his criminal client in a scheme to induce the minor victim in the underlying criminal proceeding and the victim's mother to drop the charges in exchange for money. Mr. Sharp drafted an agreement to this effect. However, the victim and her mother never signed the agreement, and Mr. Sharp's client never paid the money. Nevertheless, the victim and her mother still believed for a period of time that the agreement was in force, even after being advised by their counsel it was unenforceable and possibly illegal. For this misconduct, the court suspended Mr. Sharp from the practice of law for one year and one day. Distinguishing respondent's conduct from the conduct in *Sharp*, the committee noted respondent never drafted a formal agreement; instead, she only sent an email, which she believed was simply a settlement offer.

Under the totality of the circumstances, the committee recommended respondent be suspended from the practice of law for nine months, with six months deferred. The committee further recommended that any violation of the Rules of Professional Conduct during the deferral period should result in the deferred portion of the suspension becoming executory.

The ODC objected to the hearing committee's recommended sanction.

Disciplinary Board Recommendation

After reviewing this matter, the disciplinary board determined that the hearing committee's factual findings, which include the stipulations entered into by the parties, are not manifestly erroneous and are supported by the record. Accordingly,

the board adopted same. The board specifically emphasized the parties' stipulation that respondent's exhibits reflect A.B.'s concerns and fears regarding Mr. Wheelis. The board further noted that respondent stipulated to violating Rules 8.4(a), 8.4(b), and 8.4(d) of the Rules of Professional Conduct.

Based on the stipulated facts and rule violations, the board determined respondent violated duties owed to the public and the legal system. Like the committee, the board determined respondent acted knowingly by sending the email to Mr. Gill, even though she did not fully comprehend the consequences of sending the email at the time. While respondent caused no actual harm of any significance, her misconduct caused the potential for harm to Mr. Wheelis and the legal system. The board also agreed with the committee that the baseline sanction is suspension based upon the ABA's *Standards for Imposing Lawyer Sanctions*.

In aggravation, the board found only respondent's substantial experience in the practice of law (admitted 2002). In addition to the mitigating factors found by the committee, the board found the mitigating factor of full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings to be present. In further mitigation, the board noted respondent's convincing testimony at the hearing that she was only attempting to convey her client's settlement offer to Mr. Gill and that she did not intend to commit bribery or extortion.

Like the committee, the board found guidance from *Sharp* in determining an appropriate sanction. In particular, the board noted Mr. Sharp was never charged with any criminal violations, but he conceded he made a mistake of judgment in drafting the agreement. Mr. Sharp claimed his intent was only to resolve the matter without a trial, not to engage in the illegal act of attempting to bribe a witness. Furthermore, once the victims' attorney indicated the agreement was improper, Mr. Sharp believed the agreement was abandoned by the parties. In suspending Mr. Sharp for one year and one day, the court concluded he was sincere, although

mistaken, in believing he was not engaging in an illegal act by drafting the agreement. The court further stated that, "while [Mr. Sharp's] state of mind does not excuse his actions, it serves to mitigate the sanction."

The board also found guidance from *In re: Pryor*, 15-0243 (La. 9/1/15), 179 So. 3d 566. In *Pryor*, an attorney represented a defendant in a criminal matter. The attorney offered the victim $300 to execute an affidavit dropping the charges against his client and later upped the offer to $500 for the witness not to show up in court for his client's trial. The court found the attorney knowingly, if not intentionally, violated duties owed to the public and the legal system. The court also noted that, although no harm actually occurred, a significant potential for harm existed. Relying largely on *Sharp* to determine the sanction, the court noted that "*Sharp* suggests the intent of the lawyer is critical in determining the severity of the sanction to be imposed." The court also noted that a significant factor in determining the sanction is the manner in which other individuals perceive the attorney's conduct. Under these circumstances, the court imposed a suspension for one year and one day for the attorney's attempted bribery.

In comparing respondent's conduct to *Sharp*, the board determined that she, like Mr. Sharp, did not believe she was engaging in an illegal act when she sent the email to Mr. Gill. She believed she was only transmitting her client's settlement offer, and she never intended to extort or bribe anyone. However, like both attorneys in *Sharp* and *Pryor*, respondent's conduct could have been interpreted by others to be bribery and/or extortion. In fact, Mr. Wheelis testified at his sworn statement that he believed respondent's email to Mr. Gill constituted bribery and extortion. Overall, the board determined respondent's actions were not as egregious as those found in *Sharp* and *Pryor*, explaining that, after respondent sent the email, Mr. Gill counseled her that the offer could be interpreted as extortion, and she did not pursue the offer any further. She also did not take affirmative steps to formalize the

settlement offer into a formal agreement or affidavit as did the attorneys in *Sharp* and *Pryor*.

In light of the above findings, the board recommended respondent be suspended from the practice of law for nine months, with six months deferred. The board further recommended that any violation of the Rules of Professional Conduct during the deferral period may result in the deferred period becoming executory, or the imposition of additional discipline, as appropriate.

The ODC filed an objection to the 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 underlying facts of this matter are not in dispute, having been stipulated to by the parties. Essentially, respondent, at her client's insistence, conveyed a $100,000 settlement offer to opposing counsel, in exchange for which the client indicated that she would not appear at the opposing party's criminal trial. Respondent admitted that by her conduct, she violated Rules 8.4(a), 8.4(b), and

8.4(d) of the Rules of Professional Conduct. The record supports the stipulated facts and rule violations.

Disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *In re: Hingel*, 20-0992 (La. 11/10/20), 303 So. 3d 1029. 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. *In re: Smothers*, 20-0244 (La. 6/22/20), 297 So. 3d 743. The purpose of lawyer disciplinary proceedings is not so much to punish the attorney as it is to maintain appropriate standards of professional conduct in order to protect the public and the administration of justice. *Louisiana State Bar Ass'n v. Powell*, 439 So. 2d 415 (La. 1983).

Respondent violated duties owed to the public and the legal system. She acted knowingly by sending the email to opposing counsel; however, we agree with the committee and the board that she did not fully comprehend the consequences of her conduct at the time. Respondent caused no actual harm but clearly the potential existed for harm to the opposing party and the legal system. The baseline sanction for this misconduct is suspension. The record supports the disciplinary board's findings regarding aggravating and mitigating factors.

Turning to the issue of an appropriate sanction, we have in the past not hesitated to deal harshly with lawyers who give or offer to give anything of value to a witness with the intent to influence their conduct as witnesses in criminal proceedings. In *In re: Hingle*, 98-0774 (La. 9/18/98), 717 So. 2d 636, we disbarred an attorney who was convicted of the crime of public bribery stemming from his payment of a witness's debts in exchange for the witness's agreement not to testify against his clients. The lawyer in *Louisiana State Bar Ass'n v. Pitard*, 462 So. 2d 178 (La. 1985), was likewise convicted of public bribery after he offered financial

"settlements" to the families of three victims in exchange for affidavits exonerating his client of wrongdoing. However, in both *Hingle* and *Pitard*, the evidence established not only a conviction of a serious felony but also that the lawyer had knowingly pursued an inappropriate course of action.

In a similar vein, but without evidence of payment of money or a criminal conviction, we addressed *In re: Sharp*, 01-1117 (La. 12/7/01), 802 So. 2d 588. In *Sharp*, the respondent lawyer represented a criminal defendant charged with carnal knowledge of a juvenile. Based upon representations made by his client, the respondent was convinced that the mother of the fourteen-year old victim would accept $10,000 in exchange for requesting that the criminal charges be dropped. The respondent met with the mother and extended the $10,000 offer, which she accepted. Thereafter, the respondent drafted a formal written agreement between his client and the child's mother memorializing the offer, and he recommended that she seek the advice of independent counsel to review it. She did so and counsel contacted respondent to advise that the agreement was unenforceable and perhaps illegal. The respondent then told his client the deal would not work, and the agreement was never signed, and no payment was made.

Later, the mother of the minor child brought the agreement to the attention of the district attorney's office, which in turn filed a complaint against the respondent with the ODC. The ODC filed formal charges alleging that the respondent's conduct amounted to public bribery, even though the respondent was never criminally charged. The respondent acknowledged his involvement, but denied criminal misconduct or intent. He conceded making a mistake in judgment in drafting the agreement.

In reviewing the matter, we found the respondent assisted his client in a scheme to induce the victim in the underlying criminal proceeding to drop the criminal charges in exchange for the payment of money. We commented that such

conduct by a lawyer eroded public confidence in the criminal justice system and called the entire legal profession into disrepute. Nevertheless, we recognized significant mitigating factors in the respondent's favor, in particular the fact that he sincerely did not believe he was engaging in an illegal act by drafting the agreement and that he abandoned the agreement once he learned from other counsel that it was improper. Concluding that these factors did not excuse the respondent's actions, but served to mitigate the sanction, we suspended him from the practice of law for one year and one day.

We find the instant case is distinguishable from *Sharp*. Mr. Sharp, the attorney for a criminal defendant, drafted a formal written agreement offering money to the victim in exchange for her request that the criminal charges be dropped. This conduct was absolutely improper and resulted in an erosion of public confidence in the criminal justice system. On the other hand, respondent, the attorney for the victim of a criminal offense, sent an email to opposing counsel offering a settlement demand to the defendant. While there was potentially a basis for a civil claim by the victim against the defendant, respondent erred in adding – at the request of her client – that if the settlement were paid, the client would not appear at the defendant's trial to testify against him. These facts, coupled with respondent's convincing testimony that she conveyed the offer only because she thought she was ethically bound to comply with her client's instructions, lead us to the conclusion that respondent's conduct is not as egregious as that which we previously considered in *Sharp*.

Under these circumstances, we find the appropriate sanction for respondent's misconduct is a nine-month suspension, with six months deferred, followed by one year of probation during which respondent must attend and successfully complete Ethics School. This sanction will give respondent an opportunity to correct the problems which caused the misconduct, while at the same time protecting the public from future misconduct.

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 DeVonna M. Ponthieu, Louisiana Bar Roll number 27855, be suspended from the practice of law for nine months. It is further ordered that six months of the suspension shall be deferred. Following the active portion of the suspension, respondent shall be placed on unsupervised probation for one year, during which time she must attend and successfully complete the Louisiana State Bar Association's Ethics School. The probationary period shall commence from the date respondent and the ODC execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the 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.