

ORIGINAL

Louisiana Attorney Disciplinary Board	
FILED by: <i>Lyndis Amato</i>	
<u>Docket#</u>	<u>Filed-On</u>
13-DB-036	2/5/2015

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DONALD R. PRYOR

NUMBER: 13-DB-036

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel ("ODC") against Donald R. Pryor ("Mr. Pryor" or "Respondent"), bar roll number 18389. ODC alleges that Respondent is guilty of violating the Rules of Professional Conduct ("Rule(s)"), as follows: Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); Rule 8.4(b) (committing a criminal act, especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and 8.4(d) (engaging in conduct that is prejudicial to the administration of justice).¹ The Committee found that the ODC proved by clear and convincing evidence that Respondent violated Rule 8.4(a) through (d) and recommended disbarment.

For the following reasons, the Board adopts the Committee's findings of fact and conclusions of law. However, the Board recommends that Respondent be suspended for one year and one day rather than be disbarred as recommended by the Committee.

¹ The text of the rules is contained in the attached Appendix.

PROCEDURAL HISTORY

The formal charges were filed on July 3, 2013. On October 7, 2013, Respondent answered the formal charges denying any misconduct. ODC filed a pre-hearing memorandum on December 16, 2013 and a supplemental brief on February 21, 2014. Respondent filed a pre-hearing memorandum on March 10, 2014. After two continuances, this matter proceeded to hearing on March 14, 2014. Deputy Disciplinary Counsel Tammy P. Northrup appeared on behalf of ODC. Respondent appeared along with his attorney, Sheila C. Myers.

ODC filed a post hearing memorandum on May 2, 2014. Respondent filed a post hearing memorandum on May 7, 2014. The hearing committee issued its report on July 29, 2014 recommending that Respondent be disbarred.² ODC filed a response to the report on August 20, 2014 noting it had no objection to the Committee's recommendation.

Respondent filed a pre-argument brief on September 25, 2014. ODC filed a reply brief on October 2, 2014. Oral argument of this matter was heard on November 13, 2014, before Board Panel "B".³ Deputy Disciplinary Counsel Tammy P. Northrup appeared on behalf of ODC. Respondent appeared with his attorney, Sheila C. Myers.

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I (ODC Investigative File No. 0028048)

Graymond F. Martin, an Orleans Parish Assistant District Attorney, filed the instant complaint against Respondent. Mr. Graymond provided a transcript to the Office of Disciplinary Counsel in the matter captioned as State of Louisiana

² Hearing Committee No. 24 is composed of Mary L. Dumestre (Committee Chair), Keith McBride Pyburn Jr. (Lawyer Member) and Shawn Clancy Lee (Public Member).

³ Board Panel "B" is composed of R. Steven Tew (Chairman), Carrie Leblanc Jones (Lawyer Member), and R. Lewis Smith, Jr. (Public Member).

versus Emily Winborn, Case Number 498-791, Sec A, of the Criminal District Court for the Parish of Orleans. Respondent represented Ms. Winborn who was charged with simple burglary of an inhabited dwelling in this criminal proceeding. Ms. Winborn allegedly broke into the home of Brian Bode and stole a gun. Mr. Bode's neighbor called him while he was at work and informed him that someone was breaking into his home. The home was a raised double-shotgun house in which Mr. Bode lived in one side and his sister lived in the other. Mr. Bode left work and found Ms. Winborn leaving his sister's side of the house. His neighbor then called him and informed him that Ms. Winborn was the lady who had broken into his house. Mr. Bode called the police and Ms. Winborn was charged with simple burglary of an inhabited dwelling. Mr. Bode testified on behalf of the prosecution at trial. During his testimony, Mr. Bode testified that Respondent came to a restaurant he owns with his daughter and offered him \$300.00 to drop the charges against Ms. Winborn. Mr. Bode also testified that when he refused to drop the charges, Respondent confronted him again and offered him \$500.00 not to show up in court for Ms. Winborn's trial. Respondent denies these allegations, but ODC Senior Investigator Robin Mitchell, interviewed Mr. Bode, and according to Ms. Mitchell, Mr. Bode is a credible witness. Mr. Bode also indicated that he would testify at a disciplinary hearing if subpoenaed to do so.

Respondent's actions in this matter constitute the commission of a criminal act which reflects adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of Rule 8.4(b); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(d); and violating or attempting to violate the Rules of Professional Conduct, in violation of Rule 8.4(a) of the Rules of Professional Conduct.

THE HEARING COMMITTEE'S REPORT

As noted above, the Committee issued its report on July 29, 2014. The Committee found as follows:

EVIDENCE

At the March 14, 2014 hearing on this matter, the ODC presented three witnesses: Respondent, Mr. Martin, and Mr. Bode. Respondent testified that he has been practicing law since 1978. Trans. p. 25, ll. 3-14. Eighty to ninety percent of his practice is criminal law. *Id.* p. 26, ll. 8-10. Respondent admitted that he went to Mr. Bode's restaurant on August 20 [2010] to ask if Mr. Bode would drop the charges against Ms. Winborn. *Id.* p. 39, ll. 1-25 and p. 40, ll. 1-4. Respondent admitted that he offered Mr. Bode \$300, purportedly as restitution for the lost gun, but also asked Mr. Bode to execute an affidavit to the effect that he would not prosecute the charges against Ms. Winborn. *Id.* p. 45, ll. 6-20. Respondent denied that the offer of \$300 was payment to drop the charges. Rather, Respondent testified that he went to the restaurant to try to get Mr. Bode to sign

an affidavit of non-prosecution, and he offered the \$300.00 only as "restitution" for the stolen gun. Respondent's own testimony contradicts his position:

Q: [You weren't] going to give the three hundred dollars to Mr. Bode unless he signed the affidavit?

A: No. The affidavit was basically - and I think this affidavit is the most important part, I don't want to get it confused or mixed up at all. Because I do understand that if it is the original intent of Mr. Bode, if it is the original intent of Emily that he told her that he did not want to pursue any charges, that is the whole purpose of getting the affidavit. Restitution for the three hundred dollars for the gun is just, you know, incidental to make him whole.

Q: Okay. Did he get the three hundred dollars ... ?

A: No.

Q: Why not?

A: Because he said he didn't want to do an affidavit.

Id. p. 65, ll. 12-25 and p. 66, ll. 1-6.

When asked if the payment was contingent on Mr. Bode signing the affidavit, Respondent replied: "No. That paid money was contingent upon him being made whole as related to him saying that he did not want to pursue any charges." *Id.* p. 64, ll. 11-23 (emphasis added). In his convoluted way, Respondent admitted that the \$300 payment was contingent on Mr. Bode dropping the charges. Thus, Respondent's own testimony indicates that he was attempting to pay Mr. Bode \$300.00 as a bribe to drop the charges.

Moreover, Mr. Bode testified that on the first visit from Respondent at the restaurant, Respondent told him that he had \$300 to take care of the charges and the gun. Mr. Bode testified that he then told Respondent that he had already found the gun:

A: I don't know what period of time it was, but [Respondent] came to my daughter-in-law's place of business and asked to speak, asked my daughter if I were there, and my daughter called me over and I spoke to Mr. Pryor. And he told me that - he tapped his suit coat with his hand and said, I have three hundred dollars here if you drop the charges and that'll take care of the gun. I told him I found the gun in the yard within, I think I said, three weeks. He asked if I reported it to the DA. I said: No. Should I have? And I don't recall him answering the question.

Id. p. 168, ll. 15-25 and p. 169, ll. 1-7. Thus, no restitution was appropriate at that time.

Respondent also testified that after the first visit, he went back to the restaurant to speak with Mr. Bode, but denied that he offered Mr. Bode \$500 not to appear at the trial to be held the next day. *Id.* p. 53, ll. 12-16; p. 55, ll. 18-25 and p. 56, ll. 1-2. Respondent testified that he went back to Mr. Bode's restaurant the second time because Mr. Bode told him he would think about dropping the charges. This also was contradicted by Mr. Bode's testimony. Mr. Bode testified that he informed Respondent on the day he came to his restaurant the first time that he would not drop the charges:

Q: And did you tell him - or what did you tell him, I guess, is a more appropriate way to ask it?

A: I told him it was a weapon, and I thought it was very dangerous, I didn't want to drop the charges.

Q: Did you tell him you would think about it, or you told him that day, I'm not going to drop the charges?

A: I'm, I'm pretty sure I told him that day that I'm not going to drop the charges.

Id. p. 170, ll. 9-19.

Further evidence of Mr. Bode's credibility regarding the first visit is the fact that on the next day following Respondent's first visit to his restaurant, Mr. Bode phoned the district attorney's office to report the incident:

Q: After he came that day, did you notify anyone what he offered you?

A: Yeah, I called the district attorney's office the next day when I got to work and spoke to someone and told them what happened. And they asked if they could send someone to talk to me, or send two detectives to talk to me. I told them yes, they could, but at my job, I didn't want them coming to my residence.

Q: So you say two detectives came to talk to you?

A: Yes.

Q: And they came to the [place] where you work?

A: Yes, they did.

Q: And that was shortly after you reported the incident to the District Attorney's Office?

A: Yes. It may have been the next day.

Q: Do you remember reporting it almost immediately after it happened?

A: Yes. I called the next day.

Id. p. 171, ll. 23-25 and p. 172, ll. 1-20.

Mr. Bode's testimony that he immediately reported Respondent's offer of \$300.00 in exchange for him dropping the criminal charges against Ms. Winborn to the district attorney's office was corroborated by the testimony of Graymond F. Martin, the First Assistant District Attorney for the Parish of Orleans, who testified he sent an investigator to talk to Mr. Bode well before trial:

Q: I just want to clarify something Mr. Martin. When you first learned of this and sent the investigator or policemen out to see if Mr. Bode would wear a wire, that was in fact before you received the transcript and before the trial, correct?

A: Oh, way before, yes.

Q: So the District Attorney's Office heard about these allegations by Mr. Bode well before trial?

A: We sent someone out to interview Mr. Bode and see if Mr. Bode would be willing to help us gather more concrete evidence, i.e., the words that we could hear, and he elected not to participate at that level. And we said o.k.

Id. p. 158, ll. 6-22.

Mr. Bode testified that when Respondent came the second time to the restaurant, Respondent asked him not to show up for the trial, advising that he had \$500 for him:

Q: And did Mr. Pryor come back to your place of business another day?

A: Yes, he did, right before the actual trial.

Q: And the records that have been introduced into this proceeding Mr. Bode indicate the trial was in February 2011?

A: That's correct.

Q: Is that about the time that Mr. Bode came back - I'm sorry - Mr. Pryor came back to you place of business?

A: Yes.

Q: And what happened when he came back for that second time?

A: He asked me not to show up for court, and he touched his coat pocket top, his suit coat and said he had five hundred dollars if I didn't show up for court.

Id. p. 170, ll. 20-25 and p. 171, ll. 1-12.

Mr. Bode again testified later in the hearing that Respondent offered him \$500.00 not to appear in court:

Q: ... you say he offered five hundred dollars if you would not go to court?

A: Yes.

Q: Is that accurate?

A: Yes.

Id. p. 173, ll. 21-25 and p. 174, l. 1.

Mr. Bode also testified that when he did appear in court to testify at the criminal proceeding, Respondent approached him referencing the offer of \$500.00 for him not to appear.

Q: When you [went] to court that day, did you encounter Mr. Pryor?

A: Yes. When he saw me sitting in court, he approached me and he said, "I thought we had a deal, you weren't going to show up." And I said - he said, "Would you step out in the hall?" And I motioned to the district attorney and called him over and Mr. Pryor and the district attorney had a few words and they walked off.

Id. p. 175, ll. 14-23 and p. 177, l. 1. Respondent testified that he did not see Mr. Bode again until the day of trial and denied talking to Mr. Bode on that day. *Id.* p. 56, ll. 3-8.

Mr. Bode further testified that he did not know Mr. Pryor before the criminal matter and he would have no reason to fabricate his testimony:

Q: And, Mr. Bode, do you have any reason to make this stuff up about Mr. Pryor if it didn't occur? The allegations are, or the defenses to this is that, this did not occur, Mr. Pryor denies that he offered you money to drop the charges and to not show up in court. Why would you - I mean, do you have any reason to sit up here and testify under oath that this occurred if it did not in fact occur?

A: No.

Q: Do you have any grudges against Mr. Pryor?

A: No. I just had a funny feeling that he couldn't be trusted.

Q: And you didn't know him before this matter with Ms. Winborn occurred?

A: No, I didn't.

Id. p. 178, ll. 22-25 and p. 179, ll. 1-14.

Former criminal court judge Calvin Johnson testified for Respondent. Judge Johnson testified that he has known Respondent for all of his career, and that Respondent was a good, prepared, and diligent lawyer. *Id.* p. 234, ll. 9-25 and p. 235, ll. 1-2. He has never known Respondent to be dishonest and has never heard of Respondent trying to bribe anyone. *Id.*, p. 235, l. 11. Judge Johnson was not involved in the *Winborn* case. *Id.*, 239, ll. 22-25 and p. 239, ll. 1-8.

He testified that he was familiar with affidavits of non-prosecution and used them when a victim expressed an unwillingness to go forward. However, Judge Johnson testified that money "never, ever" changed hands. *Id.* p. 240, ll. 10-25 and p. 241, ll. 1-6. But he also testified that he had not seen such an affidavit in use since the 1980s. *Id.* p. 242, ll. 17-25 and p. 243, l. 1. And although "restitution might be paid in connection with the affidavit," Judge Johnson's testimony appeared guarded, with the implication that the restitution would be paid even if the victim would not drop the case. The evidence of restitution would be used to mitigate the sentence. *Id.* p. 241, ll. 7-25 and p. 242, ll. 1-16.

Respondent also called Robert Jenkins, a criminal defense attorney of twenty-five years who teaches trial practice at Tulane Law School. *Id.* p. 245, ll. 9-23. He was accepted as an expert in criminal defense practice and trial preparation. *Id.*, p. 247, ll. 18-25. Mr. Jenkins' practice, when he meets with a victim, is to notify the district attorney's office and to have an independent attorney go with him for the interview. *Id.* p. 248, ll. 22-25 and p. 250, ll. 1-11.

Mr. Jenkins also was familiar with affidavits of non-prosecution, but they rarely work. *Id.* p. 253, ll. 4-25 and p. 254, ll. 1-2. As an experienced attorney, he

knew that when restitution is offered, the attorney must take an unbiased witness to confirm that the offer really is restitution and not a bribe. *See id.*, p. 254, ll. 3-25 and p. 255, ll. 1-25. Mr. Jenkins will not even sign the affidavit himself, as it would be a conflict of interest, but enlists the help of the independent attorney who accompanied him. *Id.*, p. 257, ll. 21-25 and p. 258, ll. 1-18. He would never just approach a victim of an alleged theft without prior notice. *Id.*, p. 269, l. 25 and p. 270, ll. 1-25. Significantly, Respondent - likewise an experienced criminal defense attorney - never took these safeguards.

Mr. Jenkins was not involved in the *Winborn* case and knew nothing about it. *Id.*, p. 265, ll. 10-20. He testified that he never would offer money to a victim to drop a case; that would be unethical. *Id.*, p. 268, ll. 14-25 and p. 269, ll. 1-16.

FINDINGS OF FACT

1. Respondent represented Ms. Winborn, who was charged with simple burglary of an inhabited dwelling in the criminal proceeding *State of Louisiana v. Emily Winborn*, Case Number 498-791, Sec. A, of the Criminal District Court for the Parish of Orleans.
2. Mr. Bode's neighbor saw Ms. Winborn exiting Mr. Bode's house carrying the black camera bag where he kept his gun.
3. When Mr. Bode returned home after the neighbor called him, he discovered that his gun was gone.
4. Ms. Winborn was charged with entering Mr. Bode's home and stealing a gun.
5. Respondent came to a restaurant Mr. Bode owns with his daughter and offered him \$300 to drop the charges against Ms. Winborn.
6. During the first visit Mr. Bode told Respondent that he had found the gun and that he would not drop the charges.
7. The day before Ms. Winborn's trial, Respondent came to the restaurant again and offered Mr. Bode \$500 not to show up in court for Ms. Winborn's trial.
8. Ms. Winborn was convicted of the crime.

This matter came down to credibility. Mr. Bode was a credible witness, with no apparent motive to lie about his interactions with Respondent. For the most part, Respondent admitted to the facts as Mr. Bode related regarding the two visits at the restaurant. The significant divergence was that Respondent contended that the payment was only restitution, and whether Respondent offered \$500 to induce Mr. Bode to fail to appear at the trial. However, after hearing the testimony, observing the witnesses demeanors, and considering the logical interpretation of the interactions, the Committee finds that Respondent went to visit Mr. Bode at the restaurant where he worked and offered him \$300 as payment if he would to agree to drop the charges against Ms. Winborn. Although Respondent calls the \$300 an offer of restitution, it clearly was conditioned upon Mr. Bode agreeing to drop the charges. When Mr. Bode refused, he was not paid

the "restitution." Moreover, payment for the loss of the gun was not necessary because Mr. Bode told Respondent that he had found the gun.

The second visit, which occurred ten days later and the day before the trial, included an increased offer of \$500 as payment for not showing up on the day of trial. Although Respondent attempted to show that Mr. Bode's memory was failing, the details he did remember - along with a lack of true motive to lie either at trial or the hearing - leads the Committee to believe Mr. Bode's version of the facts.

Thus, clearly the initial \$300 was offered not as "restitution," but strictly as a bribe for Mr. Bode to dismiss the charges against Respondent's client. In addition, the \$500 was offered, on the day before the trial, and as a last resort, so that Mr. Bode would not appear at the trial and thus make it more likely that the charges would be dropped. Respondent's conduct was a criminal act reflecting adversely on Respondent's honesty, trustworthiness and fitness as a lawyer, and was conduct prejudicial to the administration of justice. His testimony at the hearing also involved dishonesty, fraud, deceit or misrepresentation.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in Section 2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Subsection (G)(2)(a) states that the Board is "to perform appellate review functions, consisting 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.

A. Manifest Error Inquiry

Here, the Committee's findings of fact are supported by the record and are not manifestly erroneous.

B. *De Novo* Review

The Board finds that the Committee correctly applied the Rules of Professional Conduct to the facts when they concluded that Respondent violated Rule 8.4(a) through (d). Although Mr. Pryor was never charged with the crime of attempted public bribery, the Committee determined that Mr. Bode's credible testimony, as well as the evidence in the record, indicates that Mr. Pryor's offer of money to Mr. Bode was indeed an attempt to induce him to drop the charges against Ms. Winborn, rather than an offer of restitution. As pointed out by the Committee, the offer of \$300 was clearly conditioned upon Mr. Bode agreeing to drop the charges. When Mr. Bode refused to drop the charges, he was not paid the \$300.00. Moreover, payment for the loss of the gun was not necessary because Mr. Bode told Respondent that he found the gun. Respondent's second offering of \$500 on the day before trial so that Mr. Bode would not show up for trial again appears to be a second attempt at getting the charges against Ms. Winborn dropped. The Committee, after listening to the parties' testimony, observing the parties' demeanor, and considering the fact that nothing in the record indicated that Mr. Bode had a motive to lie either at trial or at the disciplinary hearing, determined that Respondent's actions constituted attempted bribery in violation of Rule 8.4(a) through (d). In addition, it is curious that a lawyer with honest intentions, who has been practicing since 1987, and whose practice is "eighty to ninety percent criminal law" failed to take a third party lawyer/witness with him to the meetings with Mr. Bode where he was offering "restitution". His own expert witness, Robert Jenkins, testified that he made it his standard practice in such circumstances to approach victims only if he is accompanied by a third party unassociated lawyer who, by his presence, legitimizes any offers of restitution and also hinders potential accusations of intimidation or bribery. H.C. Transcript, pp. 250-271.

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, Section 10(C) states that in imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

Here, Respondent has knowingly, if not intentionally, violated a duty owed to the public and the legal system. Although there was no actual injury to the outcome of the underlying matter, as Mr. Bode refused to drop the charges against Respondent's client, the potential for injury to the outcome of the case clearly existed. In addition, there is always real injury to the reputation of the legal profession whenever the public learns of, or is subject to, a lawyer's unethical conduct.

The following ABA Standard 9.22 aggravating factors appear to be present: (1) prior disciplinary offenses;⁴ (2) refusal to acknowledge wrongful nature of conduct; and, (3) substantial experience in the practice of law.⁵ The Board finds one applicable ABA Standard 9.32 mitigating factor: good character and reputation as evidenced by the oral testimony of former criminal court judge Calvin Johnson and attorney Robert Jenkins.

⁴ The ODC offered into evidence nine exhibits reflecting multiple complaints against Respondent over the course of thirteen years. Eight exhibits evidenced admonitions issued from 1991 through 2001. The ninth exhibit, from 2004, was an order suspending Respondent from the practice of law for a period of two years, eighteen months deferred, with supervised probation for two years following completion of the active portion of suspension. The admonitions involved failure to cooperate with the investigation of complaints lodged against Respondent with the Board, and another involved failure to communicate with a client. This exhibit was a per curiam order addressing ten disciplinary complaints against Respondent. The complaints include allegations of failure to communicate with the client, failure to account for or refund an unearned fee, failure to cooperate, violating disciplinary regulations of another jurisdiction, and the unauthorized practice of law.

⁵ Respondent was admitted to practice on October 9, 1987.

The ABA Standards and Case law

Both 5.1 (Failure to Maintain Personal Integrity) and 6.3 (Improper Communications with Individuals in the Legal System) of the *ABA Standards for Imposing Lawyer Sanctions* apply in this matter.

ABA Standard 5.11 provides that disbarment is generally appropriate when a lawyer knowingly engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses.

ABA Standard 5.12 provides that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice. The Commentary to Standard 5.12 states, "Lawyers who engage in criminal conduct other than that described above in Standard 5.11 should be suspended in cases where their conduct seriously adversely reflects on their fitness to practice. As in the case of disbarment, a suspension can be imposed even where no criminal charges have been filed against the lawyer."

ABA Standard 6.32 provides that a suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

It is well-settled that the baseline sanction for misconduct arising out of felony convictions involving bribery is disbarment. *See, e.g., In re Mithun*, 00-3174 (La.1/5/01), 776

So.2d 426 (respondent attempted to bribe an assistant district attorney in order to influence the outcome of a case); *In re Hingle*, 98-0774 (La. 9/18/98), 717 So.2d 636 (attorney disbarred based on his criminal conviction of public bribery stemming from his payment of a witness' debts in exchange for the witness' agreement not to testify against the lawyer's clients); *In re Pitard*, 85-2753 (La. 1/14/85), 462 So.2d 178 (attorney paid the families of the three victims \$5,000.00 in exchange for affidavits exonerating the client of wrongdoing); *In re Collins*, 94-2251 (La. 11/18/94), 645 So.2d 1131 (misconduct while serving as federal judge which resulted in convictions for conspiracy, bribery and obstruction of justice, warranted disbarment).

As the Committee points out, the case of *In re Sharp*, 01-1117 (La. 12/7/01), 802 So.2d 588, presents not the same, but similar conduct, to that of Respondent. *In re Sharp*, like the matter at hand, involved the investigation and prosecution of an attorney who was accused, but not criminally convicted of attempted bribery. In the *Sharp* matter, 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 payment of money. The offer was made specifically to the under aged victim's mother. While doing so, respondent advised the mother to have independent counsel review the written agreement. Acting on advice from the independent counsel, the mother declined respondent's offer.

The mother reported the matter to the assistant district attorney, who filed a complaint with the ODC. The respondent acknowledged his involvement, denied criminal misconduct or intent, and conceded that he made a mistake of judgment in drafting the agreement. The court wrote: "Moreover, the notion that an attorney would assist a client in attempting to bribe a witness erodes public confidence in the criminal justice system and calls the entire legal profession into disrepute." *Id.* at 592.

Significant mitigating factors in *Sharp* include a lack of a prior disciplinary record, expression of remorse, and the court's conclusion that the respondent sincerely did not believe that he was engaging in an illegal act by drafting the agreement. The court noted that “while respondent’s state of mind does not excuse his actions, it serves to mitigate the sanction.” *Id.* The respondent in *Sharp* was suspended for a period of one year and one day.

In the matter at hand, ODC initially recommended a three year suspension or disbarment. The Committee is recommending that Respondent be disbarred. Without a conviction of public bribery in the record, or any witnesses to the alleged attempted bribery, this matter hinges on a credibility determination. The Committee, based on the live testimony of Mr. Pryor, Mr. Bode, Mr. Martin and Mr. Jenkins and the evidence before it, determined that they believed and accepted Mr. Bode’s version of the events in question. As the most important role of the hearing committee is to assess the credibility of the witnesses before it,⁶ the Board adopts the Committee’s credibility assessment of Respondent and the additional witnesses who testified before them. The Committee’s findings are supported by the record. Each time Mr. Pryor visited Mr. Bode at his restaurant to discuss the case, he violated Rules 8.4 (a)-(d). There is no evidence in the record, other than Respondent’s testimony, to support his explanation that the money he offered Mr. Bode was solely an offer of restitution.

Although there is no prior case directly on point, the facts of the *Sharp* matter lead the Board to recommend that Respondent be sanctioned with a one year and one day suspension.

⁶ “Although [the] court is the trier of fact in bar disciplinary cases, we are not prepared to disregard the credibility evaluations made by those committee members who...act as the eyes and ear of [the] court.” *In re Bolton*, 02-0257 (La. 6/21/02), 820 So.2d 548, 553.

CONCLUSION


The Board adopts the Committee’s finding of fact and conclusions of law and find that Respondent violated Rules 8.4(a) through (d). As a sanction, the Board recommends that Respondent be suspended from the practice of law for one year and one day.

RECOMMENDATION

The Board recommends that Respondent, Donald R. Pryor, be suspended from the practice of law for one year and one day. The Board also recommends that Respondent be assessed with the costs and expenses of this proceeding.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

- Carl A. Butler**
- George L. Crain, Jr.**
- Anderson O. Dotson, III**
- Carrie L. Jones**
- Edwin G. Preis, Jr.**
- Dominick Scandurro, Jr.**
- R. Lewis Smith, Jr.**
- Evans C. Spiceland, Jr.**

BY: 

R. Steven Tew
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

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;
- (b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice...