

ORIGINAL

Louisiana Attorney Disciplinary Board

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15-DB-007

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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: PATRICK HENRY

DOCKET NO. 15-DB-007

REPORT OF THE HEARING COMMITTEE #57

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Patrick Henry (“Respondent”), bar roll number 21695. The formal charges consist of two counts. In the charges, ODC alleges that Respondent violated Rules of Professional Conduct 8.4(a) (violate or attempt to violate the Rules) and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).¹

PROCEDURAL HISTORY

The formal charges were filed on March 19, 2015. Respondent filed an answer to the charges on April 20, 2015, through counsel Julie Brown White. The Disciplinary Counsel elected not to pursue Count 2 of the formal charges. The hearing on Count 1 of the formal charges was held on September 2 and 3, 2015. Deputy Disciplinary Counsel Robert S. Kennedy, Jr., appeared on behalf of ODC. Respondent appeared with counsel, Julie Brown White.

For the following reasons, the hearing committee finds that Patrick Henry violated Rule 8.4 of the Professional Rules of Conduct in that he engaged in conduct involving misrepresentation. The Committee did not find that the defendant acted with intent to defraud but that he did misrepresent the facts to William Shockey and to Kevin Hambrice regarding the arrangements for the payment of fees by Mr. Hambrice for services performed by the respondent.

¹ **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) ...
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; ...

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I

In February 2008 the respondent, Patrick Henry, accepted employment as an associate attorney with William Shockey, founding partner of the Baton Rouge law firm of Shockey and Associates. The firm operated a small business and corporate practice involving predominantly hourly-fee paying clients. At the time of his hiring, the respondent was advised that his professional services would be billed at the rate of two hundred dollars an hour; the agreement further provided that the respondent would be paid at the rate of sixty-five dollars per hour for each hour of billable time that he produced for the firm; further, that he would receive twenty-five percent of all net fees collected on cases which he personally brought to the firm.

In November 2008, the respondent agreed to represent a personal friend, Kevin Hambrice, in a long-standing and contentious child custody dispute with his former spouse in 19th JDC in Baton Rouge. According to the client, the respondent had agreed to handle the custody dispute with the expectation of the future referral of Hambrice's business associates who might need legal services; to offset a substantial part of the work obligations associated with the representation, the client's wife-a trained paralegal-agreed to perform the clerical work required in the case.

Simultaneously, the respondent informed his employer that he had agreed to represent Hambrice, telling him that the client had agreed to pay the firm's standard hourly rate, and immediately began to submit hourly billings to the firm. He was paid every two weeks based on the submitted billings.

Difficulties arose after the firm's bookkeeper sent an hourly billing invoice on December 16, 2008. The following day the client e-mailed the respondent and questioned why he was receiving a bill; the respondent answered and advised that Hambrice should simply disregard the invoice. He promised to "clear the matter up" with Shockey, but never did.

After the client received a second invoice in early January, Hambrice's wife emailed the respondent, asking whether he had "cleared the matter up." Again, the respondent reassured her that it was a clerical mistake, and that he would make certain no further invoices were sent to them. Throughout this time he nonetheless continued to submit hourly billings to the firm and was paid for his time.

Shockey terminated the respondent's employment in January 2009 for reasons unrelated to the *Hambrice* case; and the respondent took the *Hambrice* file with him when he left the firm. Thereafter when Shockey called the respondent and advised him that the client had refused to pay his bill, the respondent continued to reassure him that the client had freely agreed to be billed on an hourly basis. It was only after Mr. Shockey filed suit in open account against the client, that he (Shockey) learned from the client's lawyer in the collections case about the respondent's earlier agreement to handle the client's case *pro bono*. Shockey was compelled to dismiss his collection suit after

Hambrice produced the parties' e-mail exchange confirming the specifics of the agreement.

EVIDENCE

The Committee reviewed the evidence and exhibits submitted by ODC and the evidence and exhibits submitted by the respondent. The Committee heard the testimony of the various parties involved in this matter. The committee specifically considered the testimony of the Respondent, Patrick Henry, the complainant William Shockey and the testimony or letters from mental health professionals and sponsors. The respondent objected to emails that were submitted by ODC from Kevin Hambrice and his wife, Stormy Rothkamm Hambrice, to the respondent. The objection was based on the assertion by respondent that the emails from Hambrice and Rothkamm were hearsay. A Motion in Limine was filed by ODC and a hearing was held. After hearing the arguments of ODC and Respondent, the hearing Chair ruled to admit the emails into evidence. The emails are listed in the ODC exhibit list as Exhibit 6. The Committee reviewed the emails in conjunction with the other evidence submitted and determined that part of the email exchange was statements by respondent and therefore admissible and that the emails also evidence the state of mind and belief by Hambrice and Rothkamm that the respondent was representing Kevin Hambrice pro bono.

FINDINGS OF FACT

Based on the evidence submitted and the testimony of the parties, the Committee finds that Patrick Henry, by clear and convincing evidence, failed to adequately advise Kevin Hambrice of the financial arrangements that had or had not been made with the Shockey firm. The Committee further finds that Patrick Henry misrepresented to the Shockey Law Firm the arrangement that he had made with Kevin Hambrice. These misrepresentations were knowingly made and negligent due to the mental and emotional condition of respondent at that time. The Committee also found the following:

1. Patrick Henry was employed by the Shockey and Associates Law Firm from February 2008 until January 2009. At the time of his hiring, Patrick Henry was advised that his professional services would be billed at the rate of two hundred dollars per hour and

that he would be paid at the rate of sixty-five dollars per hour for each hour of billable time

2. Patrick Henry entered into an agreement with Kevin Hambrice to represent him in a domestic matter while Henry was employed at the Shockey Law Firm.
3. Patrick Henry was aware of the general hourly fee charged by the Shockey Law firm.
4. Patrick Henry did not communicate to the Shockey Law Firm that he would be doing the work pro bono or request that the firm charge a lesser fee.
5. Patrick Henry did submit billable hours to the Shockey Law Firm for his work on the Hambrice matter and was paid at his customary and agreed upon rate by the Firm.
6. Patrick Henry never submitted a contract signed by Kevin Hambrice to the Shockey Firm as per the requirements of his employment agreement.
7. Patrick Henry did not communicate to the Shockey Firm prior to January 2009 any requests for deferred billing or any other variations of the billing arrangements for the representation of Kevin Hambrice.
8. Patrick Henry did not advise Kevin Hambrice that he had not communicated to Shockey a request for deferred billing or any other variations of the billing arrangements prior to Kevin Hambrice receiving a bill from the Shockley Firm.
9. Emails from Hambrice indicate that Hambrice believed that Patrick Henry was doing the work on the case Pro Bono.
10. Emails from Patrick Henry to Kevin Hambrice did not clarify that Henry was not doing the work pro bono but indicated that the Hambrice would not receive any more bills.
11. That the emails of Patrick misrepresented the information to the Hambrice that they would not be billed.
12. Based on conversations with Patrick Henry, the Shockey Law Firm filed suit against Kevin Hambrice to collect outstanding attorney fees.
13. The Shockey Law Firm subsequently dismissed the lawsuit after being presented with emails that William Shockey believed indicated that Patrick Henry had agreed to provide services to Hambrice on a pro bono basis.
14. Patrick Henry subsequently reimbursed the Shockey Law Firm for attorney fees owed by the Hambrice's.

15. Although Patrick Henry indicated that he would seek an assignment of the Shockey Firm's rights against Kevin Hambrice, no assignment was requested or made.
16. Patrick Henry subsequently entered into a settlement agreement with Kevin Hambrice and Stormy Rothkamm Hambrice to settle any outstanding claims regarding Patrick Henry's representation of Kevin Hambrice in the domestic matter on September 9, 2009. Said settlement includes a paragraph which reads as follows:

“4. The SETTLEMENT & RELEASE hereby granted includes, without exclusivity or limitation, all claims and demands which were or could have been set forth and HAMBRICK AND Rothkamm accept this SETTLEMENT & RELEASE as a full discharge and acquittance of all matters raised or which could have been raised and warrant that they have not individually or collectively initiated or otherwise instituted, either directly, or through the action of another, any ethical complaint, investigation and/or proceeding with the Louisiana Bar Association's Office of Disciplinary Counsel and/or any other agency, court, tribunal, administrative body or organization in any way pertaining to or involving HENRY and/or THE HENRY FIRM.”
17. Patrick Henry was mentally impaired during this time due to his use of alcohol.
18. Patrick Henry signed a five (5) year Recovery Agreement with the Lawyers Assistance Program (LAP) on November 17, 2013,
19. Patrick has sought assistance from Alcoholics Anonymous and substance abuse counseling for his addiction.

RULES VIOLATED

The Committee finds the respondent, Patrick Henry violated Rule 8.4 in that he was involved in conduct which involved dishonesty, fraud, deceit or misrepresentation. Rule 8.4. Misconduct states:

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) ...
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; ...

The Committee finds by clear and convincing evidence that Patrick Henry failed to adequately advise Kevin Hambrice of the financial arrangements that had or had not been made with the Shockey firm. The Committee further finds that Patrick Henry misrepresented to the Shockey Law Firm the arrangement that he had made with Kevin Hambrice. The Committee believes the respondents failure to communicate the fee arrangements to Mr. Hambrice and to the Shockey law firm and his failure to adequately correct in misunderstandings or misleading statements made by him to both parties involved misrepresentation and deceit. The Committee finds that such actions were knowingly made and that Patrick Henry acted negligently due to his mental and emotional state.

SANCTION

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.

The Louisiana Supreme Court also relies on the *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards") to determine the baseline sanction.

The baseline sanction for the rule violated herein is suspension. The Committee believes that the respondent, Patrick Henry acted knowingly but was negligent in his actions. However, based on the testimony of the respondent, the complainant, the many character witnesses and the mental health professionals in the instant matter, the Committee does not believe that the respondent acted out of a selfish or dishonest motive. The Committee believes the respondent's

actions were influenced by his emotional problems and mental impairment. The committee believes that there was potential harm for the Shockey Firm and Kevin Hambrice. Although there was a potential for harm to the client in that there was a lawsuit filed, the client in this matter suffered no harm. The harm caused to the Shockey Law Firm was the loss of attorney fees due to the firm, however the respondent has made restitution to the firm for any loss it may have suffered, The Committee considered the following mitigating factors a. the absence of a prior disciplinary record; personal and emotional problems, and the mental impairment of Patrick Henry. The committee specifically considered that the actions in this matter occurred in 2009-2010 and that since that time, there have been no other disciplinary actions by respondent and that respondent appears to have in place resources to assist in managing his emotional and mental impairments.

CONCLUSION

Based on the evidence submitted, the testimony of the witnesses, the length of time since the offense, the committee recommends that Patrick Henry be suspended from the practice of law for a period of six months fully deferred subject to the following conditions

1. Patrick Henry be placed on probation for a period of three years or until he completes the LAP program for the Louisiana State Bar and;
2. Patrick Henry continues to attend Alcoholic Anonymous (AA) during the probationary period.

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.

Baton Rouge, Louisiana, this 30th day of October 2015.

**Louisiana Attorney Disciplinary Board
Hearing Committee #57**

**Arlene D. Knighten, Committee Chair
Alexis S. Luker, Lawyer Member
Cindy M. Sattler, Public Member**



**BY: Arlene D. Knighten, Committee Chair
FOR THE COMMITTEE**