

ORIGINAL

Louisiana Attorney Disciplinary Board

FILED by: *Jennifer J. Francis*

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17-DB-041

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LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JENNIFER E. GAUBERT

DOCKET NO. 17-DB-041

REPORT OF HEARING COMMITTEE # 54

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel (“ODC”) against Jennifer Elaine Gaubert (“Respondent”), Louisiana Bar Roll Number 30375.¹ ODC alleges that Respondent violated the following Rule of Professional Conduct: “Rule 8.4(c) (commit a criminal act especially one that reflects badly on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects).”² Rule 8.4 states, in pertinent part: “It is professional misconduct for a lawyer to ... (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;...” It appears that ODC intended to charge Respondent with violating Rule 8.4(b), not 8.4(c).

PROCEDURAL HISTORY

The formal charges were filed on July 21, 2017. By letters dated July 26, 2017, the formal charges were mailed via certified mail to Respondent’s primary and secondary addresses.³ The mailing to the primary address was returned. Respondent failed to file an answer to the charges. Accordingly, on October 2, 2017, ODC filed a motion to deem the factual allegations admitted

¹ Respondent is currently ineligible to practice law.

² Formal Charges, p. 4.

³ 6260 Vicksburg St. Ste A, New Orleans, LA, 70124; 1803 Jefferson Ave, New Orleans, LA 70115.

pursuant to Louisiana Supreme Court Rule XIX, §11(E)(3).⁴ By order signed October 9, 2017, the factual allegations contained in the formal charges were deemed admitted. On December 14, 2017, ODC filed its submission on sanction.

For the following reasons, the Committee finds Respondent violated the following Rule of Professional Conduct: Rule 8.4(b), which provides that it is a violation for an attorney to commit a criminal act, especially one that reflects badly on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. The Respondent's criminal convictions for simply battery and criminal mischief involving an incident with a New Orleans cab driver wherein Respondent and the cab driver had a sexual encounter is a clear violation of Rule 8.4(b). The Respondent appealed her criminal conviction to the Louisiana Fourth Circuit Court of Appeal; however, her conviction was affirmed. *See State v. Gaubert*, 2015-0774 (La. App. 4 Cir. 12/9/15); 179 So.3d 986, *reh'g denied* (Jan. 4, 2016); *writ denied*, 2016-0122 (La. 1/23/17).

After her conviction, Formal Charges were filed on July 21, 2017. The Office of Disciplinary Counsel requested that service of the Formal Charge be made by the Louisiana Attorney Disciplinary Board ("LADB") on Respondent at her primary and secondary/preferred address registered with the Louisiana State Bar Association. However, no response was ever

⁴ This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

received from Respondent. The formal charges were deemed admitted on October 9, 2017, by this Hearing Committee. Thereafter, Respondent was granted 20 days in which to file a motion to recall the order; however, Respondent again failed to take any action. Accordingly, this Hearing Committee recommends that the Respondent be suspended from the practice of law for six months and be held responsible for all costs and expenses associated with this matter.

FORMAL CHARGES

The formal charges read, in pertinent part:

I

Respondent was born on October 29, 1980. She was admitted to the practice of law in the State of Louisiana on October 13, 2006. Respondent has no prior discipline. Respondent is currently ineligible to practice law for failure to complete mandatory continuing legal education.

II

In accordance with Rule XIX, Section 11, of the Louisiana Supreme Court Rules, the Office of Disciplinary Counsel (ODC) has received permission to file formal charges against Respondent, thus establishing probable cause to believe that a violation or attempted violation of the Rules of Professional Conduct has occurred or that there are grounds for lawyer discipline. *See* La. S. Ct. Rules, Rule XIX §§ 3E(1), 11B(3).

III

There is clear and convincing evidence that Respondent has violated the Rules of Professional Conduct as set forth with particularity herein.

IV

This disciplinary matter arises solely in regard to Respondent's criminal convictions for simple battery and criminal mischief. These convictions stem from an incident involving Respondent and a New Orleans cab driver, Hervey Farrell.

On April 6, 2012, Respondent was a passenger in Mr. Farrell's taxicab. The two had a sexual encounter in the taxicab. Mr. Farrell used his cellphone to take a bawdy video of Respondent. Following the encounter, Mr. Farrell reported to police that he was sexually assaulted in his cab by Respondent. Respondent was subsequently charged in the Orleans Municipal Court with simple battery. On

April 5, 2013, Mr. Farrell filed a civil lawsuit against Respondent in Orleans Parish Civil District Court, alleging that he suffered tort damages arising from the taxicab incident.

While the civil litigation and the simple battery charge were pending, Respondent went to the Third District Station of the New Orleans Police Department to report that she was a victim of the crimes of extortion and video voyeurism by the alleged perpetrator, Mr. Farrell. Respondent's report to police essentially asserted that Mr. Farrell emailed Respondent a copy of the video of the April incident, indicating that if he received \$1,000.00, the video and charges he filed against the video would "go away."

While investigating Respondent's complaint against Mr. Farrell, the State charged Respondent, on October 1, 2013, with one count of false swearing for the purposes of denying a constitutional right, a violation of La.R.S. 14:126.2. The State later amended the bill of information to charge Respondent with one count of false swearing for the purposes of violating public health or safety, a violation of La.R.S. 14:126.1.

On April 2, 2014, Respondent was found guilty in the Orleans Municipal Court for simple battery, a violation of Code of the City of New Orleans, Sec. 54-96, and fined costs. Following Respondent's denial of a Motion for New Trial, Respondent's conviction for simple battery became final.

Despite being charged with a felony, on January 16, 2015, following a bench trial, Respondent was convicted of the lesser, misdemeanor offense of criminal mischief, a violation of La. R.S. 14:59. On February 25, 2015, Ms. Gaubert filed motions for new trial and post-verdict judgment of acquittal. The district court denied those motions. The district court sentenced Ms. Gaubert to one day in parish prison, suspended; one day of inactive probation with the conditions that she not purchase or possess a gun during probation; and ordered her to pay \$244.00 for misdemeanor court costs, \$500.00 for misdemeanor or felony costs, and \$250.00 for the Indigent Transcript Fund.

Respondent appealed her criminal mischief conviction, unsuccessfully, to the Fourth Circuit Court of Appeal and the Louisiana Supreme Court. See *State v. Gaubert*, 2015-0774 (La. App. 4 Cir. 12/9/15), 179 So. 3d 982, 986, *reh'g denied* (Jan. 4, 2016), *writ denied*, 2016-0122 (La. 1/23/17). Respondent has exhausted her appellate rights, and as such, her conviction for criminal mischief is final.

V

The evidence suggests that there exists clear and convincing evidence that Respondent has violated Rule [8.4(b)] of the Rules of Professional Conduct which provides that it is a violation for an attorney to "[c]ommit a criminal act especially

one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

EVIDENCE

- ODC 1: Initial complaint opened against Respondent on October 1, 2013.
- ODC 2: Initial correspondence to Respondent dated October 8, 2013, forwarding a copy of the complaint via certified mail, with attached return receipt.
- ODC 3: Certified mail receipt signed October 10, 2013.
- ODC 4: Initial response from Respondent dated October 25, 2013.
- ODC 5: Chronology report forwarded from the New Orleans Municipal Court for case number 1122563, demonstrating Respondent's April 2, 2014 conviction for simple battery and April 17, 2015 denial of Respondent's Motion for New Trial, finalizing conviction.
- ODC 6: Louisiana Fourth Circuit Court of Appeal opinion in *State v. Gaubert*, 2015-0774 La. App. 4 Cir. 12/9/15); 179 So.3d 982, *reh'g denied* (Jan. 4, 2016); *writ denied*, 2016-0122 (La. 1/23/17), affirming Respondent's conviction for criminal mischief.
- ODC 7: Louisiana Supreme Court's writ denial in *State v. Gaubert*, 2016-0122 (La. 1/23/17); 215 So.3d 681.
- ODC 8: Formal Charges Citation in 17-DB-041 sent certified mail, return receipt requested, return receipt number 9214 7969 0099 9790 1616 1786 64, to Respondent's primary registered address of 6260 Vicksburg Street, Suite A, New Orleans, LA 70124.
- ODC 9: Formal Charges Citation in 17-DB-041 sent certified mail, return receipt requested, return receipt number 9214 7969 0099 9790 1616 1786 64, marked "not Deliverable as Addressed", "Unable to Forward", sent to Respondent's primary bar registration address of 6260 Vicksburg Street, Suite A, New Orleans, LA 70124.
- ODC 10: Copy of return mail return receipt number 9214 7969 0099 9790 1616 1786 64, marked "not Deliverable as Addressed", "Unable to Forward", sent to Respondent's primary bar registration address of 6260 Vicksburg Street, Suite A, New Orleans, LA 70124.
- ODC 11: USPS tracking results for certified mail, return receipt requested number 9214 7969 0099 9790 1616 1786 64.

- ODC 12: Affidavit of Jennifer Stewart, Deputy Administrator of the Louisiana Attorney Disciplinary Board, verifying no answer to Formal Charges filed by Respondent.
- ODC 13: Motion to Declare Allegations Deemed Proven and the Schedule Written Arguments.
- ODC 14: Order Declaring Charges Admitted.

FINDINGS OF FACT

Having thoroughly reviewed the evidence submitted by the Office of Disciplinary Counsel and noting that Respondent has submitted nothing, the Committee finds by clear and convincing evidence that Respondent violated Rule 8.4(b) by committing a criminal act "that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Respondent has been contacted by ODC on numerous occasions and has chosen not to respond.

RULES VIOLATED

The applicable Rule is:

Rule 8.4(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee 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 the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to the legal profession. She acted negligently, knowingly, intentionally as evidenced by her conviction for simple battery and criminal mischief.

Respondent's convictions were upheld by the Louisiana Fourth Circuit Court of Appeal. Moreover, Respondent has failed to present any evidence in this proceeding indicating otherwise. Her misconduct caused actual harm to the legal profession. The Respondent was convicted of two misdemeanors, criminal mischief, and simple battery, a violation of La. R.S. 14:59, arising from the same set of operative facts as previously explained. Her criminal mischief conviction involved misrepresentation to law enforcement and the simple battery charge involved the use of force or violence against an un-consenting party – raising serious questions about her moral fitness to practice law.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. ABA Standard 5.1, Failure to Maintain Personal Integrity, is relevant to the facts herein and provides as follows:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation.

Moreover, Section 5.12 provides that “[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 (disbarment) and that seriously adversely reflects on the lawyer's fitness to practice.” The jurisprudence supports a baseline sanction of suspension; however, it provides little guidance as to the appropriate length of such suspension. The Louisiana Supreme Court explained as follows:

In examining our prior jurisprudence in this area, we note there is a considerable range of sanctions imposed upon attorneys who have been found to engage in conduct involving physical violence. *See e.g., In re: Cardenas*, 11-0031 (La. 5/6/11); 60 So.3d 609, (attorney suspended for one year with six months deferred based on conviction of domestic abuse battery for striking his estranged wife in the presence of their minor child); *In re: Willis*, 09-0211 (La. 5/13/09); 8 So.3d 548 (attorney disbarred based on multiple professional violations, including charges he was involved in a physical altercation); *In re: Sterling*, 08-2399 (La. 1/30/09); 2

So.3d 408 (attorney suspended for two years based on multiple professional violations, including charges based on his conviction for unauthorized entry of an inhabited dwelling); *In re: Estiverne*, 99-0949 (La. 9/24/99); 741 So.2d 649 (attorney suspended for one year based on charges he used an unloaded gun to threaten another attorney). This divergence suggests that the determination of an appropriate sanction in this area may turn on the unique facts and circumstances of each case, making it difficult to draw much guidance from prior jurisprudence. Nonetheless, the broad principle which may be distilled from these cases is that we have at a minimum imposed a period of suspension in cases where attorneys have been convicted of crimes involving physical violence. Therefore, the baseline sanction in this case is a period of suspension. *See also* Standard 5.12 of the ABA's Standards for Imposing Lawyer Sanctions.

Based on the Respondent's actions in this case, this Committee believes a suspension on the lower end of time imposed is appropriate. For instance, an attorney was suspended for six months with all but thirty days deferred following a conviction for simple battery after committing a battery in open court against opposing counsel following the exchange of vulgarities. *See In re: Greenburg*, 2008-2878 (La. 5/5/09); 9 So.3d 802, 805. Moreover, the Court has also suspended an attorney for ninety days for failing to communicate with his client regarding his guilty plea and a conviction of driving while intoxicated. *See In re: Lafont*, 2004-2064 (La. 4/1/05); 898 So.2d 339, 348.

While there are no mitigating factors to consider as Respondent has presented no evidence, the discipline to be imposed in a given case depends upon the seriousness of the offense and the circumstances of the offense. *See In re: Abdallah*, 2011-1631, (La. 10/14/11); 72 So.3d 836, 841 (*per curiam*). The facts deemed admitted in this case, supported by the exhibits, suggests that the appropriate discipline for Respondent's misconduct is a six-month suspension from the practice of law along with the payment of all costs and expenses associated with this matter. The recommended sanction supports the disciplinary goals of maintaining high standards of conduct, protecting the public, preserving the integrity of the profession, and deterring future misconduct. *See Louisiana Bar Association v. Reis*, 513 So.2d 1173 (La. 1987).

CONCLUSION

In conclusion, the Committee finds that the Respondent has violated Rule 8.4(b) and that the appropriate discipline is a six-month suspension from the practice of law and all costs and expenses associated with this matter.

New Orleans, Louisiana, this 9th day of July, 2018.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 54**

**Thomas Louis Colletta, Jr., Chair
Lori Allen Waters, Lawyer Member
Richard Allen Hinton, Public Member**

BY:



Thomas Louis Colletta, Jr., Chair
For the Committee