

ORIGINAL

Louisiana Attorney Disciplinary Board

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23-DB-009

8/29/2023

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DAVID R. OPPERMAN

DOCKET NO. 23-DB-009

REPORT OF HEARING COMMITTEE # 25

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against David R. Opperman (“Respondent”), Louisiana Bar Roll Number 20477.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 8.4(a) and (b).²

PROCEDURAL HISTORY

The formal charges were filed on February 16, 2023. Respondent filed an answer to the charges on March 20, 2023. Also on that date, James E. Boren enrolled as counsel for Respondent. On April 5, 2023, Respondent filed a notice of enrollment as his own counsel as to the allegations in Paragraph II of the formal charges. Respondent also filed an amended answer on that date. Pursuant to the scheduling order signed on April 4, 2023, the hearing of this matter was set for June 1, 2023. On May 24, 2023, Respondent filed a motion to continue the hearing, which was opposed by ODC. The motion was denied and the hearing was held as scheduled. Chief

¹ Respondent was admitted to the practice of law in Louisiana on April 11, 1991. Respondent is currently suspended from the practice of law on an interim basis. *In re Opperman*, 2022-0937 (La. 6/15/2022), 339 So.3d 634.

² Rule 8.4 states, in pertinent part: “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;...”

Disciplinary Counsel Charles B. Plattsmier appeared on behalf of ODC. Mr. Boren appeared on behalf of Respondent. Respondent also appeared via video conference.³

For the following reasons, the Committee finds that Respondent violated Rules 8.4(a) & (b). For this misconduct, the Committee recommends that Respondent be permanently disbarred.

FORMAL CHARGES

The formal charges read, in pertinent part:

I.

The Respondent is David R. Opperman (Bar # 20477), a 61-year-old Louisiana licensed attorney admitted to practice April 11, 1991 after graduating from the LSU Law Center. Respondent was interimly suspended by order of the Louisiana Supreme Court effective June 15, 2022 for criminal conduct forming the basis of these formal charges.

II.

On or about October 22, 2020 Respondent was indicted in the 20th Judicial District Court for the Parish of West Feliciana by the Attorney General's Criminal Division on multiple counts of felony Aggravated Rape of E.B. occurring between October 24, 2003 and October 31, 2003 and when the victim was thirteen (13) years old.

III.

On or about December 28, 2020 Respondent was charged in a separate Bill of Information filed in the 20th Judicial District Court for the Parish of West Feliciana by the Attorney General's Criminal Division with one count of felony carnal knowledge of juvenile K.R., a victim over the age of 12 but under the age of 17 and where there was an age difference of greater than 2 years, the criminal acts occurring between August 1, 2000 and July 13, 2001.

IV.

Following discussions with the Assistant Attorney General prosecuting the matters, Respondent reached a plea agreement where he entered a "no contest" plea to an amended count of the indictment charging him with indecent behavior involving the juvenile E.B. by committing a lewd or lascivious act with the intent of arousing the sexual desires of the defendant. Counts 2 and 3 of the indictment were dismissed.

V.

Following discussions with the Assistant Attorney General prosecuting the matters, Respondent reached a plea agreement where he also entered a guilty plea

³ Respondent is currently incarcerated for the crimes that form the basis of the formal charges in this matter.

to an amended bill of information in the matter involving K.R. and charging him with indecency involving a juvenile by committing a lewd and lascivious act with another under the age of seventeen years and where there was an age difference greater than two years between the two persons, with the intent to gratify the sexual desires of either person.

VI.

On or about June 10, 2022 Respondent entered the pleas described above on both the amended charge involving his criminal conduct with E.B. and the amended charge involving his criminal conduct with K.R. Accompanying his pleas, Respondent stated, “As to Count 1, I am pleading nolo contendere but I agree the State has evidence to support the charge, but it is in my best interest to accept this punishment through the nolo plea. I agree to facts in Count 2.”

VII.

After accepting Respondent’s pleas to the two (2) amended charges in violation of 14:81 (Indecency Involving Juveniles), the presiding judge sentenced him as follows:

Count 1: Defendant was ordered to serve seven (7) years at hard labor in the Department of Corrections. Two (2) of those years are to be suspended and the defendant placed on three (3) years active supervised probation upon serving his DOC time. Under no circumstances is the defendant’s probation to be terminated before serving the entire three (3) years.

Count 2: Defendant was ordered to serve seven (7) years at hard labor in the Department of Corrections, consecutive to the time being served in Count 1. All seven (7) of those years to be suspended. The defendant to be placed on three (3) years active supervised probation consecutive to his DOC time and probation period on Count 1.

Respondent will be permanently registered as a sex offender. He self-surrendered to begin his period of incarceration at hard labor on August 10, 2022.

VIII.

Respondent’s conduct reflects violations of Rule 8.4(b)—the commission of a criminal act, particularly one which calls into question the lawyer’s honest, integrity or fitness as a lawyer in other respects; and Rule 8.4(a)—violate or attempt to violate the Rules of Professional Conduct.

EVIDENCE

The Committee admitted into evidence ODC Exhibits 1-18, with ODC Exhibit 14 being admitted under seal. The Committee also admitted into evidence Respondent Exhibit 1, which was a Motion to Withdraw Nolo Contendere Plea by David Opperman, which was filed in the underlying criminal record on or about May 26, 2023. After the hearing of this matter, Respondent supplemented the record with evidence that he had withdrawn the aforementioned motion. The only witness to testify was Respondent.

FINDINGS OF FACT

Louisiana Supreme Court Rule XIX, §19, states, in pertinent part:

A. Determination of Conviction. Upon learning that an attorney has been convicted of a crime, whether the conviction results from a **plea of guilty or nolo contendere** or a verdict after trial, disciplinary counsel shall secure proof of the finding of guilt from the applicable clerk of court. ...

E. Procedure After Final Conviction. After the conviction has become final, that is, all appeals have been concluded or exhausted, disciplinary counsel may, in the event the respondent has for any reason not already been suspended, institute or reinstitute proceedings for interim suspension as provided for in subpart (C) of this Section.

Additionally, the matter may otherwise be processed in the same manner as any other information coming to the attention of the agency.

At the hearing before a hearing committee, the certificate of the conviction of the respondent shall be conclusive evidence of his/her guilt of the crime for which he/she has been convicted. The sole issue to be determined at the hearing shall be whether the crime warrants discipline and, if so, the extent thereof. At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he/she was convicted as determined by the statute defining the crime. [Emphasis added.]

Here, Respondent has pled nolo contendere to Count 1 of the criminal charges and guilty to Count 2. Accordingly, his conviction in both counts is final. Furthermore, the evidence submitted by ODC is conclusive evidence of his guilt of the crime - Indecency Involving Juveniles (La.R.S. 14:81).⁴

⁴ La.R.S. 14:81 states, in pertinent part:

At various points in this proceeding, Respondent has argued that his nolo contendere plea could not be used against him in this proceeding. He relies on Louisiana Code of Evidence Article 410(A)(2), which states: “Except as otherwise provided in this Article, evidence of the following is not, in any civil or criminal proceeding, admissible against the party who made the plea or was a participant in the plea discussions ... (2) In a civil case, a plea of nolo contendere; ...” This Committee finds this argument to be without merit. First, Rule XIX, §18(A), states, “Disciplinary proceedings are neither civil nor criminal but are *sui generis*.” Thus, La.C.E. Article 410(A)(2) appears to be inapplicable to this proceeding. Second, Rule XIX, §19, the pertinent parts of which are quoted above, specifically directs ODC to secure proof of convictions based on nolo contendere pleas and to institute disciplinary proceedings on that basis.

Accordingly, Respondent stands convicted of two counts of Indecency Involving Juveniles, which is a violation of La.R.S. 14:81.

RULES VIOLATED

Respondent has been convicted of two serious crimes, which is a violation of Rule 8.4(b). By violating Rule 8.4(b), Respondent has violated Rule 8.4(a).

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:

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- A. Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:
- (1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. Lack of knowledge of the child's age shall not be a defense; or
 - (2) The transmission, delivery or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. It shall not be a defense that the person who actually receives the transmission is not under the age of seventeen.

- (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 public and the profession. The very nature of his crimes demonstrate that he acted intentionally. Respondent's misconduct caused serious actual harm to the victims of his crimes, harm that has likely caused life-long damage to these individuals. See ODC Exhibit 13, Bates 051-054 (victim impact statement at sentencing). Respondent's misconduct, which was publicized in the media, also brought disrepute on the profession.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that disbarment is the baseline sanction for Respondent's misconduct. Standard 5.11 states:

Disbarment is generally appropriate when: (a) a lawyer 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; or (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

While Respondent's misconduct does not fit squarely within Standard 5.11, the Committee believes that Respondent has engaged in intentional conduct that seriously adversely reflects on the lawyer's fitness to practice. Additionally, as will be discussed below, the Louisiana Supreme Court's rules and case law support this conclusion. Accordingly, the Committee finds that disbarment is the baseline sanction in this matter.

The following aggravating factors are supported by the record: selfish motive, pattern of misconduct, vulnerability of victims, substantial experience in the practice of law, and illegal conduct. The only mitigating factors present are: absence of a prior disciplinary offense and imposition of other penalties or sanctions. The Committee assigns very little weight to the

mitigating factors. With regard to the latter mitigating factor, Respondent should not receive the benefit for mitigation for being lawfully imprisoned for serious crimes.

Rule XIX, Appendix D, Guideline 4, states that permanent disbarment may be warranted in instances of “[s]exual misconduct which results in a felony criminal conviction, such as rape or child molestation.” In *In re Aguillard*, the Court permanently disbarred Mr. Aguillard based upon his conviction for one count of computer-aided solicitation of a minor and two felony counts of carnal knowledge of a juvenile. 2007-B-0351 (La. 6/15/07), 958 So.2d 671. With regard to the first offense, Mr. Aguillard made Internet contact with a person whom he believed to be a thirteen-year-old and arranged to meet the girl for the purpose of engaging in sexual relations. In reality, the "girl" was an investigator from the Louisiana Attorney General's Office, which had been conducting an online undercover operation in cooperation with the Lafayette Police Department. He was arrested when he appeared for the encounter. A subsequent investigation revealed that Mr. Aguillard had previously engaged in sexual intercourse with a fifteen-year-old girl. In concluding that permanent disbarment was the appropriate sanction, the Court held that Mr. Aguillard’s misconduct “clearly” fell within the scope of Guideline 4 of the guidelines for permanent disbarment “as he has pleaded guilty to two felony sexual offenses involving minors.” *In re Aguillard* at 674.

Here, Respondent was convicted of two counts of Indecency Involving Juveniles, both of which are felonies and which is very similar to the misconduct in *Aguillard*. Based upon this, along with the aggravating factors, the Committee concludes that permanent disbarment is the appropriate sanction.

When recommending permanent disbarment, the Committee must also make findings that are consistent with of Rule XIX, §10(a)(1), which states, in pertinent part: “...However, the court

shall only impose permanent disbarment upon an express finding of the presence of the following factors: (1) the lawyer's misconduct is so egregious as to demonstrate a convincing lack of ethical and moral fitness to practice law; and (2) there is no reasonable expectation of significant rehabilitation in the lawyer's character in the future. ...” Here, the Committee believes there are facts that satisfy both of these criteria. First, at the time of these criminal offenses, Respondent was an Assistant District Attorney. Despite his position of public trust, he engaged in serious criminal misconduct with very vulnerable victims. Second, at the hearing of this matter, Respondent admitted to the misconduct in Count 2 of the criminal charges and admitted that it was a violation of the law. However, Respondent never testified that he was remorseful for the criminal act. Rather, he spent a significant portion of his testimony arguing that he should at least have the chance to apply for readmission to the bar. The Committee finds that these facts satisfy the criteria set forth in Rule XIX, §10(a)(1).

CONCLUSION

The Committee finds that Respondent violated the Rules as charged in the formal charges and recommends that Respondent be permanently disbarred. The Committee also recommends that Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Cynthia M. Bologna, to sign on their behalf.

Mandeville, Louisiana, this 28th day of August, 2023.

**Louisiana Attorney Disciplinary Board
Hearing Committee # 25**

**Cynthia M. Bologna, Committee Chair
Michael T. Pulaski, Lawyer Member
Bridgette K. Hardy, Public Member**

BY: 

**Cynthia M. Bologna, Committee Chair
For the Committee**