

The Supreme Court of the State of Louisiana

IN RE: ROBERT W. SHARP

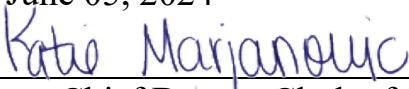
No. 2024-B-00329

IN RE: Office of Disciplinary Counsel - Applicant Other; Findings and
Recommendations (Formal Charges);

June 05, 2024

Suspension imposed. See per curiam.

JB
ML
JLW
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SJC
JTG
WJC
PDG

Supreme Court of Louisiana
June 05, 2024


Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2024-B-0329

IN RE: ROBERT W. SHARP

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Robert W. Sharp, an attorney licensed to practice law in Louisiana.

PRIOR DISCIPLINARY HISTORY

Before we address the current charges, we find it helpful to review respondent’s prior disciplinary history. Respondent was admitted to the practice of law in Louisiana in 1973. In 1998, respondent assisted his client in a scheme to induce the victim in an underlying criminal proceeding to drop charges against the client in exchange for the payment of money. For this misconduct, we suspended respondent from the practice of law for one year and one day. *In re: Sharp*, 01-1117 (La. 12/7/01), 802 So. 2d 588. After serving his suspension, respondent was reinstated to the practice of law in 2003. *In re: Sharp*, 03-1660 (La. 6/25/03), 852 So. 2d 977.

Against this backdrop, we now turn to a consideration of the misconduct at issue in the instant proceeding.

UNDERLYING FACTS

In August 2022, the ODC received a complaint from Judge Rick Warren of the 2nd Judicial District Court reporting that respondent had appeared in his court

for a child in need of care (“CINC”) proceeding on July 11, 2022. On that day, respondent advised the court that he represented Martin Cruz, a criminal defendant charged with molestation of a child under the age of thirteen; Martin’s children, including MC, the alleged victim of the molestation; and Sandra Cruz, the stepmother of the alleged victim and the biological mother of the other child subject of the CINC proceeding.

Judge Warren refused to permit respondent to enroll as counsel in the multiple adverse representations and ordered respondent to leave the courtroom. Information provided by the judge reflects that respondent made representations on behalf of his criminal defendant client, admitting that his client had molested his daughter. Respondent also interfered with the investigation conducted by the Louisiana Department of Children and Family Services (“DCFS”) by limiting questions posed to the children and prohibiting any questions of “abuse.”

In his response to the complaint, respondent indicated that he engaged in no misconduct and would continue to handle the family’s personal issues if left alone to do so. The ODC issued a subpoena directing respondent to appear for a sworn statement, which was taken on September 26, 2022.

During the statement, respondent failed to acknowledge or appreciate that his simultaneous representation of the criminal defendant/father, the stepmother, and the children – including the victim of the father’s molestation – reflected a prohibited conflict of interest. Respondent acknowledged that he had been “removed” from the representation of the criminal defendant/father and affirmatively stated that he had no further conversations with the family members or involvement in the matter. However, on October 19, 2022, the ODC received a telephone call from the district attorney who reported that, notwithstanding respondent’s removal from the representation by the judge, he received a letter from respondent stating that he still represented Martin Cruz and expected a response from the district attorney to an

earlier discovery request. The district attorney subsequently filed a written complaint with the ODC against respondent.

DISCIPLINARY PROCEEDINGS

In August 2023, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 1.7 (conflict of interest), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). Respondent filed an answer to the charges denying any misconduct.

In light of respondent's answer, the matter proceeded to a formal hearing on the merits.

Formal Hearing

The hearing committee conducted the formal hearing on December 12, 2023. The parties submitted a joint stipulation of facts, in which respondent admitted the essential underlying facts as set forth above. Respondent did not call any witnesses, but he did testify on his own behalf and on cross-examination by the ODC. The ODC introduced documentary evidence and called the following witnesses to testify: Judge Rick Warren, District Attorney Danny Newell, Assistant District Attorney Darryl Avery, attorney Elizabeth Brown (court appointed attorney for the children), and respondent.¹

¹ The exhibits contain the testimony of Corsica Blow, an investigator for the DCFS. Although Ms. Blow had been subpoenaed to attend the hearing, she did not arrive to testify. The ODC therefore utilized her testimony from the July 11, 2022 CINC hearing and waived its right to have her testify live.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee made the factual findings consistent with the underlying facts as set forth above. The following is a condensed version of the committee's summary of the relevant facts and testimony:

Respondent lived in the same RV park where Martin lived with his wife and two children. He became friends with Martin and his family, and he learned that Sandra was the stepmother of MC, whose biological mother lived in Central America.

One day, Sandra told respondent that she had learned Martin had been sexually abusing MC for months. Martin went to the sheriff's office and confessed, whereupon he was arrested and jailed. Sandra informed respondent that over her objections, two male deputies insisted on interviewing MC. According to respondent, Sandra stated that she was not allowed in the room while MC was being interviewed.

Respondent then visited Martin in jail, signed in as his attorney, and spoke to him about the facts of the case, legal issues, and the law regarding privileges and Miranda warnings. According to respondent, Martin did not want to go to trial as he wanted to shield MC from having to testify. According to respondent, Martin acknowledged and admitted the details of what he had done to MC.

Following the jail visit, respondent formulated a plan that Martin would plead guilty as charged and MC would not have to be questioned about what happened. Respondent wanted to minimize the damage done by Martin to MC and wanted MC to be seen by a counselor. Respondent attempted to contact the sheriff's office and Assistant District Attorney Darrell Avery, but no one returned his call. However, on June 10, 2022, ADA Avery wrote a letter to respondent stating that he was

assigned to the prosecution and needed a letter from him setting forth who he represented before they discussed the case.

In response, by letter dated June 15, 2022, respondent stated to ADA Avery that he knew the Cruz family well and “unless a conflict develops,” he represented Martin, Sandra, and MC. Respondent also stated that he did not want MC to undergo further questioning, physical exams, or questioning by the State. Respondent stated that the family wanted Martin released from jail with restrictions, so he could return to work and support the family, but not until he was “evaluated, treated, and undergone whatever counseling is necessary.” Respondent stated that Sandra and MC wanted the matter handled extrajudicially and would not cooperate in the prosecution. Finally, respondent stated that his goal was to reunite the family, if possible, and ensure that MC continued to reside with Sandra in a safe and stable environment.

According to respondent, he and Sandra had determined that the sheriff, the DA, and DCFS only wanted Martin to be prosecuted. Respondent filed a motion to enroll as counsel for Martin and filed a motion for bond reduction.

During the committee hearing, respondent repeatedly testified that part of his plan (and the reason why there was no conflict of interest) was for Martin to plead guilty because he would likely spend at least twenty-five years in jail. When asked to reconcile that statement with the June 15, 2022 letter in which he advised that Sandra and MC were not going to cooperate and wanted Martin released so he could support the family, respondent replied that his statements in the letter were “lawyer talk” and not really intended to be true.

According to respondent, Sandra told him that DCFS wanted to interview the children, so he contacted DCFS, and DCFS agreed to meet at Sandra’s home. When respondent arrived, Corsica Blow, an investigator for DCFS, was already there and irritated as Sandra would not let her inside the home. Respondent instructed Ms.

Blow that while she could speak with the children, she could not ask them about the allegations of molestation until he worked things out with ADA Avery. Respondent testified that he was not present during the interviews with the children.²

Respondent testified that he never actually spoke to MC about the allegations of abuse or the proceedings. Rather, his information about MC's wishes was provided by Sandra. Thus, while respondent had made in court assertions that he represented MC, respondent had not actually spoken with MC to determine what she wanted.

Ms. Blow testified that when she initially attempted to speak with Sandra and the children, respondent would not allow her to do so. Respondent informed Ms. Blow that he represented Sandra and that she (Ms. Blow) could not speak to Sandra or the children because he did not see how it would be beneficial. Respondent wanted to give the children some time, so Ms. Blow waited. A forensic interview with law enforcement was scheduled, but Sandra and the children did not report for the interview. Ms. Blow eventually interviewed the children at Sandra's home, but respondent, who was present for the interview, did not let her speak to them about the molestation.

Ms. Blow determined the allegations were valid, but DCFS did not initially feel the children were in danger because Martin was in jail. However, after learning that Sandra refused the forensic interview and wanted Martin released from jail, DCFS moved forward with the CINC proceeding to place the children away from Sandra. Ms. Blow stated that respondent's refusal to allow her to speak to the children inhibited her investigation and was part of the basis for her recommending the children be removed from the home.

² During the CINC proceeding, respondent informed Judge Warren that he was present for the DCFS interview, heard what the children said to Ms. Blow, and spoke with the children at the interview. The committee noted that while this would seem to contradict respondent's testimony, his comments to Judge Warren do not indicate that he had spoken to the children specifically about the allegations or the proceedings.

A few days after Ms. Blow's interview of the children, respondent received a call from Sandra informing him that the children had been removed from the home and that a CINC hearing was scheduled for July 11, 2022. Respondent informed Sandra that a preliminary examination for Martin in criminal court was set for July 12, 2022, and thus, he could be present for the CINC hearing.

Before the CINC hearing, respondent observed the children sitting outside the courtroom with a woman he did not know. Apparently, the children had been placed with this individual. Respondent saw Sandra inside the courtroom and attempted to speak to her, but Judge Warren had already started court and asked respondent why he was present. Respondent replied that he represented the children, the mother, and the whole family. Further, he was not prepared for a CINC case that morning.

Judge Warren asked respondent about his conflict of interest. Respondent told Judge Warren that he was hoping to have Martin plead guilty and that the State was not concerned with the welfare of the children. The transcript shows that respondent informed Judge Warren that "the minor child desires [to] not go through the criminal process." Judge Warren informed respondent that he had a conflict of interest and could not represent any of the various members of the Cruz family, particularly the children while representing the defendant, and because of his conflict, respondent was prohibited from representing any other members of the Cruz family.

Of note, at the start of the CINC hearing, respondent reiterated the statements in his letter to ADA Avery; specifically, that he wanted Martin to return to work but to stay away from the family for a week, month, year, or until MC turned eighteen. At the committee hearing, however, respondent testified that he believed Martin would have to plead guilty and would receive at least twenty-five years in jail, thus the basis for respondent's ill-conceived belief that he did not have a conflict. His letter and comments to Judge Warren undermine his testimony on that point.

After Judge Warren ordered that respondent could not represent any member of the Cruz family, on October 17, 2022, respondent wrote a letter to the Office of Public Defender and to ADA Avery advising, “as far as I know, I am still [Martin’s] attorney of record.” In reply, by letter dated October 20, 2022, ADA Avery informed respondent that Martin was now being represented by a public defender.

Judge Warren testified that after respondent announced he was representing the “whole family,” he (Judge Warren) informed respondent that he had a conflict of interest and was unable to represent anyone in the Cruz family. Respondent spent much of his cross-examination of Judge Warren arguing that there was no conflict if Martin was pleading guilty and that he (respondent) was going to make sure the child was seen by a counselor. Judge Warren was adamant that respondent had a conflict and could not represent the defendant, the stepmother, and the minor children.

District Attorney Daniel Newell testified that while he hated having to file a complaint, there was a clear conflict of interest by respondent. He noted that despite Judge Warren’s disqualification of respondent from representing Martin, he received a letter from respondent indicating that he still represented Martin. DA Newell added that Martin pleaded guilty and received a sentence of twenty-five years.

ADA Avery testified that he was aware that respondent enrolled as counsel for Martin, and as to the CINC hearing, recalled that Ms. Blow testified about how respondent impeded her investigation and was very concerned. ADA Avery could not understand how respondent could claim to represent the defendant/father and the victim/child. Of note, after respondent left the case, there was time when Martin and his defense attorney wanted to proceed with trial, and thus, ADA Avery had to meet with MC to discuss the case as well as her testimony. ADA Avery stated that MC felt strongly about testifying and making sure Martin went to jail. ADA Avery also stated that she was one of the stronger witnesses he has had for a minor child.

Elizabeth Brown, who represents minor children in CINC cases for Acadian Legal Services and was present for the CINC hearing, testified about respondent's conflict of interest and utilized Louisiana Children's Code article 607 as a basis to explain the conflict. Ms. Brown explained that if an attorney represents the child, they cannot represent either of the parents in the same matter, especially if a parent was charged for a crime involving the minor children.

The committee determined that respondent violated Rule 1.7 by attempting to represent the Cruz family despite his clear and obvious conflict of interest. Although he had a non-waivable conflict, respondent decided to represent all family members. The conflict should have been obvious to respondent. There was no way he could represent (1) Martin, the criminal defendant accused of abusing his minor daughter, (2) Sandra, the stepmother who was interested in stopping the investigation and having Martin released from jail so he could return to his job, and (3) the minor child who was the victim of Martin's abuse. Even more bewildering is that during the hearing, respondent continued to deny the conflict. In the face of testimony by four attorneys who all testified unequivocally that there was a conflict, respondent would argue with each of them during his cross-examinations that he did not have a conflict of interest.

The committee determined that respondent also violated Rule 8.4(d) by engaging in conduct that is prejudicial to the administration of justice. He caused actual harm to the legal proceedings by interfering with a DCFS investigation into allegations of abuse by a criminal defendant he was representing. He interfered with the criminal investigation by advising the district attorney's office that he represented all family members and that neither Sandra nor MC wanted to cooperate with the prosecution. During the hearing, respondent admitted that he never spoke with MC to determine what she wanted to happen. Rather, that information came from Sandra, who had a financial incentive to get Martin out of jail. Respondent

was surprised to learn from ADA Avery that MC was adamant about testifying to make sure Martin went to jail. He was unaware of MC's wishes because he was advancing the interests of Sandra, the stepmother, and Martin, the defendant.

Respondent had a long-standing friendship with the Cruz family, and it did appear that he had a sincere belief that he was doing the right thing by trying to help them. However, as a member of the bar, he should have immediately recognized his conflict of interest. Respondent could have represented one member of the family or no members, but not all. The conflict was clear and should have been readily apparent to him.

The committee determined respondent knowingly violated duties owed to his client and the legal system. His misconduct caused actual harm to his supposed clients by impeding the efforts of the DCFS to conduct its investigation into the allegations of abuse. While claiming to represent MC, respondent was working to fight Martin's prosecution and get him released from jail. As we now know from ADA Avery, that was contrary to the wishes of MC. Despite his experience in areas of criminal defense and representing children, respondent has failed to acknowledge and continues to insist that he did not have a conflict of interest. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is suspension.

In aggravation, the committee determined the following factors are present: a pattern of misconduct (continued after being told about his conflict of interest), a prior disciplinary record, refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. In mitigation, the committee determined the following factors are present: "the age of respondent," and "respondent's sincere belief that he was trying to help some personal friends."

After further considering the court's prior jurisprudence addressing similar misconduct, the committee recommended that respondent be suspended from the

practice of law for six months. The committee further recommended that respondent be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report and recommendation. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.

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 record of this matter supports a finding that respondent attempted to represent a criminal defendant who was accused of abusing his minor daughter, the stepmother of the minor daughter, as well as the minor children, including the abuse victim, and then attempted to continue his representation after the court disqualified him from doing so. This conduct violates the Rules of Professional Conduct as charged in the formal charges.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession,

and deter future misconduct. *Louisiana State Bar Ass’n v. Reis*, 513 So. 2d 1173 (La. 1987). 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. *Louisiana State Bar Ass’n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent violated duties owed to his clients and the legal system. He acted knowingly, and his conduct caused potential and actual harm. Under the ABA’s *Standards for Imposing Lawyer Sanctions*, the baseline sanction is suspension. In addition to the aggravating factors found by the committee, vulnerability of the victim is also present. There are no mitigating factors present.

In determining an appropriate sanction, the committee utilized the cases cited by the ODC in its prehearing memorandum, namely *In re: Hoffman*, 03-2499 (La. 9/9/04), 883 So. 2d 425, and *In re: Butler*, 96-1235 (La. 9/13/96), 679 So. 2d 383. In *Hoffman*, the court suspended an attorney for three months, fully deferred, for knowingly failing to make full disclosures to his clients of the implications and risks of common representation and failing to confer with and fully disclose all details of an aggregate settlement to all his clients. In *Butler*, the court suspended an attorney for six months for filing meritless claims, specifically for filing suits alleging medical malpractice and intentional interference with the contract of marriage after discovering his wife had an affair with a doctor.

Based on our review, there are no cases in the court’s jurisprudence with facts like those in the instant matter, and the cases cited by the hearing committee are supportive of the recommended sanction. Nevertheless, it is deeply concerning that respondent, who has more than fifty years of experience in the practice of law, did not recognize that his representation of the defendant/father and victim/daughter was a conflict of interest. It is also concerning that respondent has never acknowledged the wrongful nature of his conduct, even after being repeatedly advised about the

conflict by other attorneys and disqualified from the case by the judge. However, there has been no indication or allegation that respondent saw the conflict and was perhaps acting in defiance. Therefore, despite our concerns, we cannot say that the recommended sanction is wholly inappropriate for this matter.

After further considering the absence of any objection by the ODC to the hearing committee's report, we will accept the committee's recommendation and suspend respondent from the practice of law for six months.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Robert W. Sharp, Louisiana Bar Roll number 11973, be and he hereby is suspended from the practice of law for a period of six months. 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.