

The Supreme Court of the State of Louisiana

IN RE: AMY ELIZABETH BATEMAN

No.2020-B-01140

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

December 08, 2020

Suspension imposed. See per curiam.

JBM

BJJ

JLW

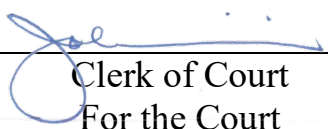
SJC

JTG

WJC

Hughes, J., dissents and assigns reasons.

Supreme Court of Louisiana
December 08, 2020



Clerk of Court
For the Court

12/08/20

SUPREME COURT OF LOUISIANA

NO. 2020-B-1140

IN RE: AMY ELIZABETH BATEMAN

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Amy Elizabeth Bateman, now known as Amy Champagne, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

At approximately 10:00 p.m. on February 25, 2018, respondent was driving her SUV eastbound on Interstate 10 in Metairie. Her nine-year old daughter was a passenger in the vehicle. As respondent exited the interstate at Veterans Memorial Boulevard, she failed to negotiate a curve and struck a utility pole.

Trooper Garrett Jackson of the Louisiana State Police investigated the accident. Respondent told Trooper Jackson that she picked up her daughter in Baton Rouge and was on her way home when she struck the pole after having some steering issues with her vehicle. While speaking with respondent, Trooper Jackson detected a moderate odor of an alcoholic beverage about her person, and observed that she had watery, bloodshot eyes and swaying balance. Respondent initially denied any consumption of alcohol, but she later told Trooper Jackson she had consumed about half a beer around noon on the day before the accident. Respondent agreed to submit to a field sobriety test and a Breathalyzer test. She performed poorly on the field sobriety test and the Breathalyzer test showed her blood alcohol level was .117g%.

Respondent was arrested on charges of DWI, failure to maintain control, and having an expired registration certificate.

After obtaining the results of the Breathalyzer test, Trooper Jackson asked respondent a series of standard interview questions. In response to these questions, respondent said that she consumed alcohol after the accident at a hotel across the street from the accident scene. Respondent stated that she could not remember the name of the hotel or what alcoholic beverages she had consumed.

After respondent was transported to jail, Trooper Jackson returned to the scene of the accident and determined that the Wyndham Garden Inn is the only hotel located within walking distance which serves alcohol. Trooper Jackson inquired whether respondent had been to the hotel that evening, but the staff did not recognize her and indicated it was hotel policy to refuse alcohol to patrons with children.

In March 2018, the ODC referred respondent to the Judges and Lawyers Assistance Program (“JLAP”) for an independent evaluation. After some delay on respondent’s part, she was evaluated by Dr. Jamie Landry, Ph.D. in June 2018, at about the same time that she was accepted into a pre-trial diversion program to resolve the DWI charge.

Respondent informed Dr. Landry that prior to her DWI arrest on February 25, 2018, she had a total of three or fewer mimosas over the course of two hours at a late brunch with her husband to celebrate her birthday. She stated that the wait at the restaurant was long and the order was incorrect, which led them to stay longer and consume more alcohol than she might have otherwise. She went home for a while and then decided to run errands around 7:00 p.m. She indicated that she did not feel impaired. While driving, she experienced a tire blowout. She then reportedly walked across the street to a hotel to call her husband, but a State Trooper arrived and began to ask her questions. After a field sobriety test, respondent was arrested for DWI. She noted that her Breathalyzer results were 0.11.

Following the evaluation, Dr. Landry issued her report, in which she observed “inaccuracies” between respondent’s Breathalyzer results and her description of her drinking on the day of her arrest.¹ Accordingly, Dr. Landry deferred a diagnosis and recommended that respondent attend a one-day multidisciplinary assessment to obtain collateral information and additional testing to rule out a substance use disorder. In July 2018, JLAP endorsed Dr. Landry’s recommendation to respondent, and provided her with a list of JLAP-approved facilities where she could obtain the assessment. However, respondent ultimately did not obtain a one-day multidisciplinary assessment, claiming that it was too costly. She also asserted that she had successfully completed the pre-trial diversion program in October 2018, following which the criminal charges were dismissed, and that such participation should be sufficient to satisfy JLAP.

DISCIPLINARY PROCEEDINGS

In September 2018, the ODC filed formal charges against respondent, alleging that her conduct as set forth above violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent answered the formal charges and acknowledged her DWI arrest. She also stated that she was “incredibly sorry for the incident” and accepted “full responsibility” for her behavior.

¹ Respondent has given at least two other versions of her drinking on the day of her arrest. In June 2018, a hearing was conducted before an administrative law judge concerning the suspension of respondent’s driver’s license after her DWI arrest. The ALJ’s report indicates that respondent testified during the hearing that her daughter was not with her at the time of the accident; that she went to the Wyndham alone; and that she drank three gin and tonics at the bar, which were paid for by another patron. The ALJ noted that this testimony contradicted the statements respondent gave to Trooper Jackson during the investigation and was not credible testimony.

In December 2018, the ODC took respondent’s sworn statement, during which she testified that she went to the Wyndham after the accident “and a guy bought me a drink. I might’ve taken a couple of sips of it.”

Formal Hearing

Following the filing of respondent's answer, the matter was set for a formal hearing before the hearing committee on April 8, 2019. Both parties introduced documentary evidence, and the ODC called Trooper Jackson and JLAP Director Buddy Stockwell to testify before the hearing committee. Respondent called no witnesses, but she testified on her own behalf and on cross-examination by the ODC.

TESTIMONY OF TROOPER JACKSON

Trooper Jackson testified that he investigated respondent's accident. Respondent informed Trooper Jackson that mechanical issues had caused her to hit a utility pole. While speaking to respondent, Trooper Jackson noticed the odor of alcohol, but she said she had not been drinking at all that day. Respondent later said that she had consumed alcohol the day before the accident, around noon. Trooper Jackson conducted a field sobriety test and detected impairment of respondent and placed her under arrest. He then administered a Breathalyzer test to determine her blood alcohol concentration, which was .117g%. The test results confirmed Trooper Jackson's suspicions of impairment.

After the Breathalyzer test, respondent's story changed again. She informed Trooper Jackson that she had consumed alcohol at a hotel after the crash, although she did not know the location of the hotel or the kind of alcohol consumed. Upon booking respondent, Trooper Jackson went to the closest hotel to the accident scene, Wyndham Garden, and inquired whether respondent had been there. The staff did not recognize respondent and said it was hotel policy not to serve alcohol to patrons accompanied by children.

Trooper Jackson testified that respondent's testimony at her driver's license administrative hearing was inconsistent with her statement to him in the following respects: (1) that she went alone to the Wyndham hotel; (2) that her daughter was

not present at the time of the accident; and (3) that she consumed three gin and tonics at the hotel. The ODC deposed respondent in December 2018, and she testified that a gentleman bought her a drink at the hotel, but Trooper Jackson did not recall her telling him that information.

TESTIMONY OF BUDDY STOCKWELL

Mr. Stockwell testified that respondent contacted JLAP on April 12, 2018 and was given a referral for the lowest level evaluation. This type of evaluation is dependent upon the evaluated person “being absolutely truthful and candid.” After the initial evaluation by Dr. Jamie Landry, she found “inaccuracies” in respondent’s report and thus she could not rule out a substance use disorder. Dr. Landry therefore recommended that respondent obtain a one-day evaluation at a JLAP-approved facility to obtain collateral information and do more intensive objective testing. On July 19, 2018, JLAP informed respondent that it had adopted Dr. Landry’s recommendation for a one-day evaluation. Respondent called JLAP the next week and said that the one-day evaluation was too expensive and asked what would happen if she did not do the assessment. This was respondent’s last communication with JLAP.

Mr. Stockwell testified that the cost of a one-day evaluation ranges from \$1,000 to \$1,500. This type of evaluation is not covered by insurance unless there is a diagnosis requiring further treatment. However, JLAP offers financial assistance for the cost of the evaluation if there is a proven hardship on the evaluated person. According to Mr. Stockwell, JLAP has “never had someone not be able to get the assessments done, if in fact they really were dedicated to having them done.”

Mr. Stockwell testified that the JLAP program is not equivalent to that offered by the diversionary programs run by the district attorney offices in the state and that comparing one to the other is “completely apples and oranges.” Mr. Stockwell

testified that lawyers and other safety sensitive workers have to be evaluated and treated “at a much higher level” to ensure they are not “impaired in the practice of law or flying an airplane or operating on patients,” whereas a diversion program serves the general public and is “a function of the punitive aspect of getting the DWI.” JLAP informed respondent in June 2018 that her participation in the Jefferson Parish District Attorney’s Office pre-trial intervention program could not be considered compliant with JLAP’s standards.

TESTIMONY OF RESPONDENT

Respondent admitted in her testimony that she was driving under the influence of alcohol on February 25, 2018, and that her conduct violated the Rules of Professional Conduct. Respondent conceded that she had not been truthful with Trooper Jackson during her interview or with Dr. Landry during her JLAP evaluation.

Respondent testified that she successfully completed the Jefferson Parish District Attorney’s Office pre-trial intervention program for first offense DWI, which included twelve hours of educational classes about drug and alcohol abuse, restorative classes, four months of hair testing, twice daily alcohol monitoring for four months, sixteen hours of community service, and attendance at a MADD panel. She testified that she believes she “can move on” from the mistakes she made on the night of her arrest and “participation in the diversion program is a huge factor there.”

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee made the following factual findings:

1. Respondent knowingly operated a motor vehicle while under the influence of alcohol on February 25, 2018.

2. Respondent knowingly made false statements to a law enforcement officer investigating the incident.
3. Respondent intentionally and knowingly failed to comply with the recommendation of JLAP that she undergo a one-day multidisciplinary assessment to determine if she has a substance use disorder.
4. Respondent knowingly engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by omitting material information and making false and misleading statements to tribunals and medical professionals and while deposed under oath.

Based on these findings, the committee determined respondent violated Rules 8.4(a), 8.4(b) and 8.4(c) of the Rules of Professional Conduct as charged.

The committee found that respondent violated duties owed to the public and the legal profession. She acted knowingly in operating a vehicle while under the influence of alcohol with her nine-year old daughter as a passenger, and in providing false information to the investigating officer. Subsequently, respondent omitted material information and provided false and misleading information to the Department of Public Safety tribunal, the JLAP medical professional, and to the ODC during her December 14, 2018 deposition. Respondent's misconduct caused potential physical harm to both her and her daughter, and potential harm to the profession. The applicable baseline sanction is suspension.

In aggravation, the committee found substantial experience in the practice of law (admitted 2005). The committee also noted as aggravating factors the following: (1) the presence of a minor child in the vehicle respondent was operating in an impaired state; (2) respondent supplied less than truthful information to law enforcement; and (3) respondent failed to cooperate with the ODC by failing to comply with JLAP's recommendation of a one-day multidisciplinary assessment to

determine if she has a substance use disorder. In mitigation, the committee found the absence of a prior disciplinary record and remorse.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended that respondent be suspended from the practice of law for one year and one day, with all but ninety days deferred, subject to a one-year period of probation with the following conditions: (1) respondent shall complete the JLAP recommended one-day multidisciplinary assessment within ninety days of the final ruling in this matter, and (2) respondent shall refrain from violations of the Rules of Professional Conduct during the probationary period, in default of which the deferred portion of the suspension will be made immediately executory. The committee also recommended that respondent be assessed with all costs of this proceeding.

The ODC filed an objection to the hearing committee's report, asserting that the appropriate sanction in this matter is a one year and one day suspension, with no portion deferred.

Disciplinary Board Recommendation

After review, the disciplinary board determined that the hearing committee's findings of fact are supported by the record and do not appear to be manifestly erroneous. The board also determined that the committee correctly applied the Rules of Professional Conduct.

The board determined respondent violated duties owed to the public and the legal profession. She acted knowingly, if not intentionally. She caused potential serious harm to herself and the public, including her nine-year old daughter, by driving while intoxicated, and caused actual physical damage to her vehicle. Her inconsistent statements to Trooper Jackson required him to undertake additional steps to investigate the accident. Additionally, respondent's public criminal

behavior reflects adversely upon the profession as a whole. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the applicable baseline sanction is suspension.

In aggravation, the board found the following factors are supported by the record: a dishonest or selfish motive, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, substantial experience in the practice of law, and illegal conduct. In addition to these aggravating factors which are specifically listed in the ABA Standards, the board found another significant aggravating circumstance is that respondent was driving while intoxicated with her nine-year old daughter in the car. In mitigation, the board found the absence of a prior disciplinary record.

After further considering this court's prior jurisprudence addressing similar misconduct, a majority of the board recommended respondent be suspended from the practice of law for one year and one day, with no period of deferral. One board member agreed with the hearing committee's recommendation of sanction. The board further recommended respondent be assessed with the costs and expenses of this proceeding.

Neither respondent nor the ODC filed an objection to the disciplinary board's recommendation.

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 committed criminal conduct by driving while intoxicated. Thereafter, she engaged in dishonesty and misrepresentation by giving multiple versions of the events in question to law enforcement, the ODC, and the JLAP evaluator. This misconduct amounts to a violation of Rules 8.4(a), 8.4(b), and 8.4(c) of the Rules of Professional Conduct as charged.

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 the public and the legal profession, causing the potential for serious harm. Fortunately, no actual harm resulted. Respondent's misconduct was at least knowing. The baseline sanction for this type of misconduct is suspension. The record supports the aggravating and mitigating factors found by the disciplinary board.

Turning to the issue of an appropriate sanction, we find guidance from the case of *In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 3d 941. In *Baer*, we stated the following with respect to appropriate sanctions for DWI offenses:

We have imposed sanctions ranging from actual periods of suspension to fully deferred suspensions in prior cases involving attorneys who drive while under the influence of alcohol. However, as a general rule, **we tend to impose an actual suspension** in those instances in which multiple DWI offenses are at issue, as well as **in cases in which the DWI stems from a substance abuse problem that appears to remain unresolved.** [Emphasis added.]

Following her psychological evaluation, JLAP recommended a one-day multidisciplinary assessment to obtain collateral information and additional testing to rule out a substance use disorder. To date, respondent has not complied with this recommendation. Pursuant to our guidance in *Baer*, an actual suspension is therefore warranted. The sanction of a one year and one day suspension means respondent will have to file a formal application for reinstatement in the event she wishes to return to the practice of law. This will ensure that the public is protected as before respondent can be reinstated to the practice of law, she will have to address the question of whether she has a substance abuse disorder, and, if so, show an effort at recovery.

Based on this reasoning, we will adopt the board's recommendation and suspend respondent from the practice of law for one year and one day.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Amy Elizabeth Bateman, now known as Amy Champagne, Louisiana Bar Roll number 29752, be and she hereby is suspended from the practice of law for one year and one day. 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.