

SUPREME COURT OF LOUISIANA

NO. 2019-B-1895

IN RE: IKE SPEARS

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

UNDERLYING FACTS

On August 20, 2018, respondent appeared before Judge Robin Pittman of the Orleans Parish Criminal District Court to represent his client, Ron Edwards, on the State’s motion for a bail increase in a domestic violence case. Assistant District Attorney Iain Dover appeared for the State.

During argument on the State’s motion, respondent advised Judge Pittman that the victim, Mr. Edwards’ girlfriend, had on a prior occasion brought false charges against Mr. Edwards and ultimately pleaded guilty to filing a false police report. The transcript reflects that the following exchange occurred after respondent’s statement about the victim:

Mr. Dover: Excuse me, sir. You’re a liar.

Respondent: We can run her - -

Mr. Dover: You are - -

The Court: You both - -

Respondent: And I will punch the shit out of you if you call me a liar, again.

Mr. Dover: And I'm standing right in front of you.

Respondent: Call me a liar, again.

Mr. Dover: Liar.

Respondent: (Raises fist up to Mr. Dover)

Mr. Dover: (Raises arm up in a blocking motion) Liar.

The Court: Mr. Spears and Mr. Dover?

Mr. Dover: Yes, Judge.

Respondent: He's trying to provoke me, Your Honor, and I'm going to be bigger than him, today, - -

The Court: Please.

Respondent: -- but perhaps we can settle this outside the courtroom.

Mr. Dover: Sure.

The Court: Perhaps, you shouldn't. ...

It is undisputed that there was no physical contact between respondent and Mr. Dover. Following the incident, Judge Pittman called each attorney into her chambers, separately, for a brief discussion. After returning to the courtroom, both respondent and Mr. Dover apologized on the record for their conduct. Judge Pittman then concluded the hearing without further difficulty.¹

DISCIPLINARY PROCEEDINGS

In May 2019, 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 3.5(d) (engaging in conduct intended to disrupt a tribunal) and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

¹ Mr. Dover's conduct is not before us in this matter. On May 6, 2019, we accepted a joint petition for consent discipline and publicly reprimanded Mr. Dover for his part in the exchange with respondent. *In re: Dover*, 19-0401 (La. 5/6/19), 268 So. 3d 1024.

Respondent answered the formal charges and denied any misconduct arising out of his encounter with Mr. Dover. Rather, respondent asserted that he was “justifiably incensed” when Mr. Dover falsely accused him in open court of being a liar, leading to a “brief verbal dustup.” Respondent also denied any violation of the Rules of Professional Conduct. The matter then proceeded to a formal hearing on the merits.

Formal Hearing

The hearing committee conducted the formal hearing on September 25, 2019. Both parties introduced documentary evidence for the hearing committee’s consideration. The following witnesses testified before the committee: respondent, Mr. Dover, Judge Pittman, and attorney Jay Daniels.

Respondent testified that the transcript of the Edwards hearing was accurate insofar as it reported what he said to Mr. Dover, i.e., “I will punch the shit out of you if you call me a liar, again” and “perhaps we can settle this outside the courtroom.” However, respondent denied that he raised his fist to Mr. Dover as noted by the court reporter. Respondent testified that after Mr. Dover called him a liar, he made “a quick turn toward” Mr. Dover, who was standing behind him, and gave him “a little ‘flex’ action.” Respondent further testified:

So I was offended. I was upset. I was angry. But I did not punch at him. I didn’t raise my fist toward him. And if he says that, he’s mistaken.

Did he flinch? Yes, he flinched. He flinched. Maybe he thought I was going to punch him, because, you know, I’m sure my tone was such that I sounded very deliberate in telling him, “If you call me a liar again, I’m going to punch the mess out of you.”

* * *

But I never intended to hit him. I didn’t hit him. We didn’t have any physical contact. And certainly, I was close

enough to him that I could have hit him. So it's not as if someone separated us or someone came in between us.

I didn't want to hit him. I didn't intend to hit him. I just wanted the guy to quit disrespected [sic] me in a public venue like that.

Mr. Dover testified that respondent did in fact raise his fist and that he, Dover, was afraid respondent was about to hit him. He acknowledged that he called respondent a liar in open court, that such an accusation was improper, and that he was counseled by his supervisor that what he had done would rise to the level of a violation of the Rules of Professional Conduct.

Judge Pittman testified that to the best of her recollection, the court reporter's transcript accurately reflects the events in her courtroom on the day in question. Judge Pittman specifically recalled respondent's arm going up (although she could not recall if he made a fist or not) and Mr. Dover putting his arm up in a blocking motion. Judge Pittman did not hold either attorney in contempt of court, and both apologized to her. The incident lasted only a minute or two, and at most, she spent "less than 10 minutes" talking to the attorneys in chambers.

Attorney Jay Daniels was present in Judge Pittman's courtroom on the day of the incident. He testified that he did not see respondent raise a fist at Mr. Dover. However, it was clear to him that respondent was upset at being called a liar, and used profanity in response to Mr. Dover's accusations.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee noted that the facts of this matter are largely undisputed. Based on these facts, the committee determined that respondent violated the Rules of Professional Conduct as charged.

The committee found that respondent violated duties owed to the legal system and the profession. He acted knowingly, if not intentionally, in his reaction to Mr. Dover's provocation. Respondent's conduct caused actual harm, although slight, to the court in the form of a minimal delay in Judge Pittman's docket. It also caused potential harm to the profession as the conduct occurred in the presence of the public and was reported in the newspaper. The applicable baseline sanction in this matter is reprimand.

In aggravation, the committee recognized respondent's substantial experience in the practice of law (admitted 1986). In mitigation, the committee found the following factors: absence of a prior disciplinary record, absence of a dishonest or selfish motive, a cooperative attitude toward the proceedings, and character or reputation.²

In formulating a recommendation for an appropriate sanction, the committee considered *In re: Greenburg & Lewis*, 08-2878 (La. 5/5/09), 9 So. 3d 802. Mr. Lewis and Mr. Greenburg represented opposing parties in a bitterly contested succession matter. While appearing in open court for a motion hearing, Messrs. Lewis and Greenburg exchanged vulgarities, following which Mr. Greenburg grabbed Mr. Lewis's suit jacket, and both men fell to the floor. Mr. Greenburg was subsequently convicted of the misdemeanor offense of simple battery arising out of this altercation. In response to the formal charges filed against both lawyers, neither of whom had a prior disciplinary record, the court suspended Mr. Greenburg from the practice of law for six months, with all but thirty days deferred, subject to his participation in an anger management counseling program. The court publicly reprimanded Mr. Lewis.

² The committee also noted in mitigation that respondent was provoked by Mr. Dover not just once, but twice. Nevertheless, the committee specifically rejected respondent's argument that his actions were a justified response to Mr. Dover's insults.

The committee noted that in *Greenburg*, an actual physical confrontation took place between the attorneys. The court publicly reprimanded Mr. Lewis because he was not the aggressor or the instigator of the incident. The committee found that respondent's conduct in this matter is closer to that of Mr. Lewis than that of Mr. Greenburg, who was suspended, because respondent was likewise not the instigator of the incident.

Based on this reasoning, the committee recommended that respondent be publicly reprimanded. The committee also 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. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.³

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.

³ As amended effective May 15, 2019, Supreme Court Rule XIX, § 11(G) provides that “[i]f the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee's report to the court.”

The underlying facts of this matter are not seriously in dispute. Respondent engaged in an inappropriate and unprofessional verbal exchange with opposing counsel during an appearance before a judge in open court. This conduct violates Rules 3.5(d) and 8.4(d) of the Rules of Professional Conduct.

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 legal system and as a professional. He acted knowingly and caused actual harm to the court, as Judge Pittman's docket was temporarily delayed while she addressed the incident between respondent and Mr. Dover. Respondent's conduct also caused harm to the legal profession. The incident occurred in open court, in front of lawyers, court personnel, and ordinary citizens of Orleans Parish, and it was covered in the local newspaper. Such conduct undermines public confidence in and respect for the legal profession, and it cannot be condoned by this court. Considering the ABA's *Standards for Imposing Lawyer Sanctions*, the applicable baseline sanction is suspension. The aggravating and mitigating factors found by the hearing committee are supported by the record.

Turning to the issue of an appropriate sanction, we agree that the *Greenburg* case cited by the committee is instructive. As the committee noted, respondent's conduct most closely resembles that of Mr. Lewis, who was publicly reprimanded, rather than that of Mr. Greenburg, who was suspended. Mr. Lewis and Mr.

Greenburg both exchanged vulgarities but Mr. Greenburg was additionally convicted of the crime of simple battery upon Mr. Lewis. Because there was no physical altercation in this case, we find the mitigating circumstances justify a downward deviation from the baseline sanction of suspension to a public reprimand.

Based on this reasoning, we will accept the hearing committee's recommendation and publicly reprimand respondent.

DECREE

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Ike Spears, Louisiana Bar Roll number 17811, be and he hereby is publicly reprimanded. 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.