

The Supreme Court of the State of Louisiana

IN RE: TARA ELWELL

No. 2022-B-00390

IN RE: Tara Elwell - Applicant Other; Disciplinary Counsel - Applicant Other; Joint
Petition for Consent Discipline;

February 01, 2024

Probation extended. Conditions of probation modified. See per curiam.

JLW

JDH

JTG

WJC

JBM

PDG

Crichton, J., concurs in part, dissents in part and assigns reasons.

Supreme Court of Louisiana

February 01, 2024



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2022-B-0390

IN RE: TARA ELWELL

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent and the Office of Disciplinary Counsel (“ODC”) submitted a joint petition for consent discipline to this court. The “Joint Stipulation of Facts” filed by the parties in connection with that petition provided, “[i]n exchange for the stated discipline being imposed, Respondent conditionally admits to having knowingly violated Rules 1.5 (excessive fee), 1.16 (obligations upon termination) of the Rules of Professional Conduct.” As a sanction, the parties proposed respondent be suspended from the practice of law for eighteen months, with all but six months deferred, subject to one year of probation “with the special condition that during the year of probation, Respondent will initiate participation in the Louisiana State Bar Association Fee Dispute Arbitration Program, and will be bound by and comply with the ruling of the arbitrator.”

On April 20, 2022, a majority of this court accepted the petition. *In re: Elwell*, 22-0390 (La. 4/20/22), 336 So. 3d 450. Our decree provided:

IT IS ORDERED that the Petition for Consent Discipline be accepted and that Tara Elwell, Louisiana Bar Roll number 31401, be suspended from the practice of law for eighteen months, with all but six months deferred. Following the active portion of the suspension, respondent shall be placed on probation for a period of one year, subject to the special condition set forth in the Petition for Consent Discipline. The probationary period shall commence from the date respondent and the ODC execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension

executory, or imposing additional discipline, as appropriate.

Respondent has since completed the active portion of her suspension. Her probationary period is set to expire on February 6, 2024.

On January 11, 2024, the ODC filed a motion captioned “Motion to Revisit Probation Terms and/or Obtain Guidance from the Court with Incorporated Request for Extension of Probation.” In the motion, the ODC explained that respondent attempted to submit the matter to arbitration through the Louisiana State Bar Association (“LSBA”) Fee Dispute Arbitration Program, but the LSBA declined to accept it. The ODC moves this court to revise the special condition of probation to order respondent to initiate and participate in fee arbitration through a third-party arbitration service. It further requests her probation be extended to accommodate this condition.

In opposition, respondent objects to this proposal, pointing out she would be exposed to significant additional expense which she did not anticipate. She concludes, “[i]t would be unjust to impose a more onerous special condition on [respondent] when she never agreed to such a condition.”

Our disciplinary rules and jurisprudence are silent with respect to situations in which a condition of probation becomes impossible to fulfill due to circumstances beyond the control of the parties. Nonetheless, La. Const. art. V, § 5(B) grants this court exclusive original jurisdiction over attorney disciplinary proceedings. *See also Succession of Wallace*, 574 So. 2d 348, 350 (La. 1991) (“[t]his court has exclusive and plenary power to define and regulate all facets of the practice of law, including the admission of attorneys to the bar, the professional responsibility and conduct of lawyers, the discipline, suspension and disbarment of lawyers, and the client-attorney relationship.”).

In the exercise of our exclusive and plenary authority, we find it both necessary and appropriate to revise the conditions of probation. Accordingly, we will extend respondent's probation for a period of one year. During that time, respondent and the ODC shall mutually select a third-party arbitration service. Upon selection, respondent will initiate participation in fee arbitration and will be bound by and comply with the ruling of the arbitrator.

DECREE

For the reasons assigned, it is ordered that respondent's probation shall be extended for one year, or until February 6, 2025. It is further ordered that during the extended period of probation, respondent and the Office of Disciplinary Counsel shall mutually select a third-party arbitration firm, at respondent's cost, to perform the disputed fee arbitration. Upon selection, respondent will initiate participation in fee arbitration and will be bound by and comply with the ruling of the arbitrator. Respondent is further ordered to return \$75,000 of the disputed fee to her counsel's trust account immediately pending a final ruling by the arbitrator. Respondent may request that this court terminate the extended period of probation early by showing evidence that the disputed fee issue has been resolved. In all other respects, the provisions of our judgment in *In re: Elwell*, 22-0390 (La. 4/20/22), 336 So. 3d 450, shall remain in effect.