

IN THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA

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LAWYER DISCIPLINARY BOARD,

Petitioner,

v.

No. 18-0101

McGINNIS E. HATFIELD,

Respondent.

REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD

Rachael L. Fletcher Cipoletti [Bar No. 8806]
Chief Lawyer Disciplinary Counsel
Renée N. Frymyer [Bar No. 9253]
Lawyer Disciplinary Counsel
Office of Lawyer Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304
(304) 558-7999
(304) 558-4015 – facsimile
rfcipoletti@wvdc.org
rfrymyer@wvdc.org

I. REPLY TO RESPONDENT'S BRIEF

In his brief, Respondent admits to his conduct but asserts that he committed no violation of the Rules of Professional Conduct. Instead, he attempts to portray himself as a party apparently induced into his conduct by the victim and attributes motives to the victim that are not in the record. Respondent's arguments are without merit and must fail.

The Hearing Panel Subcommittee ("HPS") found that Respondent violated Rule 7.3(b)(2) of the Rules of Professional Conduct when he used inappropriate, sexually-harassing conduct during telephone contact with B.W., a prospective client in a domestic matter. The HPS also found that by making sexual advances in an attempt to create a sexual relationship with a client or a prospective client in exchange for his professional services, Respondent violated Rule 8.4(a) and (d). Finally, the HPS found that Respondent had committed the criminal acts of solicitation of another to commit an act of prostitution and therefore violated Rule 8.4(b) of the Rules of Professional Conduct. These findings are sound and based upon the clear and convincing evidence contained in the record.

Respondent appears to ignore much of the evidence in the record and apparently is relying on an "existing relationship" between himself and the victim, B.W., based upon a "lap dance" he claims she performed for him, to justify and absolve him of his conduct of soliciting sexual favors in exchange for legal representation. At the hearing, B.W. could not recall if she had performed any such dance for Respondent [Tr. p. 33], but assuming that such took place, this dance would have been a service performed by B.W. at the place of her employment, not an invitation to be propositioned or harassed. Indeed, the evidence in the record is that the only relationship she desired from Respondent was that of attorney and client. B.W. testified that she asked Respondent if she could make payments to him because she did not have enough money at the time to pay a

retainer, but she said that was “not good enough” and prompted his requests for sexual favors [Tr. p. 9].

According to the recording admitted into evidence, after being propositioned by Respondent, B.W. states, “I thought like when we first started out, I was just going to pay you. I didn’t know that you wanted sex out of the whole thing.” [Ex. 2 and Ex. 21]. Respondent responds, “Well, I’d have to charge you like 1,500 bucks. You don’t have \$1,500, do you?” [Id.] Respondent’s conduct is clear – he attempted to use his position as a member of the Bar to secure sexual favors from a woman who was in an obvious vulnerable position. It is well settled that this Honorable Court has a duty to “assist in protecting the vulnerable . . . from the lustful advances of attorneys[.]” *Lawyer Disciplinary Board v. Stanton*, 225 W.Va. 671, 680, 695 S.E.2d 901, 910 (2010).

Respondent also clearly fails to accept responsibility for his conduct and attempts to shift the blame to B.W.’s “life choices” for putting her in the position of the receiving end of Respondent’s conduct. In addition, attributing B.W.’s complaint to her “economic interests in a relationship with Respondent” has no basis in fact. The record is clear that B.W. never once asked Respondent for money or any other assistance despite his apparent willingness to provide such, nor did she ever receive any financial assistance from Respondent. As a potential client, B.W. anticipated paying Respondent for his legal services she badly needed in her divorce proceeding and cut off all contact with Respondent after he presented his alternative offer. Respondent is no victim. He intentionally engaged in tactics meant to prey upon B.W.’s vulnerability and was ultimately unsuccessful only because B.W. had the strength to reject and report Respondent’s repugnant behavior.

Respondent also attempts to downplay B.W.'s injuries. However, after being presented with her in-person testimony, the HPS found that even years later, there was no question that B.W. had been harmed emotionally by Respondent's reprehensible conduct. Respondent's continued lack of remorse is troubling.

The evidence is clear that Respondent violated the duties a lawyer owes to the public, to the legal system, and to the profession; acted in an intentional and knowing manner; and caused actual and potential injury by his misconduct. In ordering a strong sanction in these proceedings, this Court will be serving its goals of delivering an effective deterrent to other members of the Bar and at the same time restoring public confidence in the ethical standards of the legal profession. *See* Syllabus Point 3, *Comm. on Legal Ethics v. Walker*, 178 W. Va. 150, 358 S.E.2d 234 (1987). In order to protect the profession and the public it serves, Respondent's egregious conduct must be met with harsh consequences. His discipline should send a clear message to the Bar and the public that conduct of this nature will not be tolerated or condoned.

II. CONCLUSION

The findings of fact and conclusions of law set forth by the HPS of the Lawyer Disciplinary Board are correct, sound, fully supported by reliable, probative, and substantial evidence on the whole adjudicatory record, and should not be disturbed. Accordingly, for the reasons set forth in its brief and above, the ODC urges that this Honorable Court adopt the sanctions as recommended by the HPS in this matter, which appropriately are that Respondent's law license be annulled and that he pay the costs incurred in this disciplinary proceeding pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.