

SUPREME COURT OF LOUISIANA

NO. 2019-B-1460

IN RE: AUDREY MELISSA LAMB

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

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

**UNDERLYING FACTS**

On September 8, 2017, respondent was involved in an automobile accident as she drove west on Perkins Road in Baton Rouge. A witness saw respondent’s vehicle cross the center line and veer into oncoming traffic, drive onto private property, strike a parked, unoccupied vehicle, and then come to rest in a ditch. The police officers who responded to the scene detected an odor of alcohol on respondent and placed her under arrest after she failed a field sobriety test.

Subsequent investigation revealed that respondent was in possession of a small amount of marijuana, a .38 caliber revolver, and \$19,880 in cash. She was booked with DWI, reckless operation of a motor vehicle, failure to maintain control, and simple possession of marijuana.<sup>1</sup> Testing revealed that respondent’s blood alcohol level was .144g%, nearly twice the legal limit in Louisiana.

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<sup>1</sup> As noted in the police report, officers found less than 14 grams of marijuana in respondent’s vehicle. If respondent had been in possession of more than 14 grams of marijuana along with the firearm, she could have been charged with a felony, as opposed to simple possession of marijuana.

Respondent is enrolled in a one-year pretrial diversion program and will have successfully completed the requirements of the program by September 2019. Furthermore, she consulted the Judges and Lawyers Assistance Program (“JLAP”) for an evaluation, the results of which indicated that she does not suffer from a substance use disorder. Accordingly, JLAP made no recommendations for further testing or treatment.

### **DISCIPLINARY PROCEEDINGS**

In June 2018, the Baton Rouge City Prosecutor’s Office notified the ODC of respondent’s arrest. In February 2019, the ODC filed formal charges against respondent, alleging that her conduct violated Rules 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(b) (commission of a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer) of the Rules of Professional Conduct.

In her answer, respondent admitted that she was arrested and charged as set forth in the formal charges. However, she maintained the incident was a one-time occurrence and an “accumulation of personal matters that had overwhelmed her.” Respondent stated that she has been sober since her arrest, citing her successful completion of a substance use education program and random drug tests and submission to an interlock device on her vehicle that yielded no infractions. She also noted that the marijuana in her possession at the time of her arrest was a small amount for her personal use, and that the firearm and cash in her vehicle were returned to her by the police.

### *Mitigation Hearing*

Given respondent’s admission to the formal charges, the matter then proceeded to a hearing in mitigation, which was conducted by the hearing committee

on June 18, 2019. The ODC called Officer Chase Ard, Officer Ebony Walker, and Captain Keith Wilson of the Baton Rouge Police Department to testify in person at the hearing. Respondent testified on her own behalf and on cross-examination by the ODC.

#### TESTIMONY OF OFFICER WALKER

Officer Walker was dispatched to the accident scene on Perkins Road involving respondent. She testified that respondent appeared to be intoxicated so she contacted Officer Ard for assistance, due to his experience with DWI stops. A witness at the scene reported that respondent's vehicle had veered into oncoming traffic, hit a parked vehicle, and come to rest in a ditch. Officer Walker's observations were consistent with the account of the witness.

#### TESTIMONY OF OFFICER ARD

Officer Ard testified that he was called to the scene of respondent's accident at about 7:15 p.m. due to the suspicion of an impaired driver. Officer Ard conducted a field sobriety test, which respondent failed, and he placed her under arrest. He then observed the search that was conducted of respondent's vehicle. As noted in the incident report, the search found \$19,880 in cash, a gun, and less than 14 grams of marijuana.

Respondent admitted the gun and the cash found during the search were hers. Respondent also acknowledged that she had smoked marijuana and consumed alcohol earlier in the day. The Breathalyzer test administered to respondent registered .144 grams percent. Officer Ard charged respondent with DWI, reckless operation of a vehicle, failure to maintain control, and possession of marijuana. He confirmed that possession of less than 14 grams of marijuana is considered personal use, that the cash was not determined to be connected with any type of drug operation

or illegal activity, and the handgun was not found to have been stolen or to have been involved in any sort of past criminal activity. Both the gun and the cash were later returned to respondent.

#### TESTIMONY OF CAPTAIN WILSON

Captain Wilson testified that he processed the gun found in respondent's vehicle after the accident. The next day, the State Police Crime Lab ran a search on the weapon. Because there was no indication that the gun had been used previously in the commission of a crime, it was returned to respondent.

#### TESTIMONY OF RESPONDENT

Respondent testified to her personal history and her work with the Indigent Parent Defender Board ("IPDB"), representing indigent parents whose children come to foster care under allegations of child abuse or neglect. Her private practice consists of mainly family law.

In 2008, respondent left a difficult marriage and lost her home and all of her savings. She was able to find a house in Zachary and lived there until August 2016, when the historic floods in East Baton Rouge Parish inundated her home with two feet of water. The house was uninhabitable for over a year and respondent also lost her car. After the flood, she moved in with her sister for a while and then a friend took her in until she was able to move back into her home. Through all of this, respondent testified that she went to work every day, as she had to make a living and she had an employee who depended on her for her livelihood.

Respondent testified that on the day of the accident in September 2017, she had just returned to her home after the flood. She had a mattress on the floor, no curtains on the windows, and her clothes were still stored at her law office. It was a Friday and her office was closed. Respondent testified that she just wanted to be

somewhere for herself that day, as getting back into her house after the flood had been very traumatic, so she decided to visit her family home in the Mayfair area where she grew up.

Respondent arrived at Mayfair around 1:00 p.m. Her nephew, who lives there, rolled a joint and respondent acknowledges smoking some, not the whole joint, while there. Respondent also drank four mini-bottles of Sutter Home Chardonnay.

Respondent stayed at Mayfair until she left to go to her office to pick up a dress for a funeral service she had to attend. She did not feel intoxicated. She remembers driving down Perkins Road, but does not recall anything about the accident itself. The last thing she remembered before the crash was a particular song on the radio, and then the next thing she knew her airbag had deployed and a paramedic was knocking on her car window.

After the accident, respondent told the police that there was money in the trunk of the car. Explaining why she kept cash in her vehicle, respondent testified that she left her husband in 2008, after their marriage had become unbearable. He changed the locks on the door and emptied their joint bank account, leaving her with nothing. After that experience, respondent stopped using a bank and started holding money in cash. She testified that the money in the car was her savings and has since been used to restore her home.

As for the gun, respondent testified that it was in the glove compartment. She testified that she purchased the revolver from a pawn shop in 2011 for protection. She lives alone and has never fired the gun. It was properly registered in her name and has never been used in the commission of a crime.

Respondent also had in the car a small quantity of marijuana in a baggie that was given to her by her nephew. She testified that smoking marijuana was not a regular event in her life, but that she had been under so much stress that she just wanted to “let my hair down” and “forget about that I got to get furniture. I got to

get curtains for my window. Got to redo everything. I got to do all this here. There's nobody but me."

### *Hearing Committee Report*

After considering the evidence and testimony presented at the hearing, the hearing committee made factual findings consistent with the facts set forth above. Additionally, the committee noted that respondent was cooperative with the police at the scene of the automobile accident and complied with the testing they requested of her that day. She was likewise cooperative with the ODC in its investigation of the complaint and in responding to the formal charges. Respondent appeared truthful, honest, and forthright in responding to all questions posed to her at the hearing. She expressed sincere remorse concerning the entire event and expressed sincere gratitude that no one was physically injured as a result of her actions.

Respondent testified that she no longer consumes alcohol or marijuana. Prior to the accident in September 2017 she had never been arrested for DWI or any related offenses of any kind. She has also had no other criminal charges filed against her.

Based on these factual findings, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated duties owed to the public by driving under the influence. She acted knowingly. Her misconduct caused actual harm to the owner of the vehicle that was involved in the accident, which resulted in substantial property damage.<sup>2</sup> Respondent also caused harm to the profession, which occurs whenever any member of the bar engages in criminal acts. Finally, there was the potential for significant harm in the form of injury or death as a result

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<sup>2</sup> The committee noted that respondent had automobile insurance that would have provided coverage for the accident, but to her knowledge no claim was ever filed with or received by her insurer.

of respondent's decision to drive while impaired. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined that the baseline sanction is suspension.

In aggravation, the committee found substantial experience in the practice of law (admitted 1998) and illegal conduct. In mitigation, the committee found the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, imposition of other penalties or sanctions, and remorse. The committee also noted in mitigation respondent's past and present pro bono work with juveniles and the IPDB and that she was fully cooperative and compliant with the police and JLAP.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day, with said suspension fully deferred in light of the compelling mitigating factors present. 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 and recommendation. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee's report to the court for review.<sup>3</sup>

## **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

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<sup>3</sup> 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."

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 following a single-car accident, respondent was arrested and charged with DWI, possession of marijuana, and traffic charges. This misconduct amounts to a violation of Rules 8.4(a) and 8.4(b) 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 knowingly violated duties owed to the public, causing both actual and potential harm. The baseline sanction for this type of misconduct is suspension. The record supports the aggravating and mitigating factors found by the hearing committee.

Turning to the issue of the appropriate discipline in this matter, the case which controls the analysis of the proper sanction for DWI arrests is *In re: Baer*, 09-1795 (La. 11/20/09), 21 So. 3d 941. In that case, we stated:



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.

Here, respondent has not been involved in multiple DWI offenses. Further, following an evaluation by JLAP, it was determined that respondent does not suffer from a substance use disorder, and as such JLAP did not recommend any further testing or treatment. Therefore, the conditions under which we normally impose an actual period of suspension are not present in this case.

Based on this jurisprudence, as well as 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 one year and one day, fully deferred.

### **DECREE**

Upon review of the findings and recommendations of the hearing committee, and considering the record, it is ordered that Audrey Melissa Lamb, Louisiana Bar Roll number 25747, be and she hereby is suspended from the practice of law for a period of one year and one day, fully deferred. 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.