

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 23 DB 2022
Petitioner	:	
v.	:	Attorney Registration No. 202262
BRIAN FREDERICK LEVINE	:	
Respondent	:	(Lawrence County)

ORDER

AND NOW, this 20th day of September, 2023, upon consideration of the Report and Recommendation of the Hearing Committee filed on June 2, 2023; it is hereby ORDERED that the said BRIAN FREDERICK LEVINE, of Lawrence County shall be subjected to **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. Costs shall be paid by the Respondent.

BY THE BOARD:



Board Chair

TRUE COPY FROM RECORD

Attest:



Marcee D. Sloan
Board Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 23 DB 2022
	:	
v.	:	Attorney Registration No. 202262
	:	
BRIAN FREDERICK LEVINE, Respondent	:	(Lawrence County)

OPINION

This matter comes to the Board following the filing of a Hearing Committee Report recommending that Respondent, Brian Frederick Levine, receive a public reprimand for his violations of Pennsylvania Rules of Professional Conduct (“RPC”) 3.4(b), 8.4(b), and 8.4(d). Upon our independent review of this matter, we agree with the Committee’s conclusions that Respondent engaged in professional misconduct and further agree that a public reprimand is warranted.

By Petition for Discipline filed on April 11, 2022, Petitioner, Office of Disciplinary Counsel, charged Respondent with professional misconduct in one client matter and alleged that he: (1) offered value to a witness in exchange for her agreement not to testify at a scheduled preliminary hearing in a criminal proceeding in which Respondent’s client was the defendant; and (2) attempted to coerce the same witness by suggesting that charges could be brought against her if she appeared to testify at the preliminary hearing. On May 5, 2022, Respondent filed a counseled Answer to Petition for Discipline.

Following a prehearing conference on July 8, 2022, a District IV Hearing Committee (“Committee”) held a disciplinary hearing on November 16, 2022. In its case-

in-chief, Petitioner introduced exhibits ODC-1 through ODC-6 and presented the testimony of one witness, Angel Lyles. Respondent testified on his own behalf and presented the testimony of one witness, Lawrence County Assistant District Attorney Luanne Parkonen. Respondent introduced no exhibits. After the Committee found a *prima facie* violation of at least one of the ethical rules charged in the Petition for Discipline, Respondent presented no character witnesses or other evidence in mitigation.

On February 14, 2023, Petitioner filed a post-hearing brief to the Committee and requested that the Committee recommend to the Board that Respondent receive a public reprimand for his misconduct. Respondent filed a post-hearing brief on March 6, 2023, and requested that the Committee recommend to the Board that a private reprimand be imposed. The Committee filed its Report to the Board with a recommendation for a public reprimand on June 2, 2023. The parties did not take exception to the Report and recommendation, and the Board adjudicated this matter at its meeting on July 25, 2023.

FACTUAL FINDINGS

The record established the following facts. Respondent was born in 1980 and was admitted to practice law in the Commonwealth in 2006. He maintains an office for the practice of law at Levine Law, 22 E. Grant Street, New Castle, Lawrence County, Pennsylvania 16101. Respondent is currently on active license status and has no record of attorney discipline.

On or before October 4, 2021, John Thomas Payne was arrested and charged with receiving stolen property, docketed in Magisterial District Court 53-3-04 (Lawrence County) at MJ-5530-CR-0000119-2021. Respondent represented Mr. Payne in the criminal proceeding. A preliminary hearing was scheduled for October 13, 2021.

The Commonwealth intended to call Ms. Angel Lyles to testify at the preliminary hearing. Mr. Payne shared ownership of a Corvette automobile with Ms. Lyles. Mr. Payne and Ms. Lyles were not married.

The day before the scheduled preliminary hearing, on October 12, 2021, at 1:31 p.m., Respondent called Ms. Lyles and left a voicemail message advising that he wanted to “run some things by [her] of interest.” On October 12, 2021, at 1:32 p.m., Respondent sent Ms. Lyles a text message stating, “Angel, this is Attorney Brian Levine, representing John Payne in tomorrow’s preliminary hearing. Just left you a voicemail. I’d like to run something by you. Pls [sic] call me back today. Brian Levine, Esquire.” That same afternoon, Ms. Lyles returned Respondent’s call. During the call, Respondent advised Ms. Lyles that if she did not appear to testify at the October 13, 2021 preliminary hearing, she could thereafter come to Respondent’s office at which time he would give her the keys to the Corvette that she jointly owned with Mr. Payne. Respondent further advised that it would be in Ms. Lyle’s interest to not appear for the October 13, 2021 preliminary hearing because she could face “lateral charges.” Respondent called Ms. Lyles two more times on October 12, 2021. Ms. Lyles did not answer or return these calls. On October 12, 2021, at 5:23 p.m., Respondent sent Ms. Lyles a text message stating, “Angel, pls [sic] call me back for follow up and confirmation of agreement between you and John. Brian Levine, Esquire.”

On October 13, 2021, Ms. Lyles appeared for the scheduled preliminary hearing. On October 13, 2021, Respondent appeared and waived the scheduled preliminary hearing on Mr. Payne’s behalf. On that same date, after waiving the preliminary hearing, Respondent asked to speak privately in-person with Ms. Lyles, who consented to the conversation. Respondent reiterated that he would give Ms. Lyles the

keys to the Corvette if she refused to testify against Mr. Payne, and asked Ms. Lyles to return to his office where she would sign a form stating that she would not testify and then be given the car keys. Ms. Lyles did not accept Respondent's proposal.

On December 6, 2021, Petitioner provided to Respondent a DB-7 Request for Statement of Respondent's Position regarding a complaint raised by Ms. Lyles. On January 7, 2022, Respondent submitted a response and admitted that he advised Ms. Lyles that "Mr. Payne was willing to pay the delinquent insurance premiums on the Corvette vehicle; turn over the keys and possession of the vehicle to Ms. Lyles; and sign over title to Ms. Lyles, with Ms. Lyles then being responsible for paying all financial maintenance on [the] vehicle moving forward – in exchange for Ms. Lyles agreeing to not appear and/or testify against Mr. Payne in connection with the criminal proceedings." Respondent also admitted that "it was [his] strategy and intent to attempt to work out a global resolution of all outstanding/pending matters between Mr. Payne and Angela [sic] Lyles in tandem with the subject criminal proceedings."

In attorney disciplinary matters, evidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof of such conduct is clear and satisfactory. *Office of Disciplinary Counsel v. John T. Grigsby, III*, 425 A.2d 730, 732 (Pa. 1981). On this record, Petitioner met its burden as to Respondent's violations of RPC 3.4(b), 8.4(b), and 8.4(d), and failed to satisfy its burden as to RPC 1.2(d).

Here, the record established that Respondent offered to Ms. Lyles that his client, Mr. Payne, would pay the delinquent insurance premiums on the Corvette vehicle, turn over the keys and possession of the vehicle to Ms. Lyles and sign over the title to Ms. Lyles in exchange for Ms. Lyles' agreement to not appear and/or testify against Mr.

Payne at a preliminary hearing at which Mr. Payne was a criminal defendant. The record further demonstrated that Respondent told Ms. Lyles it would be in her interests to not appear for the preliminary hearing because she could face lateral charges. Respondent's multiple contacts with Ms. Lyles took place on October 12, 2021, the day prior to Mr. Payne's scheduled preliminary hearing.

Respondent characterized his actions as an attempt to achieve a "global resolution" of issues between Mr. Payne and Ms. Lyles, yet in the context of the offer of full ownership of the Corvette vehicle, the timing of that offer one day prior to the preliminary hearing, the statement that Ms. Lyles could have lateral charges filed against her, and the multiple attempts to contact Ms. Lyles over a very short period time, we conclude that Respondent's actions amount to coercion and intimidation. As the Committee aptly noted, there is far too much coincidence to explain away Respondent's actions as a global settlement of disputes, and it strains credulity to conclude otherwise. A reasonable individual would conclude that the sole purpose of the offer was to induce Ms. Lyles to not appear and/or to testify at the preliminary hearing. The facts of this record do not support Respondent's position that he was merely attempting to reach a settlement of outstanding claims between his client and Ms. Lyles.

Respondent's threat of "lateral charges" if Ms. Lyles testified against Mr. Payne and attempts to coerce her by offering full ownership of the jointly owned Corvette if she refused to testify violated RPC 8.4(b), which provides that "[i]t is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." In concluding that Respondent's actions violated this provision of the rules related to criminal acts, we reviewed 18 Pa.C.S. § 4953 (Intimidation of witnesses or victims), which sets forth that:

(a) Offense defined. -- A person commits an offense if, with the intent to or with the knowledge that his conduct will obstruct, impede, impair, prevent or interfere with the administration of criminal justice, he intimidates or attempts to intimidate any witness or victim to:

...

(3) Withhold any testimony, information, document, or thing relating to the commission of a crime from any law enforcement officer, prosecuting official or judge.

...

(5) Elude, evade or ignore any request to appear or legal process summoning him to appear to testify or supply evidence.

While there is no evidence of record to establish that criminal charges were pursued against Respondent as a result of his conduct with Ms. Lyles, we observe that RPC 8.4(b) does not require a criminal conviction as a predicate to finding that an attorney's conduct violated the rule. *See, Office of Disciplinary Counsel v. Edwin L. London*, Nos. 119 & 171 DB 2014 (D. Bd. Rpt. 8/25/2015) (S. Ct. Order 10/22/2015). However, Petitioner must satisfy its burden to prove that Respondent committed the criminal act, Upon this record, Petitioner met its burden. Respondent's actions in offering the vehicle to Ms. Lyles, his statement that she could face lateral charges if appearing to testify at the preliminary hearing, and Respondent's repeated attempts to contact and speak with Ms. Lyles leading up to the preliminary hearing, taken together, would clearly be intended to "obstruct, impede, impair, prevent or interfere with the administration of criminal justice" through the coercion of Ms. Lyles not to testify.

By extending an offer of full ownership of the Corvette to Ms. Lyles in exchange for her refusing to testify, Respondent violated RPC 3.4(b), which provides, in pertinent part, that "[a] lawyer shall not...offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony."

Respondent's conduct in this matter also violated RPC 8.4(d), which provides that "[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice." As to RPC 1.2(d), which provides, in pertinent part, that "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal," we conclude that there is insufficient evidence of record to establish a violation of this rule.

Having determined that Respondent engaged in professional misconduct, we next consider the appropriate discipline. It is well-established that in imposing discipline, each case must be decided individually on its own unique facts and relevant circumstances, "being mindful of the need for consistency in the results reached in disciplinary cases so that similar misconduct is not punished in radically different ways." *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 190 (Pa. 1983). The analysis required under *Lucarini* mandates weighing any aggravating and mitigating factors present in this matter.

The primary purpose of Pennsylvania's system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system. *Office of Disciplinary Counsel v. John J. Keller*, 506 A.2d 872 (Pa. 1986). In weighing the appropriate discipline, we consider in that Respondent has practiced law in the Commonwealth for approximately seventeen years with no record of professional discipline, a mitigating factor. We also find in Respondent's favor that he cooperated with Petitioner during the disciplinary process. However, we find, as did the Committee, that Respondent did not express remorse or acknowledge his wrongdoing, instead describing his actions as though he were negotiating a settlement of a private matter, with no recognition that his actions were intended to impact a criminal proceeding. This lack of

appreciation for the impropriety of his actions compels public discipline in the form of a public reprimand in order to underscore the seriousness of Respondent's conduct. A public reprimand is appropriate under the circumstances of this matter and will emphasize to Respondent the critical need to conduct his practice in accordance with ethical rules.

CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC"):

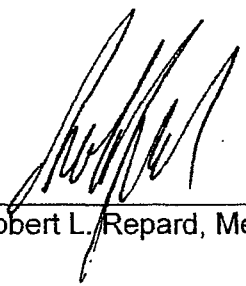
1. RPC 3.4(b) – A lawyer shall not...pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony.
2. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
3. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the Respondent, Brian Frederick Levine, shall receive a Public Reprimand.

The expenses incurred in the investigation and prosecution of this matter shall be paid by the Respondent.

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Hon. Robert L. Repard, Member

Date: 9/20/2023

Members Dee, Lehocky, and Mongeluzzi recused.