

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

FILED

October 30, 2018

ARDC CLERK

In the Matter of:

KEVIN PATRICK WENDORF,

Attorney-Respondent,

No. 6287655.

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Commission No. 2018PR00079

AMENDED COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Wendy J. Muchman, pursuant to Supreme Court Rule 753(b), complains of Respondent, Kevin Patrick Wendorf, who was licensed to practice law in the State of Illinois on November 10, 2005, and alleges that Respondent has engaged in the following conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute:

COUNT I

Criminal Conduct-Assault and Battery of L.T.

1. At all times alleged in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-3, which provides, "Battery. (a) A person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual."

2. At all times alleged in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/12-1, which provides: "Assault." (a) A person commits an assault when, without lawful authority, he engages in conduct which places another in reasonable apprehension of receiving a battery."

3. At all times alleged in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/10-3, which provides: "Unlawful Restraint. (a) A person commits the offense of unlawful restraint when he or she knowingly without legal authority detains another."

4. At all times alleged in this complaint, there was in effect a criminal statute in Illinois 720 ILCS 5/11-1.50 (a)(2), a class 4 felony which provides: "Criminal Sexual Abuse." A person commits criminal sexual abuse if that person: commits an act of sexual conduct and knows that the victim is unable to understand the nature of the act or is unable to give knowing consent."

5. On or about April 30, 2017, L.T. was arrested and charged with retail theft.

6. On or about April 30, 2017, L.T. telephoned attorney George Kallas, who had represented her in two prior legal matters, and left him a message asking if he would represent her relating to her April 30, 2017, arrest.

7. Respondent rented an office from Kallas and, as a result, they officed in the same suite. Respondent returned L.T.'s phone message on April 30, 2017, identified himself as Kallas' partner, and told L.T. that Kallas was not available, and that Kallas had asked him to meet with L.T. on May 1, 2017, regarding her case and to collect a down payment of \$500 towards Kallas' \$2,500 retainer.

8. On May 1, 2017, Respondent met with L.T. at his office. L.T. gave Respondent \$500 and he asked L.T. to sign a criminal fee agreement. L.T. signed the agreement and Respondent dated the agreement May 1, 2017, and signed the agreement with his initials "KPW." At that meeting, L.T. told Respondent that she struggled with her emotional and mental health, that she had considered suicide, that she took antianxiety and antidepressant medications as well as a sleep medication which she believed may have led to her unknowingly taking the

actions which resulted in the retail theft charges. L.T. further told Respondent that she had recently lost her job, that her home was in foreclosure and that she was living with friends. Respondent also discussed with L.T. some issues with her pending domestic relations matter, stating that Respondent had concerns about her attorney's performance and the fee that he had charged her. In addition, L.T. had been unable to obtain a response filed in an arbitration matter in which she was involved and Respondent offered to get information for her about that matter.

9. As a result of Respondent describing himself to L.T. as Kallas' "partner," Respondent's action in affixing his initials to the fee agreement, the personal confidences L.T. provided to Respondent at Respondent's law office and Respondent's indication that he would obtain information about her divorce and arbitration matters, L.T. had a reasonable belief that Respondent was acting as her attorney.

10. After the May 1, 2017, meeting, L.T. attempted to call or text Kallas, asking him to contact her, but Respondent responded to her attempts to communicate with Kallas. As a result, L.T. believed that Kallas wanted Respondent to handle her matter. At no time did L.T. ever meet with or discuss her matter with Kallas.

11. Between May 1, 2017, and May 20, 2017, Respondent sent L.T. several texts asking her how she was feeling, enquiring about her mental state, and asking her to call him. Respondent also advised L.T. in a text that one of her medications, Ambien, is a medication that causes people to sleepwalk. During this period, Respondent and L.T. also spoke on the telephone and he asked her to meet him for breakfast or lunch, which she declined.

12. Respondent asked L.T. to meet him at his office on Saturday, May 20, 2017, at 4:45 pm to discuss the information that Respondent had obtained on L.T.'s behalf.

13. When L.T. arrived at Respondent's office building on May 20, 2017, Respondent was waiting for her in his car. Respondent used his keys to unlock and enter the building and his office suite and then locked the door behind him. Respondent and L.T. were the only people present in Respondent's office. Respondent started the meeting by accessing L.T.'s records on the DuPage County Courts website. He pulled a second chair close to him so that he and L.T. could review the records together. Respondent said he thought her lawyer was overbilling her. As they finished their review, Respondent put his arm around her and touched her arm and legs. Respondent complimented her earrings and touched her hair, telling her how attractive she was to him. L.T. stood up with the intention of leaving and Respondent pulled her onto his lap and began massaging her shoulders. L.T. told him that she didn't do things like that and that he was married and Respondent told L.T. that he hadn't had sex with his wife in 18 months. Respondent then led L.T. to an adjacent area to sit on a couch, took off his suit coat and her jacket. Respondent then stood L.T. up and restrained her by pinning her against a wall. Respondent exposed his penis to L.T. and pulled her hand towards him and forced her hand to touch his penis twice. L.T. withdrew her hand both times. Respondent pulled L.T.'s hand to his penis a third time, at which point Respondent ejaculated on both his and her clothing. Respondent pulled up his pants and left to retrieve her purse, unlocked the office door and they exited the building at the same time. Respondent said he would call her and got into his car and left. L.T. went quickly to her car and locked the door. She texted a friend, J., about what had just happened in her meeting with Respondent while sitting in her car. L.T. was shocked and frightened by Respondent's actions, and upset and disoriented so that she was initially unable to drive and had to search for directions to her home on her GPS.

14. During the events described in paragraph 13 above, L.T. repeatedly told Respondent that she did not want to have sexual contact with him. Because she believed the door to be locked and was frightened of Respondent, she did not attempt to leave the office.

15. On the morning of May 21, 2017, L.T. went to the Glen Ellyn Police Department and made a police report about the May 20, 2017 incident at Respondent's office.

16. As a result of Respondent's position as her attorney, L.T.'s mental health issues and the medications L.T. was taking to treat those issues, about which Respondent was aware, L.T. was unable to give informed consent to any sexual contact between herself and Respondent.

17. On July 26, 2018, a misdemeanor criminal complaint was filed in the Circuit Court of the Eighteenth Judicial Circuit against Respondent, entitled People of the State of Illinois v. Kevin Wendorf, case number 18 CM 1626, charging Respondent with battery, in violation of ILCS Chapter 720/5/12-3(a)(2).

18. As a result of the conduct set forth above, Respondent has engaged in the following misconduct:

- a. engaging in sexual relations with a client where no consensual relationship existed between them before the attorney-client relationship commenced by engaging in sexual activity with L.T. on May 21, 2017 in his law office in violation of Rule 1.8 (j) of the Illinois Rules of Professional Conduct; and,
- b. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, by conduct including restraining and engaging in sexual contact with LT, a person who Respondent believed had serious mental health and drug abuse issues, by committing battery in violation of 720 ILCS 5/12-3, assault in violation of 720 ILCS 5/12-1, unlawful restraint in violation of 720 ILCS 5/10-3, and criminal sexual abuse in violation of 720 ILCS 5/11-1.50(a)(2), in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Criminal Conduct: Obstruction of Justice by Allowing Affirmative False Statements to be Made to the Glen Ellyn Police Department and False Statements to the ARDC)

19. The Administrator realleges the facts set forth in paragraphs 1 through 17 of Count I above.

20. At all times alleged in this complaint, there was in effect a criminal statute in Illinois, 720 ILCS 5/31-4, Obstructing Justice, which provides that:

(a) A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly commits any of the following acts:

(1) Destroys, alters, conceals or disguises physical evidence, plants false evidence, furnishes false information;....

21. At all times alleged in this complaint, there were in effect a criminal statutes in Illinois, 720 ILCS 5/5-1, Accountability for Conduct of Another, and 720 ILCS 5/5-2, When Accountability Exists, which provides that:

A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself, or that of another and he is legally accountable for such conduct as provided in section 5-2, or both.

A person is legally accountable for the conduct of another when:

(a) having a mental state described by the statute defining the offense, he or she causes another to perform the conduct, and the other person in fact or by reason of legal incapacity lacks such a mental state;

A person is not so accountable, however, unless the statute defining the offense provides otherwise, if:

(2) the offense is so defined that his or her conduct was inevitably incident to its commission.

22. On the morning of May 21, 2017, L.T. went to the Glen Ellyn Police Department and made a police report about the May 20, 2017, incident at Respondent's office. Because L.T.

stated that Respondent had ejaculated on her clothing, the police requested and received from L.T. her clothing in order to conduct a DNA test.

23. On May 26, 2017, L.T. reported Respondent's conduct as described in paragraph 13 above, to the ARDC, resulting in the docketing of investigation, 2017IN02232.

24. On June 21, 2017, Respondent appeared at Valenti's office for an interview with Glen Ellyn Police Detectives Jeremy Schmidt and Kyle Duffie about L.T.'s allegations. Respondent was present with his attorney, Frank Valenti at Valenti's office in Villa Park, Illinois. The police detectives, Duffie and Schmidt, conducted an interview. Valenti, as Respondent's attorney, answered all questions. At all times, while Valenti talked to the detectives and answered their questions about L.T.'s allegations, Respondent was present. Valenti, as Respondent's attorney, told the police detectives the following:

- As of May 20, 2017, L.T. was Respondent's client;
- On May 20, 2017, L.T. came into Respondent's office and they discussed her case;
- Anything Respondent discussed with L.T. at the meeting was privileged; that Respondent has never had a sexual relationship with L.T.;
- Respondent did not have sexual contact with L.T. on May 20 or any other date;
- Respondent did not ejaculate at any point during his May 20 meeting with L.T.;
- Respondent did not force L.T. to touch his penis on May 20 or any other time;
- L.T. had made these allegations because she is "nuts" and has "psychiatric issues." Valenti said there was no reason for Respondent's semen to be on L.T.'s clothing and therefore Respondent would decline a DNA test.

25. The statements made by Respondent's attorney to the Glen Ellyn police on Respondent's behalf and described in paragraph 24 above, were false, and Respondent knew they were false because Respondent knew that he had in fact engaged in sex acts with L.T.

Respondent did not assert his 5th amendment rights or simply deny his involvement in any crime. Respondent allowed his counsel to specifically deny his involvement in the conduct and to furnish affirmatively false information about which Respondent knew the police detectives were seeking to acquire information.

26. On August 5, 2017, Respondent, through his attorney, Frank Valenti, responded in writing to L.T.'s allegations to the ARDC. Valenti's response filed on behalf of Respondent stated that "[a]s for the alleged incident, what [L.T.] alleges simply did not occur." Valenti denied that Respondent ever represented L.T. as her attorney, asserted that the reason Respondent chose to meet with L.T. on a Saturday was because he "would have unrestricted access to the computers which would allow him to log on to the DuPage County web site to review all [L.T.'s] cases, past and present." Valenti stated that "the entry door when locked can only prevent entry from the outside. Anyone inside the office can exit at any time."

27. The statements set forth in Respondent's August 5, 2017, written response to the A.R.D.C. described in paragraph 26 above made by Respondent's attorney on Respondent's behalf denying that Respondent represented L.T. or that and that the events alleged by L.T. to have occurred at the May 20, 2017, meeting "simply did not occur," were based on Respondent's assertions to his attorney, were false, and Respondent knew they were false when he made them to his attorney.

28. On May 21, 2018, Respondent appeared at the ARDC with this attorney, Frank Valenti to give a sworn statement in relation to the investigation initiated by L.T. Respondent was sworn under oath and was asked about his contact with L.T. in his meeting with her on May 20, 2017. At that time, Respondent admitted that sexual contact had occurred between

Respondent and L.T. on May 20, 2017 and stated that L.T. was not Respondent's client; she was only Mr. Kallas's client.

29. As of September 28, 2018, the date this complaint was filed, Respondent has not corrected the statements made by his attorney and agent to the Glen Ellyn Police Department.

30. As a result of the conduct set forth above, Respondent has engaged in the following misconduct:

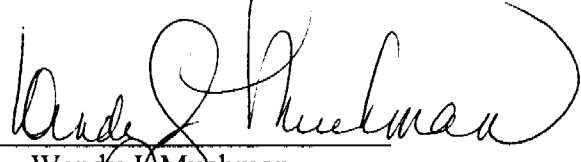
- a. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as lawyer in other respects by conduct including, allowing his attorney, Frank Valenti, to provide affirmatively and materially false information to the Glen Ellyn police detectives who were investigating a crime while present for that interview, thereby obstructing justice and causing another person to provide false information for which Respondent is accountable in violation of 720 ILCS 5/31-4 Obstructing Justice, and 720 ILCS 5/5-1, Accountability for Conduct of Another and 720 ILCS 5/5-2, When Accountability Exists, and in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010);
- b. engaging in conduct involving dishonesty, deceit and misrepresentation by appearing for an interview with the Glen Ellyn police department and allowing his lawyer to lie about the fact that no sexual contact had occurred between Respondent and L.T. on May 20, 2017 when Respondent knew that sexual contact had occurred when Respondent could have asserted his fifth amendment rights, in violation of Rule 8.4 (c); and,
- c. Knowingly making a false statement of material fact in his response to Administrator's investigation 2017IN02232 by directing his lawyer to deny in his written response to the Administrator's inquiry that he represented L.T. or that any sexual contact had occurred between Respondent and L.T. in violation of Rule 8.1(a).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By:


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