

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

MATTER OF RICHARD R. SHAW, II, AN ATTORNEY, RESPONDENT.
GRIEVANCE COMMITTEE OF THE EIGHTH JUDICIAL DISTRICT, PETITIONER.

-- Order of censure entered. Per Curiam Opinion: Respondent was admitted to the practice of law by this Court on January 20, 2000, and maintains an office in Cheektowaga. The Grievance Committee filed a petition alleging that respondent had engaged in professional misconduct, including agreeing with a client to exchange legal services for sexual relations with the client. Although respondent filed an answer denying material allegations, the parties thereafter entered into a stipulation resolving all factual issues concerning the alleged misconduct. Respondent subsequently submitted to this Court matters in mitigation, and he appeared before the Court and was heard in mitigation.

Respondent admits that, in April 2015, he appeared in Cheektowaga Town Court as assigned counsel on behalf of a client for her arraignment on a charge of prostitution. Respondent admits that he spoke with the client following the arraignment and, during that conversation, respondent indicated that he would be willing to exchange legal services for sexual relations with the client. The client, however, replied in a noncommittal fashion and left the courthouse. Respondent admits that, over the next two days, he contacted the client by telephone or text message on several occasions, which prompted the client to report the matter to law enforcement officials. The client thereafter engaged respondent in two recorded telephone calls during which respondent agreed to represent the client on the prostitution charge in exchange for sexual relations with the client. Although respondent subsequently contacted the client to cancel the agreement, he was criminally charged and, on July 15, 2015, he entered a plea of guilty in Cheektowaga Town Court to one count of loitering for purposes of prostitution, in violation of Penal Law § 240.37 (2), a violation. Town Court sentenced him to a one-year conditional discharge and directed him to perform 50 hours of community service.

We find respondent guilty of professional misconduct and conclude that he has violated the following Rules of Professional Conduct (22 NYCRR 1200.0):

rule 1.7 (a) (2)—representing a client where a reasonable lawyer would conclude that there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests;

rule 1.8 (j) (1) (i)—requiring or demanding sexual relations with a person as a condition of entering into or continuing a professional representation;

rule 8.4 (b)—engaging in illegal conduct that adversely reflects on his fitness as a lawyer; and

rule 8.4 (h)—engaging in conduct that adversely reflects on his fitness as a lawyer.

We have considered, in determining an appropriate sanction, respondent's submissions in mitigation, including his statement that the misconduct occurred at a time when he was experiencing family difficulties and mental health issues for which he has since sought treatment. We have additionally considered his expression to this Court of extreme remorse, which we find to be sincere. Accordingly, after consideration of all of the factors in this matter, we conclude that respondent should be censured.

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, AND SCUDDER, JJ.

(Filed Mar. 1, 2016.)