

SUPREME COURT OF LOUISIANA

In re Bailey

115 So. 3d 458 (La. 2013) · Decided April 12, 2013

SUMMARY

The Louisiana Supreme Court considered disciplinary charges against attorney Joseph W. Bailey arising from his representation of a disabled client and the client's irrevocable trust. The court found violations involving excessive fees, conflicts of interest, mishandling of trust funds, inadequate supervision, and dishonest conduct, and ordered Bailey disbarred.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	April 12, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding arising from formal charges filed by the Office of Disciplinary Counsel. The hearing committee recommended disbarment, the disciplinary board recommended disbarment, and the Louisiana Supreme Court independently reviewed the record without oral argument after rejecting respondent's late objection.
STANDARD OF REVIEW	Because attorney disciplinary matters fall within the court's original jurisdiction, the court acts as the trier of fact and independently reviews the record to determine whether the alleged misconduct was proven by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential
PARTIES	Joseph W. Bailey v. Office of Disciplinary Counsel

TOPICS

trustee duties breach of trust trust administration bankruptcy trusts

PRACTICE AREAS

legal ethics attorney discipline trust administration fiduciary duties bankruptcy

QUESTIONS PRESENTED

1. Whether the record established by clear and convincing evidence that Bailey violated the Louisiana Rules of Professional Conduct.
2. Whether Bailey's misconduct warranted disbarment rather than a lesser sanction.

HOLDINGS

1. The record established that Bailey charged excessive fees, engaged in conflicts of interest, failed to properly supervise his wife in her roles as trustee and non-lawyer assistant, converted client or trust funds to his own use, and engaged in dishonest conduct, thereby violating the Rules of Professional Conduct found by the hearing committee and disciplinary board.
2. Disbarment was warranted because Bailey knowingly and intentionally violated duties owed to Morris, caused substantial actual harm, and presented aggravating circumstances that justified no downward deviation from the baseline sanction of disbarment.

KEY QUOTATIONS

“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 independent review of the record to determine whether the alleged misconduct has-been proven by clear and convincing evidence.” (466)

“Considering the weight of the aggravating circumstances present, there is no justification for any downward deviation from the applicable baseline sanction. Accordingly, we conclude the disciplinary board’s recommendation is appropriate, and we will order that respondent be disbarred.” (467)

FACTUAL BACKGROUND

Joseph W. Bailey represented Royce Morris in estate and tax planning and helped establish an irrevocable trust to manage Morris's substantial personal-injury settlement. Bailey recommended that his wife, Judith Bailey, become successor trustee while Bailey continued representing Morris and the trust, creating conflicts and eliminating meaningful checks and balances. Trust funds were depleted through excessive distributions, inadequate administration, questionable fees, personal-credit-card payments, and charges for services not performed. A civil judgment against Bailey and his wife was later determined in bankruptcy court to be nondischargeable because it resulted from defalcation while acting in a fiduciary capacity.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed formal charges alleging violations of multiple Louisiana Rules of Professional Conduct. After a formal hearing, the hearing committee found most of the charged misconduct and recommended disbarment; the disciplinary board affirmed the factual and rule-violation findings and also recommended disbarment. The Supreme Court rejected Bailey's objection as untimely, reviewed the matter on the briefs, independently reviewed the record, and ordered disbarment.

DISPOSITION

other

CASES CITED

- In re: Bailey, 10-0426 (La. 5/7/10), 41 So. 3d 436
- In re: Banks, 09-1212 (La. 10/2/09), 18 So. 3d 57
- Louisiana State Bar Ass'n v. Reis, 513 So. 2d 1173 (La. 1987)
- Louisiana State Bar Ass'n v. Whittington, 459 So. 2d 520 (La. 1984)

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