

SUPREME COURT OF LOUISIANA

In re Loughlin

148 So. 3d 176 (La. 2014) · Decided September 26, 2014

SUMMARY

The Louisiana Supreme Court reviewed a disciplinary board decision publicly reprimanding an attorney for advertising that his firm specialized in maritime personal injury and death cases. The court concluded that the respondent’s conduct was not shown to involve a culpable mental state or harm to the public and dismissed the formal charges, without reaching the constitutional arguments.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Louisiana
DECIDED	September 26, 2014
DISPOSITION	dismissed
PROCEDURAL POSTURE	Respondent lawyer appealed a disciplinary board decision imposing a public reprimand and requiring continuing legal education on lawyer advertising.
STANDARD OF REVIEW	Because attorney-discipline matters fall within the court's original jurisdiction, the Supreme Court of Louisiana 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 precedential opinion
PARTIES	Kearney Soniat du Fossat Loughlin v. Office of Disciplinary Counsel

TOPICS

- appellate procedure
- standard of review
- constitutional law
- first amendment
- admiralty

PRACTICE AREAS

- legal ethics
- attorney discipline
- legal advertising
- maritime law

QUESTIONS PRESENTED

1. Whether respondent's website statement that his firm was specializing in maritime personal injury and death cases constituted sanctionable misconduct under the applicable Louisiana lawyer-advertising and specialization rules.
2. Whether the record established by clear and convincing evidence that respondent's conduct warranted professional discipline.
3. Whether respondent's constitutional challenges to the advertising rules needed to be decided.

HOLDINGS

1. The respondent's conduct did not rise to the level of sanctionable misconduct because the record established no culpable mental state and no harm to the public.
2. In attorney-discipline matters within the Louisiana Supreme Court's original jurisdiction, the court acts as the trier of fact and independently reviews the record to determine whether misconduct was proven by clear and convincing evidence.

KEY QUOTATIONS

“Considering these factors, we do not find respondent’s actions rise to the level of sanctionable misconduct. Therefore, we will dismiss the formal charges against respondent.” (148 So. 3d at 178)

“it is ordered that the formal charges against respondent be and hereby are dismissed.” (148 So. 3d at 178)

FACTUAL BACKGROUND

In 2007, respondent created a law-firm website stating that his firm was a plaintiff-oriented litigation firm specializing in maritime personal injury and death cases. The website remained accessible through a Google search after respondent requested that it be taken down in 2009. The Office of Disciplinary Counsel charged respondent with violating Louisiana advertising and specialization rules, but the disciplinary record showed no actual public harm and no culpable mental state sufficient to support discipline.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed formal charges alleging that respondent violated Louisiana lawyer-advertising rules by stating on his former website that his firm specialized in maritime personal injury and death cases. The hearing committee found a violation and recommended a public reprimand and continuing legal education; the disciplinary board affirmed and ordered those sanctions. Respondent appealed to the Supreme Court of Louisiana, which independently reviewed the record and dismissed the formal charges.

DISPOSITION

dismissed

CASES CITED

- In re Banks, 09-1212 (La. 10/2/09), 18 So. 3d 57

OPINION

In re Loughlin

148 So. 3d 176

PER CURIAM.

*177ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM. | Respondent, Kearney Soniat du Fossat Loughlin, seeks review of a decision of the disciplinary board imposing a public reprimand. For the reasons that follow, we dismiss the formal charges against respondent.

FACTS AND PROCEDURAL HISTORY

In 2007, respondent created a website to promote his law firm. Both the “home page” and the “firm profile” page of the website contained the following statement: “Loughlin & Loughlin is a plaintiff-oriented pure litigation firm specializing in maritime personal injury and death cases.” [Emphasis added.] In 2009, respondent requested that the website be taken down for revisions because his wife, ■with whom he had been practicing, left the private practice of law. In October 2011, in connection with its investigation in an unrelated matter, the Office of Disciplinary Counsel (“ODC”) accessed a copy of the “firm profile” page of respondent’s former website through a Google search. After investigation, the ODC filed one count of formal charges, alleging respondent violated Rules 7.2(c)(1)(B) and 7.2(c)(5) as well as former Rule 7.4 (as it existed prior to 2009) by his claim on his former website that he “specialized” in maritime personal injury and death cases.¹ 12Respondent answered the formal charges and denied any misconduct. He contended that his former website did not claim a particular expertise or legal specialization, but rather used the term “specializing” in its ordinary meaning to convey that the focus of his law practice was maritime personal injury and death claims. Respondent later filed an amended answer asserting that the rules represented a content-based restriction on speech and are overly broad and vague, all in violation of the First, Fifth, and Fourteenth Amendments of the United States Constitutions and Article I, Sections 2 and 7 of the Louisiana Constitution. The matter proceeded to a formal hearing. At the conclusion of the hearing, the hearing committee determined that the language on respondent’s website stated or implied that his firm was a “specialist” in maritime personal injury and death cases, although such a specialization has not been recognized or approved in accordance with the rules and procedures established by the Louisiana Board of Legal Specialization. Accordingly, the committee found respondent violated former Rule 7.4 during the 2007-2009 time period described above. The committee determined respondent acted negligently in failing to make himself aware of and comply with Rule 7.4. However, it found there was no evidence of actual injury caused by respondent’s *178violation, and little potential for injury was shown. Considering these factors, it recommended respondent be publicly reprimanded, and recommended that he be required to attend a continuing legal education program on lawyer advertising. The disciplinary board affirmed the factual findings of the committee. Like the committee, it found no actual harm was caused by respondent’s actions and it

concluded respondent's actions were based "upon inexperience with the advertising rules rather than a dishonest or selfish motive." Accordingly, the board ^ordered that respondent be publicly reprimanded. The board also directed respondent to attend a continuing legal education program on lawyer advertising.² Respondent appealed the board's ruling to this court. We issued an order directing the parties to file written briefs for our consideration.

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 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. The record establishes respondent's actions were not taken with a culpable mental state.³ It is also undisputed his actions caused no harm to the public. Considering these factors, we do not find respondent's actions rise to the level of sanctionable misconduct. Therefore, we will dismiss the formal charges against respondent.⁴

DECREE

Upon review of the findings and recommendation of the hearing committee and the disciplinary board, and considering the record and the briefs filed by the 14 parties, it is ordered that the formal charges against respondent be and hereby are dismissed. VICTORY, J., dissents and assigns reasons. . Rules 7.2(c)(1)(B) and 7.2(c)(5) became effective on October 1, 2009. In response to respondent's claim that his website predated the adoption of these rules, the ODC amended the charges to also allege a violation of Rule 7.4, as it existed prior to 2009. . The board declined to reach respondent's constitutional arguments, finding insufficient evidence in the record to reach a conclusion on this issue. . The ABA's Standards for Imposing Lawyer Sanctions recognize three mental states. The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. In the instant case, we do not find respondent's mental state rises to even the lowest level of culpability. .Because we dismiss the formal charges, we do not reach respondent's constitutional arguments.