

SUPREME COURT OF LOUISIANA

In re Schmidt

130 So. 3d 908 (La. 2013) · Decided December 10, 2013

SUMMARY

The Louisiana Supreme Court reviews disciplinary charges against attorney Thomas Robert Schmidt arising from his representation of four clients. The court found violations involving inadequate diligence and communication, mishandling of advance fees and client property, failure to return unearned fees and files, and failure to cooperate with disciplinary authorities. Schmidt was suspended for one year and one day, with all but sixty days deferred, followed by two years of supervised probation and specified conditions.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Louisiana
DECIDED	December 10, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding within the Louisiana Supreme Court's original jurisdiction. The Office of Disciplinary Counsel objected to the disciplinary board's recommended sanction, and the matter was docketed for oral argument.
STANDARD OF REVIEW	The Louisiana Supreme Court has original jurisdiction over bar disciplinary matters and independently reviews the record to determine whether misconduct was proven by clear and convincing evidence. The court is not bound by the hearing committee's or disciplinary board's findings and recommendations, although the manifest-error standard applies to the committee's factual findings.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court attorney-discipline opinion
PARTIES	Office of Disciplinary Counsel v. Thomas Robert Schmidt

TOPICS

[appellate procedure](#) [standard of review](#) [appellate jurisdiction](#)

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

QUESTIONS PRESENTED

1. Whether the record established by clear and convincing evidence that Schmidt violated the Louisiana Rules of Professional Conduct.
2. What sanction was appropriate for Schmidt's multiple instances of client neglect, deficient communication, mishandling of advanced fees and client property, and failure to cooperate with the Office of Disciplinary Counsel.
3. Whether the circumstances warranted deferring most of the suspension and imposing supervised probation rather than requiring immediate service of the full suspension.

HOLDINGS

1. The record established that Schmidt violated the Rules of Professional Conduct by failing to complete clients' legal matters, failing to communicate with clients, failing to promptly return unearned fees and client files, and failing to cooperate with the Office of Disciplinary Counsel in the Ball matter.
2. A suspension from the practice of law for one year and one day was appropriate for Schmidt's misconduct, with all but sixty days deferred and followed by two years of supervised probation.
3. A fee paid in advance to secure future legal services is generally not earned until the lawyer performs the services, regardless of how the fee is characterized in the retainer agreement.

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.” (913)

“The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances.” (913)

FACTUAL BACKGROUND

Thomas Robert Schmidt represented four clients in unrelated matters between 2009 and 2010. His misconduct included failing to timely file a personal-injury claim, abandoning or failing to advance a community-property matter, failing to communicate and account for advanced fees, depositing advanced fees into his operating account rather than his trust account, failing to return unearned fees or client files, and failing to cooperate with the disciplinary investigation. The court attributed the misconduct primarily to poor law-office management and overwork rather than dishonesty or selfish motive, but found that it caused actual harm to clients.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed four counts of formal charges in August 2012. After a December 2012 hearing, the hearing committee found multiple violations and recommended a two-year suspension with all but

one year and one day deferred. The disciplinary board modified certain factual findings and recommended a one-year-and-one-day suspension with all but thirty days deferred, followed by supervised probation. The Louisiana Supreme Court independently reviewed the record and imposed a one-year-and-one-day suspension with all but sixty days deferred, followed by two years of supervised probation.

DISPOSITION

other

CASES CITED

- In re: Banks, 09-1212 (La. 10/2/09), 18 So. 3d 57
- In re: Caulfield, 96-1401 (La. 11/25/96), 683 So. 2d 714
- In re: Pardue, 93-2865 (La. 3/11/94), 633 So. 2d 150
- 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)