

SUPREME COURT OF LOUISIANA

In re Schiro

886 So. 2d 1117 (La. 2004) · Decided November 15, 2004

SUMMARY

The Louisiana Supreme Court reviewed disciplinary charges against attorney Gasper J. Schiro arising from his handling of a client's personal injury matter against the City of New Orleans. The court found violations involving competence, diligence, communication, and expediting litigation, and imposed a one-year suspension with six months deferred and one year of unsupervised probation.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	November 15, 2004
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding arising from formal charges filed by the Office of Disciplinary Counsel. After a hearing committee and the disciplinary board recommended suspension, the matter was reviewed by the Louisiana Supreme Court under its original jurisdiction.
STANDARD OF REVIEW	The Supreme Court independently reviews the record to determine whether misconduct has been proven by clear and convincing evidence, while applying manifest-error review to the hearing committee's factual findings.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential authority on the stated attorney-discipline standards and sanction.
PARTIES	Office of Disciplinary Counsel v. Gasper J. Schiro

TOPICS

municipal law

PRACTICE AREAS

legal ethics attorney discipline professional responsibility

QUESTIONS PRESENTED

1. Whether Schiro acted as Witt's attorney despite not being counsel of record.
2. Whether clear and convincing evidence established that Schiro violated the Rules of Professional Conduct by failing to provide competent and diligent representation, failing to communicate, and failing to make reasonable efforts to expedite litigation.
3. Whether clear and convincing evidence established a conflict of interest arising from Schiro's position as an elected parish official.
4. Whether Schiro's discussion of paying Witt \$2,000 constituted an improper or dishonest settlement of a malpractice claim under Rules 1.8(h) and 8.4(c).
5. What sanction was appropriate in light of the misconduct and aggravating and mitigating circumstances.

HOLDINGS

1. Schiro acted as Witt's attorney because his conduct in handling the matter caused Witt reasonably to believe that Schiro represented him, even though Schiro never formally enrolled as counsel of record.
2. Schiro violated Rules 1.1(a), 1.3, 1.4(a) and (b), and 3.2 by failing to provide competent representation, failing to communicate adequately with Witt, failing to act with diligence, and failing to make reasonable efforts to expedite the litigation.
3. The Office of Disciplinary Counsel failed to prove by clear and convincing evidence that Schiro's position as a parish official created a conflict of interest in representing Witt against the City of New Orleans.
4. The Office of Disciplinary Counsel failed to prove by clear and convincing evidence that Schiro improperly or dishonestly attempted to settle malpractice liability in violation of Rules 1.8(h) and 8.4(c).
5. A one-year suspension from the practice of law was appropriate, with six months deferred and followed by one year of unsupervised probation.

KEY QUOTATIONS

“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.” (1121)

“While respondent’s lack of dishonest intent in no way excuses his failure to conduct the representation in a competent and diligent manner, it serves to mitigate the severity of the sanction.” (1122)

“It is further ordered that six months of this suspension shall be deferred.” (1123)

FACTUAL BACKGROUND

Gaspar J. Schiro agreed to assist Harry Witt with a personal-injury matter against the City of New Orleans, but arranged for another attorney to enroll as counsel of record because of a possible conflict concern. Despite not formally enrolling, Schiro drafted and filed pleadings, sought trial and pretrial settings, attempted settlement discussions, and acted in a manner that led Witt reasonably to believe Schiro was his attorney. The matter remained largely inactive for years, Schiro failed to communicate adequately or pursue it diligently, and he later discussed giving Witt \$2,000 from his own funds after Witt threatened to file a disciplinary complaint.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed one count of formal charges alleging violations of multiple Louisiana Rules of Professional Conduct. The hearing committee found violations involving competence, diligence, communication, expediting litigation, and attempted settlement of malpractice liability, and recommended a one-year-and-one-day suspension followed by probation. The disciplinary board agreed with most of the competence, diligence, communication, and expediting findings, rejected the malpractice-settlement violation, and recommended a one-year suspension with six months deferred. The Supreme Court independently reviewed the record, found several violations proven, and imposed a one-year suspension with six months deferred and one year of unsupervised probation.

DISPOSITION

other

CASES CITED

- In re: Quaid, 94-1316 (La. 11/30/94), 646 So. 2d 343
- Louisiana State Bar Ass'n v. Boutall, 597 So. 2d 444 (La. 1992)
- 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)
- In re: Dunn, 98-0535 (La. 6/5/98), 713 So. 2d 461
- In re: Mitchell, 02-2581 (La. 11/8/02), 831 So. 2d 901
- In re: Dean, 03-2478 (La. 1/21/04), 864 So. 2d 152
- In re: Holmes, 03-1959 (La. 9/19/03), 855 So. 2d 736
- In re: Fazande, 03-2210 (La. 1/21/04), 864 So. 2d 174