

SUPREME COURT OF LOUISIANA

In re David M. Newell

60 So. 3d 1194 (La. 2011) · No. 2010-B-2109 · Decided March 15, 2011

SUMMARY

The Louisiana Supreme Court reviews disciplinary charges against attorney David M. Newell arising from seven client matters. The court addresses neglect and communication failures, mishandling and commingling of client funds, conflicts of interest, improper claims, and failure to refund unearned fees. The provided text includes the underlying facts, disciplinary findings, and discussion of the appropriate sanction.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	March 15, 2011
DOCKET	2010-B-2109
DISPOSITION	other
PROCEDURAL POSTURE	The Office of Disciplinary Counsel filed seven formal disciplinary counts against respondent attorney David M. Newell. After a hearing committee and disciplinary board recommended a one-year-and-one-day suspension, the matter was docketed for oral argument before the Supreme Court of Louisiana following respondent's objection to the disciplinary board's recommendation.
STANDARD OF REVIEW	Because attorney-discipline matters fall within the Supreme Court of Louisiana'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. 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 disciplinary opinion; precedential.

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QUESTIONS PRESENTED

1. Whether the alleged violations of the Louisiana Rules of Professional Conduct were proven by clear and convincing evidence.
2. What sanction was appropriate in light of the nature of the misconduct and the aggravating and mitigating circumstances.
3. Whether restitution, ethics and trust-accounting education, audits, and supervised probation should be imposed as conditions of discipline.

HOLDINGS

1. The record established by clear and convincing evidence that Newell committed professional misconduct, including neglect of client matters, inadequate communication, failure to refund unearned fees, improper handling and commingling of client and third-party funds, conflicts of interest, an improper business transaction, and conduct prejudicial to the administration of justice.
2. A one-year-and-one-day suspension was warranted, but all except six months of the suspension should be deferred because of the mitigating circumstances, subject to two years of supervised probation.
3. The deferred portion of the suspension was conditioned on successful completion of the Louisiana State Bar Association's Ethics School and Trust Accounting School, semiannual trust-account audits for two years, and restitution of unearned fees to the identified clients.

KEY QUOTATIONS

“Bar disciplinary matters fall within the original jurisdiction of this court.” (60 So. 3d at 1204)

“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.” (60 So. 3d at 1204)

“We will defer all but six months of the suspension, subject to respondent's successful completion of a two-year period of supervised probation” (60 So. 3d at 1205)

FACTUAL BACKGROUND

Newell represented clients in succession, personal-injury, wrongful-death, bankruptcy, and registry-of-court-funds matters. The court found that he neglected legal matters, failed to communicate, failed to refund unearned fees, mishandled and commingled client and third-party funds, continued representing clients despite a conflict of interest, filed a claim on behalf of an ineligible wrongful-death claimant, and engaged in an undisclosed business transaction with a client. The misconduct caused actual or potential harm and involved negligent, knowing, and intentional conduct, with aggravating and mitigating factors affecting the sanction.

PROCEDURAL HISTORY

The hearing committee found multiple violations involving neglect, inadequate communication, failure to refund unearned fees, mishandling of client and third-party funds, conflicts of interest, improper business transactions, and conduct prejudicial to the administration of justice. The disciplinary board largely adopted those findings, additionally finding certain violations involving dishonesty and nonlawyer-assistant supervision, and recommended a one-year-and-one-day suspension with restitution. The Supreme Court independently reviewed the record, upheld the misconduct findings, and imposed a one-year-and-one-day suspension, deferring all but six months subject to supervised probation and specified conditions.

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)
- Hunt v. New Orleans Ry. & Light Co., 140 La. 524, 73 So. 667 (1916)
- Chatman v. Martin, 245 So. 2d 423 (La. App. 2d Cir. 1971)
- Viau v. Batiste, 332 So. 2d 512 (La. App. 4th Cir.), writ denied, 337 So. 2d 531 (La. 1976)

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