

SUPREME COURT OF LOUISIANA

In re Bailey

848 So. 2d 530 (La. 2003) · Decided June 6, 2003

SUMMARY

The Louisiana Supreme Court reviewed disciplinary charges against attorney Gary W. Bailey arising from two matters. The court found that Bailey knowingly misrepresented a scheduling conflict to obtain a continuance and knowingly offered an altered medical report into evidence. The court suspended him from practicing law in Louisiana for two years and assessed costs.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per curiam
JURISDICTION	Louisiana
DECIDED	June 6, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding arising from two counts of formal charges alleging violations of the Louisiana Rules of Professional Conduct. The hearing committee and disciplinary board recommended a two-year suspension, and the Supreme Court of Louisiana independently reviewed the record.
STANDARD OF REVIEW	The Supreme Court independently reviews the record as the trier of fact and requires misconduct to be proven by clear and convincing evidence. The manifest-error standard applies to the hearing committee's factual findings, although the court is not bound by the committee's or disciplinary board's findings and recommendations.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gary W. Bailey v. Office of Disciplinary Counsel

TOPICS

- sanctions
- evidence
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Bailey violated the Louisiana Rules of Professional Conduct by knowingly misrepresenting a scheduling conflict to a tribunal and failing to appear after the continuance was denied.
2. Whether Bailey violated the Louisiana Rules of Professional Conduct by attempting to introduce an altered medical report into evidence.
3. Whether the proven misconduct warranted a two-year suspension from the practice of law.

HOLDINGS

1. The misconduct was proven by clear and convincing evidence, and the hearing committee's factual findings were supported by the record.
2. Bailey violated the Louisiana Rules of Professional Conduct by knowingly misrepresenting a material fact to a court, engaging in dishonesty or misrepresentation, prejudicing the administration of justice, offering altered evidence, and falsifying or unlawfully altering evidence.
3. The seriousness and multiplicity of Bailey's misconduct warranted suspension from the practice of law for two years.

KEY QUOTATIONS

“Bar disciplinary matters come 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.” (537)

“In 1999, respondent filed a motion for continuance in which he knowingly misrepresented to the trial court that he had a scheduling conflict (i.e., a trial that would last three to five days), when he had no reason to believe his statements were in any way truthful or inaccurate.” (537)

“In 2000, respondent filed a medical report into evidence at trial when he clearly knew that the report had been altered.” (537)

FACTUAL BACKGROUND

Bailey sought a continuance of a Louisiana prescription hearing by representing that he was scheduled for a three-to-five-day trial in Texas, although the Texas trial had already concluded and only a brief post-trial-motion hearing remained. He did not appear at the Louisiana hearing after learning that the continuance had been denied. In a separate matter, Bailey attempted to introduce a medical report that had been altered to delete the words "at work," a fact central to whether his client's injury occurred at home or at work.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed two counts of formal charges on January 2, 2002. After an evidentiary hearing, the hearing committee found violations and recommended a two-year suspension; the disciplinary board

generally adopted those findings and recommendation. Neither Bailey nor the ODC objected to the board's recommendation, and the Supreme Court accepted it after independent review.

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)