

The Supreme Court of the State of Louisiana

IN RE: ZACHARY RYAN MOFFETT

No.2021-B-01058

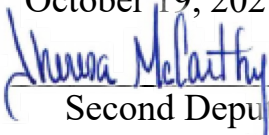
IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

October 19, 2021

Disbarment imposed. See per curiam.

JDH
JLW
SJC
JTG
WJC
JBM
PDG

Crichton, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana
October 19, 2021


Second Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2021-B-1058

IN RE: ZACHARY RYAN MOFFETT

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Zachary Ryan Moffett, an attorney licensed to practice law in Louisiana, but currently on interim suspension for threat of harm to the public. *In re: Moffett*, 19-0627 (La. 5/6/19), 268 So. 3d 1024.

Respondent is the subject of 49 counts of formal charges filed by the ODC.¹ The formal charges allege a pattern of misconduct by respondent of accepting legal fees from clients and then abandoning the representation without further communication and after doing little, if any, work in the matters. Respondent also failed to return his clients’ files upon request and failed to refund unearned fees and advanced costs totaling approximately \$130,000.² Finally, the ODC alleged that respondent engaged in the practice of law after he was placed on interim suspension and failed to cooperate in the disciplinary investigation.

¹ The formal charges allege the following violations: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(f)(5) (failure to refund an unearned fee), 1.16(d) (obligations upon termination of the representation), 5.5 (engaging in the unauthorized practice of law), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct.

² Approximately \$50,000 of this amount has been reimbursed to clients by the Louisiana State Bar Association’s Client Assistance Fund.

Respondent answered the formal charges and admitted the allegations therein. He also requested a hearing in mitigation.

The hearing committee conducted a mitigation hearing in May 2021. No witnesses appeared at the hearing with the exception of respondent, who testified that he suffers from bipolar disorder, anxiety, and depression. Respondent argued that his mental health problems and his inexperience in the practice of law warrant a lengthy suspension rather than disbarment.

Following the hearing, the hearing committee recommended respondent be disbarred. The committee reasoned that respondent did not act with a dishonest or selfish motive but instead “was not competent to handle the work and was overwhelmed to the point of procrastination.” The committee also found that if respondent can address his mental health issues and make restitution to his clients and the Client Assistance Fund, then he “should be given the opportunity for reapplying for admission after five years.”

Neither respondent nor the ODC filed an objection to the hearing committee’s recommendation. Therefore, pursuant to Supreme Court Rule XIX, § 11(G), the disciplinary board submitted the committee’s report to the court for review.

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. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee’s factual findings. *See 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.

The underlying facts of this matter are not in dispute, having been admitted by respondent. Essentially, respondent neglected his clients' legal matters, failed to communicate with his clients, and failed to cooperate with the ODC in its investigations. Respondent engaged in further misconduct by failing to inform his clients that he had been placed on interim suspension. He engaged in the unauthorized practice of law by accepting fees and meeting with clients after his interim suspension. All told, respondent has failed to refund approximately \$130,000 in unearned fees and costs to his clients. This conduct violated the Rules of Professional Conduct as charged.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). 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. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent knowingly, if not intentionally, violated duties owed to his clients, the public, the legal system, and the legal profession. His misconduct caused significant actual harm, in particular to his clients, whose legal matters were not completed and who did not receive reimbursement of the fees they paid. We agree with the hearing committee that the applicable baseline sanction is disbarment.

Aggravating factors include a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding

by intentionally failing to comply with the rules or orders of the disciplinary agency, vulnerability of the victims, indifference to making restitution, and illegal conduct.³ The factors in mitigation are as follows: the absence of a prior disciplinary record, personal or emotional problems, and inexperience in the practice of law (admitted 2014).

Considering the voluminous record of this matter, and the absence of any objection by the ODC to the committee's recommendation, we agree that disbarment is an appropriate sanction. Prior to applying for readmission, respondent shall make full restitution to each of his clients subject of the formal charges and/or to the Louisiana State Bar Association's Client Assistance Fund, as appropriate. Respondent shall also address his mental health issues through the Judges and Lawyers Assistance Program.

DECREE

Upon review of the findings and recommendation of the hearing committee, and considering the record, it is ordered that Zachary Ryan Moffett, Louisiana Bar Roll number 35526, be and he hereby is disbarred, retroactive to May 6, 2019, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. It is further ordered that respondent shall make full restitution to each of his clients subject of the formal charges and/or to the Louisiana State Bar Association's Client Assistance Fund, as appropriate, and address his mental health issues through the Judges and Lawyers Assistance Program. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal

³ Felony theft charges are pending against respondent arising out of two client matters in which he accepted legal fees from his clients but failed to perform any work.

interest to commence thirty days from the date of finality of this court's judgment until paid.