

Original

LOUISIANA ATTORNEY DISCIPLINARY BOARD

NUMBER 98-DB-082

IN RE: JOSEPH A. ROME

RULING OF THE DISCIPLINARY BOARD

FILED DISCIPLINARY BOARD	
Date	6/12/2000
Clerk	H. Almonte

This is a disciplinary proceeding based on the filing of a petition for consent discipline by the Respondent, Joseph A. Rome of New Orleans Louisiana.

PROCEDURAL HISTORY

On November 10, 1998, the Office of Disciplinary Counsel ("ODC") filed formal charges consisting of two Counts against the Respondent, Joseph A. Rome. The charges alleged that the Respondent engaged in several violations of the Rules of Professional Conduct.

On December 17, 1998, the ODC filed a motion to declare the factual allegations deemed proven because the Respondent failed to file an answer to the formal charges. On December 23, 1998 the Hearing Committee granted the deemed admitted motion of the ODC, and ordered that written arguments and documentary evidence on the issue of sanctions be filed by March 15, 1999.

On March 11, 1999, the ODC filed its submissions with the Hearing Committee. The submission contained the complaint filed against the Respondent, and several letters to the Respondent from the ODC. The submission also contained an interview by the staff investigator of the complainant, Christine Montgomery, and the record of prior admonitions of the Respondent.

On April 7, 1999, the Respondent filed his response to the formal charges with the Board. In his answer, the Respondent denies engaging in misconduct as stated in the formal charges.

On April 14, 1999, the Hearing Committee, on its own motion rescinded the order granting the ODC's motion to declare the factual allegations deemed admitted. The Committee based its decision on the Supreme Court opinions in *In Re Gardner*, 98-1476 (10/9/98) and *In Re Tosh*, 98-2152 (10/9/98) wherein they held that the Hearing Committee should indulge every presumption in favor of an attorney who indicates he wishes to respond and participate in the formal hearing. As a result of the order rescinding the deemed admitted order, the ODC filed a motion to withdraw their exhibits on April 27, 1999. The Committee granted the motion on April 28, 1999. A hearing on the formal charges was originally scheduled for June 25, 1999.

On November 15, 1999, the Respondent filed a motion for consent discipline proposing a public reprimand. A joint stipulation of facts was filed with the motion and signed by both the ODC and the Respondent.

On February 24, 2000, a panel of the Disciplinary Board heard oral arguments on this matter. Deputy Counsel G. Fred Ours represented the ODC. The Respondent was not present for the proceeding.

FORMAL CHARGES

On November 10, 1998, formal charges consisting of two Counts were filed against the Respondent. Count one of the charges alleges that the Respondent was retained by Christine Montgomery to represent her in a bankruptcy proceeding. The Respondent accepted the case and received a \$300.00 advance on a \$1,000.00 total fee.

The Respondent filed the bankruptcy petition and attended the meeting of the creditors. However, it is alleged that the Respondent failed to respond to or attend a hearing on a motion to dismiss the bankruptcy filed by the bankruptcy trustee. The Respondent allegedly failed, neglected or refused to file any other pleadings or communicated with his client. The client was forced to retain the services of another attorney. The Respondent also failed to properly withdraw from representation or account to his client for unearned fees. The ODC alleges that the Respondent violated Rules 1.3, 1.4, 1.5(f)(6), 1.15(c), 1.16(b)(d) and 8.4 of the Rules of Professional Conduct.

In Count two of the charges, the ODC alleges that the Respondent was personally served with a subpoena ordering his appearance before disciplinary counsel to testify and produce his file relating to the Montgomery complaint. The Respondent failed, neglected or refused to appear or produce the records. It is alleged that the Respondent violated La. S. Ct. Rule XIX §9(c) and Rules 3.4(a) (c), 8.1(b)(c), and 8.4 of the Rules of Professional Conduct.

CONSENT DISCIPLINE AND CONCURRENCE BY THE ODC

On November 15, 1999, the Respondent filed a motion for consent discipline proposing a public reprimand including restitution in an amount to be determined by the LSBA Fee Arbitration Committee. The Respondent has admitted to failing to act with diligence, failing to properly withdraw and account to his client for fees received, and failure to cooperate in a disciplinary investigation.

The ODC filed its concurrence to the consent discipline on December 30, 1999.

APPLICATION OF FACTORS CONSIDERED IN IMPOSING SANCTIONS

Louisiana Supreme Court Rule XIX §10(C) states that in imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

The Board has determined that the Respondent violated duties owed to his client, the legal system and the profession. The Respondent acted knowingly and negligently by his failure to diligently represent his client. Additionally, the Respondent acted intentionally when he failed to appear before disciplinary counsel pursuant to a subpoena. These actions clearly caused injury to his client because she had to retain the services of another lawyer to complete her bankruptcy, and perhaps by the Respondent's failure to return unearned fees, although in dispute.

In reviewing previous cases involving similar misconduct, the proposed reprimand appears to be the appropriate sanction to address the misconduct. Pursuant to the ABA Standards For Imposing Lawyer Sanctions, Standard 4.43, suggests "a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." Also Standard 7.3 suggests "a reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and

causes injury or potential injury to a client, the public, or the legal system.” It is unclear from the record whether the client paid the Respondent the remaining \$700.00 of the \$1,000.00 fee. This is important because if he was only paid the original \$300.00, the fee may have been earned, although he would have to account for his time. There is no dispute that the Respondent initially met with the client, discussed the bankruptcy, collected information, drafted and filed the bankruptcy petition. It is also undisputed that he attended the meeting of the creditors on behalf of his client. At first glance this appears to be a fee dispute; however, since the Respondent has tendered an admission to neglect of a legal matter, the Board cannot consider whether or not a rules violation occurred. See *In Re: Glenn Lieberman*, 675 So.2d 272 (La. 1996).

This Board has previously issued reprimands in similar cases. In the case *In Re: Dennis K. Dolbear*, 98-DB-061 (2/24/99), the Board reprimanded the attorney Dolbear for failure to return an unearned fee, neglect of a legal matter, and failure to cooperate with the ODC. Mr. Dolbear represented clients in a matter where they were seeking a release from prison. Dolbear agreed to refund their money if he was unsuccessful in obtaining their release. However, although unsuccessful, he failed to return the client’s money. Dolbear was also sanctioned for failure to return a client file after the client decided not to retain Dolbear. The Board found that Dolbear negligently failed to act with reasonable diligence and negligently handled client property. He also failed to cooperate with the investigation of the ODC.

Finally, there is no indication in the record that the Respondent acted intentionally in dealing in his client’s affairs. It is noted in the joint stipulation of facts that the Respondent is engaged in full time employment with the Housing Authority of New

Orleans. This position is not an attorney position, and the Respondent does not engage in a full time law practice. These factors contribute to the fact that the public reprimand is appropriate.

RULING

Based on the foregoing the petition for consent discipline proposing a public reprimand be issued against the Respondent is accepted. It is ordered that a public reprimand be immediately issued against Joseph A. Rome of New Orleans, Louisiana, Respondent herein. It is further ordered that the Respondent be assessed with all costs and expenses of these proceedings, with legal interest accruing, commencing thirty days from the finality of this Ruling until paid.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Judy Y. Barrasso
John G. Beckwith, Sr.
Reginald R. Brown, Sr.
David R. Frohn
Clare Jupiter
Robert E. Leake, Jr.
James L. Pate
Jack Q. Whitehead, Jr.

BY: _____


DONALD R. BROWN
FOR THE ADJUDICATIVE PANEL