LOUISIANA ATTORNEY DISCIPLINARY BOARD

ORIGINAL

IN RE: HERMAN J. MOUTON, JR.

DOCKET NO. 12-DB-019

Louisiana Attorney Disciplinary Board
FILED by: Donna P. Burgess
Docket# 12-DB-019
Filed-On 3/4/2013

REPORT OF HEARING COMMITTEE

This is a proceeding based upon a filing of a petition and application for readmission to the practice of law following the disbarment of Herman J. Mouton, Jr.

For the reasons set forth hereinbelow, it is the recommendation of this Hearing Committee that Mr. Mouton be conditionally readmitted to the practice of law provided that he meets certain terms and conditions in their entirety as follows:

(A) Sit for and pass the Louisiana Bar Examination;

(B) Obtain CLE requirements of fifteen (15) hours per year over the next five (5) years, including two (2) hours each of Professionalism and Ethics;

(C) Refrain from use of illegal drugs and have no violations of the terms of his probation as ordered by the Federal Court in connection with the crime that resulted in his disbarment;

(D) For the first five years following his readmission, practice law with an attorney supervisor and/or mentor and not engage in solo practice;

(E) Adhere to the Rules of Professional Conduct throughout the period of his conditional readmission, and avoid, and be free of, any and all violations;

(F) Have no contact with accused or convicted felons in any manner, whether in or outside the practice of law.

(G) Any violation of any single term or condition of this conditional readmission shall result in revocation of Mr. Mouton's conditional readmission.

The findings of this Hearing Committee which lead to the above ruling are set forth hereinbelow.

INTRODUCTION AND PROCEDURAL HISTORY

Herman J. Mouton, Jr. (hereinafter "Mr. Mouton" or "Petitioner") filed a petition and application for readmission to the practice of law on April 5, 2012, after being disbarred by order of the Louisiana Supreme Court on January 13, 1995.[1] On June 7, 2012, the Office of Disciplinary Counsel ("ODC") filed its response to the petition. ODC took no position regarding the petition and requested that this matter be set for hearing pursuant to Louisiana Supreme Court Rule XIX, §24(F). The matter was heard by this Hearing Committee on October 1, 2012, in Lafayette, Louisiana. The members of the Committee are Joseph C. Giglio, Jr., Chairman, Thomas R. Hightower, Jr., Lawyer Member, and Pamela Stone Stroup, Public Member. Mr. Mouton appeared along with his attorney, Leslie J. Schiff. Deputy Disciplinary Counsel G. Fred Ours appeared on behalf of ODC.

RESPONSE OF ODC

In its Pre-hearing Memorandum, the Office of Disciplinary Counsel took no position in response to the petition and application for readmission; however, ODC opposed readmission in its Post-Hearing Memorandum.

EVIDENCE

The testimony at hearing consisted of the testimony of Mr. Mouton, Mr. Pat Fontenot, Mr. Alvin Hayes, Mr. Donovan Hudson, Mr. Aaron Harris, Mr. Milton Jackson, Rev. Edwin C. "Rudy" Scott, Father Justin, SVA, Mr. Michael Thibodeaux, Mr. Paul Mouton, Mr. John Patout,

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[1] *In re Mouton*, 94-2752 (La. 1/13/95), 648 So.2d 864. The effective date of the disbarment was retroactive to the date of Mr. Mouton's interim suspension. In re Mouton, 92-1190 (La. 5/15/92), 598 So.2d 364. Mr. Mouton was formally charged with being convicted of a serious crime involving the violation of Rules 8.4(b) and (c) of the Rules of Professional Conduct. On June 21, 1991, Mouton was convicted in District Court, Middle District of Louisiana of one count of conspiracy to distribute cocaine and to possess cocaine with the intent to distribute, and three counts of use of a communication facility to facilitate a felony in violation of 21 U.S.C. § 846, 18 U.S.C. § 2 and 21 U.S.C. § 843(b). Mouton was sentenced to 23 years on count I and 4 years on each of counts II, VII, X to be served concurrently and to be followed by 5 years supervised probation. On July 6, 1993 the Fifth Circuit of the United States Court of Appeal affirmed the conviction and sentences.

LCSW, Mr. J.E. "Buddy" Stockwell, Senator Elbert Guillory and Mr. Joe Simien. Two of the subpoenaed witnesses, Ronald Griffith of Lake Charles, LA and Griffin Rivers of Lansing, MI, did not appear but submitted letters of support for the respondent. The letters were accepted into evidence and the record was left open to allow Mr. Ours to take Mr. Griffith's and Mr. Rivers' depositions by phone.

Mr. Mouton testified that his law practice had been a general practice that also handled criminal cases. He felt his conviction on federal charges was just in that he began using cocaine in the mid-80's, became cocaine-dependent and a daily user. After his arrest in 1991, he voluntarily entered a 30-day detox program in the Chemical Dependency Unit of Baton Rouge General Hospital. He testified (and the other evidence submitted at the hearing confirmed) that he has been totally abstinent insofar as the consumption of illegal drugs since his arrest in 1991.

Petitioner presented evidence of his approval by the Federal Bureau of Prisons to participate in the Elderly Offender Pilot Program, via Good Conduct Time Release. He is on a total of five years of supervised release, effective July 1, 2011. The Petitioner is therefore subject to random drug screening through the end of his probation, June 30, 2016.

The Committee finds that the testimony of the witnesses noted above and presented on behalf of Mr. Mouton was credible, consistent, and conclusive that Mr. Mouton is held in high regard by the community despite his lapse into the world of cocaine back in the 1980s. Petitioner indicated that the motivation behind his petition and application for readmission to the practice of law was to become financially able to better care for his aged infirm mother and his disabled brother. The Petitioner's care for his family was praised by multiple witnesses. Senator Guillory, with whom the Petitioner previously shared an office for the practice of law, reported that he would welcome the Petitioner's return to his legal practice.

Additional witnesses testified that they would hire Mr. Mouton upon his readmission to the practice of law. These witnesses also confirmed that he has been drug-free for approximately 21 years.

The Petitioner is on supervised release in the Western District of Louisiana under the supervision of Benjamin Rushing, U.S. Probation Officer, who reports that no noncompliance events have been reported to the court. The Committee reviewed all exhibits presented by Mr. Schiff, the Petitioner's attorney, and by Mr. Ours, ODC.

However credible these witnesses were, the Committee was concerned with certain testimony of Mr. Mouton himself. Despite having a viable employment offer from Attorney Elbert Guillory, Mr. Mouton did not testify that he was receptive to this offer and in fact indicated clearly that he had no definite plans. Mr. Mouton's testimony, read as a whole, concerning his return to the practice of law could easily lead one to conclude that he intended to practice in solo fashion. The Committee strongly feels that this conditional readmission, given his lengthy absence from the practice of law and very slight exposure to changes in the law since his conviction in 1991, be predicated on the requirement that he be allowed to practice only with supervision and under the tutelage of an experienced attorney. In finding this, the Committee notes that a license to practice law is a privilege, and not a right; and further, the Louisiana Bar Association, and particularly the Disciplinary Board, has an obligation and duty to supervise its membership and protect the public. The Committee also notes that ODC did not take a position in opposition to the application for readmission at the original hearing, as noted above, and therefore presented no evidence during the course of the hearing that would preclude Mr. Mouton's conditional readmission.

LAW AND FINDINGS OF FACT

Readmission following disbarment is governed by Louisiana Supreme Court Rule XIX, Section 24. Section 24(E). The Committee finds the testimony to be clear and convincing that Mr. Mouton has satisfied the substantive criteria for readmission to the practice of law. Each of these criteria will be addressed separately below.

E1. "The lawyer has fully complied with the terms and conditions of all prior discipline orders, except to the extent that they are abated under section 25."

The Committee on Professional Responsibility, Louisiana State Bar Association, issued Petitioner a formal private reprimand on September 13, 1985, and a public reprimand on February 17, 1987. Neither reprimand placed demand for restitution, terms or conditions on Petitioner. The Committee notes that the Petitioner's obligation to pay the $250,000 fine ordered by the United States District Court for the Middle District of Louisiana has expired, as provided by the Criminal Fine Improvements Act: "The obligation to pay a fine or penalty ceases upon the death of the defendant or the expiration of twenty years after the date of entry of the judgment, whichever occurs earlier." 18 U.S.C.& 3613 (b) (amended 1996).

Thus, this criteria has been satisfied.

E2. "The lawyer has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment."

The Committee finds no evidence that the Petitioner has practiced law since May 15, 1992, when the order of interim suspension was ordered by the Louisiana Supreme Court on motion of disciplinary counsel. Prior to the Petitioner's arrest and conviction, he practiced law with Senator Elbert Guillory. During the hearing Senator Guillory testified that Petitioner is currently assisting him only with constituent concerns such as helping widows with Social Security problems and making speeches on the Senator's behalf.

The Committee finds this testimony to be credible as it comes from an attorney who would jeopardize his own eligibility to practice law if he assisted Mr. Mouton in the unauthorized practice of law. Mr. Mouton testified he was not a "jailhouse lawyer" during his period of incarceration. The Committee concludes there is no evidence that the Petitioner has engaged in or attempted to engage in the unauthorized practice of law during the period of disbarment.

E3. "If the lawyer was suffering under a physical or mental disability or infirmity at the time of the suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed. Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless:

a) the lawyer has pursued appropriate rehabilitative treatment;

b) the lawyer has abstained from the use of alcohol or other drugs for at least one year; and

c) the lawyer is likely to continue to abstain from alcohol or other drugs."

Petitioner has pursued appropriate rehabilitative treatment. He testified that he had a severe cocaine addiction at the time of his arrest. Mr. Schiff presented evidence of the Petitioner's admission to a thirty-day treatment program at the Chemical Dependency Unit of Baton Rouge General Hospital on May 11, 1991, which was shortly after his arrest. Mr. Stockwell, director of the Lawyer Assistance Program (LAP), testified Petitioner contacted him in 2011 for assistance with his reinstatement application.

Subsequently Petitioner underwent an evaluation process with LAP to determine if any LAP resources were appropriate for him. Mr. Stockwell referred Petitioner to John Patout, LCSW, to determine if Petitioner had a diagnosable substance abuse problem. Mr. Stockwell testified that Mr. Patout had no recommendation for any type of treatment or mental health

services for the Petitioner. Mr. Stockwell also testified that the Petitioner did not need any assistance from the office of LAP at that time.

The Petitioner testifies to being abstinent since his entrance back in 1991 into the chemical dependency program referenced above. He was subject to random drug screening while incarcerated and continues to be so during his period of supervised release.

In correspondence dated September 28, 2012, and introduced into evidence without objection, Benjamin Rushing, U.S. Probation Officer, indicates that no incidents of noncompliance have been reported to the Court.

The evidence, including the testimony and exhibits, indicate that Mouton has conducted himself well since his release from incarceration. He is remorseful, rehabilitated and no longer has a substance abuse problem. He has been compliant with his supervised release program. The witnesses established his credibility among his peers in the community. The evidence submitted established that he is likely to continue to abstain from the use of illegal drugs.

The Committee is satisfied that Mr. Mouton has met the criteria set forth in subsection E3.

E4. "The lawyer recognizes the wrongfulness and seriousness of his conduct for which the lawyer was suspended or disbarred."

The Petitioner has accepted responsibility for his misconduct, acknowledging that his conviction was just, and he is remorseful. The Committee finds the Petitioner's testimony to be credible. He is forthright in acknowledging the damage done to his profession and his family as a result of his misconduct. He is particularly remorseful that his incarceration robbed his wife, children, parents and brother of his emotional, physical and financial support during his time of incarceration. His father died while the Petitioner was incarcerated. Currently, he is still not

able to provide the appropriate financial support for his aged and infirm mother, nor his disabled brother.

The Committee is satisfied that Mr. Mouton has met the criteria set out in E4.

E5. "The lawyer has not engaged in any other professional misconduct since suspension or disbarment."

Mr. Mouton testified that there have been no new complaints filed against him since the date of his Interim Suspension and subsequent disbarment. ODC presented no evidence to suggest otherwise; nor was there any evidence that the Petitioner has engaged in any professional misconduct.

Therefore, the Committee is satisfied that Mr. Mouton has met the criteria set out in E5.

E6. "Notwithstanding the conduct for which the lawyer was disciplined, the lawyer has the requisite honesty and integrity to practice law,"

The Committee has carefully evaluated all evidence presented by Mr. Schiff and Mr. Ours, and the testimony of Mr. Mouton and all witnesses. Thirteen witnesses appeared on behalf of Mr. Mouton, clearly establishing the high regard and credibility that Mr. Mouton currently enjoys in his community. Two out-of-town persons who were subpoenaed, but did not appear, provided letters of support and these witnesses were deposed by Mr. Ours in the presence of Mr. Schiff.

Testimony of witnesses repeatedly included references to appreciation of Mr. Mouton's personal care of the daily needs of his aged infirm mother. The Petitioner indicated that the driving force behind his petition for readmission is the financial needs of his mother and brother. Witnesses testified to the community's need and to their personal/professional need for Petitioner to be authorized to return to the practice of law. The Committee finds that the evidence provided

by witnesses and Mr. Mouton himself leave no doubt as to the Petitioner's requisite honesty and integrity to practice law.

Accordingly, this criteria is deemed to be fully satisfied.

E7. "The lawyer has kept informed about recent developments in the law and is competent to practice and has satisfied MCLE requirements for the year of reinstatement or readmission."

The Petitioner has not practiced law since 1991 and has had limited exposure to recent developments in the law. He attended free MCLE seminars in Lake Charles in 2011 and in Lafayette in 2012. At the time of the hearing, he had paid the registration fee for 7.0 CLE credits including 1 hour of Ethics and 1 hour of Professionalism, to be held in Opelousas on October 12, 2012. The Supreme Court of Louisiana notified the Petitioner of the termination of his MCLE ineligibility, effective January 19, 2012, and his compliance with the Rule XXX of the Rules of the Supreme Court of Louisiana pertaining to Continuing Legal Education Requirements for the years 1990-2011. The Committee finds that the Petitioner has fully satisfied the MCLE requirements for the year of readmission, but also finds that he may not be as fully informed about recent developments in the law as the Committee would expect from everyday practitioners.

However, we believe that with adherence to the conditions set forth at the beginning of this opinion, notably sitting for and passing the Louisiana Bar Exam, he will be competent to practice.

E8. "The lawyer has paid to the Louisiana State Bar Association currently owed bar dues."

See below.

E9. "The lawyer has paid all filing fees owed to the Clerk of Court and all disciplinary costs to the Disciplinary Board."

See below.

E10. "The lawyer has paid to the Disciplinary Board currently owed disciplinary administration and enforcement fees required under Section 8 (A) of this rule and has filed the registration statement required under Section 8 (c) of this rule."

See below.

E11. "The lawyer shall obtain a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the lawyer's clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the lawyer shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund."

The Committee has also considered the above criteria 8, 9, 10 and 11 regarding payment of bar dues, disciplinary assessments, Clerk of Court fees, and the filing of the registration statement, and the certification from the Client Assistance Fund. All of the requirements for criteria 8, 9, 10, and 11 have been fulfilled and evidentiary proof was provided to the Committee during the hearing.

Thus, the Committee finds that these criteria (8, 9, 10 and 11) were satisfied.

ODC OPPOSITION TO READMISSION APPLICATION

After initially offering no opinion on the Petitioner's petition and application for re-admission at the time of the Committee hearing, the ODC Post-hearing Memorandum opposed the Petitioner's petition and application. The Committee has reviewed the criteria upon which ODC based its opposition:

Severity of offense:

The Committee does not find the case of *In Re: Jack P. Gremillion, Jr.11DB-039 (Louisiana Disciplinary Board 10/29/12)* to be applicable to the Petitioner's case. It was Mr.

Gremillion's post-disbarment misconduct that was cited as being of an egregious nature and magnitude. In this case, there is no evidence of any post-disbarment misconduct.

Prematurity:

ODC states the Petitioner's supervised release status would preclude his representation of criminal clients. The Committee finds that the Petitioner's supervised release status would not preclude his participation in a general/civil law practice nor preclude practice in a law office in which other attorneys might represent criminal clients.

ODC also argues that the Petitioner's ineligibility to vote would preclude his readmission. The Committee finds that voter eligibility is not a pre-requisite for readmission/admission to the bar.

Finally, ODC's concern that the Petitioner has not paid the $250,000 fine levied by the Court is irrelevant in light of application of the Criminal Fines Improvement Act which was explained earlier in this report.

Character Evidence:

Evaluation of the testimony of witnesses is the most difficult task for the Committee. Even so, the Committee, having carefully and thoughtfully considered all testimony and evidence, is clearly convinced that Mr. Mouton is rehabilitated, is remorseful, enjoys the respect of peers in his community, and has the requisite honesty and integrity to practice law. ODC presented no countervailing character evidence or testimony during the hearing nor was there any such evidence or testimony in the depositions submitted thereafter.

Knowledge of the Law and Competency to Practice:

The Committee believes that with the successful adherence to the Committee's conditions, set forth at page 1 of this report, Mr. Mouton will have the appropriate knowledge of the law and be competent to practice.

RECOMMENDATION

After weighing all the evidence, including testimony and exhibits, the Committee finds that Mr. Mouton has met his burden of proof by clear and convincing evidence, and that he should be readmitted to the practice of law. This Hearing Committee recommends that Mr. Mouton be conditionally readmitted to the practice of law provided that he meets the conditions set forth on page 1 of this report.

This opinion is unanimous and has been reviewed by each committee member, all of whom fully concur and authorize the committee chair, Joseph C. Giglio, Jr., to sign this opinion on the Committee's behalf.

Lafayette, Louisiana, this 1st day of March, 2013.

Louisiana Attorney Disciplinary Board
Hearing Committee

Joseph C. Giglio, Jr., Committee Chair
Thomas R, Hightower, Jr., Lawyer Member
Pamela S. Stroup, Public Member

By:_____
JOSEPH C. GIGLIO, JR., COMMITTEE CHAIR FOR THE COMMITTEE

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