

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Salo

48 A.3d 174 (D.C. 2012) · Decided July 18, 2012

SUMMARY

The District of Columbia Court of Appeals considers reciprocal discipline imposed on Frederick W. Salo after New York suspended him for nonvenal misappropriation and related trust-account violations. The court holds that Salo rebutted the presumption favoring identical reciprocal discipline because the misconduct was comparable to negligent misappropriation under District of Columbia standards. It imposes a six-month suspension without a fitness requirement.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Beckwith, Associate Judge; Beckwith; Easterly; Nebeker
JURISDICTION	District of Columbia
DECIDED	July 18, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Reciprocal attorney-discipline proceeding in which the Office of Bar Counsel sought imposition of discipline identical to a one-year suspension imposed by the New York court, with a fitness requirement.
STANDARD OF REVIEW	De novo review applies to whether an exception to the presumption of reciprocal discipline applies because that determination is a question of law or ultimate fact.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Frederick W. Salo v. Office of Bar Counsel

TOPICS

administrative law

appellate procedure

standard of review

judicial review of agency action

PRACTICE AREAS

legal ethics

attorney discipline

reciprocal discipline

professional responsibility

QUESTIONS PRESENTED

1. Whether Salo rebutted the presumption that the District of Columbia should impose discipline identical to the discipline imposed by New York.
2. Whether the New York findings were most appropriately characterized under District of Columbia standards as negligent rather than reckless or intentional misappropriation.
3. Whether the difference between New York's one-year suspension with a fitness requirement and the District of Columbia's usual sanction for negligent misappropriation was substantial.
4. Whether Salo's District of Columbia suspension should include a fitness requirement.

HOLDINGS

1. Salo rebutted the presumption favoring identical reciprocal discipline because the misconduct warranted substantially different discipline in the District of Columbia under D.C. Bar Rule XI § 11(c)(4).
2. For purposes of reciprocal discipline, Salo's conduct was properly treated as negligent misappropriation rather than reckless or intentional misappropriation.
3. The six-month suspension did not require proof of fitness as a condition of reinstatement.

KEY QUOTATIONS

“We therefore equate Mr. Salo’s conduct with negligent misappropriation under our standards.” (179)

“We conclude that the substantially different exception to our reciprocal discipline rule applies in this case and that Mr. Salo has thus rebutted the presumption of reciprocal discipline.” (180)

“Accordingly, for the foregoing reasons, it is ORDERED that Frederick W. Salo is hereby suspended from the practice of law in the District of Columbia for a period of six months, effective December 30, 2011, when he submitted proof of his compliance with D.C. Bar R. XI § 14(g).” (181)

FACTUAL BACKGROUND

Salo received a \$198,000 personal-injury settlement into an IOLA account and retained \$40,000 pending resolution of a workers' compensation lien. While the lien remained unresolved, the account balance fell to \$102.88, and Salo transferred \$32,000 to his personal account and later returned the same amount to the IOLA account. The New York court found misappropriation, commingling, improper trust-account practices, and related misconduct, but found insufficient evidence that Salo acted with venal intent, relying in part on uncontroverted evidence concerning his PTSD and depression.

PROCEDURAL HISTORY

The New York Supreme Court, Appellate Division, First Department, found Salo guilty of nonvenal misappropriation and related offenses and suspended him from practice for one year, with reinstatement subject to a fitness requirement. After Salo notified the District of Columbia Bar of the New York discipline, the District of Columbia Court of Appeals imposed an interim suspension and received his affidavits under D.C. Bar Rule XI. The court held that Salo rebutted the presumption favoring identical reciprocal discipline and imposed a six-month suspension without a fitness requirement.

DISPOSITION

other

CASES CITED

- Matter of Salo, 77 A.D.3d 30, 906 N.Y.S.2d 16 (N.Y. App. Div. 2010)
- In re Meisler, 776 A.2d 1207 (D.C. 2001)
- In re Williams, 3 A.3d 1179, 1182 (D.C. 2010)
- In re Jacoby, 945 A.2d 1193, 1199-200 (D.C. 2008)
- In re Garner, 576 A.2d 1356, 1357 (D.C. 1990)
- In re Fitzgerald, 982 A.2d 743, 748 (D.C. 2009)
- In re Kersey, 520 A.2d 321, 326 (D.C. 1987)
- In re Peek, 565 A.2d 627, 631, 633 (D.C. 1989)
- In re Anderson, 778 A.2d 330, 339, 342 (D.C. 2001)
- In re Micheel, 610 A.2d 231, 236 (D.C. 1992)
- In re Greenwald, 926 A.2d 169, 171 (D.C. 2007)
- In re Edwards, 870 A.2d 90, 94 (D.C. 2005)
- In re Schweizer, 762 A.2d 34 (D.C. 2000)
- In re Maignan, 942 A.2d 1115, 1117 (D.C. 2007)
- In re Berger, 737 A.2d 1033, 1045 (D.C. 1999)
- In re De Maio, 893 A.2d 583, 589 (D.C. 2006)
- In re Cater, 887 A.2d 1, 6, 22 (D.C. 2005)
- In re D'Onofrio, 764 A.2d 797, 798 n.1 (D.C. 2001) (per curiam)
- In re Stuart, 942 A.2d 1118, 1120 (D.C. 2008)
- In re Gonzalez, 967 A.2d 658, 660-661 (D.C. 2009)
- In re Benjamin, 698 A.2d 434, 439 (D.C. 1997)
- In re Zakroff, 934 A.2d 409, 422 (D.C. 2007)