

DISTRICT OF COLUMBIA COURT OF APPEALS

In re McGann

863 A.2d 864 (D.C. 2004) · Decided December 30, 2004

SUMMARY

The District of Columbia Court of Appeals imposed a 30-day suspension on John L. McGann as reciprocal discipline for representing multiple criminal defendants whose interests conflicted and failing to communicate with them. The suspension was ordered to run consecutively to an earlier suspension because McGann had not filed the required affidavit.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Per Curiam; Belson; Farrell; Reid
JURISDICTION	District of Columbia
DECIDED	December 30, 2004
DISPOSITION	other
PROCEDURAL POSTURE	Reciprocal attorney-discipline proceeding referred to the Board on Professional Responsibility after the Virginia State Bar Disciplinary Board imposed a public reprimand and continuing-education condition on respondent.
STANDARD OF REVIEW	In an uncontested reciprocal-discipline proceeding, review is limited, the presumption favors identical reciprocal discipline, and the court gives heightened deference to the Board's recommendation when no exception is filed, accepting findings supported by substantial evidence.
PRECEDENTIAL VALUE	Published, precedential opinion

TOPICS

- appellate procedure
- standard of review
- administrative law

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility

QUESTIONS PRESENTED

1. What reciprocal discipline should be imposed in the District of Columbia after Virginia disciplined McGann for representing criminal defendants with conflicting interests and failing to communicate adequately?
2. Whether the Board on Professional Responsibility's recommended 30-day suspension should be adopted where no party filed an exception and the record substantially supported the Board's findings.
3. Whether the new suspension should run consecutively to McGann's earlier suspension because he failed to file the required affidavit.

HOLDINGS

1. In an uncontested reciprocal-discipline case, the court's review is limited and the presumption favors imposing identical reciprocal discipline.
2. A 30-day suspension was the appropriate reciprocal discipline for McGann's conflict-of-interest and communication violations in light of his prior discipline and the obviousness of the conflict.
3. The 30-day suspension must run consecutively to McGann's suspension in No. 94-BG-1221 (BDN 390-94).

KEY QUOTATIONS

"Our review in uncontested disciplinary cases is limited and the presumption is in favor of identical reciprocal discipline." (865)

"Moreover, as there is substantial support in the record for the Board's findings, we accept them and adopt the recommended sanction because it is not inconsistent with discipline imposed in similar cases." (865)

"Accordingly, it is ORDERED that John L. McGann is hereby suspended for 30 days to run consecutively to his earlier suspension in No. 94-BG-1221 (BDN 390-94)." (866)

FACTUAL BACKGROUND

McGann represented multiple criminal defendants facing prosecution arising from the same matter despite conflicts among the clients' interests. The Virginia disciplinary authorities found that he violated conflict-of-interest and communication obligations, publicly reprimanded him, and required continuing legal education. McGann had prior discipline for commingling personal and client funds and had not filed a required affidavit in the earlier disciplinary matter.

PROCEDURAL HISTORY

The Virginia State Bar Disciplinary Board publicly reprimanded John L. McGann and required continuing legal education after finding that he represented multiple criminal defendants whose interests conflicted. After Virginia temporarily suspended him for noncompliance and later reinstated him, Bar Counsel notified the District of Columbia Court of Appeals. The matter was referred to the Board on Professional Responsibility, which recommended a 30-day suspension as reciprocal discipline. The Court adopted the recommendation and ordered the suspension to run consecutively to an earlier suspension.

DISPOSITION

other

CASES CITED

- In re Goldsborough, 654 A.2d 1285 (D.C. 1995)
- In re Zilberberg, 612 A.2d 832, 834 (D.C. 1992)
- In re Delaney, 697 A.2d 1212, 1214 (D.C. 1997)
- In re McGann, 666 A.2d 489 (D.C. 1995) (per curiam)
- In re Butterfield, 851 A.2d 513 (D.C. 2004)
- In re Steely, 806 A.2d 1236 (D.C. 2002)
- In re Hughes, Bar Docket No. 455-78, at 4 (BPR Apr. 30, 1981), aff'd, No. M-80-81 (D.C. Nov. 2, 1981)
- In re McGarvey, Bar Docket No. 299-80, at 5-6 (BPR Aug. 11, 1982), aff'd, No. M-129-82 (D.C. Dec. 9, 1982)

OPINION

PER CURIAM.

PER CURIAM: On September 18, 2001, the Virginia State Bar Disciplinary Board imposed a public reprimand upon the respondent,¹ along with the condition that he take certain continuing education courses, after finding that he had represented multiple criminal defendants facing prosecution arising out of the same matter, even though the clients' interests were in conflict.

When respondent did not immediately comply with the conditions, he was temporarily suspended by Virginia. After he complied, he was reinstated and no further action was taken by Virginia. Bar Counsel notified us of this action, and pursuant to D.C. Bar R. XI, § 11(d), we referred the matter to the Board on Professional Responsibility ("Board") for a determination of whether identical, greater, or lesser discipline should be imposed as reciprocal discipline, or whether the Board would proceed de novo.

Bar Counsel originally urged different discipline. The Board agreed, and now recommends that we suspend respondent for 30 days as the appropriate reciprocal discipline. Bar Counsel has not taken exception to the Board's report and recommendation, and respondent has not filed a response.² Our review in uncontested disciplinary cases is limited and the presumption is in favor of identical reciprocal discipline.

See In re Goldsborough, 654 A.2d 1285 (D.C.1995); In re Zilberberg, 612 A.2d 832, 834 (D.C.1992); D.C. Bar R. XI, § 11(f). Respondent's conduct in Virginia demonstrated a patent

conflict of interest (in violation of D.C. Bar Rule 1.7(b)(2) and (3)), prejudiced his clients, and was compounded by a serious failure to communicate with them (in violation of D.C.

Bar Rule 1.4(a)). These violations, if committed here under different circumstances, might have warranted the imposition of a public censure.³ However, in this case respondent does not have an unblemished ethical record; to the contrary, he has had prior discipline (for commingling of personal and client funds) which demonstrates a continuing failure to comply with well-known and unmistakable ethical obligations.⁴ Further, in this case the underlying conflict of interest was obvious.⁵ Therefore, in this case the more appropriate sanction is a short suspension.

Since no exception has been taken to the Board's recommendation, we give heightened deference to it. See D.C. Bar Rule XI, § 9(g)(2); *In re Delaney*, 697 A.2d 1212, 1214 (D.C.1997). Moreover, as there is substantial support in the record for the Board's findings, we accept them and adopt the recommended sanction because it is not inconsistent with discipline imposed in similar cases.⁶ We also note that respondent has failed to file the affidavit required by D.C.

Bar R. XI, § 14(g) in his earlier disciplinary case, N. 94-BG-1221 (BDN 390-94); therefore, this discipline *866will run consecutively to his suspension in the earlier case. Accordingly, it is ORDERED that John L. McGann is hereby suspended for 30 days to run consecutively to his earlier suspension in No. 94-BG-1221 (BDN 390-94).

Moreover, since respondent has not filed the affidavit required by D.C. Bar R. XI, § 14(g) in either of these matters, we direct his attention to the requirements of that rule and their effect on his eligibility for reinstatement. See D.C. Bar R. XI, § 16(c). So ordered..

We note that respondent has been administratively suspended from the D.C. Bar twice since Nov. 30, 1994 for failure to pay bar dues.. Respondent also did not participate in any proceedings before the Board.. See *In re Hughes*, Bar Docket No. 455-78, at 4, (BPR Apr. 30, 1981) *aff'd*, No. M-80-81 (D.C. Nov. 2, 1981) (attorney tried to represent both parties in a divorce proceeding); *In re McGarvey*, Bar Docket No. 299-80 at 5-6 (BPR Aug.

11, 1982), *aff'd*, No. M-129-82 (D.C. Dec. 9, 1982) (attorney decided to represent both a church involved in a construction project, and the person the church hired as a building contractor who was facing criminal charges).. See *In re McGann*, 666 A.2d 489 (D.C.1995) (*per curiam*).. See *In re Butterfield*, 851 A.2d 513 (D.C.2004).. See, e.g., *In re Steely*, 806 A.2d 1236 (D.C.2002).