

DISTRICT OF COLUMBIA COURT OF APPEALS

In re William S. Bach

966 A.2d 350 (D.C. 2009) · No. 07-BG-1389 · Decided February 26, 2009

SUMMARY

The District of Columbia Court of Appeals disbarred William S. Bach for intentionally misappropriating estate funds by paying himself \$2,500 in conservator and attorney fees before obtaining the required probate court approval. The court held that the presumption of disbarment for intentional misappropriation under *In re Addams* applied, despite the fee ultimately being approved and the absence of financial harm. A concurrence urged the full court to reconsider *Addams*’s virtually automatic disbarment rule.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Farrell, Senior Judge; Reid, Associate Judge; Ferren, Senior Judge
JURISDICTION	District of Columbia
DECIDED	February 26, 2009
DOCKET	07-BG-1389
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Board on Professional Responsibility recommended disbarment after finding that respondent intentionally misappropriated estate funds and collected an unlawful fee.
STANDARD OF REVIEW	The Board's findings and conclusions were accepted when supported by substantial evidence in the record; ultimate determinations concerning rule violations and whether misappropriation was negligent, reckless, or intentional were reviewed without deference. The court also reviewed the recommended sanction under the governing disciplinary precedent.
PRECEDENTIAL VALUE	Published appellate opinion; precedential

TOPICS

- guardianship procedure
- conservatorship
- guardianships
- estate administration
- remedies

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

probate and conservatorship

QUESTIONS PRESENTED

1. Whether Bach's payment of \$2,500 from the ward's estate before advance court approval constituted intentional misappropriation under D.C. Bar Rule 1.15(a).
2. Whether the later approval of Bach's fee petition, the absence of financial harm, and other mitigating circumstances avoided or reduced the disciplinary consequences of the intentional misappropriation.
3. Whether the District of Columbia's Addams rule required disbarment for the intentional misappropriation shown in this case.

HOLDINGS

1. An attorney-conservator's withdrawal of estate funds for personal compensation before the required advance court approval is an unauthorized use of entrusted client funds and violates D.C. Bar Rule 1.15(a).
2. Bach's misappropriation was intentional because he deliberately treated estate funds as his own while knowing that advance court approval was required.
3. Subsequent court approval of the fee and the absence of financial harm do not cure an intentional misappropriation that occurred when the attorney withdrew funds without advance approval.
4. Under *In re Addams*, disbarment is the required sanction for intentional misappropriation absent the most stringent or extraordinary extenuating circumstances; the circumstances here did not justify a lesser sanction.

KEY QUOTATIONS

"Because the 'breach of trust' entailed by intentional misappropriation 'is so reprehensible, striking at the core of the attorney-client relationship,' ... '[o]nly the most stringent of extenuating circumstances [will] justify a lesser disciplinary sanction such as suspension.'" (351)

"But an attorney who knows he has done what the law forbids may not leave it to chance or the diligence of auditors to bring (or not bring) the action to light." (352)

"Whether the paramount goal of deterrence that drove the decision in Addams can be achieved by lesser, more case-individual sanctions for misappropriation is an issue the full court is always free to revisit" (353)

FACTUAL BACKGROUND

William S. Bach was the court-appointed conservator for the estate of a 92-year-old incapacitated woman. After filing a petition seeking compensation, he wrote himself a \$2,500 check from the estate before the Probate Court had approved payment, because he feared a nursing home's claim would exhaust the estate. The court later approved compensation in an amount sufficient to cover the payment, but the unauthorized withdrawal was discovered during review of a later accounting, after which Bach was removed as conservator and referred to Bar Counsel.

PROCEDURAL HISTORY

Bach, serving as conservator for an incapacitated adult's estate, paid himself \$2,500 before obtaining the court approval required for conservator compensation. The Hearing Committee found violations of Rules 1.5(a) and 1.15(a), but not Rule 8.4(d), and recommended disbarment. The Board on Professional Responsibility affirmed the relevant findings and recommended disbarment; the District of Columbia Court of Appeals accepted the Board's conclusions and recommendation.

DISPOSITION

other

CASES CITED

- In re Addams, 579 A.2d 190 (D.C. 1990) (en banc)
- In re Anderson, 778 A.2d 330 (D.C. 2001)
- In re Berryman, 764 A.2d 760 (D.C. 2000)
- In re Berkowitz, 801 A.2d 51 (D.C. 2002) (per curiam)
- In re Clarke, 684 A.2d 1276 (D.C. 1996) (per curiam)
- In re Davenport, 794 A.2d 602, 603 (D.C. 2002)
- In re Fair, 780 A.2d 1106, 1110-13 (D.C. 2001)
- In re Gil, 656 A.2d 303, 304 (D.C. 1995)
- In re Hines, 482 A.2d 378, 386 (D.C. 1984)
- In re Micheel, 610 A.2d 231, 234 (D.C. 1992)
- In re Pels, 653 A.2d 388, 389, 397-98 (D.C. 1995)
- In re Pennington, 921 A.2d 135, 141 (D.C. 2007)
- In re Pierson, 690 A.2d 941, 944-45, 947-50 (D.C. 1997)
- In re Reback, 513 A.2d 226, 233 (D.C. 1986) (en banc)
- In re Robinson, 583 A.2d 691, 692 (D.C. 1990)
- In re Schneider, 553 A.2d 206, 212 (D.C. 1989)
- In re Soininen, 889 A.2d 294 (D.C. 2005) (per curiam)
- In re Utley, 698 A.2d 446, 449-50 (D.C. 1997)
- In re Weiss, 839 A.2d 670, 673-74 (D.C. 2003)
- Attorney Grievance Comm'n of Maryland v. Owrutsky, 322 Md. 334, 587 A.2d 511, 516 (1991)