

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Lawyer Disciplinary Board v. Post, 219 W. Va. 82

631 S.E.2d 921 (2006) · No. No. 31734 · Decided May 25, 2006

SUMMARY

The Supreme Court of Appeals of West Virginia ordered the annulment of Daniel J. Post's West Virginia law license in a reciprocal disciplinary proceeding following his disbarment in Colorado. The court rejected Post's due process challenges to the Colorado proceedings, concluding that he had waived those challenges by failing to raise them there or appeal the Colorado disbarment. The court also assessed \$790.80 in disciplinary proceeding costs.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Albright, Justice
JURISDICTION	West Virginia
DECIDED	May 25, 2006
DOCKET	No. 31734
DISPOSITION	other
PROCEDURAL POSTURE	Reciprocal lawyer-discipline proceeding arising from the respondent's disbarment in Colorado. The respondent challenged the recommended annulment of his West Virginia law license on due-process grounds.
STANDARD OF REVIEW	De novo review. The court gives respectful consideration to the Hearing Panel Subcommittee's recommendations on legal questions and sanctions but exercises independent judgment regarding the sanction. The attorney bears the burden of showing that factual findings are unsupported by reliable, probative, and substantial evidence on the whole adjudicatory record.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia
PARTIES	Lawyer Disciplinary Board v. Daniel J. Post

TOPICS

procedural due process

standard of review

appellate procedure

civil procedure

constitutional law

PRACTICE AREAS

legal ethics and professional responsibility

lawyer discipline

reciprocal discipline

QUESTIONS PRESENTED

1. Whether the Colorado disciplinary proceedings violated due process because proceedings resumed after Post was placed on disability inactive status without his seeking reinstatement to active status.
2. Whether alleged structural defects, bias, or retaliation in the Colorado disciplinary system provided a valid basis to reject reciprocal discipline.
3. Whether West Virginia was required under Rule 3.20 of the West Virginia Rules of Lawyer Disciplinary Procedure to impose the same discipline imposed by Colorado.

HOLDINGS

1. The Colorado proceedings were not resumed in violation of Colorado Rule of Civil Procedure 251.23 because the presiding disciplinary judge expressly authorized resumption upon either the appearance of counsel or Post's restoration to active status, and counsel appeared for Post.
2. Post failed to establish a valid ground under Rule 3.20 for refusing reciprocal discipline. His constitutional challenges were waived because he did not raise them in the Colorado proceedings or appeal the Colorado disbarment.
3. Because Post failed to establish any Rule 3.20 ground for avoiding reciprocal discipline, West Virginia was required to impose the same sanction imposed by Colorado; the court therefore annulled his West Virginia law license.

KEY QUOTATIONS

"Our review in this matter is de novo." (219 W. Va. at 83, 631 S.E.2d at 922)

"The failure of Mr. Post to raise any of the constitutional challenges that he asserts for the first time in this reciprocal action in the course of the Colorado disciplinary proceedings and also to take an appeal from that action constitutes a waiver of those assertions." (219 W. Va. at 86, 631 S.E.2d at 925)

"Because Mr. Post failed to establish a ground for challenging the disbarment action imposed upon him by the Colorado court system, we are required under the Lawyer Disciplinary Rules to impose the same sanction instituted against him by the foreign court." (219 W. Va. at 87, 631 S.E.2d at 926)

FACTUAL BACKGROUND

Post was disbarred in Colorado after admitting misconduct involving nineteen clients or groups of clients, including neglect, failure to communicate, failure to return client property and funds, incompetent representation, dishonesty and misrepresentation, and conversion of funds. He was also an inactive member of the West Virginia State Bar and did not report his Colorado disbarment as required by West Virginia disciplinary rules. In the reciprocal proceeding, Post challenged the Colorado process based primarily on alleged due-process deficiencies, including the resumption of proceedings after his placement on disability inactive status and alleged bias or structural defects.

PROCEDURAL HISTORY

The Colorado disciplinary authorities consolidated five ethical complaints, and Post, represented by counsel, stipulated to facts and admitted misconduct. The Colorado Hearing Board disbarred him, ordered restitution and a payment to the Client Protection Fund, and the disbarment became effective by order dated July 10, 2001, after Post took no appeal. West Virginia disciplinary counsel initiated reciprocal proceedings; after hearings and a competency evaluation, the Hearing Panel Subcommittee recommended annulment of Post's West Virginia license and costs of \$790.80. The Supreme Court of Appeals adopted that recommendation.

DISPOSITION

other

CASES CITED

- Roark v. Lawyer Disciplinary Board, 201 W. Va. 181, 495 S.E.2d 552 (1997)
- Comm. on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994)
- Comm. on Legal Ethics v. Battistelli, 185 W. Va. 109, 405 S.E.2d 242 (1991)
- In re Disciplinary Proceedings Against Brickle, 135 Wis. 2d 355, 400 N.W.2d 464 (1987)
- Col. Supreme Ct. Grievance Comm. v. Dist. Ct., 850 P.2d 150 (Colo. 1993)

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