

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Daniel J. Slattery, Jr.

767 A.2d 203 (D.C. 2001) · No. No. 98-BG-1147 · Decided January 25, 2001

SUMMARY

The District of Columbia Court of Appeals reviewed disciplinary charges against Daniel J. Slattery, Jr., arising from his unauthorized appropriation of funds belonging to a fraternal organization and his subsequent concealment of the conduct. The court held that attorney discipline under D.C. Rules of Professional Conduct 8.4(b) and 8.4(c) does not require a criminal conviction and upheld the findings of misconduct. The opinion also rejected Slattery’s procedural due process and notice challenges.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Ruiz, Associate Judge; Schwelb, Associate Judge; Reid, Associate Judge
JURISDICTION	District of Columbia
DECIDED	January 25, 2001
DOCKET	No. 98-BG-1147
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding before the District of Columbia Court of Appeals on exceptions by the respondent and Bar Counsel to the Board on Professional Responsibility's report and recommendation. The Board found violations of D.C. Rules of Professional Conduct 8.4(b) and 8.4(c) and recommended a three-year suspension with proof of fitness; Bar Counsel sought disbarment.
STANDARD OF REVIEW	Under D.C. Bar R. XI, § 9(g), the court accepts the Board's factual findings unless unsupported by substantial evidence and adopts the recommended disposition unless doing so would foster inconsistent dispositions for comparable conduct or otherwise be unwarranted. The court retains the ultimate choice of sanction.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Daniel J. Slattery, Jr., Office of Bar Counsel v. Daniel J. Slattery, Jr., Office of Bar Counsel

TOPICS

administrative law

procedural due process

constitutional law

appellate procedure

standard of review

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

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QUESTIONS PRESENTED

1. Whether the District of Columbia Court of Appeals and the Board on Professional Responsibility could determine that Slattery committed a criminal act for purposes of D.C. Rule of Professional Conduct 8.4(b) without a criminal conviction.
2. Whether the disciplinary specification provided sufficient notice of the alleged misconduct and whether the alleged shift from theft by trick to theft by conversion violated applicable disciplinary rules or Fifth Amendment due process.
3. Whether substantial evidence supported findings that Slattery violated D.C. Rules of Professional Conduct 8.4(b) and 8.4(c).
4. Whether disbarment was warranted rather than the three-year suspension recommended by the Board.

HOLDINGS

1. A disciplinary tribunal may determine by clear and convincing evidence that an attorney engaged in conduct constituting a criminal act for purposes of Rule 8.4(b), even when the attorney was never criminally charged or convicted; the tribunal disciplines the conduct, not a supposed violation of a criminal statute.
2. The disciplinary specification sufficiently notified Slattery that he was charged with theft and violations of Rules 8.4(b) and 8.4(c); treating the theft as conversion rather than theft by trick did not violate disciplinary rules or Fifth Amendment due process.
3. Slattery violated Rule 8.4(b) by intentionally appropriating Hibernian funds that he knew he was not personally entitled to use, conduct that constituted a criminal act and adversely reflected on his honesty, trustworthiness, and fitness.
4. Slattery violated Rule 8.4(c) by engaging in dishonest and deceitful conduct through the unauthorized appropriation and concealment of the funds and through false and evasive deposition testimony.
5. Disbarment was required because Slattery deliberately misappropriated fiduciary funds and engaged in subsequent deceit, and imposing a sanction short of disbarment would foster inconsistent dispositions for comparable misconduct.

KEY QUOTATIONS

"we discipline for "conduct, not for any supposed violation of a criminal statute with which [a lawyer] has never even been charged."" (207)

“We therefore adopt the Hearing Committee's original recommendation that Daniel J. Slattery, Jr. be disbarred from the District of Columbia Bar.” (219)

FACTUAL BACKGROUND

Slattery, a signatory and primary account manager for a Hibernian organization furniture fund, withdrew and used \$10,262.30 from the account for his personal benefit without authorization or disclosure. He later filed suit against the organization and gave false and evasive deposition testimony denying knowledge or responsibility for the account. Although he eventually reimbursed the funds, he was never criminally charged.

PROCEDURAL HISTORY

The Hearing Committee found that Slattery misappropriated funds from a Hibernian organization account and concealed the conduct, and recommended disbarment. The Board adopted the findings and conclusions but recommended a three-year suspension with a fitness requirement. The Court rejected Slattery's jurisdictional and due-process challenges, upheld the violations, and imposed disbarment.

DISPOSITION

other

CASES CITED

- United States v. Quarles, 350 U.S. 11, 76 S. Ct. 1, 100 L. Ed. 8 (1955)
- In re Stiller, 725 A.2d 533, 539-40 (D.C. 1999)
- In re Gil, 656 A.2d 303, 304-06 (D.C. 1995)
- In re Pierson, 690 A.2d 941, 947 (D.C. 1997)
- In re Thorup, 432 A.2d 1221, 1225 (D.C. 1981)
- In re Colson, 412 A.2d 1160, 1164 (D.C. 1979) (en banc)
- In re Williams, 464 A.2d 115, 119 (D.C. 1983)
- In re Smith, 403 A.2d 296, 300-02 (D.C. 1979)
- In re Ruffalo, 390 U.S. 544, 550-52 (1968)
- Mahoning County Bar Ass'n v. Ruffalo, 176 Ohio St. 263, 199 N.E.2d 396, 401 (1964)
- In re James, 452 A.2d 163, 168 n.3 (D.C. 1982)
- Bouie v. City of Columbia, 378 U.S. 347, 355 (1964)
- In re Shorter, 570 A.2d 760, 767-68, 777 n.12 (D.C. 1990)
- In re Goffe, 641 A.2d 458, 463-64 (D.C. 1994) (per curiam)
- In re Steele, 630 A.2d 196, 199 (D.C. 1993)
- In re Haupt, 422 A.2d 768, 771 (D.C. 1980) (per curiam)
- In re Addams, 579 A.2d 190, 193-94 (D.C. 1990) (en banc)
- In re Kennedy, 542 A.2d 1225, 1230-31 (D.C. 1988)
- In re Kent, 467 A.2d 982, 983-85 (D.C. 1983)

- In re Moore, 691 A.2d 1151, 1151-52 (D.C. 1997)
- In re Perrin, 663 A.2d 517, 519-21 (D.C. 1995)
- In re Wilson, 81 N.J. 451, 409 A.2d 1153, 1154 (1979)

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