

SUPREME COURT OF GEORGIA

In the Matter of Gregory C. Menefee

In re Menefee, 286 Ga. 32 (Ga. 2009) · No. S09Y1593 · Decided October 19, 2009

SUMMARY

The Supreme Court of Georgia imposed reciprocal discipline on Gregory C. Menefee based on his temporary suspension in Kentucky for alleged misappropriation or improper handling of client funds. The court held that procedural defects concerning submission of the Kentucky disciplinary order were cured and suspended Menefee indefinitely in Georgia, with reinstatement conditioned on proof of reinstatement in Kentucky.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Per Curiam; All the Justices
JURISDICTION	Georgia
DECIDED	October 19, 2009
DOCKET	S09Y1593
DISPOSITION	other
PROCEDURAL POSTURE	Reciprocal attorney-discipline matter before the Supreme Court of Georgia on the Review Panel's report and recommendation proposing an indefinite suspension based on discipline imposed in Kentucky.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

remedies civil procedure waiver appellate procedure

PRACTICE AREAS

attorney discipline reciprocal discipline professional responsibility

QUESTIONS PRESENTED

- Whether Georgia should impose reciprocal discipline based on Menefee's Kentucky suspension.
- Whether the failure to initially file a certified copy of the Kentucky disciplinary order with the Clerk required remand or dismissal of the reciprocal-discipline proceeding.

HOLDINGS

1. The initial failure to file a certified copy of the Kentucky disciplinary order with the Clerk did not require remand or refiling because the defect was cured when the Clerk obtained and served the certified order and the Office of General Counsel filed an amended notice.
2. Reciprocal discipline was appropriate, and Menefee was suspended indefinitely from practicing law in Georgia until he demonstrated that he had been reinstated in Kentucky.

KEY QUOTATIONS

“Thus, any procedural defect in the disciplinary proceedings has been cured, and the matter need not be returned to the Office of General Counsel for refiling.” (277)

“Accordingly, effective as of the date of this opinion, Menefee is hereby suspended from the practice of law in Georgia indefinitely.” (277)

FACTUAL BACKGROUND

The Supreme Court of Kentucky temporarily suspended Menefee on June 19, 2008, based on probable cause that he had misappropriated or improperly dealt with funds held for clients. The Kentucky order identified seven complaints involving thousands of dollars from eight clients in estate, residential mortgage, and bankruptcy matters. In the Georgia reciprocal-discipline proceeding, the initial notice to the Clerk lacked a certified copy of the Kentucky order, but Menefee received the order, acknowledged service, and stated that he would not contest reciprocal discipline.

PROCEDURAL HISTORY

The Supreme Court of Kentucky temporarily suspended Menefee after finding probable cause to believe that he had misappropriated or improperly dealt with client funds. Georgia's Review Panel recommended reciprocal discipline, although the initial notice filed by the Office of General Counsel did not include a certified copy of the Kentucky disciplinary order. The Clerk later obtained and served the certified order, and the Office of General Counsel filed an amended notice. The Supreme Court of Georgia held that the procedural defect had been cured and imposed reciprocal discipline.

DISPOSITION

other

CASES CITED

- In the Matter of Boniface, 285 Ga. 815, 684 S.E.2d 268 (2009)

OPINION

PER CURIAM.

685 S.E.2d 276 (2009) 286 Ga. 32 In the Matter of Gregory C. MENEFEE. No. S09Y1593. Supreme Court of Georgia. October 19, 2009. William P. Smith III, General Counsel State Bar, Jonathan W. Hewett, Assistant General Counsel State Bar, Atlanta, for State Bar of Georgia. PER CURIAM. This disciplinary matter is before the Court on the Review Panel's Report and Recommendation proposing that the Court suspend Gregory C. Menefee as reciprocal discipline and that the suspension be effective until Menefee demonstrates that he has been reinstated in Kentucky.

Rule 9.4(b)(1) of the Georgia Rules of Professional Conduct. See Bar Rule 4-102(d). Menefee acknowledged service of the notice of reciprocal discipline, writing on the document, "[f]urthermore, I will not contest this reciprocal discipline."

The record shows that the Supreme Court of Kentucky temporarily suspended Menefee on June 19, 2008, concluding that probable cause existed to believe that he had misappropriated or improperly dealt with funds held on behalf of his clients and ordering that disciplinary proceedings be initiated against him.

The Kentucky court outlined seven complaints alleging that Menefee misappropriated thousands of dollars from eight clients in estate, residential mortgage, and bankruptcy matters. It further stated that Menefee's response to the petition for temporary suspension indicated that he had no objection, that he began winding up his law practice in 2007, that he is employed outside the field of law, and that he has no plans to resume practicing law.

The Review Panel found that Menefee had not met the burden under Rule 9.4(b)(3) to justify imposition of discipline other than that imposed in Kentucky. However, the Review Panel stated that it "is concerned with compliance with the procedures of Rule 9.4(b)."

The State Bar's Notice Regarding Reciprocal Discipline, directed to the Clerk of the State Disciplinary Board, did not include a certified copy of the Kentucky disciplinary order, but the Clerk later issued a Notice of Reciprocal Discipline, directed to Menefee, which did attach the disciplinary order.

The Review Panel found that because Menefee was aware of the proceeding, received a copy of the disciplinary order from the Clerk, voluntarily acknowledged service, *277 and consented to the reciprocal discipline, he had waived any procedural irregularities in this proceeding and no further action was needed to correct the Notice from Bar Counsel to the Clerk.

Thus, the Review Panel recommended, by an 11-1 vote, the reciprocal discipline of suspension beginning upon entry of this Court's order and continuing until Menefee shows that he has been reinstated to practice in Kentucky.

However, Review Panel member James Ellington dissented, recommending that the case be remanded to the Office of General Counsel for refiling because of a failure to file a certified copy of the Kentucky disciplinary order as required by Rule 9.4(b).

The same situation presented itself in *In the Matter of Boniface*, 285 Ga. 815, 684 S.E.2d 268 (2009). As we noted there, Rule 9.4(b) provides: Upon notification from any source that a lawyer within the jurisdiction of the State Bar of Georgia has been disciplined in another jurisdiction, the Office of General Counsel shall obtain a certified copy of the disciplinary order and file it with the Clerk of the State Disciplinary Board.

Rule 9.4(b)(1)(i) further provides that upon receipt of that certified copy of the disciplinary order, "the Clerk of the State Disciplinary Board shall... issue a notice directed to the lawyer containing... [a] copy of the order from the other jurisdiction...."

Thus, the plain language of the Rules requires the Office of General Counsel to file a certified copy of a foreign jurisdiction's disciplinary order with the Clerk of the Disciplinary Board. Here, the Office of General Counsel's Notice Regarding Reciprocal Discipline directed to the Clerk did not include a certified copy of the foreign disciplinary order. Nevertheless, here, as in *Boniface*, the Clerk eventually obtained a certified copy of the order and included it with the notice issued to Menefee, and the Office of General Counsel filed an amended notice with the Clerk that also included a copy of the order.

Thus, any procedural defect in the disciplinary proceedings has been cured, and the matter need not be returned to the Office of General Counsel for refiling. However, we again remind the Office of General Counsel that under the rules, that Office is directed to file a certified copy of the foreign order with the Clerk concurrently with the initiation of the reciprocal discipline process.

Having reviewed the record, we agree with the Review Panel that reciprocal discipline is appropriate in this case. Accordingly, effective as of the date of this opinion, Menefee is hereby suspended from the practice of law in Georgia indefinitely. Reinstatement shall be conditioned upon Menefee's providing satisfactory proof to the Review Panel that he has been reinstated in Kentucky.

Menefee is reminded of his duties under Bar Rule 4-219(c). Suspension until further order of the Court. All the Justices concur.