

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Hendin

873 A.2d 1100 (D.C. 2005) · Decided May 5, 2005

SUMMARY

The District of Columbia Court of Appeals adopted the Board on Professional Responsibility’s recommendation for reciprocal discipline against Stuart E. Hendin, following his disbarment in New York. The court disbarred him from practicing law in the District of Columbia, effective July 25, 2002, based on his prior professional misconduct and disbarment.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                                                                   |
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| COURT              | District of Columbia Court of Appeals                                                                                                                                                                                                                                                                                             |
| JURISDICTION       | District of Columbia                                                                                                                                                                                                                                                                                                              |
| DECIDED            | May 5, 2005                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION        | other                                                                                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE | Reciprocal attorney-discipline proceeding based on the respondent's disbarment by the New York State Supreme Court, Appellate Division, Third Judicial Department. The District of Columbia Board on Professional Responsibility recommended identical discipline, and neither the respondent nor Bar Counsel filed an exception. |
| PRECEDENTIAL VALUE | published precedential opinion                                                                                                                                                                                                                                                                                                    |

TOPICS

appellate procedure administrative law

PRACTICE AREAS

attorney discipline professional responsibility reciprocal discipline

QUESTIONS PRESENTED

1. Whether the District of Columbia Court of Appeals should impose reciprocal discipline based on the respondent's New York disbarment.
2. What effective date should apply to the District of Columbia disbarment after the respondent filed a complete Rule XI, § 14(g) affidavit.

HOLDINGS

1. The court adopted the Board on Professional Responsibility's recommendation and imposed identical discipline, disbarring the respondent from practicing law in the District of Columbia.
2. The respondent's District of Columbia disbarment was made effective July 25, 2002, the date on which he filed his initial Rule XI, § 14(g) affidavit.

#### KEY QUOTATIONS

*“Accordingly, it is ORDERED, that Stuart E. Hendin is disbarred from the practice of law in the District of Columbia effective July 25, 2002.”* (873 A.2d at 1101)

#### FACTUAL BACKGROUND

Between February 1, 1998, and February 28, 2000, Stuart E. Hendin misappropriated approximately \$108,000 from clients while practicing law in Ottawa, Ontario. He self-reported the misconduct, cooperated with the Canadian investigation, and made full restitution; he was also found to have suffered from severe depression. The New York State Supreme Court, Appellate Division, Third Judicial Department, later disbarred him based on the Canadian misconduct, and he failed to notify District of Columbia Bar Counsel of the Canadian and New York actions as required.

#### PROCEDURAL HISTORY

The respondent was permitted to resign from practice in Ontario, Canada, after misappropriating approximately \$108,000 from clients, and was subsequently disbarred by the New York court effective immediately. After receiving a certified copy of the New York disbarment order, the District of Columbia Court of Appeals suspended the respondent and referred the matter to the Board on Professional Responsibility. The Board recommended reciprocal disbarment effective July 25, 2002, the date of the respondent's initial Rule XI, § 14(g) affidavit, subject to supplementation; after the respondent filed an amended affidavit, the court adopted the Board's recommendation.

#### DISPOSITION

other

#### CASES CITED

- In re Goldberg, 460 A.2d 982 (D.C. 1983)

#### OPINION

##### PER CURIAM.

PER CURIAM: This is a matter of reciprocal discipline based on the June 12, 2002, order of the New York State Supreme Court, Appellate Division, Third Judicial Department, which disbarred the respondent from practice as an attorney in the state of New York.

The Board on Professional Responsibility recommends identical discipline, with the effective date of disbarment to run, nunc pro tunc, from the time he filed a complete § 14(g) affidavit. Neither respondent nor Bar Counsel has filed an exception to the Board's recommendation.

Therefore, we adopt the recommendation of the Board. See D.C. Bar R. X, § 9(g). This matter grows out of the respondent's professional misconduct committed in the course of his legal practice in Ottawa, Ontario, Canada, between February 1, 1998 and February 28, 2000. At that time, the respondent misappropriated approximately \$108,000 from various clients.

The respondent, who self-reported his misconduct to the Law Society of Upper Canada, cooperated fully with its investigator, and made full restitution of the misappropriated funds. He also was found to have been suffering from severe depression at the time.

As a result, the Law Society, in its decision and order of September 18, 2001, permitted the respondent to resign, prohibiting him from thenceforth practicing law in that jurisdiction. As a result of this misconduct and the disciplinary action in Canada (and apparently not due to any other misconduct in New York or elsewhere), the New York State Supreme Court, Appellate Division, Third Judicial Department issued an order dated June 12, 2002, in which it disbarred the respondent "effective immediately." According to the Board, the respondent never notified Bar Counsel of either the action taken against him in Canada or of his disbarment in New York, as he was required to do.<sup>1</sup> Instead, Bar Counsel forwarded to this court a certified copy of the New York order of disbarment, and we suspended respondent on July 15, 2002.

The Board on Professional Responsibility \*1101 also sent a letter to the respondent, dated July 2, 2002, informing him that he should "file an affidavit -with the Board Office which meets the criteria of *In re Goldberg*, 460 A.2d 982 (D.C.1983)," stating whether he had practiced law in the District since the effective date of his disbarment in New York and whether he intended to continue to practice in the District during the remainder of that sanction.

The respondent filed such an affidavit on July 25, 2002, stating that he had not practiced in the District of Columbia since February 1, 2000. He also filed a Rule XI, § 14(g) affidavit on that date, which listed only his state bar admissions.

In its Report, the Board recommended that the respondent's disbarment should be effective from July 25, 2002, the date on which he filed his initial Rule XI, § 14(g) affidavit, provided that he supplement it within ten days of the Board's Report, which was dated October 20, 2004, with an affidavit listing the federal jurisdictions to which he has been admitted to practice.

Respondent filed a "Motion for Extension of Time to File Amended Affidavit," which was granted by the court on November 15, 2004.<sup>2</sup> Respondent filed the amended § 14(g) affidavit on November 29, 2004.<sup>3</sup> Accordingly, it is ORDERED, that Stuart E. Hendin is disbarred from the practice of law in the District of Columbia effective July 25, 2002.. While the Board maintains that

the respondent was not required to report the Canadian action against him because it was not, strictly speaking, imposed by a "disciplining court," the appellant was nevertheless obligated to report his disbarment by the New York court.

See D.C. Bar R. XI, § 1 l(a)-(b).. The motion requested an extension to December 1, 2004. Bar Counsel did not oppose the motion. The Board indicated in a letter to respondent that it no longer had jurisdiction in the case since it had already filed its Report, and suggested that respondent deal directly with the court on the issue..

The Board maintained in its Report that the respondent's initial affidavit filed pursuant to D.C. Bar R. XI, § 14(g) was insufficient because he failed to list all the federal jurisdictions to which he was admitted to practice, namely, the United States District Court for the District of Columbia and the United States Supreme Court.

In the new affidavit, filed November 29, 2004, respondent acknowledges that he is admitted to the bar of the Supreme Court, but states that his failure to report this in his earlier affidavit was an oversight. He further states that the belief that he is admitted to the United States District Court for the District of Columbia is the result of a typographical error on his District of Columbia Bar Registration Statement, and that his attorney has confirmed with the clerk of the federal district court that he has never been a member of that bar.

Having received no further representations to the contrary from Bar Counsel, we assume that the record of the respondent's bar memberships is now complete.