

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Thomas O'Toole

877 A.2d 151 (D.C. 2005) · No. 04-BG-245 · Decided June 23, 2005

SUMMARY

The District of Columbia Court of Appeals imposed reciprocal discipline on Thomas O'Toole based on a 30-day suspension imposed by the Maryland Court of Appeals for willfully failing to file federal and state income tax returns. The court ordered the suspension to run nunc pro tunc from June 7, 2004, the date the required affidavits were filed.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Per Curiam; Terry, Associate Judge; Ruiz, Associate Judge; Glickman, Associate Judge
JURISDICTION	District of Columbia
DECIDED	June 23, 2005
DOCKET	04-BG-245
DISPOSITION	other
PROCEDURAL POSTURE	Reciprocal attorney-discipline proceeding based on a Maryland suspension. The District of Columbia Board on Professional Responsibility recommended an identical thirty-day suspension.
STANDARD OF REVIEW	The court gives deference to a foreign jurisdiction that has afforded the attorney a full disciplinary proceeding and generally imposes identical discipline when the respondent does not oppose it, subject to the District of Columbia's independent consideration of the matter.
PRECEDENTIAL VALUE	Published opinion; precedential District of Columbia Court of Appeals decision

TOPICS

- income tax
- appellate procedure
- tax

PRACTICE AREAS

- attorney discipline
- professional responsibility
- income tax

QUESTIONS PRESENTED

1. Whether the District of Columbia should impose reciprocal discipline identical to the thirty-day Maryland suspension.
2. What effective date should apply to the reciprocal suspension when the respondent did not timely file the affidavits required for nunc pro tunc treatment.

HOLDINGS

1. Willfully failing to file income-tax returns constitutes misconduct in the District of Columbia.
2. The District of Columbia should impose a thirty-day suspension identical to the Maryland suspension.
3. The thirty-day reciprocal suspension runs nunc pro tunc from June 7, 2004, the date O'Toole filed the necessary affidavit, rather than from the date of the Maryland suspension.

KEY QUOTATIONS

“Willfully failing to file income tax returns constitutes misconduct in this jurisdiction.” (152)

“Accordingly, it is ORDERED, that Thomas O'Toole is suspended from the practice of law in the District of Columbia for thirty days, effective June 7, 2004.” (154)

FACTUAL BACKGROUND

O'Toole willfully failed to file his individual federal and state income-tax returns over a three-year period from 1998 to 2001, although he had made substantial estimated tax payments. The Maryland Court of Appeals found by clear and convincing evidence that the conduct violated Maryland tax law and Maryland professional-conduct rules and suspended him for thirty days. After reporting the Maryland discipline, O'Toole delayed filing the affidavits required for nunc pro tunc treatment in the District of Columbia but ultimately obtained permission to file a supplemental affidavit.

PROCEDURAL HISTORY

The Maryland Court of Appeals suspended O'Toole for thirty days after finding that he willfully failed to file individual federal and state income-tax returns from 1998 through 2001. The District of Columbia Court of Appeals imposed an interim suspension, and O'Toole later filed the affidavits required for nunc pro tunc treatment. The court adopted the Board's recommendation and made the reciprocal suspension effective June 7, 2004.

DISPOSITION

other

CASES CITED

- Attorney Grievance Comm'n v. O'Toole, 379 Md. 595, 598-600, 843 A.2d 50, 52-53 (2004)
- In re Levitt, 724 A.2d 1206, 1207 (D.C. 1999)

- In re Zdravkovich, 831 A.2d 964, 968-69 (D.C. 2003)
- In re Cole, 809 A.2d 1226, 1227 n. 3 (D.C. 2002)
- In re Goldberg, 460 A.2d 982, 985 (D.C. 1983)
- In re Glass, 805 A.2d 236, 236 n. 1 (D.C. 2002)
- In re Cornish, 691 A.2d 156, 158 n. 3 (D.C.), cert. denied, 522 U.S. 867, 118 S.Ct. 176, 139 L.Ed.2d 117 (1997)
- In re Slosberg, 650 A.2d 1329, 1331-33 (D.C. 1994)
- In re Gardner, 650 A.2d 693, 697 (D.C. 1994)

OPINION

PER CURIAM.

877 A.2d 151 (2005) In re Thomas O'TOOLE, Respondent. A Member of the Bar of the District of Columbia Court of Appeals. No. 04-BG-245. District of Columbia Court of Appeals. Submitted June 9, 2005. Decided June 23, 2005. *152 Before TERRY, RUIZ and GLICKMAN, Associate Judges. PER CURIAM: This is a matter of reciprocal discipline based on the February 18, 2004 order of the Court of Appeals of Maryland, which suspended the respondent from the practice of law in Maryland for thirty days, effective as of that date.

The Board on Professional Responsibility recommends identical reciprocal discipline, with the effective date of suspension to run, nunc pro tunc, from June 7, 2004, the date on which the respondent first filed a § 14(g) affidavit with this court. 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. XI, § 9(g). This matter grows out of the respondent's willful failure to file his own individual federal and state income tax returns over the course of three years, from 1998 to 2001. See Attorney Grievance Comm'n v. O'Toole, 379 Md. 595, 598-600, 843 A.2d 50, 52-53 (2004). While the Maryland Court of Appeals found that the respondent had made substantial estimated tax payments, it nevertheless found by clear and convincing evidence that his willful failure to file income tax returns constituted a violation of Maryland law, see MD. CODE ANN. TAX-GEN §§ 13-1007(a) and 13-1001(d) (1988, 1997 Repl.Vol., 2002 Supp.), and, therefore, of the Maryland Rules of Professional Conduct 8.4(b) (criminal act reflecting adversely on fitness) and (d) (conduct prejudicial to the administration of justice).

Maryland imposed a suspension of thirty days, effective February 18, 2004, and this court suspended respondent on an interim basis by order of March 23, 2004. Bar Counsel and the Board on Professional Responsibility recommend reciprocal discipline, pursuant to D.C. Bar XI, § 11(f) (2).

The respondent does not oppose that recommendation. Willfully failing to file income tax returns constitutes misconduct in this jurisdiction. See *In re Levitt*, 724 A.2d 1206, 1207 (D.C.1999). *153 The respondent having taken advantage of the opportunity to litigate this issue before the Maryland Court of Appeals,[1] we accept the Board's recommendation of thirty days reciprocal suspension.

See *In re Zdravkovich*, 831 A.2d 964, 968-69 (D.C.2003) (deference accorded to other jurisdictions which have already afforded the attorney a full disciplinary proceeding); *In re Cole*, 809 A.2d 1226, 1227 n. 3 (D.C.2002) (where attorney does not oppose, "the imposition of identical discipline should be close to automatic, with minimum review by both the Board and this court").

A question remains, however, of the effective date of the suspension. The respondent requests suspension effective February 18, 2004, concurrent with his suspension in Maryland. Though he did timely report his Maryland discipline to this jurisdiction on February 25, 2004, as required by D.C. Bar Rule XI, § 11(b), it was not until June 7, 2004,[2] that he filed the affidavits required by D.C.

Bar Rule XI, § 14(g) (demonstrating full compliance with notice requirements of Rule XI) and *In re Goldberg*, 460 A.2d 982, 985 (D.C. 1983) (certifying that he was not practicing in this jurisdiction at the time of the foreign discipline). When an attorney fails to file a § 14(g) or Goldberg affidavit within ten days of this court's interim suspension order, discipline will be imposed nunc pro tunc only to the date when the attorney files the necessary affidavits.

See D.C. Bar R. XI, §§ 14(g)-(h), 16(c); *In re Glass*, 805 A.2d 236, 236 n. 1 (D.C.2002) (citing *In re Cornish*, 691 A.2d 156, 158 n. 3 (D.C.), cert. denied, 522 U.S. 867, 118 S.Ct. 176, 139 L.Ed.2d 117 (1997); *In re Slosberg*, 650 A.2d 1329, 1331-33 (D.C.1994)).

Because respondent did not do so, the earliest this court could grant discipline nunc pro tunc would be June 7, 2004. The Board, however, found the respondent's § 14(g) affidavits to be deficient because neither of them, according to the Board, demonstrated full compliance with the client notice requirements.

The Board recommended that the respondent be afforded the opportunity to file a supplement to his § 14(g) affidavit, to be considered nunc pro tunc to June 7, 2004, provided he filed it within ten days of the Board's Report.[3] Though the respondent filed a supplement to his affidavit, he did not do so until over two months after the Board filed its Report.

Nevertheless, neither Bar Counsel nor the Board opposed the respondent's motion to the court to file the supplemental affidavit nunc pro tunc to June 7, 2004, and as a result this court granted his motion on March 10, 2005.

On *154 its face, the supplement to the affidavit appears to respond to the Board's concern, and we have received no further representations to the contrary from Bar Counsel or the Board. We conclude, therefore, that reciprocal discipline of thirty days' suspension should run from June 7, 2004.

Accordingly, it is ORDERED, that Thomas O'Toole is suspended from the practice of law in the District of Columbia for thirty days, effective June 7, 2004. So ordered. NOTES [1] The Maryland Court of Appeals based its findings on an evidentiary hearing held on August 18, 2003, in which the respondent fully participated.

[2] The respondent in fact filed two § 14(g) affidavits: one mailed June 4, 2004 was received and filed on June 7, while the one mailed earlier, on May 27, was received and filed on June 18. The Board states in its Report that the minor differences between the two affidavits are immaterial and recommends June 7, 2004 as the operative date on which the respondent filed his § 14(g) affidavit for purposes of considering nunc pro tunc imposition of discipline.

We accept the Board's recommendation. [3] Ordinarily, core deficiencies in the § 14(g) affidavit cannot be corrected by supplement. See Slosberg, 650 A.2d at 1332. Since the Board found evidence in the respondent's affidavits, however, that the respondent simply had no clients to whom to give notice, the Board noted that there would be no prejudice in allowing the respondent to file a supplement to his affidavit to explicitly state so.

See *In re Gardner*, 650 A.2d 693, 697 (D.C.1994) (respondent allowed to supplement deficient affidavit of notice requirement compliance where evidence showed the respondent had no clients or parties to whom to give notice).