

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Dickey

73 A.3d 127 (D.C. 2013) · Decided August 8, 2013

SUMMARY

The District of Columbia Court of Appeals imposed reciprocal discipline on an attorney who had been suspended by the Supreme Court of South Carolina for two years. The court rejected the attorney's claims that the South Carolina proceeding deprived him of due process or involved an infirmity of proof, concluding that he had not met his burden under D.C. Bar Rule XI, § 11(c). The court ordered a two-year suspension, nunc pro tunc to January 23, 2013, with reinstatement conditioned on proof of fitness.

CASE DETAILS

COURT	District of Columbia Court of Appeals
JURISDICTION	District of Columbia
DECIDED	August 8, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Reciprocal attorney-discipline proceeding initiated by Bar Counsel after the Supreme Court of South Carolina suspended respondent from the practice of law for two years.
STANDARD OF REVIEW	Under D.C. Bar Rule XI, § 11(c), reciprocal discipline is presumed appropriate, and the attorney bears the burden of demonstrating by clear and convincing evidence one of the specified exceptions.
PRECEDENTIAL VALUE	published and precedential

TOPICS

procedural due process due process appellate procedure constitutional law

PRACTICE AREAS

attorney discipline professional responsibility reciprocal discipline due process

QUESTIONS PRESENTED

1. Whether respondent established by clear and convincing evidence that the South Carolina disciplinary proceeding denied him due process.

2. Whether respondent established by clear and convincing evidence that the South Carolina proceeding suffered from an infirmity of proof.
3. Whether the District of Columbia Court of Appeals should impose reciprocal discipline identical to the two-year suspension imposed by South Carolina.

HOLDINGS

1. Respondent failed to prove by clear and convincing evidence that the South Carolina proceeding lacked adequate notice or opportunity to be heard.
2. Respondent failed to prove by clear and convincing evidence that the South Carolina findings of misconduct rested on an infirmity of proof.
3. The court imposed a two-year suspension from the practice of law in the District of Columbia, nunc pro tunc to January 23, 2013, with reinstatement conditioned on proof of fitness to resume practice.

KEY QUOTATIONS

“reciprocal discipline proceedings are not a forum to reargue the foreign discipline.” (129)

“The Supreme Court of South Carolina directly addressed respondent’s due process argument, demonstrating that he “was provided notice, an opportunity to be heard, and judicial review.”” (129)

FACTUAL BACKGROUND

The Supreme Court of South Carolina sustained three misconduct findings: respondent created a document appearing to be a medical record and included it in an insurance settlement package; failed to return an unearned fee required by an arbitration award; and failed to identify potential experts and provide affidavits in a medical-malpractice case, resulting in dismissal without informing his client of the reason. South Carolina suspended respondent for two years and imposed reinstatement conditions. Respondent challenged the reciprocal discipline by alleging denial of due process and an infirmity of proof.

PROCEDURAL HISTORY

The Supreme Court of South Carolina found respondent guilty of professional misconduct and imposed a two-year suspension subject to conditions. The District of Columbia Court of Appeals temporarily suspended respondent pending resolution of the reciprocal-discipline matter and ordered him to show cause why identical discipline should not be imposed. Respondent filed an affidavit of compliance but failed to establish by clear and convincing evidence that the South Carolina proceeding violated due process or suffered from an infirmity of proof.

DISPOSITION

other

CASES CITED

- In re Dickey, 395 S.C. 336, 718 S.E.2d 739 (2011)

- In re Sibley, 990 A.2d 483, 487 (D.C. 2010)
- In re Dickey, 292 Ga. 12, 734 S.E.2d 18 (2012)
- In re Zdravkovich, 831 A.2d 964, 969 (D.C. 2003)

OPINION

In re Dickey 73 A.3d 127

PER CURIAM.

PER CURIAM: The Supreme Court of South Carolina concluded that respondent had committed professional misconduct and suspended him from the practice of law for two years. Bar Counsel now requests that we impose identical reciprocal discipline. Respondent resists, asserting that he was denied due process in the South Carolina proceedings and that there was an infirmity of proof. We conclude that respondent has not carried his burden of proof under our rules, and we impose identical reciprocal discipline. In the underlying disciplinary proceeding, eight allegations of misconduct were lodged against respondent. A hearing panel sustained seven of those charges and recommended that respondent be disbarred. However, the Supreme Court of South Carolina concluded that only three of the charges were supported by clear and convincing evidence: that respondent created a document that appeared to be a medical record and included it in a settlement package sent to the insurance company; that respondent failed to return an unearned fee to a client, as required by an arbitration award; and that respondent's failure to identify potential experts and provide their affidavits in a medical malpractice lawsuit led to dismissal of the case, but respondent failed to inform his client of the reason for the dismissal. In re Dickey, 395 S.C. 336, 360-63, 718 S.E.2d 739, 751-53 (2011). Additional details are found in the thorough opinion of the Supreme Court of South Carolina. That court suspended respondent from the practice of law for two years and imposed other conditions. Respondent must petition for reinstatement in South Carolina, a procedure requiring him to demonstrate that he is fit to resume the practice of law, and he must file an affidavit showing that he has complied with the sanctions imposed by the court. 395 S.C. at 364, 718 S.E.2d at 753. On December 20, 2012, this court suspended respondent from the practice of law in the District of Columbia pending the final disposition of this matter and ordered him to show cause why he should not be suspended in this jurisdiction for an identical period of two years, with his reinstatement conditioned upon a showing of fitness. On January 23, 2013, respondent *129 filed his affidavit of compliance with D.C. Bar R. XI, § 14(g). "With regard to attorney-discipline cases that come to us as reciprocal matters, D.C. Bar R. XI, § 11(c) establishes a rebuttable presumption in favor of this court's imposition of discipline identical to that imposed by the original disciplining jurisdiction." In re Sibley, 990 A.2d 483, 487 (D.C.2010). Our rules provide that: Reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that:

(1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

- (2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or
- (3) The imposition of the same discipline by the Court would result in grave injustice; or
- (4) The misconduct established warrants substantially different discipline in the District of Columbia; or
- (5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

Unless there is a finding by the Court under (1), (2), or (5) of this subsection, a final determination by another disciplining court that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in this Court. D.C. Bar R. XI, § 11(c). Invoking subsections (c)(1) and (c)(2), respondent asserts that the original proceeding was so lacking in notice or opportunity to be heard as to deprive him of due process and that there was an infirmity of proof in South Carolina. However, respondent fails to prove his case. He has not provided a record to support his allegations, he has not marshaled evidence to establish his claims, and he cites few, if any, pertinent legal precedents. Instead, with only vague citations to the record at best, he alleges, among other things, that the South Carolina Supreme Court proceeding was “tantamount to a criminal act” and that he was unfairly treated because of “the corrupt conduct of Court Officials” The Supreme Court of South Carolina directly addressed respondent’s due process argument, demonstrating that he “was provided notice, an opportunity to be heard, and judicial review.” 395 S.C. at 360, 718 S.E.2d at 751. Moreover, its opinion recites ample evidence to support the findings of misconduct. Prior to imposing reciprocal discipline, the Supreme Court of Georgia rejected the same two arguments that respondent has presented to us. In *re Dickey*, 292 Ga. 12, 734 S.E.2d 18 (2012). Respondent’s rhetoric and his conclusory allegations are not sufficient to carry his burden of proof, and we have made it clear that “reciprocal discipline proceedings are not a forum to reargue the foreign discipline.” In *re Zdravkovich*, 831 A.2d 964, 969 (D.C.2003). Accordingly, we hold that respondent has failed to prove, by clear and convincing evidence, that he was deprived of due process or that there was an infirmity of proof in the South Carolina proceeding. Therefore, respondent is suspended from the practice of law in the District of Columbia for a period of two years, nunc pro tunc to January 23, 2013, the date on which he filed his affidavit complying with D.C. Bar R. XI, § 14(g). Respondent’s reinstatement is conditioned upon proof of his fitness to resume the practice of law. So ordered.