

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)

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