

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Brian D. Geno

997 A.2d 692 (D.C. 2010) · No. No. 10-BG-290 · Decided July 1, 2010

SUMMARY

The District of Columbia Court of Appeals publicly censured attorney Brian D. Geno for violating D.C. Rules of Professional Conduct 1.3(c) and 1.4(a). Geno failed to adequately notify an immigration client of a hearing, appeared at the wrong courthouse, and took no effective remedial action after an in absentia deportation order was entered.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Per Curiam; Reid, Associate Judge; Oberly, Associate Judge; Nebeker, Senior Judge
JURISDICTION	District of Columbia
DECIDED	July 1, 2010
DOCKET	No. 10-BG-290
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Board on Professional Responsibility recommended public censure after adopting findings that respondent violated the District of Columbia Rules of Professional Conduct. No exceptions were filed.
STANDARD OF REVIEW	The court gives heightened deference to an unopposed Board recommendation and adopts it unless doing so would foster inconsistent dispositions for comparable conduct or otherwise be unwarranted; the court also respects the Board's sense of equity unless the recommendation is materially inconsistent with sanctions imposed in comparable cases.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

immigration

appellate procedure

standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether respondent violated D.C. Rules of Professional Conduct 1.3(c) and 1.4(a) by failing to provide adequate diligence and communication in connection with his client's immigration hearing.
2. Whether public censure, rather than an informal admonition or suspension, was the appropriate sanction for respondent's misconduct.

HOLDINGS

1. Respondent violated Rules 1.3(c) and 1.4(a) by failing to notify his client adequately of the immigration hearing, failing to attend the correct hearing, and failing to take remedial action after the in absentia deportation order was entered.
2. Public censure was warranted because respondent failed to accept responsibility for conduct that caused an in absentia deportation order and created a serious risk of deportation, while the isolated nature of the misconduct made suspension unduly punitive.

KEY QUOTATIONS

"In light of the grave consequences to Mr. Majano if he failed to appear at the hearing, a few phone calls and one letter sent on the eve of the hearing do not constitute due diligence as required by our rules." (997 A.2d at 693)

"We will adopt the recommended sanction "unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted."" (997 A.2d at 693)

FACTUAL BACKGROUND

Respondent represented an immigration client seeking political asylum and received notice of a hearing warning that failure to appear could result in an in absentia hearing and deportation. He delegated contact efforts to a legal assistant, made several unsuccessful telephone calls that stopped nearly a month before the hearing, and mailed a letter only on the eve of the hearing, which arrived after the hearing time. Respondent also went to the wrong immigration court, resulting in the client's failure to appear and entry of an in absentia deportation order; respondent later demanded additional payment before taking steps to seek vacatur of the order.

PROCEDURAL HISTORY

Hearing Committee Twelve found that respondent violated Rules 1.3(c) and 1.4(a) by failing to notify his immigration client of a hearing, failing to attend the hearing, and failing to take remedial action after an in absentia deportation order was entered. The Hearing Committee recommended an informal admonition, but the Board on Professional Responsibility recommended public censure. The District of Columbia Court of Appeals adopted the Board's recommendation because it was unopposed and was not inconsistent with comparable disciplinary dispositions.

DISPOSITION

CASES CITED

- In re Delaney, 697 A.2d 1212, 1214 (D.C. 1997)
- In re Edwards, 870 A.2d 90, 94 (D.C. 2005)
- In re Smith, 403 A.2d 296, 303 (D.C. 1979)
- In re Schlemmer, 840 A.2d 657 (D.C. 2004)

OPINION

PER CURIAM.

997 A.2d 692 (2010) In re Brian D. GENO, Respondent. A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 416468). No. 10-BG-290. District of Columbia Court of Appeals. Decided July 1, 2010.

Before REID and OBERLY, Associate Judges, and NEBEKER, Senior Judge. PER CURIAM: The Board on Professional Responsibility ("Board"), accepting the findings of Hearing Committee Twelve, concluded that respondent violated D.C. Rules of Professional Conduct 1.3(c) and 1.4(a) when he failed to notify his client of a pending immigration hearing, failed to attend the hearing resulting in the entry of an in absentia deportation order, and failed to take any remedial actions.

However, the Board disagreed with the Committee's recommendation of an informal admonition and concluded that respondent, Brian D. Geno, should be publically censured. Neither Bar Counsel nor respondent has filed any exceptions.

We adopt and agree with the recommendation that Brian D. Geno should be publically censured. Mr. Geno has been a member of this Bar since December 5, 1988, and has no prior disciplinary history in this court. In July 1995, respondent undertook the representation of Mr. Majano in an immigration matter. Mr. Majano sought political asylum. Initially, Mr. Majano's application was dismissed; however, after respondent successfully appealed, the matter was reinstated.

Respondent thereafter received notice of a court hearing scheduled for 1:00 p.m., on August 28, 2002. The hearing notice warned *693 that failure to appear could result in the matter being heard in absentia and may result in deportation.

The court order did not show service on Mr. Majano. It is at this point that respondent failed to meet his professional obligations. Respondent delegated the responsibility of contacting Mr. Majano to his legal assistant. Numerous telephone calls were made; however, none of these telephone calls reached Mr. Majano. These telephonic attempts ceased on August 1, 2002, almost a month before the hearing.

No other attempts were made to contact Mr. Majano until the day before the scheduled hearing when a letter was mailed to Mr. Majano. Mr. Majano received the letter the next day; however, it was not delivered until after the 1:00 p.m. hearing.

On the day of the hearing respondent traveled to the immigration court in Arlington, Virginia; however, the hearing was scheduled to be heard in Baltimore, Maryland. Thus, neither Mr. Majano nor respondent appeared at the hearing.

As a consequence, an in absentia deportation order was issued. Further, once contacted by Mr. Majano, respondent demanded additional payments prior to filing the necessary paperwork to have the in absentia deportation order vacated and a new hearing scheduled. Mr. Majano refused to make any additional payments and the in absentia order remained in effect at the time of the hearing before the Board.

Although the Hearing Committee recommended an informal admonition, the Board determined that a public censure was warranted because respondent failed to accept responsibility for his actions and the resulting entry of the in absentia order and the possibility of his client's deportation.

The Board properly rejected respondent's claims of diligence. In light of the grave consequences to Mr. Majano if he failed to appear at the hearing, a few phone calls and one letter sent on the eve of the hearing do not constitute due diligence as required by our rules. Further, the Board determined that respondent's failure to understand his obligation distinguished this case from others that resulted in the entry of an informal admonition; however, the Board also determined that because the conduct was an isolated incident, any suspension would be unduly punitive.

Since the Board's recommendation is unopposed, our deference to it is normally heightened. See D.C. Bar R. XI, § 9(h)(2); *In re Delaney*, 697 A.2d 1212, 1214 (D.C.1997). We will adopt the recommended sanction "unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1).

Similarly, we will "respect the Board's sense of equity in these matters' unless the recommendation... is materially inconsistent with the sanctions that we have imposed in comparable cases." *In re Edwards*, 870 A.2d 90, 94 (D.C.2005) (citing *In re Smith*, 403 A.2d 296, 303 (D.C.1979)).

In similar immigration cases, this court has imposed discipline ranging from informal admonitions to 90-day suspensions. In these cases, the court has looked to the severity of counsel's omissions, the prejudice to the client, any remedial actions taken, and the disciplinary history of respondent.

Here we concur with the Board that respondent's actions and failure to understand the seriousness of his omissions require more than the informal admonition sanction of *In re Schlemmer*, 840 A.2d

657 (D.C.2004). Accordingly, it is ORDERED that Brian D. Geno is hereby publically censured for violating D.C. *694 Rules of Professional Conduct 1.3(c) and 1.4(a).

So ordered.

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