

DISTRICT OF COLUMBIA COURT OF APPEALS

In re James

911 A.2d 409 (D.C. 2006) · Decided November 22, 2006

SUMMARY

The District of Columbia Court of Appeals imposed reciprocal disbarment on Charles M. James III after Maryland had disbarred him for professional-conduct violations, including intentional misappropriation. The court treated the proceeding as effectively unopposed because James failed to participate before the Board and failed to file a brief supporting his exceptions.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Per Curiam; Fisher; Kramer; Schwelb
JURISDICTION	District of Columbia
DECIDED	November 22, 2006
DISPOSITION	other
PROCEDURAL POSTURE	Reciprocal attorney-discipline proceeding in which the Board on Professional Responsibility recommended disbarment after Maryland disbarred James. James filed exceptions but failed to file the required brief or otherwise properly oppose the recommendation.
STANDARD OF REVIEW	The court applies a deferential standard of review to an effectively unopposed recommendation for reciprocal discipline and presumes that identical discipline should be imposed absent an applicable exception, including an obvious miscarriage of justice.
PRECEDENTIAL VALUE	Published opinion; precedential District of Columbia Court of Appeals decision
PARTIES	Charles M. James, III

TOPICS

- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

- legal ethics and professional responsibility
- attorney discipline
- appellate procedure

QUESTIONS PRESENTED

1. Whether the District of Columbia should impose reciprocal disbarment after Maryland disbarred James for professional-conduct violations including intentional misappropriation.
2. Whether James could contest the reciprocal-discipline recommendation in the Court of Appeals after failing to present the relevant point to the Board and failing to respond adequately to the court's briefing orders.

HOLDINGS

1. The court imposed reciprocal disbarment because James's Maryland disbarment was effectively unopposed in the District of Columbia proceedings and the record showed no basis for finding that identical discipline would result in an obvious miscarriage of justice.
2. James waived any point that he failed to present to the Board and could not contest reciprocal discipline after failing to oppose the proposed discipline before the Board or respond properly to the court's show-cause and briefing orders.

KEY QUOTATIONS

“Intentional misappropriation warrants disbarment in the District of Columbia.” (at 409)

“We have consistently held that an attorney who fails to present a point to the Board waives that point and cannot be heard to raise it for the first time here.” (at 410)

“Treating an opposition filed for the first time in this court as equivalent to a timely response to the show cause order thwarts the operation of a disciplinary system that depends heavily on the Board’s expertise in making recommendations.” (at 410)

“For the foregoing reasons, Charles M. James, III is disbarred in the District of Columbia.” (at 410)

FACTUAL BACKGROUND

The Court of Appeals of Maryland disbarred Charles M. James, III, on March 16, 2005, for multiple professional-conduct violations, including intentional misappropriation. The District of Columbia Board on Professional Responsibility recommended disbarment as reciprocal discipline, and James did not participate before the Board or present evidence to rebut identical discipline. Although he filed exceptions in the District of Columbia Court of Appeals, he repeatedly failed to file the required brief.

PROCEDURAL HISTORY

The Court of Appeals of Maryland disbarred James on March 16, 2005, for violations of Maryland's Rules of Professional Conduct, including intentional misappropriation. The District of Columbia Board on Professional Responsibility recommended identical reciprocal discipline. James filed exceptions on March 22, 2006, but failed to comply with repeated orders to file a supporting brief, so the court considered the matter on the Board's report and recommendation alone.

DISPOSITION

CASES CITED

- In re Addams, 579 A.2d 190 (D.C. 1990) (en banc)
- In re Childress, 811 A.2d 805, 807 (D.C. 2002)
- In re Goldsborough, 654 A.2d 1285, 1288 (D.C. 1995)
- In re Abrams, 689 A.2d 6, 10 (D.C.) (en banc), cert. denied, 521 U.S. 1121, 117 S. Ct. 2515, 138 L. Ed. 2d 1017 (1997)
- In re Holdmann, 834 A.2d 887, 889-90 (D.C. 2003)
- In re Harper, 785 A.2d 311, 316 (D.C. 2001)

OPINION

In re James 911 A.2d 409

PER CURIAM.

PER CURIAM: In this reciprocal disciplinary proceeding, the Board on Professional Responsibility has recommended that Charles M. James, III, a member of our Bar, be disbarred. The Board's recommendation is based upon James' disbarment on March 16, 2005, by the Court of Appeals of Maryland for a number of violations of Maryland's Rules of Professional Conduct, including, *inter alia*, intentional misappropriation. Intentional misappropriation warrants disbarment in the District of Columbia. In re Addams, 579 A.2d 190 (D.C. 1990) (en banc). James did not participate in the proceedings before the Board, and presented no evidence to rebut the presumption in favor of imposing identical reciprocal discipline. See D.C. Bar R. XI, § 11(f)(2). There was no evidence before the Board, and, indeed, no claim, that the imposition of identical reciprocal discipline would result in an "obvious miscarriage of justice." In re Childress, 811 A.2d 805, 807 (D.C.2002). On March 22, 2006, James filed exceptions in this court to the Board's Report. He contended that his misappropriation was negligent rather than intentional. He also invited our attention to a Joint Petition by the Attorney Grievance Commission of Maryland and by James requesting that he be suspended from practice by consent for a period of ninety days, a far less severe sanction than disbarment. James has failed, however, to file a brief, as required by several orders of this court.¹ As a result of James' noncompliance, we ordered on June 12, 2006, that this matter be scheduled "on the report and recommendation of the Board on Professional Responsibility only." In light of the deferential standard of review when a recommendation for reciprocal discipline, as here, is effectively unopposed, see In re Goldsborough, 654 A.2d 1285, 1288 (D.C. 1995), we conclude that James must be disbarred. Moreover, even if we were to consider the claims made by James in his exceptions, "[w]e have consistently held that an attorney who fails to present a point to the Board waives that point and cannot be heard to raise it for the first time here." In re Abrams, 689 A.2d 6, 10 (D.C.) (en banc),

cert. denied, 521 U.S. 1121, 117 S.Ct. 2515, 138 L.Ed.2d 1017 (1997) (citation and internal quotation marks omitted). “We have also specifically held that an attorney waives the right to contest the imposition of reciprocal discipline when he or she does not oppose the proposed discipline before the Board or fails to respond to the court’s show cause order.” In re Holdmann, 834 A.2d 887, 889 (D.C.2003) (citation omitted). “Treating an opposition filed for the first time in this court as equivalent to a timely response to the show cause order thwarts the operation of a disciplinary system that depends heavily on the Board’s expertise in making recommendations.” In re Harper, 785 A.2d 311, 316 (D.C.2001); Holdmann, 834 A.2d at 889 (quoting Harper). Under these circumstances, and especially in light of James’ failure to file a brief and his disregard of the court’s briefing order, “we find no [sufficient] reason in this record to relieve [James] of his waiver.” Holdmann, 834 A.2d at 890. For the foregoing reasons, Charles M. James, III is disbarred in the District of Columbia. So ordered. 2 . On March 28, 2006, this court entered a clerk's order directing James to file a brief in support of his exceptions within forty days from the date of the order. James failed to do so. On May 17, 2006, the court entered a second clerk’s order directing James to file his brief within fifteen days, and warning James that failure to do so may result in the scheduling of the matter on the basis of the Board’s report alone. James again failed to comply. Finally, on June 12, 2006, the court entered a third clerk’s order directing that in light of James’ noncompliance, "this matter be scheduled on the Summary Calendar before a merits division as soon as the calendar permits, on the report and recommendation of the Board on Professional Responsibility only.” . James has previously been advised of the responsibilities of disbarred and suspended attorneys pursuant to D.C. Bar R. XI, § 14(g). Although James’ initial filing pursuant to § 14(a) was untimely and deficient, the record does not reflect any objection by Bar Counsel to James' most recent amended filing.