

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*



DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of: :
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 :
 DAVID H. MILLER, :
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 : D.C. App. No. 19-BG-1092
 Respondent. : Board Docket No. 19-BD-070
 : Disc. Docket No. 2016-D122
 A Suspended Member of the Bar of the :
 District of Columbia Court of Appeals :
 (Bar Registration No. 482782) :

Issued
January 27, 2020

REPORT AND RECOMMENDATION
OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

A federal jury found Respondent guilty of mail and wire fraud, conspiracy to commit mail and wire fraud, and other crimes. The District of Columbia Court of Appeals has directed the Board on Professional Responsibility to institute a formal proceeding to determine the nature of Respondent's offenses and whether the crimes involve moral turpitude within the meaning of D.C. Code § 11-2503(a) (2001). For the reasons that follow, the Board recommends that the Court disbar Respondent pursuant to D.C. Code § 11-2503(a) based on his convictions of crimes involving moral turpitude *per se*.

BACKGROUND

Respondent was admitted to the District of Columbia Bar on August 11, 2003. On October 4, 2019, a jury in the United States District Court for the Eastern District of Virginia found Respondent guilty on ten felony counts: one

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

count of conspiracy to commit mail and wire fraud (18 U.S.C. § 1349), one count of conspiracy to launder monetary instruments (18 U.S.C. § 1956(h)), four counts of mail fraud (18 U.S.C. §§ 2 and 1341), and four counts of wire fraud (18 U.S.C. §§ 2 and 1343). Respondent is awaiting sentencing on January 24, 2020.

On November 15, 2019, Disciplinary Counsel filed a certified copy of Respondent's jury verdict form with the Court of Appeals, which suspended Respondent pursuant to D.C. Bar R. XI, § 10(c), and directed the Board to institute a formal proceeding to determine whether any of Respondent's offenses involve moral turpitude within the meaning of D.C. Code § 11-2503(a) (2001). Order, *In re Miller*, No. 19-BG-1092 (D.C. Nov. 20, 2019).

On December 6, 2019, Disciplinary Counsel filed a statement with the Board recommending Respondent's disbarment because Respondent had been found guilty of crimes involving moral turpitude *per se*. Respondent did not file a response to Disciplinary Counsel's statement, the time for doing so having expired.

ANALYSIS

D.C. Code § 11-2503(a) requires the disbarment of a member of the District of Columbia Bar convicted of a crime of moral turpitude. Once the Court has determined that a particular crime involves moral turpitude *per se*, disbarment must be imposed. See *In re Colson*, 412 A.2d 1160, 1165 (D.C. 1979) (en banc).

Respondent was found guilty of mail and wire fraud, and conspiracy to commit mail and wire fraud. The Court has already decided that these are all crimes of moral turpitude *per se*. See *In re Bryant*, 46 A.3d 402, 402 (D.C. 2012) (per curiam) (“[B]oth mail fraud and wire fraud are crimes of moral turpitude *per se*.” (quoting *In re Evans*, 793 A.2d 468, 469 (D.C. 2002) (per curiam))); *In re Schainker*, 871 A.2d 1206, 1206 (D.C. 2005) (per curiam) (conspiracy to commit mail and wire fraud is a crime of moral turpitude *per se*); *In re Lickstein*, 972 A.2d 314, 316 (D.C. 2009) (per curiam) (a “[c]onviction of conspiracy to commit a crime of moral turpitude is itself a crime of moral turpitude.”).

Disciplinary Counsel represents that Respondent’s sentencing is scheduled for January 24, 2020. The fact that Respondent has not been sentenced and may yet file an appeal in the underlying criminal matter should not delay the Board’s recommendation here; however, the Court should defer final action until any appeal is decided. See *In re Hirschfeld*, 622 A.2d 688, 690 (D.C. 1993) (withholding action on Board report and recommendation until appeal of conviction is concluded). If Respondent files an appeal, Disciplinary Counsel should notify the Board and the Court when the appeal is decided, so that the Court may take final action in this matter. See, e.g., *In re Hudson*, 89 A.3d 517, 518 n.2 (D.C. 2014) (per curiam) (respondent disbarred after Disciplinary Counsel notified the Court that the underlying criminal convictions were affirmed on appeal).

CONCLUSION

For the foregoing reasons, the Board recommends that, upon receipt of a certified copy of the final judgment of conviction, the Court disbar Respondent pursuant to D.C. Code § 11-2503(a) based on his conviction of crimes involving moral turpitude *per se*.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 
Sara K. Blumenthal

All members of the Board concur in this Report and Recommendation.