

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
ANTOINE I. MANN, ESQUIRE,	:	
	:	DCCA No. 03-BG-1138
Respondent.	:	Bar Docket No. 200-00
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 483378)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

This reciprocal matter comes before the Board on Professional Responsibility (the “Board”) as a result of discipline imposed upon Antoine Mann (“Respondent”) by the Court of Appeals of Maryland (“the Maryland Court”) on September 23, 2003. The Board recommends the imposition of identical reciprocal discipline of an indefinite suspension, to be effective immediately, but deemed to commence for purposes of reinstatement on the date Respondent files an affidavit that fully complies with D.C. Bar R. XI, § 14(g).

I. BACKGROUND

Respondent was admitted to the Bar of the District of Columbia Court of Appeals (“Court”) on June 1, 1992. Respondent is also a member of the Bar of the Maryland Court.

On October 23, 2003, Bar Counsel filed with the Court a certified copy of a September 23, 2003 order of the Maryland Court indefinitely suspending Respondent by consent.¹ On November 6, 2003, the Court issued an Order suspending Respondent on an interim basis pursuant to D.C. Bar R. XI, § 11(d) and directing the Board either to (i) recommend whether

¹ Bar Counsel opened Docket Number 00-200 in May 2000, to provide assistance to the Attorney Grievance Commission of Maryland in the investigation of Respondent that led to the Maryland discipline. Bar Counsel’s

identical, greater, or lesser discipline should be imposed as reciprocal discipline, or (ii) determine whether the Board should proceed *de novo*. *In re Mann*, No. 03-BG-1138 (D.C. Nov. 6, 2003).

Bar Counsel filed a statement on April 5, 2004, recommending the imposition of identical reciprocal discipline – an indefinite suspension. Bar Counsel sent a copy of this statement to Respondent’s last known address in Maryland. Respondent has not filed a statement regarding his position on reciprocal discipline and has not participated in these proceedings.

II. THE MARYLAND DISCIPLINARY PROCEEDINGS

On May 13, 2003, the Maryland Attorney Grievance Commission filed a petition for disciplinary or remedial action against Respondent in the Circuit Court for Frederick County. The petition detailed ethical violations over four years in eight separate complaints:

1. Kellner Complaint (filed April 10, 2002): In the course of representing the beneficiary of a life insurance policy in 1998, Respondent received funds assigned to pay the funeral expenses for the deceased policyholder. Respondent assisted in uttering or forging the check, deposited the funds into a business account that he controlled, and withdrew cash from the account in the same amount the following day. Respondent then lied to Bar Counsel about his relationship with the business account, lied to Maryland Bar Counsel under oath, and attempted to obstruct the disciplinary investigation. Respondent was charged with violating Maryland Rules 1.1, 1.15, 8.2, 8.4, 16-603, 16-604, 16-609, and 16-812, and Business Occupations and Professions Article §§ 10-302, 10-304, 10-306, and 10-307.
2. Md. Bar Counsel Complaint (filed April 10, 2002): In 1998, Respondent paid \$5,000 for an eleven year-old Mercedes station wagon with 292,443 miles on it.

investigation was deferred pending completion of the Maryland investigation. It was reactivated upon receiving the Maryland Court’s Order. *See* Bar Counsel’s Statement, at 2 n.1.

Respondent, who is also a notary, notarized a bill of sale that listed the purchase price as \$950 and the odometer reading as 86,253 miles, and filed this fraudulent bill of sale with Maryland authorities. Less than three months later, Respondent sold the car for \$13,000 after misrepresenting that it had never been in an accident and had been driven less than 100,000 miles. During the subsequent lawsuit brought by the buyer in the Circuit Court of Montgomery County, Maryland, Respondent lied to the court and the plaintiff's attorney concerning the car and failed to cooperate with Maryland Bar Counsel. Respondent was charged with violating Maryland Rules 3.3, 3.4, 8.1, 8.4, and 16-812.

3. Wyson Complaint (filed March 26, 2002): In 2000, Respondent represented an individual seeking compensation for a work-related permanent disability. Respondent made an initial demand of over \$1 million to the Injured Worker's Insurance Fund, but reduced the demand three times before settling for \$35,000 without his client's consent. Respondent misrepresented to his illiterate client that the \$35,000 was an initial payment in order to obtain his signature on the final release. Respondent then retained over 40% of the settlement check and obtained attorney fees from the subsequent injury fund without the required approval. Thereafter, Respondent testified untruthfully to the Workers' Compensation Commission regarding his dealings with his client. Respondent was charged with violating Maryland Rules 1.1, 1.2, 1.4, 1.5, 1.15, 3.3, 8.4, 16-609, and 16-812, and Business Occupations and Professions Article §§ 10-306, and 10-307.
4. Ford Complaint (filed January 30, 2003): While representing an injured employee in a workers compensation case in 2002, Respondent applied for a lump sum payment prematurely and without first obtaining an independent medical

evaluation, and falsely represented that his client's employer and insurer had consented to a lump sum payment. Meanwhile, Respondent failed to keep his client informed of the status of the case and did not return his telephone calls. Respondent was charged with violating Maryland Rules 1.1, 1.4, 8.4, and 16-812.

5. Roberts Complaint (filed January 30, 2003): While representing a criminal defendant in Frederick County District Court in 2002, Respondent failed to appear for trial and, when it was rescheduled, he appeared late. Respondent obtained a second rescheduling for the following month, but again failed to appear. Respondent was charged with violating Maryland Rules 1.1, 1.3, 8.4, and 16-812.
6. Nichols Complaint (filed February 25, 2003): While Respondent was representing a client in a personal injury case in 2001, his client was jailed on an unrelated criminal matter. Respondent advanced his client bail and obtained an agreement that the client would repay the advance out of the proceeds of the personal injury case. Respondent failed to deposit the settlement proceeds of the personal injury claim in an attorney trust account. Thereafter, Respondent did not timely respond to Bar Counsel's inquiries. Respondent was charged with violating Maryland Rules 1.1, 1.8, 1.15, 8.1, 8.4, 16-603, 16-606, and 16-812, and Business Occupations and Professions Article §§ 10-302, 10-304, and 10-307.
7. Bailey Complaint (filed February 25, 2003): In 1999, Respondent represented a client with three claims for unemployment insurance benefit payments. Respondent failed to enter into a retainer agreement with his client and accepted payment without sending a billing statement. Throughout his representation, Respondent did not return his client's calls and failed to otherwise communicate with him. By the time Respondent referred his client to another attorney, the

appeal time had run on all three claims. Respondent then falsely told Bar Counsel that his client had not paid him and that he had referred the case to another attorney as soon as his client refused to pay. Respondent was charged with violating Maryland Rules 1.1, 1.3, 1.4, 1.5, 8.1, 8.4, and 16-812.

8. Md. Bar Counsel Complaint (filed February 25, 2003): In 2002, Respondent was arrested and charged with soliciting sex from two undercover Baltimore city police officers, but accepted community service in exchange for a *nolle prosequi*. When questioned by Bar Counsel about the charges, Respondent stated that the accusations were a “misunderstanding,” but did not provide the details of his plea agreement. Respondent was charged with violating Maryland Rules 8.1, 8.4, and 16-812.

Respondent, represented by counsel, consented to an indefinite suspension by the Maryland Court “due to Respondent’s psychological and/or psychotic problems that cannot be diagnosed at this time due to Respondents abuse of alcohol.” Statement of Bar Counsel, Attachment C, ¶ 3 (Joint Petition for Indefinite Suspension by Consent).² Respondent stated that his consent was freely and voluntarily given, that he understood the implications of consenting to indefinite suspension, and acknowledged that “if a hearing were to be held, sufficient evidence could be produced to sustain the allegations of misconduct.” *Id.* ¶ 6. Respondent also consented to pay \$6,474.85 to reimburse the Maryland Attorney Grievance Commission for costs incurred in its investigation.

² The eight complaints that form the basis for the Grievance Commission’s petition allege violations of the following Maryland rules one or more times: MPRC Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8, 1.15, 3.3, 3.4, 8.1, 8.2, 8.4; Maryland Rules 16-603, 16-604, 16-606, 16-609, and 16-812; and Business Occupations and Professions Article §§ 10-302, 10-304, 10-306, and 10-307. The joint petition for indefinite suspension by consent mentions only the following charges: MPRC Rules 1.1, 1.3, 1.4, 1.5, 1.15, 3.3, 8.1(a)(b), 8.4(a)(b)(c)(d); Maryland Rules 16-603, 16-606 and 16-609; and Business Occupations and Professions Article §§ 10-304 and 10-307.

On September 23, 2003, the Maryland Court ordered Respondent indefinitely suspended from the further practice of law and ordered him to pay the Grievance Commission's costs.

III. RECIPROCAL DISCIPLINE

There is a presumption in favor of imposing identical reciprocal discipline that may be rebutted by clear and convincing evidence that one or more of the five exceptions set out in D.C. Bar R. XI, § 11(c) exists. D.C. Bar R. XI, § 11(f); *In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992).³ When Bar Counsel urges reciprocal discipline, and the respondent does not contest it, the Board's role is limited to reviewing the foreign proceeding "sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline" *In re Childress*, 811 A.2d 805, 807 (D.C. 2002) (quoting *In re Spann*, 711 A.2d 1262, 1265 (D.C. 1998)). The imposition of identical discipline when the respondent fails to object "should be close to automatic, with minimum review by both the Board and this court." *In re Cole*, 809 A.2d 1226, 1227 n.3 (D.C. 2002) (per curiam).

In accordance with our limited role, we have examined the record and find nothing that rises to the level of an obvious miscarriage of justice. We are, however, concerned by Bar Counsel's failure to address the notice Respondent received in this case. While this is not one of the five exceptions to identical reciprocal discipline listed in D.C. Bar R. XI, §11(c), attorneys in disciplinary proceedings are entitled to procedural due process, including notice and an

³ The five exceptions under D.C. Bar R. XI, § 11 (c) are as follows:

(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.

opportunity to be heard. *In re Asher*, 772 A.2d 1161, 1165 (D.C. 2001); *In re Thorup*, 432 A.2d 1221, 1225 (D.C. 1981).

Our view of the record in this case discloses that, while Respondent has not participated in these proceedings, he has been afforded notice and an opportunity to be heard. The records of the Secretary of the D.C. Bar show Respondent's primary address of record to be his home address in Frederick, Maryland, and his secondary address as the State Attorney's Office in Baltimore.⁴ The record shows that papers sent by the Board to Respondent's home address were returned undelivered. The record does not indicate that any papers were mailed to Respondent at his secondary address of record. But papers mailed by the Board and Bar Counsel to Respondent at the Post Office box to which Respondent's Maryland disciplinary sanction was addressed have not been returned. Accordingly, we find Bar Counsel's notice to Respondent of these proceedings adequate. Nonetheless, Bar Counsel is directed to mail a copy of this Report to Respondent at all three addresses for Respondent and any others that Bar Counsel may have reasonably available.

None of the exceptions to D.C. Bar R. XI, § 11(c) apply here. Respondent voluntarily consented to the Maryland discipline. Respondent's sworn acknowledgement that sufficient evidence of misconduct could be established is adequate proof to sustain the charges against Respondent. Because the Maryland Rules that Respondent was found to have violated are virtually identical to the District of Columbia counterparts, Respondent's misconduct in Maryland would constitute misconduct in this jurisdiction.⁵ Given the duration and serious

⁴ District of Columbia attorneys are obligated to notify the Secretary of the Bar of any change of address within 30 days of such change. D.C. Bar R. II, § 2(1). Failure to do so results in summary suspension after due notice from the Secretary of the Bar. *Id.* § 2(3).

⁵ If Bar Counsel initiated original proceedings against Respondent on the charges that resulted in his indefinite suspension, Bar Counsel would charge him for violation of the Maryland Rules because Respondent practiced principally in Maryland and his misconduct had its predominant effect there. *See* Rule 8.5.

nature of Respondent's misconduct, particularly the pattern of dishonesty and fraud in which he engaged and which caused substantial harm to several clients, we have no doubt that disbarment could have been imposed for the same misconduct in this jurisdiction. Finally, there is no "disciplining court" issue presented here. Accordingly, it would not result in a grave injustice to impose the identical reciprocal discipline of an indefinite suspension. *Childress*, 811 A.2d at 807.

IV. SANCTION

The final question is what constitutes "identical" reciprocal discipline where the disciplining court has imposed the sanction of an indefinite suspension – a sanction that does not exist in our system. The Court has addressed this issue and what we are to do depends on whether the disciplining court developed a "factual record:"

In cases for which the original disciplining court has developed no factual record but has imposed indefinite suspension with no minimum period, we impose indefinite suspension with the right to apply for reinstatement after being reinstated in the original jurisdiction or after five years, whichever comes first. . . . When . . . the original disciplining court has imposed an indefinite suspension with no minimum term of suspension and after conducting a full evidentiary hearing, we have indicated that a fixed period of suspension plus a fitness requirement is appropriate reciprocal discipline. When we have required proof of fitness of an attorney as reciprocal discipline and that attorney has been summarily reinstated in the original disciplining jurisdiction either without objection from the Bar Counsel or equivalent in that jurisdiction, or without a hearing as contemplated in *In re Berger*, 737 A.2d at 1044-1045, we have permitted that attorney to seek vacature of our fitness requirement pursuant to the guidelines set forth in Bd. on Prof'l Responsibility R. 8.7. However, we have recently held that, when the misconduct is serious enough, we will not waive a plenary hearing on fitness prior to reinstatement in our jurisdiction.

In re Zdravkovich, 831 A.2d 964, 968 (D.C. 2003) (footnotes and citations omitted).

By recommending the imposition of an indefinite suspension rather than a fixed period of suspension in this case, Bar Counsel states that the Maryland Court did not develop a factual record of Respondent's misconduct. But that is not entirely correct. By consenting to an

indefinite suspension in the Maryland proceeding, Respondent admitted that “sufficient evidence could be produced to sustain the allegations of misconduct.” In view of the factual allegations of misconduct and the admission of culpability, we have no difficulty finding that this case falls within the ambit of those cases, outlined in *Zdravkovich*, in which we recommend a fixed period of suspension. *In re Hines*, 867 A.2d 863 (D.C. 2005) (per curiam) is directly on point. There the respondent received a fixed-term of suspension imposed as identical reciprocal discipline following his consent to indefinite suspension in Maryland having acknowledged sufficient evidence to sustain allegations of misconduct.

What is different in the case before us, however, is the fact that Respondent’s admissions were premised upon his assertion of a disability that might warrant mitigation of sanction under *In re Kersey*, 520 A.2d 321 (D.C. 1987). The Maryland Court did not develop a factual record of the evidence regarding the alleged disability. Thus, this case does not fall neatly into either of the approaches to indefinite suspension outlined in *Zdravkovich*.

By recommending an indefinite suspension here, as advocated by Bar Counsel, we would be endorsing the only sanction that would permit the Maryland Court to develop a factual record with regard to the alleged disability. Such a sanction would, in our judgment, adequately protect the public, the courts and the profession in the District of Columbia because the Board will have an opportunity to consider any evidence of mitigation and determine whether it is sufficient to justify reinstatement in less than five years. Even after five years, reinstatement will only be permissible upon a showing of fitness to practice. Considering the serious and repeated nature of Respondent’s misconduct, we conclude that a plenary hearing on fitness should not be waived. Thus, consistent with Bar Counsel’s recommendation of the same, and Respondent’s failure to participate in these proceedings, we recommend imposing the identical reciprocal discipline of indefinite suspension on Respondent.

V. CONCLUSION

We recommend that the Court impose identical reciprocal discipline on Respondent of indefinite suspension from the practice of law in the District of Columbia with the right to apply for reinstatement after being reinstated in the original jurisdiction or after five years, whichever comes first. For purpose of reinstatement, Respondent's suspension should run from the time he files an affidavit that fully complies with D.C. Bar R. XI, § 14(g).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____
Martin R. Baach
Chair

Dated: July 18, 2005

All members of the Board concur in this Report and Recommendation except Dr. Payne, who did not participate in the consideration of this case.