DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
MONTGOMERY BLAIR SIBLEY,	:	
	:	
Respondent.	:	D.C. App. No. 08-BG-372
	:	Bar Docket No. 408-06
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 464488)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

This matter comes before the Board on Professional Responsibility (the "Board") as a result of discipline imposed upon Montgomery Blair Sibley ("Respondent") by the Supreme Court of Florida (the "Florida Court") on March 7, 2008. The Board recommends that the District of Columbia Court of Appeals (the "Court") impose a three-year suspension with a fitness requirement as the functionally identical reciprocal discipline.

I. BACKGROUND

Respondent was admitted to the Bar of the District of Columbia Court of Appeals on September 13, 1999, on motion. He had previously been admitted to practice law in Florida and New York. Statement of Bar Counsel ("BC Statement"), Attachment A.

By letter of July 25, 2006, Respondent self-reported to Bar Counsel that a disciplinary complaint had been filed against him in Florida. *Id.* at 4-5. Respondent thereafter promptly reported the Florida Court's order of suspension and on April 11, 2008, Bar Counsel filed with the Court a certified copy of the March 7, 2008 decision of the Florida Court suspending Respondent for three years (the "Florida Decision"). *Id.*, Attachment B.

On April 15, 2008, Respondent countered Bar Counsel's request for the Court to suspend Respondent pending final resolution of this reciprocal proceeding, with his Motion for Stay of Automatic Suspension, raising due process rights which allegedly would be violated by a temporary suspension. Following a filing by Bar Counsel with the Court and a reply by Respondent, the Court entered its Order dated May 8, 2008 suspending Respondent pending final disposition of this reciprocal proceeding, pursuant to D.C. Bar R. XI, § 11(d). The Court further directed the Board to either: (i) recommend whether identical, greater or lesser discipline shall be imposed; or (ii) determine whether the Board should proceed *de novo.* Order, *In re Sibley*, No. 08-BG-372 (D.C. May 8, 2008). The Court gave Bar Counsel 30 days in which to inform the Board of Bar Counsel's position regarding reciprocal discipline, and Respondent was granted 10 days to show cause why identical, greater or lesser discipline should not be imposed. *Id.*

On May 20, 2008, Respondent filed with the U.S. Supreme Court an application for a stay of proceedings pending the disposition of his pending petition for writ of certiorari relating to the Florida suspension. Thereafter, on May 23, 2008, Respondent filed with the Court a Motion to Vacate Automatic Suspension in which he asserted that the decision was void since two or more of the Justices of that court, as well as the Referee who issued the Report on Respondent's conduct, had not taken the requisite loyalty oaths. Following the filing of Bar Counsel's response, the Court on June 17, 2008, entered an order denying Respondent's motion.

Bar Counsel filed its statement on June 9, 2008, along with the Report of the Referee which underlies the Florida Court's decision, recommending a three-year suspension with a fitness requirement as functionally identical discipline to that entered by the Florida Court. With leave of the Board,[1] Respondent filed a response to Bar Counsel's statement on July 7, 2008, that

[1] *See* July 28, 2008 Order of the Board by its Chair. Respondent's request for oral argument before the Board was denied in this same Order.

exceeded the page limit. He requested an evidentiary hearing. Bar Counsel filed its reply on August 6, 2008, and on August 13, 2008, Respondent filed a sur-response, which was accepted for filing.

II. THE UNDERLYING PROCEEDING

Florida Bar Counsel filed its disciplinary complaint against Respondent on July 12, 2006, in the Florida Court. A duly appointed Referee for the Florida Court conducted a trial on the disciplinary charges on April 16, 2007. Although provided with notice of the hearing, Respondent failed to appear. Report of Referee, Attachment C to BC Statement at 1. The week preceding the hearing, Respondent had filed motions to dismiss, to disqualify, and to continue the hearing – which were denied. He failed to advise either the Referee or Bar Counsel that "he was unavailable or would not be appearing for the final hearing." *Id*. at 2.

As related in the Referee Report, on August 5, 2002, a Judge of the Florida Eleventh Judicial Circuit "found the Respondent in contempt of court for willfully failing to pay child support [$100,000.00]." *Id*. at 3. The Judge determined that Respondent had the financial ability to pay this child support but "willfully failed to do so" and thus willfully violated the court order. He was sentenced to 90 days imprisonment unless payment was made. By October 18, 2002, the Court had increased its sentence from a 90-day period of imprisonment to "an indefinite period" until Respondent complied with the court order. On November 22, 2002, the same court issued an Order of Contempt and Commitment. On November 3, 2004, the orders of the lower court on child support and contempt were upheld on appeal by the Third District Court of Appeals. In that same ruling, the Appeals Court precluded Respondent "from further self-representation in that court." *Id*. at 4. The appellate opinion referred to "25 self-represented appellate proceedings (24 of which were found to be of no merit)" initiated by Respondent, and 12 federal court actions

he had filed against judges assigned to his case, the court system, and his former wife. *Id.* Respondent unsuccessfully appealed this ruling to the Supreme Court of Florida. *Sibley v. Sibley*, 901 So. 2d 120 (Fla. 2005).

Having related this history, the Referee handling Respondent's disciplinary hearing found clear and convincing evidence of two rules violations: Rule 4-8.4(h) (willfully refusing as determined by a court "to timely pay a child support obligation"), and Rule 4-3.1 (Meritorious Claims and Contentions (asserting frivolous matters in court)). The Referee recommended that Respondent be suspended for three years from the practice of law. *Id.* at 5. The Referee found several aggravating factors (e.g., patterns of misconduct, refusal to acknowledge misconduct, and Respondent's substantial experience in the law), and no factors in mitigation. The report of the Referee was approved by the Florida Court on March 7, 2008, and Respondent was suspended for three years [with a fitness requirement.]. Respondent has filed numerous petitions for writ of certiorari and stays with the U.S. Supreme Court in connection with the Florida proceedings. Attachment F to BC Statement. The record filed with the Board shows that all but one petition and one stay have been denied.

III. LEGAL DISCUSSION

There is a presumption in favor of imposing identical reciprocal discipline. This presumption may be rebutted by clear and convincing evidence of one or more of the five exceptions set out in D.C. Bar R. XI, § 11(c). *See In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992).[2] Bar Counsel recommends that Respondent be suspended for three years, with

[2] D.C. Bar R. XI, § 11(c), provides that reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that: (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.

reinstatement conditioned upon a showing of fitness, as functionally identical reciprocal discipline. Respondent contends that there were errors in both the procedure and substance of the Florida disciplinary proceedings. These contentions of error appear to narrow down to the following: (1) an attack on the alleged failure of members of the Florida Court to take the requisite oaths of office, (2) Respondent's alleged inability to call witnesses and obtain a continuance of the disciplinary hearing, (3) a lack of proof of his failure to pay child support, and (4) a failure to prove he had filed frivolous pleadings. Respondent's Response to Statement of Bar Counsel at 1-4 ("R. Response").

A. D.C. Bar R. XI, § 11(c)(1) (Due Process)

"Due process is afforded when the disciplinary proceeding provides adequate notice and a meaningful opportunity to be heard." *In re Edelstein*. 892 A.2d 1153, 1157 (D.C. 2006) (quoting *In re Day*, 717 A.2d 883, 886 (D.C. 1998) (citation omitted), *cert. denied*, 527 U.S. 1005 (1999)). Respondent clearly had notice of the disciplinary hearing in Florida and chose not to participate. *See* Report of Referee at 2, Attachment C to BC Statement. He found sufficient time to prepare and file motions attacking the disciplinary proceeding but apparently, once his motions had been denied, he chose to absent himself from the scheduled hearing before the Referee. There is no record of his unavailability for that hearing – just his absence from it after notice was given. Therefore, his claims of a denial of due process are lacking in merit.

B. D.C. Bar R. XI, § 11(c)(2) (Infirmity of Proof)

Respondent argues that there was insufficient record evidence to support the factual findings of his disciplinary violations in Florida: (1) his willful refusal to pay child support, and (2) his repeated frivolous court filings. As to the first, Respondent argues, *inter alia*, that there simply was no real support for the finding by the Florida Court that Respondent "at all times . . .

had the present financial ability to pay . . . ." R. Response at 65. As to the second, it is argued, *inter alia*, that the basis for a finding that he filed frivolous pleadings was unsound because the three-judge appeals court making that finding cited his having filed 25 appeals, yet in none of these were sanctions imposed. *Id*. at 71. The Court has made clear that "principles of collateral estoppel apply in reciprocal discipline cases." As such, these reciprocal proceedings "are not a forum to reargue the foreign discipline." *In re Zdravkovich*, 831 A.2d 964, 969 (D.C. 2003) (citations omitted).

The findings of fact by the Florida Court and the Referee are based largely on factual findings in other separate judicial proceedings in which it was determined that Respondent willfully refused to pay child support. Likewise, the Florida disciplinary findings on frivolous court filings were based largely on a separate opinion of the Florida appellate court. *See Sibley v. Sibley*, 885 So. 2d 980 (Fla. Dist. Ct. App. 3d Dist. 2004), Attachment C to BC Statement at 4. Respondent had opportunities to appeal all these decisions and appears to have done so. He has no right to seek a further review of these rulings in this reciprocal discipline proceeding.

C. Attack on the Legitimacy of the Florida Court

Respondent argues that six of the seven justices of the Florida Court had not taken required loyalty oaths "prior to ruling on over twenty-five (25) interlocutory and potentially dispositive motions relating to" Respondent's disciplinary hearing. R. Response at 28. Therefore, he argues that the Florida Court's order suspending him is void. *Id*. at 39. Respondent has apparently raised these issues in the state courts in Florida and the United States Supreme Court. Certainly, this is not a proper forum to relitigate the issue. It is clearly outside the parameters of D.C. Bar R. XI, § 11(c).

D. D.C. Bar R. XI, § 11(c)(5) (The Misconduct Constitutes Misconduct in the District of Columbia)

Although the District of Columbia Rules of Professional Conduct do not specifically prohibit the willful refusal to pay child support, Bar Counsel contends that the contempt of court findings against Respondent constitute misconduct in the District of Columbia under D.C. Rule 8.4(d) (conduct that seriously interferes with the administration of justice), Rule 3.4(c) (to knowingly disobey an obligation under the rules of a tribunal), and Rule 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness). BC Statement at 8. We concur. *See In re Ramacciotti*, 683 A.2d 139, 141 (D.C. 1996) (per curiam) (finding of Board upheld by the Court in a reciprocal proceeding that, *inter alia*, attorney's refusal to pay child support and contempt of court, violated D.C. Rules 8.4(d), 3.4(c), and 8.4(b)). As to Respondent's filing of multiple frivolous court papers, D.C. Rule 3.1 (prohibition against filing frivolous legal claims) is virtually the same as Florida Rule 4-3.1. Since Respondent's conduct constitutes misconduct under the District of Columbia Rules, D.C. Bar R. XI, § 11(c)(5) does not preclude the imposition of reciprocal discipline.

E. D.C. Bar R. XI, § 11(c)(4) (Substantially Different Reciprocal Discipline)

The Florida Court suspended Respondent for three years, which under Florida law also requires a showing of fitness for reinstatement. *See* Rule 3-7.10 of the Rules Regulating the Florida Bar, Attachment E to BC Statement. Respondent repeatedly and willfully violated court orders to pay child support. He further engaged in "vexatious and meritless litigation" before various Florida courts, filing 24 appeals and 12 federal court actions. All were dismissed. Report of Referee, Attachment C to BC Statement, at 3-4. Bar Counsel argues that a three-year suspension with a fitness requirement is within the range of sanctions which would be imposed in this jurisdiction for such conduct in an original matter. BC Statement at 9. We agree.

See In re Shieh, 738 A.2d 814, 815-16 (D.C. 1999) (attorney disbarred in reciprocal action for a "history of lawsuits (many duplicative), frivolous motions (including for removal of cases to federal court and recusal of judges), meritless appeals, and disobedience of court orders . . ."); *In re De Maio*, 893 A.2d 583, 585 (D.C. 2006) (reciprocal matter where attorney was suspended for 18 months with a fitness requirement for making "false, spurious and inflammatory representations and allegations" against the Chief Judge of the court, and abusing the legal process); *In re Morrissey*, 648 A.2d 185, 187 (D.C. 1994) (per curiam) (18-month suspension of attorney in reciprocal action, plus fitness requirement, for engaging in "unprofessional, perhaps even bizarre, conduct," including filing frivolous motions for no purpose other than delay).

IV. CONCLUSION

We recommend that the Court impose the functionally identical discipline on Respondent of a suspension for three years, with his reinstatement conditioned upon a showing of fitness to practice. For purposes of reinstatement, we recommend that Respondent's period of suspension be deemed to run from the date he files an affidavit in compliance with D.C. Bar R. XI, § 14(g). *See In re Slosberg,* 650 A.2d 1329, 1331-33 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /S/
Ray S. Bolze
Vice Chair

Dated: November 14, 2008

All members of the Board concur in this Report and Recommendation except Ms. Williams, who did not participate.