DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
CHIRAYU A. PATEL,	:	
	:	D.C. App. No. 06-BG-1187
Respondent.	:	Bar Docket No. 350-06
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 460469)	:	

REPORT AND RECOMMENDATION OF
THE BOARD ON PROFESSIONAL RESPONSIBILITY

This reciprocal discipline case is based on the March 9, 2005, order of the Supreme Court of New Jersey (the "New Jersey Court") reprimanding Chirayu A. Patel ("Respondent") for negligent misappropriation of client trust funds and failure to comply with recordkeeping requirements. The Board on Professional Responsibility (the "Board") recommends that the District of Columbia Court of Appeals (the "Court") impose non-identical reciprocal discipline of a six-month suspension from the practice of law, to be effective immediately, but deemed to commence for purposes of reinstatement on the date that Respondent files an affidavit that fully complies with the requirements of D.C. Bar R. XI, § 14(g).

I. Background

Respondent was admitted to the District of Columbia Bar on motion on November 6, 1998. He is also admitted to the practice of law in New Jersey and New York.

Respondent did not report his New Jersey reprimand to Bar Counsel; instead, Bar Counsel learned of the disciplinary action from the ABA National Lawyer Regulatory Data Bank. On October 23, 2006, Bar Counsel filed a certified copy of the New Jersey Court's order of discipline with the Court. By order of November 27, 2006**,** the Court referred the case to the

Board and directed Bar Counsel to inform the Board of its position on reciprocal discipline. Order, *In re Patel,* D.C. App. No. 06-BG-1187 (D.C. Nov. 27, 2006).

In a statement filed with the Board on December 21, 2006, Bar Counsel recommends the imposition of non-identical reciprocal discipline in the form of a six-month suspension from the practice of law. Respondent has not opposed that disposition or otherwise participated in these proceedings.

II. The New Jersey Proceedings

Respondent was reprimanded in New Jersey for negligent misappropriation of client funds by overdrawing his trust account on three occasions, for a total of $2,372.28, and for related recordkeeping violations. Respondent stipulated to the facts and admitted that he had violated New Jersey Rules 1.15(a) (negligent misappropriation of trust funds) and 1.15(d) (failure to comply with recordkeeping requirements). The New Jersey Disciplinary Review Board, in findings adopted by New Jersey Court, found that the misappropriations arose from miscalculations on three separate Housing and Urban Development real estate settlement statements. Respondent replaced the funds promptly when the errors came to light as a result of an overdraft in his trust account and completed the steps necessary to comply with the applicable recordkeeping requirements.

III. Reciprocal Discipline

Reciprocal discipline will be imposed in the District of Columbia unless the Respondent demonstrates, or the Court finds on the face of the record on which the foreign discipline was predicated, by clear and convincing evidence, that one of the five exceptions set forth in

D.C. Bar R. XI, § 11(c) applies.[1] D.C. Bar R. XI, § 11(c) "'creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction' . . . unless the record affirmatively shows that a different sanction is warranted." *In re Sheridan*, 798 A.2d 516, 521 (D.C. 2002) (quoting *In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992)); *see also In re Demos*, 875 A.2d 636, 642 (D.C. 2005).

Where neither Bar Counsel nor the respondent opposes the imposition of identical discipline, the Court has cautioned that the role of the Board is limited, and the imposition of identical discipline is "close to automatic." *In re Cole*, 809 A.2d 1226, 1227 n.3 (D.C. 2002) (per curiam);[2] *see also In re Spann*, 711 A.2d 1262, 1265 (D.C. 1998); *In re Bielec*, 755 A.2d 1018, 1022 n.3 (D.C. 2000) (per curiam). "The most the Board should consider itself obliged to do in cases where neither Bar Counsel nor the attorney opposes imposition of identical discipline is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline – a situation that we anticipate would rarely, if ever, present itself." *Spann*, 711 A.2d at 1265. The Court has described this standard of review as "strict" and "rigid" (*In re Zdravkovich*, 831 A.2d 964, 968-69 (D.C. 2003)), adopting it in part because "there is merit in according deference, for its

[1] The five exceptions are:

> (1) the procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (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; (3) the imposition of the same discipline by the Court would result in grave injustice; (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.

[2] *See also In re Reis*, 888 A.2d 1158, 1160 (D.C. 2005) (per curiam) ("The disciplinary system need not make extraordinary efforts to secure a more lenient reciprocal sanction for an attorney who cares so little about his license to practice law in this jurisdiction that he makes no objection to the possibility that he might be reciprocally disbarred here.") (quoting *In re Drager*, 846 A.2d 992, 994 (D.C. 2004)).

own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority." *Id*. at 969.

Here, however, Bar Counsel urges that Respondent's negligent misappropriation warrants the harsher sanction of a six-month suspension. Determining whether substantially different discipline is warranted requires a two-step process:

> "First, we determine if the misconduct in question would not have resulted in the same punishment here as it did in the disciplining jurisdiction." *In re Garne*r, 576 A.2d 1356, 1357 (D.C. 1990) (citations omitted). "Same punishment" is defined as a sanction within the range of sanctions that would be imposed for the same misconduct." *Id*. (citations omitted). Accordingly, the appropriate question for us to address is not whether Bar Counsel would have sought disbarment for respondent's misconduct if it had originally occurred here, but whether the original discipline elsewhere is within the range of sanctions possible here. (citation omitted). Second, if the discipline imposed in the District of Columbia would be different from that of the original disciplining court, we must then decide whether the difference is "substantial." *Id*. (footnote omitted).

Demos, 875 A.2d at 642

As Bar Counsel correctly notes, the District of Columbia, as a matter of policy, imposes disbarment in virtually all cases of intentional or reckless misappropriation, *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc), and typically imposes a six-month suspension without a fitness requirement on an attorney who has committed negligent misappropriation of entrusted funds, coupled with related violations of commingling and deficient recordkeeping. *See, e.g.*, *In re Edwards*, 870 A.2d 90, 94 (D.C. 2005); *In re Davenport*, 794 A.2d 602, 603-05 (D.C. 2002); *In re Anderson*, 778 A.2d 330, 340, 342 (D.C. 2001); *In re Chang*, 694 A.2d 877, 878 (D.C. 1997) (per curiam); *see also In re Bailey*, 883 A.2d 106 (D.C. 2005) (imposing nine-month suspension for negligent misappropriation of $2,240.20). New Jersey, by contrast, ordinarily imposes a reprimand for the same violations. *In re C. Aaron Patel*, Docket

No. DRB 04-261 at 5 (N.J. Dec. 10, 2004). We therefore conclude that Respondent's misconduct would have resulted in different punishment if Respondent were prosecuted in the District of Columbia. Moreover, the difference between a reprimand and a six-month suspension is plainly substantial.

We conclude that imposition of non-identical reciprocal discipline would ~~not~~ give rise to any obvious miscarriage of justice. *In re Childress,* 811 A.2d 805, 807 (D.C. 2002) (quoting *Spann,* 711 A.2d at 1265). Respondent had notice of the New Jersey proceedings and participated in them. The proof was clearly adequate, inasmuch as Respondent stipulated to the underlying facts and the violations. Finally, the New Jersey misconduct would constitute misconduct in the District of Columbia.

IV. Conclusion

Based upon the foregoing, we recommend that the District of Columbia Court of Appeals impose non-identical reciprocal discipline of a six-month suspension. We further recommend that for purposes of reinstatement, the suspension be deemed to run from the date that Respondent 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: Deborah J. Jeffrey
Deborah Jeffrey

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

Dated: MAR 14 2007