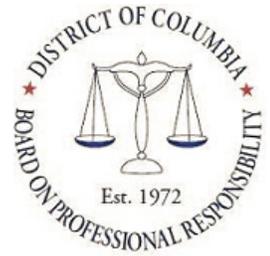


THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY



Issued
Sept. 25, 2019

In the Matter of: :
: :
GLENN H. STEPHENS, III, : Board Docket No. 17-BD-028
: :
Respondent. : Disciplinary Docket Nos. 2015-D330,
: 2016-D081, 2016-D234 & 2016-
A Suspended Member of the Bar of the : D369
District of Columbia Court of Appeals :
(Bar Registration No. 472780) :

REPORT AND RECOMMENDATION

In this extraordinary matter, Disciplinary Counsel seeks to have Respondent disbarred. Respondent has also unequivocally, and colorfully, sought to be disbarred. In this unique posture, we must determine whether the disciplinary system should expend substantial resources on the merits of a case that each party would like to have end in disbarment. For the reasons set out below, we conclude that Respondent should be disbarred without an analysis of the merits of his case and we recommend that the Court of Appeals grant Respondent's clear request that he be disbarred.

This matter involves four separate disciplinary complaints against Respondent.¹ Respondent was personally served with the Specification of Charges on April 11, 2017, but did not participate in any proceedings before the Hearing

¹ On November 7, 2018, the Court suspended Respondent pursuant to D.C. Bar R. XI, § 3(c), for failure to respond to a Board order in a matter where Disciplinary Counsel's investigation involves an allegation of serious misconduct. Order, *In re Stephens*, D.C. App. No. 18-BS-966. Respondent did not file a response to Disciplinary Counsel's motion seeking his suspension, and he has not filed the affidavit required by D.C. Bar R. XI, § 14(g).

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

Committee, either in person or through counsel. He did not file an Answer, nor did he file any other pre-hearing documents. He did not appear at the hearing, nor did Respondent file a post-hearing brief with the Hearing Committee.

Rather than participate in these proceedings, on March 1, 2018 (the deadline for the exchange of proposed hearing exhibits), Respondent sent an email to Deputy Disciplinary Counsel Julia L. Porter, Esquire. The email's subject was "Maybe I wasn't clear . . ." and its content requested that Disciplinary Counsel disbar Respondent:

Please don't kill trees, waste taxpayer resources and ODC personnel on me.

ODC has no credibility or legitimacy to me. Or the drivel you generate.

You are simply dishonest lawyers who do nothing to regulate dishonest lawyers.

And racists to boot.

Rather than wasting time, money, and paper on your sophistries, *please disbar me.*

Disbarment by ODC would be an honor.

To date, aside from competing in the triathlon world championships, my greatest honors are my PhD from UCLA and my law degree from Boalt.

But a disbarment letter from ODC will be framed and go up right alongside those diplomas.

Please do me the honor of disbaring me.

I will be so very very [sic] proud.

Glenn

DX 174 (emphases added).²

After Disciplinary Counsel put on evidence at a four-day hearing, an Ad Hoc Hearing Committee painstakingly analyzed each of the allegations against Respondent and issued a 252-page report concluding that, in representing himself and various clients in litigation and related proceedings, Respondent abused the judicial system and ignored the ethical boundaries of adversarial advocacy that are key components of that system. The Hearing Committee determined that Respondent violated Rules 3.1 (frivolous claims) in four matters, 3.2(a) (expediting litigation) in one matter, 3.4(c) (violating the rules of a tribunal) in one matter, 4.2 (communicating with a represented person) in one matter, 4.4(a) (embarrassing/burdening third parties) in four matters, 8.4(d) (serious interference with the administration of justice) in three matters, and 8.4(g) (misuse of criminal/disciplinary charges) in two matters. The Hearing Committee recommended that Respondent be suspended for three years, with fitness. Disciplinary Counsel takes exception only to the recommendation that Respondent be suspended for three years, arguing that, instead, he should be disbarred.

² Disciplinary Counsel does not have the authority to unilaterally disbar a Respondent. *See* D.C. Bar R. XI, § 6(a) (setting forth Disciplinary Counsel's powers and duties).

Respondent has not taken exception to the Hearing Committee Report or the Hearing Committee's recommendation.

Respondent's email to Disciplinary Counsel indicated his desire to be disbarred. However, once a disciplinary investigation has begun, Respondent cannot simply turn his law license back into the Court of Appeals. *See In re McClure*, 144 A.3d 570, 573 (D.C. 2016) (per curiam) (under D.C. Bar R. II, § 7 "an attorney may not avoid imminent disciplinary review by filing a voluntary resignation on the eve of the commencement of an investigation or disciplinary proceeding." (internal quotations omitted)). Instead, D.C. Bar R. XI, § 12 sets forth the conditions under which a respondent may consent to disbarment while an investigation is pending, or after formal charges have been filed. *See, e.g., In re Greiner*, 203 A.3d 766 (D.C. 2019) (Mem.); *In re Huber*, 708 A.2d 259 (D.C. 1998) (consent to disbarment filed one day before oral argument before the Court). Rule XI, § 12 requires that the respondent submit an affidavit

(1) That the consent is freely and voluntarily rendered, that the attorney is not being subjected to coercion or duress, and that the attorney is fully aware of the implication of consenting to disbarment;

(2) That the attorney is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct, the nature of which shall be specifically set forth in the affidavit;

(3) That the attorney acknowledges that the material facts upon which the allegations of misconduct are predicated are true; and

(4) That the attorney submits the consent because the attorney knows that if disciplinary proceedings based on the alleged misconduct were brought, the attorney could not successfully defend against them.

Upon the filing of a conforming affidavit with the Board, the Board would then recommend that the Court disbar the respondent on consent. D.C. Bar R. XI, § 12(b).

Because Respondent's email indicated his desire to be disbarred, but did not meet the requirements for consent disbarment set out in D.C. Bar R. XI, § 12, on July 17, 2019, we issued a show cause order that set out the conditions under which a respondent may consent to disbarment, including the statements that must be contained in the required affidavit pursuant to D.C. Bar R. XI, § 12(a), and we

ORDERED that, no later than August 1, 2019, Respondent shall show cause why the Board should not recommend to the Court of Appeals that Respondent be disbarred forthwith, based on his consent to be disbarred, without further consideration of the proceedings against him.

Disciplinary Counsel responded to the order to show cause, arguing that Respondent should be disbarred on the merits, and not on the basis of his email alone. Disciplinary Counsel argues that the Hearing Committee's findings, "which Respondent has not opposed, should be presented to the Court as a further basis for his disbarment." ODC Response at 2. Disciplinary Counsel makes two additional arguments against disbaring Respondent on the basis of the statements in his email alone. First, Disciplinary Counsel argues that the misconduct found by the Hearing Committee will be considered "unadjudicated misconduct" under Board Rule 9.8 if Respondent seeks reinstatement in the future. ODC Response at 1-2. Second, the Court's disbarment order might not be sufficient for the imposition of reciprocal discipline against Respondent in the United States Court of Appeals for the District

of Columbia Circuit and the United States District Court for the District of Columbia. ODC Response at 2-3.

Respondent did not respond to the Order to Show Cause. Instead, he sent a mailing to the Office of Disciplinary Counsel. In that mailing, he enclosed a number of copies of a color image of Flavor Flav from the hip-hop group Public Enemy with the text “ODC is a joke” in all caps at the top of the page in what one can only assume was a reference to Public Enemy’s 1990 song “911 is a joke.” R. Response at 1-3. Respondent also reiterated his prior allegation that members of the Office of Disciplinary Counsel are unethical and racist. *See* R. Response at 5.

Pursuant to D.C. Bar R. XI, §§ 9(c-d), the Board is required to review the Hearing Committee record and prepare a report of its findings and recommendation, which is then filed with the Court. Our review of the Hearing Committee’s consideration of each of the alleged Rule violations would no doubt be a lengthy process, given the extent of the misconduct found by the Hearing Committee. The Board takes seriously its obligation to review Hearing Committee reports, and is no stranger to the thorough review of lengthy records, even those in cases in which the respondent did not participate. *See, e.g., In re Matisik*, Board Docket No. 13-BD-091 (BPR Feb. 2, 2018); *In re Frison*, Board Docket No. 11-BD-083 (BPR May 24, 2013).

However, the facts in this case are wholly unique and our Rules do not contemplate the situation presented by these facts. Respondent has indicated his intent to be disbarred. To be sure, he enjoys a number of procedural protections by

virtue of Rule XI, § 12. When this Board issued the Show Cause Order, we gave Respondent the opportunity to avail himself of those procedural protections. Instead, he chose to ignore our Order and mailed in a photo of Flavor Flav. We share Respondent's concern about spending resources on a case where both Respondent and Disciplinary Counsel want the same thing: Respondent's disbarment. Where a respondent has indicated that he does not want the protections provided by the Rules, we see nothing to be gained by an exhaustive march through those procedures. Accordingly, in light of Respondent's unambiguous expression that he seeks to be disbarred, and his response to the Show Cause Order, we conclude that his response is the functional equivalent of meeting the requirements of Rule XI, § 12.

There is no evidence that Respondent's email was a rash, unthinking act. Charges were pending against Respondent for approximately eleven months before he requested to be disbarred. He has not repudiated his request, even though Disciplinary Counsel used it to support its arguments before the Hearing Committee and the Board in support of disbarment. He did not repudiate it when ordered to show cause why he should not be disbarred on consent. In short, nothing in the record suggests that Respondent's disbarment request was unknowingly or improvidently made, or that he has thought better of it and would like to remain a member of the Bar.³

³ Our dissenting colleagues assert that our recommendation is not permitted by the Rules because Respondent has not submitted the affidavit required by § 12(a). The Rules appear to presume that members of the Bar who are under disciplinary investigation will either defend themselves or, if they no longer wish to remain as

We recognize the severity of this recommendation; however, Respondent has clearly and unequivocally requested his own disbarment and has not withdrawn that request despite several opportunities to do so, and we consider that the additional time and effort for the Board and the Court to review the 252 pages of factual findings and legal conclusions of the Hearing Committee Report in this case will certainly delay the resolution of other disciplinary matters. We therefore see no point in further diverting the disciplinary system's resources away from cases involving respondents who desire to retain their privilege to practice law in the District of Columbia, or from the public that awaits a resolution of contested proceedings.

Even though it seeks the same result as Respondent, and this Recommendation, Disciplinary Counsel argues that the result should be reached through a different route—the creation of a waiver doctrine that would then be applied to Respondent's conduct.

Disciplinary Counsel argues that our approach in the Show Cause Order and in this Recommendation is flawed; that Respondent's actions should not be seen as the equivalent of meeting the requirements of Rule XI, § 12. Disciplinary Counsel identifies potential undesirable consequences from recommending that Respondent be disbarred without a finding on the merits. As a general matter, because each of

members of the Bar, will consent to disbarment. Because Respondent did neither, we issued the show cause Order, which set out the required elements of a consent to disbarment affidavit, and asked him to explain why he should not be disbarred. Under these circumstances, we view his failure to do so as a reflection of his agreement to his own disbarment and his desire not to take advantage of the procedural protections offered by our Rules.

these consequences would be present if Respondent had consented to disbarment by following the literal requirements of Rule XI, § 12, we conclude that accepting these consequences is acceptable and consistent with the rules that govern our disciplinary system.

We address each of Disciplinary Counsel's arguments below.

Waiver—First, Disciplinary Counsel argues that we should use Respondent's case as a vehicle to create a doctrine that would allow us to conclude that a respondent has waived arguments if they are not made at the Hearing Committee level. If we were to do so, we would then, as Disciplinary Counsel suggests, adopt the Hearing Committee's report without substantive review. The Board is sympathetic to this argument. Limiting the Board's substantive review of Hearing Committee matters to those where one or both parties note exceptions would reduce the amount of time necessary to resolve disciplinary cases. However, the Court of Appeals has not adopted a waiver doctrine of the kind Disciplinary Counsel advocates here, and we do not think it consistent with the rules that govern our proceedings.

D.C. Bar R. XI, § 9(b) provides that if no exceptions are filed to a Hearing Committee report, "the Board shall decide the matter on the basis of the Hearing Committee record." The Board's decision must be based on an actual review of the record, not an unquestioning adoption of the Hearing Committee's findings. While the Board must "accept the hearing committee's factual findings if those findings are supported by substantial evidence in the record, viewed as a whole," *In re*

Cleaver-Bascombe, 986 A.2d 1191, 1194 (D.C. 2010) (per curiam), we cannot determine whether substantial evidence supports the Hearing Committee’s findings without actually reviewing the record. Similarly, because the Board’s recommended sanction cannot “foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted” (see D.C. Bar R. XI, § 9(h)), a comprehensive, fact-intensive “comparability analysis” is required. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (discussing the factors considered in making a sanction recommendation). Given these requirements, we are unwilling to create a waiver doctrine of the kind Disciplinary Counsel seeks, absent clear direction from the Court of Appeals.

Moreover, using this case as a vehicle to create a new waiver doctrine would be a bold expansion of the law. We conclude that the more moderate course of action would be to construe Respondent’s conduct as the functional equivalent of compliance with Rule XI, §12.

Unadjudicated Misconduct—Disciplinary Counsel argues that unless the Board and the Court fully consider the Hearing Committee’s findings and recommendations, the misconduct found by the Hearing Committee will be considered “unadjudicated misconduct” under Board Rule 9.8, thereby placing an evidentiary burden on Disciplinary Counsel if Respondent seeks reinstatement in the future.

Again, Respondent could simply acknowledge any one of the disciplinary charges against him in an affidavit consenting to disbarment under Rule XI, § 12 and

Disciplinary Counsel would be in the same position. Treating Respondent’s conduct in this unique case as satisfying the requirements for a consent disbarment does not put Disciplinary Counsel in a meaningfully worse position with unadjudicated conduct than consent disbarment would.⁴

Reciprocal Discipline—Disciplinary Counsel notes its “concern[] that disbarring Respondent based solely on statements in his email, without any admission or finding of wrongdoing (including by way of default, which is not available in our disciplinary system), could prevent the imposition of reciprocal discipline” in the D.C. Circuit and D.C. federal district court. Response at 2 (footnote omitted).⁵ Disciplinary Counsel cites no authority to support this concern, and in any event, undertaking an extensive review of the alleged misconduct here for the sole purpose of possibly facilitating reciprocal discipline in another court is not sufficient

⁴ The Court has imposed disbarment by consent in prior disciplinary cases that were then pending before the Court on the merits. *See, e.g., In re Szymkowicz*, 195 A.3d 785, 787 (D.C. 2018) (per curiam) (dismissing charges pending against Respondent Silverman following her disbarment by consent in a separate matter, *In re Silverman*, 175 A.2d 89 (D.C. 2017) (per curiam)).

⁵ Like Disciplinary Counsel, we recognize that in some other jurisdictions, the failure to participate in the disciplinary process may lead to disbarment. *See, e.g., Matter of Karlick*, 108 A.D.3d 81, 964 N.Y.S.2d 907 (1st Dept. 2013) (court disbarred lawyer who was suspended for failure to participate and failed to set aside the suspension). We further recognize that such a process likely reduces the resources necessary to resolve disciplinary complaints against respondents who do not participate in the disciplinary process, which can be a very time-consuming process. However, the advisability of such a process in the District of Columbia is beyond the scope of this recommendation.

cause to divert the Board's and the Court's resources and contribute to the delay of other cases in this disciplinary system.

CONCLUSION

Upon consideration of the foregoing, and it appearing that Respondent has not even attempted to show cause why he should not be disbarred on consent, and that Disciplinary Counsel has failed to show cause why Respondent should not be disbarred on consent, we recommend that the Court enter an order disbarring Respondent on consent, forthwith and without further consideration of the evidence in this case.⁶

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Matthew G. Kaiser, Chair

All members of the Board concur in this order, except Ms. Sargeant and Ms. Cassidy, who have filed a dissent, and Mr. Walker and Mr. Hora, who are recused.

⁶ If the Court enters such an order, and Disciplinary Counsel intends to introduce evidence on unadjudicated acts of alleged misconduct in the event that Respondent seeks reinstatement in the future, Disciplinary Counsel should provide Respondent with the notice required by Board Rule 9.8.

DISTRICT OF COLUMBIA COURT OF APPEALS
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DISSENT

We cannot agree with the majority’s conclusion that Respondent should be disbarred when the requirements for consent to disbarment have not been satisfied and the Rules do not allow the Board discretion to infer consent from circumstances such as those presented here. As the majority describes, D.C. Bar R. XI, § 12(a) sets forth the procedure to be followed when a lawyer under disciplinary investigation decides to consent to disbarment. Because Respondent has not followed that procedure, we conclude that the Board must carry out its duty under D.C. Bar R. XI, § 4(e)(7) “[t]o review the findings and recommendations of Hearing Committees submitted to the Board, and to prepare and forward its own findings and recommendations” to the Court. The majority has chosen not to review the Hearing Committee’s findings and recommendations because Respondent emailed Disciplinary Counsel asking to be disbarred, and failed to respond to the Board’s Order to show cause why he should not be disbarred. Respondent’s conduct is regrettable, but it is not a sufficient reason to cast aside § 12(a)’s procedure by which

a member of the Bar may consent to disbarment, and, in any event, the Board is not granted discretion to do so.

The majority candidly acknowledges that Respondent has not complied with D.C. Bar R. XI, § 12(a). Notably, the deficiencies are not technical or trivial. Most importantly, Respondent has not submitted an affidavit declaring his consent to disbarment, which is required by D.C. Bar R. XI, § 12(a) (a lawyer may consent to disbarment “*but only by delivering to Disciplinary Counsel an affidavit declaring the attorney’s consent to disbarment.*” (emphases added)).¹ Even if Respondent’s email were construed as an affidavit, which it is not, its content only partially satisfies the requirements of D.C. Bar R. XI, § 12(a). Respondent’s email asserts that he wants to be disbarred, and given the clarity of the statement, and his failure to recant, we can safely find that he made these statements freely and voluntarily, and not as the result of coercion or duress, two of the items that must be included in

¹ There are many reasons for the safeguards provided by the requirements for a consent to disbarment, including the requirement that the consent be presented through an affidavit. For example, an affidavit, as required by the rule, provides a reliable basis to conclude that it is in fact the respondent who consents to disbarment as opposed to an interloper seeking to damage a respondent. In this instance, although Disciplinary Counsel received an email from an email address purporting to be that of Respondent, as well as a mailing which included the document (a scan of a picture of the rapper known as Flavor Flav with an insulting caption) also purporting to be from Respondent without an affidavit, there is no assurance that Respondent created and delivered these materials. *See* DX 174. Indeed, Disciplinary Counsel referred to the “disbarment” email in its briefs to the Hearing Committee and the Board, with no response from Respondent. *See, e.g.*, ODC Br. at 78; ODC Br. to Board at 8. In addition, the show cause Order issued by the Board referred to the email, again with no response from Respondent, other than the picture sent to Disciplinary Counsel.

a consent to disbarment affidavit. *See id.*, § 12(a)(1). Because Respondent sent the email at issue in connection with the pending matter, we can also find that Respondent is aware that there is a proceeding involving allegations that he engaged in misconduct, thus satisfying part of § 12(a)(2).

However, the email does not satisfy the remainder of § 12(a). Nothing in the record permits a finding that Respondent “is fully aware of the implication of consenting to disbarment.” *See id.*, § 12(a)(1). Similarly, we cannot find that Respondent is aware of the “nature” of the proceedings pending against him. *See id.*, §12(a)(2). Respondent has not acknowledged that “the material facts upon which the allegations of misconduct are predicated are true,” *Id.*, § 12(a)(3), or that he is consenting to disbarment because he “knows that . . . [he] could not successfully defend against” the alleged misconduct, *Id.*, § 12(a)(4). All of these missing facts are required components of an affidavit filed in support of a lawyer’s request to be disbarred.

Respondent’s email and his failure to respond to the Board’s show cause Order are inexplicable. However, they do not provide a sufficient basis for the Board to avoid our duty to “review the findings and recommendations” of the Hearing Committee. D.C. Bar R. XI, § 4(e)(7). That such review may be an arduous undertaking given the voluminous case record is not a reason for the Board to avoid its obligation under Rule XI.

For the reasons stated above, we dissent from the Board's decision to decline to provide the Court with a report and recommendation based on the Board's review of the Hearing Committee's findings and recommendations.

By:  _____
Bernadette Sargeant

Ms. Cassidy joins in this dissent.