DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
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JINHEE KIM WILDE,	:	
	:	
Respondent.	:	D.C. App. No. 10-BG-1351
	:	Bar Docket No. 244-09
A Suspended Member of the Bar of the	:	
District of Columbia Court of Appeals.	:	
(Bar Registration No. 436659)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

On November 2, 2010, the Office of Bar Counsel ("Bar Counsel"), sent a letter to the District of Columbia Court of Appeals (the "Court"), enclosing a certified copy of a Judgment of Conviction against Respondent from the Incheon District Court in Incheon, South Korea, together with the English translation thereof. The Incheon District Court had found that, while on a flight from the United States to South Korea, Respondent stole $1,100 in U.S. Currency from Erica Yeong Zee Chang. Bar Counsel asserted that the offense was a "serious crime" as defined by D.C. Bar R. XI, § 10(b), because it involved theft, and sought the immediate suspension of Respondent from the practice of law in the District of Columbia. Bar Counsel sent another letter to the Court two days later in which it included the English version of various articles of the Korean Criminal Act.

In a letter dated November 9, 2010, Respondent, through her counsel, opposed Bar Counsel's request for an order suspending Respondent from the practice of law. Respondent contended that D.C. Bar R. XI, § 10, applies only to convictions of United States Courts, not courts of foreign countries, and that no judgment had been entered as

required by D.C. Bar R. XI, § 10. Respondent also contended, *inter alia*, that certain of the English translations provided by Bar Counsel to the Court were not accurate, raising questions about the veracity of the translations. Respondent subsequently filed a formal Opposition to Request for Immediate Suspension with the Court on or about November 12, 2010, to which Bar Counsel filed a response on November 19, 2010.

On January 12, 2011, the Court, in a one-page per curiam Order, granted Bar Counsel's petition for immediate suspension of Respondent pending resolution of the matter.[1] Among other things, the Court noted that it appeared that the offense constituted a "serious crime" as defined by D.C. Bar R. XI, § 10(b). The Court directed the Board to institute a formal proceeding to determine the nature of the offense and whether it involved moral turpitude within the meaning of D.C. Code § 11-2503(a) (2001).

Both parties made submissions to the Board on the moral turpitude issue. On March 8, 2011, Bar Counsel submitted its Statement on the Issue of Moral Turpitude *Per Se*. In essence, Bar Counsel contended that the criminal laws in South Korea make clear that theft is a felony that subjects the perpetrator to up to six years imprisonment, and that such a felony constitutes moral turpitude *per se.* Bar Counsel's Statement at 2-4. On March 28, 2011, Respondent filed her Response to Bar Counsel's Statement on the Issue of Moral Turpitude *Per Se*. Respondent contended, first, that there are questions about the substance and accuracy of the judgment in the Incheon District Court as translated. Response at 2-4. For example, Respondent noted that the Act of Crime listed in the judgment is "Attempted Theft" not "Theft," which is a misdemeanor under D.C. law. *Id.* at 2-3; *see* D.C. Code § 22-1803 (2001). She also pointed out that under a section

[1] On or about May 18, 2011, Respondent filed with the Court a Motion to Lift Suspension and Terminate Proceedings, which is opposed by Bar Counsel. The motion is pending.

entitled "Applicable Laws," the judgment referred to Article 329 of Criminal Law (Fines) as opposed to Article 329 of the Criminal Act (Larceny), as asserted by Bar Counsel. Response at 2. Respondent argued that Bar Counsel had failed to establish that she was convicted of felony theft, and that there were serious questions about what had actually transpired at the trial based upon the judgment and its translation. *Id*. at 4. Respondent also asserted, among other things, that the Korean legal system is quite different from the American legal system, and does not provide the same protections and guarantees that the American system does. *Id*. at 7-17.

Bar Counsel, on April 6, 2011, submitted a Reply to Respondent's Response to Bar Counsel's Statement on the Issue of Moral Turpitude *Per Se*. In the Reply, Bar Counsel asserted, among other things, that although attempted theft is a misdemeanor in the District of Columbia, attempted theft can constitute a felony in other jurisdictions, that Korean law includes provisions for attempted crimes, and that Korean law provides criminal defendants with many of the same rights and protections that defendants enjoy in the United States. Reply at 2-6.

II. THE MARYLAND RULING

Respondent is also a member of the Maryland Bar. The Attorney Grievance Commission of Maryland filed a petition with the Court of Appeals of Maryland that was transmitted to the Circuit Court for Montgomery County, Maryland. The petition alleged that Respondent had violated Rules 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (Misconduct) of the Maryland Rules of Professional Conduct. Two days of hearings were conducted on March 3, 2011, and March 4, 2011. On March 29, 2011, Judge

Ronald B. Rubin of the Circuit Court for Montgomery County, Maryland issued a 16-page opinion in which he found that Bar Counsel had not established, by clear and convincing evidence, that Respondent had stolen monies on the flight from the United States to South Korea.

The Korean judgment was not admitted as evidence in the case, and thus the Maryland Court did not determine whether the conviction established that Respondent had committed a crime. Rather, the Maryland Court decided the case based on the facts presented to it. In essence, the Maryland Court credited Respondent and the witnesses supporting her. Respondent had contended that she had $2,000 on her person when she arrived on the plane, and $2,000 at the end of the flight, and that she did not steal any monies from the alleged victim.

III. ANALYSIS

Under the procedure set forth in *In re Colson*, 412 A.2d 1160, 1168 (D.C. 1979) (en banc), and the applicable Board rules, ordinarily we would determine whether the crime of which Respondent was convicted constitutes moral turpitude *per se*. A crime involves moral turpitude if, among other things, the prohibited conduct is base, vile or depraved, or society manifests a revulsion toward such conduct because it offends generally accepted morals. *Id.*; *In re McBride*, 602 A.2d 626 (D.C. 1992) (en banc). "As the term is applied in our disciplinary cases, moral turpitude has been held to include acts of intentional dishonesty for personal gain." *In re Hallmark*, 998 A.2d 284, 285 (D.C. 2010) (per curiam) (citation omitted). Thus, offenses involving theft and fraud generally are found to involve moral turpitude. *See id.*

If the Court determines that an offense involves moral turpitude *per se*, disbarment must be imposed. *Colson*, 412 A.2d at 1164. Conviction of a felony offense "which manifestly involve[s] moral turpitude by virtue of [its] underlying elements" mandates disbarment without inquiry into the specific conduct that led to the conviction. *Id.* D.C. Code § 11-2503(a) provides that if a member of the Bar is convicted of an offense involving moral turpitude, then the name of the member of the Bar "shall be struck from the roll of the members of the bar and such person shall thereafter cease to be a member."

Our task is complicated by the fact that Respondent was tried and convicted outside of the United States, in South Korea. We are aware of no other case in which the Board was asked to make a determination whether a crime committed in a foreign country constitutes moral turpitude *per se*, warranting disbarment. In the circumstances, we feel constrained to determine, first, whether we have jurisdiction under D.C. Bar R. XI, § 10, to determine whether the crime of which Respondent was convicted in South Korea constitutes moral turpitude *per se*.

The starting point in the analysis is D.C. Bar R. XI, § 10(a) itself. The Rule states, in pertinent part, that if "an attorney is found guilty of a crime or pleads guilty or *nolo contendere* to a criminal charge in a District of Columbia court," or a "court outside the District of Columbia or in any federal court," then the Court and the Board are to receive certified copies of the court record or docket entry of the finding or plea. D.C. Bar R. XI, § 10(b), defines a "serious crime" as including a felony or theft, among other things. Under D.C. Bar R. XI, § 10(c), when an attorney has been convicted of a serious

crime, the Court enters an order immediately suspending the attorney, pending a final disposition of a disciplinary proceeding to be commenced promptly by the Board.

Bar Counsel set this matter in motion by its November 2, 2010, letter to the Court in which it asserted that the conviction of Respondent in South Korea constituted a finding of guilt of a serious crime. In its Response to Respondent's Opposition to Request for Immediate Suspension, Bar Counsel asserted that the Incheon District Court in South Korea is a court "outside the District of Columbia," and that, therefore, Respondent's conviction falls within D.C. Bar R. XI, § 10. *See* Response at 4. We find, however, that the South Korean conviction cannot form the basis for a finding by this Board that Respondent committed a crime of moral turpitude *per se.*

First, we find that D.C. Bar R. XI, § 10(a), does not provide us with jurisdiction over this matter. The words "in a District of Columbia court" and "in a court outside the District of Columbia or in any federal court" on their face appear to include only domestic state and federal courts. If the language were intended to encompass extraterritorial jurisdictions, the drafters could have said: "in a District of Columbia court, state court, federal court, or a court in any foreign jurisdiction," or used similar language. Had the intention been to distinguish among foreign jurisdictions, giving weight to the determinations of certain foreign courts but not others, that also could have been accomplished. As the language stands, if foreign courts were to be included, it would only be because of the breadth of the words "outside the District of Columbia." Bar Counsel interprets those words to include courts in foreign jurisdictions. If those words were intended to be broad enough to include foreign courts, however, they would certainly be broad enough to include federal courts within the United States. Under Bar

Counsel's interpretation, the words "in any federal court" would thus be unnecessarily redundant. In the circumstances, we interpret the words in D.C. Bar R. XI, § 10(a), to include only domestic state and federal court convictions.

Moreover, problems would ensue if the words "in a court outside the District of Columbia" were to include courts in foreign jurisdictions. It does not take a great stretch of the imagination to conceive of circumstances where convictions in foreign jurisdictions would lack credibility here. In some countries, the smallest of infractions may be deemed felonies. *See, e.g.*, Singapore Vandalism Act, ch. 108, §§ 2, 3, III Statutes of Republic of Singapore, pp. 257-58 (imprisonment for up to three years for an act of vandalism) (cited in *Small v. United States*, 544 U.S. 385, 390 (2005)). In other countries, the rights provided to defendants accused of criminal conduct are so lacking that no reviewing body in the United States would find that the accused received a fair trial. *See Small*, 544 U.S. at 389-390 (noting that certain jurisdictions equate the testimony of one man with two women). Yet, if the words of D.C. Bar R. XI, §10(a), were to be construed to include courts in foreign jurisdictions, then all felony convictions of a member of this Bar, no matter in which country they occurred, could lead to not only temporary suspension but also a finding of moral turpitude *per se.*

An argument might be advanced, however, that the language of D.C. Bar R. XI, § 10(a), could be construed to allow the Court and the Board to determine, on a case by case basis, which country's procedures and laws are sufficient to allow for a finding of temporary suspension and moral turpitude *per se*. This approach, too, would be fraught with problems. First, the language of D.C. Bar R. XI, § 10(a), does not seem to suggest that such an approach was intended. Second, determining which country's procedures

and laws are sufficient and which are not would be an extraordinarily difficult and subjective task. Reasonable minds could certainly differ on whether a country's procedures and laws are sufficiently similar to our own to permit a conviction to carry weight here.[2] Even more troubling, there is no set criteria of which we are aware that could appropriately guide us in making that determination. We do not believe that D.C. Bar R. XI, § 10(a), was intended, or should be construed, to permit the Board to broadly and subjectively determine which country's rules and laws are sufficiently similar to ours to allow us to assess whether an attorney pleaded guilty to or was otherwise convicted of a crime in a foreign country that constitutes moral turpitude *per se*.[3]

This result appears to be consistent with applicable case law. In *Small v. United States*, *supra*, defendant Small was charged with violating a statute making it unlawful for a person to possess a firearm if the person has been "convicted in any court" of a crime punishable by imprisonment for a term exceeding one year. *Id*. at 387 (quoting 18 U.S.C. § 922(g)(1)). Small had previously been convicted by a Japanese court. The question before the Supreme Court was whether the statutory reference "convicted in any court" includes a conviction entered in a foreign court. *Id*. at 388.

The Supreme Court determined that the words "convicted in any court" includes only U.S. domestic courts, not foreign courts. *Id*. at 394. In reaching this conclusion, the

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[2] Moreover, even if a country's procedures and laws are adequate, it may be difficult to determine whether the country adheres to its own procedures and laws.

[3] The United States Supreme Court, in *Small*, recognized this problem:

> . . . it is difficult to read the statute as asking judges or prosecutors to refine its definitional distinctions where foreign convictions are at issue. To somehow weed out inappropriate foreign convictions that meet the statutory definition is not consistent with the statute's language; it is not easy for those not versed in foreign laws to accomplish; and it would leave those previously convicted in a foreign court (say of economic crimes) uncertain about their legal obligations.

Small, 544 U.S. at 390.

Supreme Court cited numerous differences between domestic and foreign criminal laws and procedures noting, among other things, that foreign laws may even criminalize conduct that U.S. laws encourage. *Id*. at 388-90.

Here, the language of D.C. Bar R. XI, § 10(a), is similar to the language of the statute at issue in *Small*. Consistent with *Small*, we believe that absent an express indication that the inclusion of foreign countries was intended within the meaning of the words "in a court outside the District of Columbia," the rule cannot be interpreted to encompass convictions outside of the United States.[4]

We are mindful of the fact that the Court treated Respondent's conviction in South Korea as a "serious crime" when it suspended her under D.C. Bar R. XI, § 10(c). Implicit in the Court's Order is that a conviction in South Korea constitutes a conviction outside the District of Columbia under D.C. Bar R. XI, § 10(a). Under the law of the case doctrine, a decision rendered by the Court is ordinarily binding on this Board. *Johnson v. Fairfax Vill. Condo IV Unit Owners Ass'n*, 641 A.2d 495, 503 (D.C. 1994) (citing *Kritsidimas v. Sheskin*, 411 A.2d 370, 372 (D.C. 1980) (per curiam)). A temporary suspension, however, is by its nature a preliminary determination, which ordinarily does not involve a full adjudication on the merits. *Compare In re Hutchinson*, 474 A.2d 842 (D.C. 1984) (Court fully analyzed facts and law in finding misdemeanor conviction was not a "serious crime."). In the circumstances, we believe the law of the case doctrine should not bar the Board's consideration of the serious crime question. *See*

[4] We also note that Judge Rubin's recent decision in Maryland, in which he found that Respondent had not engaged in theft, highlights the problem of accepting judgments in foreign jurisdictions without giving attorneys an opportunity to be heard here. For all the reasons discussed in this Report and Recommendation, we have confidence that a finding by a domestic court will include appropriate procedural safeguards and allow us to make appropriate findings on the issue of moral turpitude. We cannot have the same confidence with respect to decisions in foreign jurisdictions.

Schroeder v. Weinstein, 585 A.2d 1382, 1383 n.4 (D.C. 1991) (per curiam); *see also Kleinbart v. U.S.*, 604 A.2d 861, 867 (D.C. 1992).

Given our substantial doubts whether Respondent's South Korean conviction is a crime within the meaning of D.C. Bar R. XI, § 10(a), we recommend, in the unique circumstances of this case, that the Court reconsider its order referring the conviction to the Board for a moral turpitude determination under D.C. Code § 11-2503(a). Should the Court agree with us that Respondent's conviction in South Korea cannot form the basis for a temporary suspension under D.C. Bar R. XI (or a moral turpitude determination under D.C. Code § 11-2503(a)), then Bar Counsel would be free to make an assessment as to whether it wishes to proceed with this case in the ordinary course pursuant to D.C. Bar R. XI, § 8.

On the other hand, should the Court rule that the Korean judgment constitutes a serious offense and that the matter should be remanded back to us, we would then have to consider the moral turpitude issue. Having reviewed this matter thoroughly, however, we can say that if the Court were to remand the matter to us, we would in turn immediately refer the matter to a Hearing Committee to make factual findings on the moral turpitude issue. The papers that have been submitted by Bar Counsel are insufficient, in our view, to establish that Respondent has been convicted of a felony offense constituting moral turpitude *per se.* The translation of the judgment and other paperwork is suspect, and we are not confident that Respondent received the procedural safeguards in South Korea necessary to ensure a fair and impartial hearing. *See generally* Respondent's Response to Bar Counsel's Statement on the Issue of Moral Turpitude *Per Se* at 7-16.

IV. CONCLUSION

For the foregoing reasons, the Board recommends that the Court reconsider its order suspending Respondent under D.C. Bar R. XI, § 10(c), based on her conviction of a serious crime and referring the conviction to the Board for a moral turpitude determination, and that it find that Respondent was not convicted of a crime within the meaning of D.C. Bar R. XI, § 10(a). If the Court reconsiders its order, the Board further recommends that Respondent's conviction be referred to Bar Counsel to proceed in accordance with D.C. Bar R. XI, § 8.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____
Eric L. Yaffe

Dated:

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