

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
JOHN R. FUCHS,	:	
	:	
Respondent	:	D.C. App. No. 08-BG-9
	:	Bar Docket No. 455-07
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Administratively Suspended:	:	
December 31, 2005)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

This reciprocal discipline case is based on a May 4, 2006, order of the Supreme Court of California (the “California Court”) suspending John Robert Fuchs (the “Respondent”) for two years, with execution stayed in favor of six months actual suspension and probation for three years with conditions, and imposing costs. The Board on Professional Responsibility (the “Board”) recommends that the District of Columbia Court of Appeals (the “Court”) impose identical reciprocal discipline of a two-year suspension, with all but the first six months stayed, and probation for three years subject to the conditions imposed by the California Court.

I. BACKGROUND

Respondent was admitted to the District of Columbia Bar on July 14, 1987. Respondent is also admitted to practice in California.

Respondent has been administratively suspended since December 31, 2005, for nonpayment of Bar dues and failure to file the required annual registration statement.¹

On July 27, 2006, the Court also suspended Respondent for one-year with execution stayed in favor of a two-year period of unsupervised probation in an unrelated reciprocal discipline case from California. *In re Fuchs*, 905 A.2d 160 (D.C. 2006) (per curiam).

On January 10, 2008, Bar Counsel filed with the Court a certified copy of the California Court's May 4, 2006, order of discipline. Order, *In re John Robert Fuchs*, State Bar Court Case No. 02-O-15454 (Ca. May, 4, 2006) (en banc). By order of January 25, 2008, the Court, *inter alia*, suspended Respondent on an interim basis pursuant to D.C. Bar R. XI, § 11(d), and directed the Board to either (i) recommend whether identical, greater or lesser discipline should be imposed as reciprocal discipline, or (ii) determine whether the Board should proceed *de novo*. Order, *In re John Fuchs*, App. No. 08-BG-9 (D.C. Jan 25, 2008). On February 22, 2008, Bar Counsel filed a statement of its position on reciprocal discipline with the Board, recommending the imposition of identical reciprocal discipline. Respondent has not filed a statement with the Board or otherwise participated in these proceedings.

II. THE CALIFORNIA DISCIPLINARY PROCEEDINGS

The California Court's order of discipline was based on Respondent's stipulation of facts and admission of documents, as well as testimonial and documentary evidence admitted at a disciplinary hearing before the California State Bar Court. The misconduct

¹ Bar Counsel notes that if identical reciprocal discipline is imposed Respondent would be subject unsupervised probation while administratively suspended. Statement of Bar Counsel at 1 n.1. We note that the Court has previously imposed identical reciprocal discipline on a respondent who was administratively suspended. *See, e.g., In re Gailliard*, 2008 WL 793650 (D.C. 2008) (per curiam).

occurred in the course of Respondent's representation of a married couple, who had retained him to file a civil action on their behalf. Respondent successfully won a jury award for damages in the matter. The husband thereafter retained Respondent to collect the judgment. Respondent's efforts included filing a motion in the bankruptcy proceeding of one of the defendants to prevent the discharge of the judgment. The couple subsequently separated and divorced. The divorce judgment included a property settlement between the parties that any judgment recovered in the civil action was to be equally divided, after payment of fees, expenses and costs of the recovery.

Respondent continued to represent both the husband and wife despite their disagreement over a number of issues, including the manner of proceeding in the collection action, which created an actual conflict of interest. Respondent took direction from the husband, including the filing of a lawsuit naming the wife as the sole plaintiff, without notifying her, and refused to subsequently withdraw the lawsuit when she requested that he do so. Respondent eventually collected \$126,000 on the judgment. Respondent failed to notify the wife for more than four months that he was holding funds on her behalf and refused to disburse the wife's share based on the husband's unsubstantiated claim that he was entitled to the entire judgment.

The wife hired another attorney in order to recover her portion of the judgment. The wife's attorney noted that the husband did not have a valid lien on the funds and that Respondent was required to immediately disburse any funds not in dispute and resolve the fee dispute in arbitration. The Beverly Hills Bar Association eventually awarded Respondent attorney fees. Respondent disbursed to himself the fees from the wife's funds held in trust, but continued to refuse to distribute the remaining funds to the wife and

filed an interpleader complaint contending the funds were in dispute between the husband and wife and Respondent did not know to whom to disburse the funds. In the motion to dismiss the interpleader complaint, the wife's attorney asserted that Respondent had a conflict of interest because his own interest in the funds and his previous representation of the husband. The court granted the motion to dismiss, finding that the husband had no right, title or interest in the funds, and ordered that the funds be disbursed to the wife, minus the \$ 246.50 that was paid to Respondent as costs and fees for the interpleader proceeding.

The State Bar Court found that Respondent violated California Rules 4-100(B)(1) (failure to promptly notify client of receipt of funds) and 3-310(C)(2) (conflict of interest). The State Bar Court considered a number of aggravating factors, including a prior record of discipline, multiple acts of wrongdoing, "bad faith and dishonesty" based on Respondent's insistence throughout the dispute and disciplinary proceedings that the wife was not his client and that he was only responsible for the collection of the judgment and not the distribution, harm to the client, refusal to acknowledge any wrongdoing, and lack of candor at trial. The State Bar Court recommended that Respondent be suspended for two years, with all but the first six months stayed, and that he be placed on probation for three years subject to conditions, including submission of quarterly written reports, attendance at the State Bar Ethics School and successful completion of its test, proof of passage of the Multistate Professional Responsibility Examination, and payment of costs. The California Court adopted the State Bar Court's recommendation in its May 4, 2006 order of discipline.

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 of the exceptions set forth in D.C. Bar R. XI, § 11 (c) exists.² D.C. Bar R. XI, § 11(f): *In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992). “[I]n cases where neither Bar Counsel nor the attorney opposes identical discipline, “[t]he most the Board should consider itself obliged to do . . . 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.”” *In re Childress*, 811 A.2d 805, 807 (D.C. 2002) (quoting *In re Spann*, 711 A.2d 1262, 1265 (D.C. 1998)). The Court has “stated that, “in such circumstances, the imposition of identical discipline should be close to automatic, with minimum review by both the Board and this court.”” *Id.* (quoting *In re Cole*, 809 A.2d 1226, 1227 n. 3 (D.C. 2002)).

Bar Counsel recommends the imposition identical reciprocal discipline. In accordance with our limited role, the Board has examined the record and finds nothing that rises to the level of an obvious miscarriage of justice. The California order of discipline was imposed pursuant to a stipulation and was supported by testimonial and documentary evidence. Respondent thus received due process in California and there was no infirmity of proof. The misconduct in California would have constituted misconduct in this jurisdiction

² D.C. Bar R. XI, § 11(c) provides: 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.

under our parallel disciplinary rules.³ The imposition of the identical sanction imposed in California is also within the range of sanctions that would be imposed in an original matter in this jurisdiction, particularly in light of the aggravating factors of bad-faith and dishonesty found by the California Court. *See In re Hager*, 812 A.2d 904 (D.C. 2002) (one-year suspension for conflict of interest that enured to respondent's financial benefit and dishonesty); *In re Elgin*, 918 A.2d 362 (D.C. 2007) (six-month suspension for violations including conflict of interest and dishonesty in pursuing litigation on behalf of client in furtherance of respondent's own financial interest without advising client).

IV. CONCLUSION

The Board recommends that the Court impose identical reciprocal discipline of a two-year suspension, with all but the first six months stayed, and that Respondent be placed on probation for three years subject to the conditions imposed by the California Court.⁴ The period of suspension should be deemed to commence on the date on which Respondent files an affidavit in compliance with the requirements of D.C. Bar R. XI, § 14(g). *In re Slossberg*, 650 A.2d 1329, 1331-33 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 
Deborah J. Jeffrey

Date: **JUL 29 2008**

All members concur in this Report and Recommendation.

³ See D.C. Rules 1.7(b)(2) (conflict of interest) and 1.15(b) (lawyer shall promptly notify client of funds).

⁴ We do not recommend an identical requirement that Respondent be ordered to pay costs because D.C. Bar R. XI does not provide for the payment of costs of disciplinary proceedings. *See In re Holdmann*, Bar Docket No. 287-00 at 8 (BPR Nov. 7, 2002), *recommendation aff'd*, 834 A.2d 887 (D.C. 2003).