

DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
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L. GILBERT FARR,	:	
	:	D.C. App. No. 08-BG-108
Respondent.	:	Bar Docket No. 45-08
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 957365)	:	

REPORT AND RECOMMENDATION OF THE  
BOARD ON PROFESSIONAL RESPONSIBILITY

This reciprocal discipline matter is based on an order of the Supreme Court of New Jersey (the “New Jersey Court”) disbarring L. Gilbert Farr (“Respondent”). The Board on Professional Responsibility (the “Board”) recommends that the District of Columbia Court of Appeals (the “Court”) impose identical reciprocal discipline of disbarment to be effective immediately, but deemed to commence, for purposes of reinstatement, on the date that Respondent files an affidavit in compliance with the requirements of D.C. Bar R. XI, § 14(g).

I. BACKGROUND

Respondent was admitted to the District of Columbia Bar by motion on August 1, 1978. He was also a member of the New Jersey, Florida, and Pennsylvania bars.

On February 25, 2004, the New Jersey Court disbarred Respondent. Respondent failed to report the discipline to Bar Counsel as required by D.C. Bar R. XI, § 11(b). Bar Counsel instead learned of the discipline when a member of the public inquired why Respondent had not been disbarred in the District of Columbia. Bar Counsel thereafter obtained a certified copy of the

New Jersey Court's order of disbarment as well as reciprocal orders of disbarment in Florida and Pennsylvania and filed them with the Court on February 20, 2008.<sup>1</sup>

On March 7, 2008, the Court issued an order suspending Respondent pursuant to D.C. Bar R. XI, § 11(d), and directing the Board to recommend whether identical, greater, or lesser discipline should be imposed as reciprocal discipline, or whether the Board instead elects to proceed *de novo*. The Court further ordered Respondent to show cause why identical, greater, or lesser discipline should not be imposed. Order, *In re Farr*, No. 08-BG-108 (D.C. Mar. 7, 2008).

On April 7, 2008, Bar Counsel filed with the Board a statement in which it recommended identical reciprocal discipline of disbarment. Respondent has been properly notified of these proceedings, but has not filed a response or participated in any way.<sup>2</sup>

## II. THE NEW JERSEY PROCEEDINGS

Respondent was disbarred by the New Jersey Court on February 25, 2004, based upon the recommendation of the New Jersey Disciplinary Review Board (the "New Jersey Board").

The New Jersey Court disciplined Respondent for misconduct alleged in nine separate complaints. Respondent submitted unverified answers in each matter and was represented by counsel, who at the hearing on the first complaint notified the special master that Respondent did not intend to appear and intended to default. Respondent also instructed his attorney not to appear at the hearing. The special master then struck Respondent's answer because Respondent's appearance at the hearing was mandatory and the answer was not properly verified. At a hearing in the other eight matters, counsel for Respondent informed the special master that Respondent would not appear and that he wished to withdraw his answers. The

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<sup>1</sup> Bar Counsel filed the Florida and Pennsylvania orders of reciprocal disbarment, based on the New Jersey Court's action, for informational purposes only.

<sup>2</sup> Respondent is presumed to have received notice of this reciprocal proceeding because correspondence and pleadings were sent to his most recent address on file with the D.C. Bar and were not returned. See *In re Buffington*, 911 A.2d 1240 n.2 (D.C. 2006) (per curiam).

special master struck Respondent's answers because they were not verified and deemed the allegations in the complaints admitted. Notwithstanding the treatment of the matters as defaults, the special master made findings and recommended disbarment based on the record as a whole.

The New Jersey Board then reviewed the allegations of the complaints to determine if they supported the charged violations. It made findings in each of the nine matters, as summarized below.

1. The Pyatt Matter

Respondent filed an appeal from the denial of a petition for post conviction relief on behalf of Leisa Pyatt, who he represented *pro bono*, subject to payment of costs. The matter was remanded to the trial court. Respondent represented Pyatt at the remand hearing but then neglected to file an appeal from the denial of the petition. In December 1999, Pyatt terminated the representation and requested her file. Respondent eventually turned over a portion of the file but refused to turn over the remaining documents until he received payment for costs. With an impending deadline to file a brief for the client, successor counsel sent a check to Respondent to pay costs, but Respondent still did not turn over the file. The court ultimately issued an order compelling Respondent to turn over the file. Respondent did not comply with the court's order.

2. The Select Audit Matter

On March 10, 1999, Summit Bank notified the New Jersey Office of Attorney Ethics (the "OAE") of an overdraft in Respondent's trust account. The OAE subsequently scheduled an audit of Respondent's attorney books and records. Respondent did not produce the necessary documents despite numerous requests by the OAE. The OAE scheduled a demand audit. After the audit was rescheduled and Respondent's counsel withdrew from the representation due to Respondent's lack of cooperation, Respondent failed to appear at another scheduled audit,

resulting in his temporary suspension. An audit of Respondent's business and trust accounts revealed a number of record keeping violations, including negligent misappropriation of entrusted funds.

3. The Guilty Plea Matter – Illegal Use of Heroin

On March 15, 2002, Respondent pleaded guilty to illegal use of heroin, in violation of N.J.S.A 2C:35-10(b).

4. The Contempt of Court Matter

Respondent failed to attend several court hearings in a criminal matter, to pay a fine for his failure to attend, or appear at a hearing scheduled by the court to explain his absence. He also failed to pay a fine levied for his failure to appear, after promising the court administrator he would do so, and was then fined for contempt. Respondent eventually sent a check but for less than the full amount of the fine, and it was returned. Respondent never paid the full fine and was arrested on an outstanding warrant.

5. The Guilty Plea Matter – Illegal Possession of Cocaine

On December 10, 2001, Respondent pleaded guilty to the charge of possession of a controlled dangerous substance in a motor vehicle, in violation of N.J.S.A. 2C:39-4-49.1.

6. The Horan Matter

Susan Horan acted as the "straw person" in the purchase of a mobile home, in order to help a girlfriend who wanted to live in it with Respondent. Horan also signed a lease agreement with the trailer park, as tenant of the mobile home. The friend moved out of the area, and Horan signed over ownership of the mobile home to Respondent, who was not added to the lease until 1999. On numerous occasions, Respondent defaulted on the monthly rental payments, resulting in the filing of a lawsuit against Horan. In pleadings and correspondence relating to this suit,

Respondent falsely represented to the court and opposing counsel that he represented Horan, when he was in fact the owner and responsible for the delinquent payments. In one instance, Respondent signed Horan's name to a legal document.

7. The Fletcher Matter

In October 1999, David Fletcher retained Respondent to prepare an appeal of the denial of his motion for post-conviction relief and, if necessary, a *habeas corpus* motion. Fletcher paid Respondent \$4,000 for these services. Respondent did not prepare a fee agreement, although he had not previously represented Fletcher. Respondent only met with Fletcher twice, failed to communicate with the client, and eventually abandoned the representation. He never returned the client's file, notwithstanding his promise to the OAE that he would do so.

8. The Michael McGowan Matter

In July 2000, Michael McGowan retained Respondent to represent him in a criminal matter and gave him a \$7,500 retainer. Respondent did not prepare a written fee agreement, although he had not previously represented McGowan. Respondent failed to appear at a scheduled bail hearing and arrived several hours late for a rescheduled hearing. Respondent then attended a meeting with the prosecutor, during which the prosecutor presented a proposed plea agreement with a deadline. McGowan never heard from Respondent again. The prosecutor notified Respondent of a mandatory status hearing, but Respondent failed to appear. Thereafter, the court appointed McGowan's previous counsel to represent him, and McGowan accepted the plea agreement.

9. The José Irizarry Matter

José Irizarry retained Respondent to represent him on a bail reduction motion. Respondent did not prepare a written retainer agreement, despite having received more than

\$28,000 from Irizarry's family. Irizarry had an understanding with Respondent that \$10,000 would be reserved for use as a cash surety bond and the remainder would be applied to legal fees and expert witness fees. Respondent promised Irizarry that \$25,000 would be held in an interest-bearing escrow account. Instead, Respondent deposited the funds in his business account, and he used the funds to pay for business and personal expenses over the next six months. When Irizarry specifically asked Respondent about the funds, Respondent falsely assured him that they were being held in an escrow account and earning interest. *Id.* Respondent prepared only a handful of pleadings. No correspondence or evidence of communications with expert witnesses was found in Irizarry's file. The only briefs found in the case had been prepared by Irizarry himself and by the assistant prosecutor handling the case.

The New Jersey Board concluded that based on the findings in the above nine matters, Respondent committed multiple violations of the following New Jersey Rules of Professional Conduct ("RPC"): RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), RPC 1.5(a) (unreasonable fee), RPC 1.5(b) (failure to provide a written fee agreement), RPC 1.15 (failure to safeguard client property), RPC 1.15(a) (negligent misappropriation of client funds), RPC 1.15(d) (failure to maintain required attorney books and records), RPC 1.16(d) (improper termination of representation), RPC 3.3(a)(5) (failure to disclose material fact to tribunal), RPC 8.1(b) (failure to cooperate with ethics authorities), RPC 8.4(b) (commission of a criminal act that reflects adversely on lawyer's honesty, trustworthiness or fitness), RPC 8.4(c) (conduct involving fraud, dishonesty, deceit or misrepresentation), and RPC 8.5(d) (conduct prejudicial to the administration of justice).

The New Jersey Board recommended disbarment based on its findings of misconduct and in view of Respondent's disciplinary history, which included a prior six-month suspension for

serious misconduct as a prosecutor.<sup>3</sup> The New Jersey Court imposed disbarment based on the recommendation of the New Jersey Board.

### III. RECIPROCAL DISCIPLINE

In this jurisdiction, there is a presumption in favor of imposing identical reciprocal discipline that may be rebutted by clear and convincing evidence that one or more of the five exceptions set out in D.C. Bar R. XI, § 11(c) applies.<sup>4</sup> D.C. Bar R. XI, § 11(f); *see In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992). When a respondent does not contest reciprocal discipline, however, the Board's role is limited to reviewing the foreign proceeding "sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline." *In re Childress*, 811 A.2d 805, 807 (D.C. 2002) (quoting *In re Spann*, 711 A.2d 1262, 1265 (D.C. 1998)). The imposition of identical discipline when the respondent fails to object "should be close to automatic, with minimum review by both the Board and this court." *In re Cole*, 809 A.2d 1226, 1227 n.3 (D.C. 2002) (per curiam).

Bar Counsel recommends the imposition of identical reciprocal discipline and Respondent has filed nothing with the Board in response. "Where there has been no objection from the attorney . . . we find it *virtually* impossible to imagine a situation where the imposition

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<sup>3</sup> In 1989, the New Jersey Court suspended Respondent for six months for misconduct while he was employed as an assistant prosecutor. He stole evidence (marijuana and PCP) for personal use, threatened an informant, and lied to the Attorney General's Office, among other things. In imposing a sanction, the New Jersey Court considered that the misconduct was remote in time, aberrational and unlikely to reoccur. *In re Farr*, 115 N.J. 231 (1989). Bar Counsel was not notified of the New Jersey Court's order of discipline. Respondent was reciprocally disciplined in this jurisdiction based on that misconduct. *In re Farr*, 590 A.2d 521 (D.C. 1991). Respondent's other disciplinary history in New Jersey includes a temporary suspension for the failure to cooperate with the New Jersey OAE following an overdraft in his trust account. *In re Farr*, 165 N.J. 540 (2000). He remained suspended until his disbarment in 2004.

<sup>4</sup> The five exceptions under D.C. Bar R. XI, § 11(c) are as follows:

- (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.

of identical reciprocal discipline would constitute the ‘grave injustice’ which our Rule XI, § 11(c)(3) permits us to avoid.” *In re Sumner*, 762 A.2d 528, 530 (D.C. 2000).

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. Respondent received notice of the disciplinary charges pending against him in New Jersey, was represented by counsel and chose not to participate. Thus, there was no violation of due process. There was also no infirmity of proof. Although the New Jersey discipline was entered pursuant to a default, the special master made findings, and the New Jersey Board concluded that they contained sufficient factual support for each charged violation. Under these circumstances, discipline imposed by default is a proper basis for imposing reciprocal discipline. *In re Dobbyn*, Bar Docket No. 381-06 at 8 (BPR May 15, 2007), *recommendation adopted*, 943 A.2d 1165, 1166 (D.C. 2008) (per curiam) (summarizing the circumstances where reciprocal discipline may be based on default discipline as including those where the respondent: (i) had notice of the foreign charges; (2) was not procedurally prevented from offering a defense on the merits or asserted a substantial defense; and (3) does not contest our reciprocal proceedings) (citing *In re Hitselberger*, 761 A.2d 27, 28 (D.C. 2000) (per curiam), and *Sumner*, 762 A.2d at 529).

The extensive misconduct found by the New Jersey Court, including criminal acts, extensive dishonesty, gross neglect of client matters, the failure to safeguard client property, and negligent misappropriation, also constitutes misconduct in the District of Columbia under our corresponding disciplinary rules. The imposition of reciprocal discipline is therefore appropriate.

We further find that the imposition of identical reciprocal discipline of disbarment for Respondent’s extensive misconduct would not constitute a grave injustice nor would the



misconduct result in substantially different discipline in this jurisdiction. See, e.g., *In re Anya*, 871 A.2d 1181 (D.C. 2005) (per curiam) (disbarment for extensive misconduct, including neglect, dishonesty and failure to communicate with clients); *In re Foster*, 699 A.2d 1110 (D.C. 1997) (per curiam) (disbarment for extensive neglect of a child custody matter by an attorney who “deliberately abdicated his professional responsibilities and the duties owed his clients without regard to the consequences, which were disastrous . . . and then contemptuously thumbed his nose at the legal system when called upon to account for his deplorable conduct”). We thus conclude that disbarment is the appropriate reciprocal discipline.<sup>5</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Board recommends that Respondent be disbarred as identical reciprocal discipline. For purposes of reinstatement, Respondent's disbarment should be deemed to run from the date he files the affidavit required by D.C. Bar R. XI, § 14(g). *See In re Slosberg*, 650 A.2d 1329, 1331-32 (D.C. 1994).

## BOARD ON PROFESSIONAL RESPONSIBILITY

By: /S/  
Jean S. Kapp

Dated: December 23, 2008

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

<sup>5</sup> Respondent was permanently disbarred by the New Jersey Court. Permanent disbarment is not an available sanction in the District of Columbia, and a reciprocal order of disbarment would be contrary to the policy that attorneys are entitled to petition for reinstatement, regardless of the gravity of their misconduct. *See In re McBride*, 602 A.2d 626, 640-641 (D.C. 1992) (en banc). Thus, Respondent should be eligible to apply for reinstatement five years from the time he complies with the § 14(g) affidavit requirement. *See* D.C. Bar R. XI, § 16(c).