

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
MICHAEL J. BEATTIE,	:	
	:	
Respondent.	:	D.C. App. No. 07-BG-197
	:	Bar Docket No. 64-07
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 450873)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

This reciprocal discipline matter is based on an order of the Circuit Court of Fairfax County, Virginia (“Fairfax County Court”), sitting as a Three-Judge Court empaneled by the Chief Justice of the Virginia Supreme Court. The Fairfax County Court, on February 13, 2007, entered an Order of Suspension, With Terms (the “Virginia Order”), which suspended Respondent for six months, directed him (in paragraph 2) to “engage in no conduct which violates any provisions of Virginia Rules of Professional Conduct 1.3, 1.4, 5.1, or 8.4 . . . and/or which violates any analogous provisions . . . of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law,” and imposed additional conditions. Virginia Order, p. 6. Paragraph 3 of the Virginia Order also requires Respondent to retain a “law office management consultant” for at least one year after he resumes the private practice of law in Virginia. Virginia Order, p. 7.

Bar Counsel has urged that we recommend reciprocal discipline identical to that imposed in Virginia, which Bar Counsel describes as “a six-month suspension followed by three years of probation and the additional terms imposed in Virginia.” Statement of

Bar Counsel, p. 9. Respondent, by counsel, has filed a paper entitled “Beattie’s Position on Retroactive Date for Reciprocal Discipline,” in which he states that “he will consent to imposition of reciprocal discipline with an effective date of October 11, 2007.”¹

In view of Respondent’s explicit consent, we recommend the reciprocal discipline Bar Counsel has proposed, a six-month suspension followed by a three-year period of probation upon the condition that Respondent shall not be held by the Virginia disciplinary system to have failed to comply with the terms set forth in paragraphs 2 and 3 of the Virginia Order.

I. THE FACTS

Respondent was admitted to the Bar of the District of Columbia Court of Appeals (the “Court”) in May 1996. He has had no discipline imposed on him in an original proceeding in the District of Columbia, but the Court recently entered an order in a previous reciprocal proceeding based upon a previous Virginia matter. *See In re Beattie*, 930 A.2d 972 (D.C. 2007). In addition, Respondent was indefinitely suspended from practice in the United States District Court for the Eastern District of Virginia on August 13, 2003, and that suspension appears to remain in effect.²

¹ This “Position” paper was not filed with the Board until January 24, 2008, long after the Statement of Bar Counsel was filed. Respondent accompanied the paper with a motion for leave to file out of time and a letter from his counsel stating that Respondent’s “Position” paper . . . independently speaks to a matter germane to the Board’s disposition of the pending docket — namely his consent to reciprocal discipline and consent to Bar Counsel’s view of the commencement date for that discipline.” Record Index 16. The Board grants the motion and accepts Respondent’s “Position” paper as part of the record in this matter.

² The Virginia Order reveals the following with regard to Respondent’s suspension by the United States District Court for the Eastern District of Virginia:

Respondent has consistently maintained in filings before the Eastern District and Fourth Circuit that the Order of August 13, 2003, was not entered pursuant to the Eastern District Local Rule governing attorney discipline; and, therefore, the Order was limited in application to cases before Judge [Rebecca Beach] Smith. In an abundance of caution, Respondent did not thereafter enter an appearance in any future case filed within any Division of the Eastern District.

A. Prior District of Columbia Proceedings in This Matter

Respondent did not promptly notify Bar Counsel of the discipline in this matter, as required by D.C. Bar R. XI, § 11(b). Bar Counsel instead learned of the discipline from the Virginia Bar and, on March 27, 2007, filed a certified copy of the Virginia Order with the Court. On April 10, 2007, the Court entered an order suspending Respondent “from the practice of law in the District of Columbia pending final disposition of this proceeding,” 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* pursuant to D.C. Bar R. XI, § 11. Order, *In re Beattie*, No. 07-BG-197 (D.C. Apr. 10, 2007).

B. Course of Virginia Disciplinary Proceedings

The Virginia Order was based upon the Fairfax County Court’s acceptance of an agreed disposition proposed jointly by the Virginia State Bar and Respondent. In its order entered on February 13, 2007, the Fairfax County Court found that Respondent’s conduct violated Rules 1.1, 1.3(a), 1.4(a), (b) and (c), 3.4(e), 4.1(a), 5.1(b) and (c), and 8.4(c) of the Virginia Rules of Professional Conduct.³

Virginia Order, p. 2 n.1.

³ Rule 1.1. Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3(a). Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4. Communication. (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

C. Misconduct Established in the Virginia Proceedings

The Virginia Order recites circumstances pertaining to two disciplinary complaints that arose from a single representation that Respondent undertook. Regarding the first complaint, Respondent, after he was indefinitely suspended on August 13, 2003 from practice before the United States District Court for the Eastern District of Virginia, continued to represent a client who had retained him in July 2003 for representation in a sex discrimination case in that court, without telling his client about the suspension. Virginia Order, p. 1-2. In addition, he rarely communicated with his client regarding the representation. *Id.* at 2, ¶ 4. In July 2004, he persuaded “a part-time contract attorney” to prepare and sign pleadings that were filed with the United States District Court for the Eastern District of Virginia, listing his firm “Beattie & Associates as the firm of record.” *Id.* at 2-3, ¶ 5. The Virginia Order generally described the conduct of that action as follows:

The Respondent and attorneys associated with his firm failed to confer with opposing counsel regarding discovery, produced Fed. R. Civ. P. 26(a) discovery disclosures nominally out of time, failed to comply with the Court’s Scheduling Order . . . , failed to appear at the initial pre-trial conference . . . , and failed to appear for a final pre-trial conference

Rule 3.4(e). Fairness to Opposing Party and Counsel. A lawyer shall not . . . [m]ake a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

Rule 4.1(a). Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly . . . make a false statement of fact or law.

Rule 5.1. Responsibilities of a Partner or Supervisory Lawyer. (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. (c) A lawyer shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 8.4(c). Misconduct. It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty . . . which reflects adversely on the lawyer’s fitness to practice law[.]

Id. at 3, ¶ 5. The case ultimately was dismissed on summary judgment. *Id.*

The second disciplinary complaint concerned Respondent's dealings with another Virginia lawyer to perform some work in the same case. Telling that lawyer that his firm was "short-staffed" because of the recent loss of an associate, Respondent asked the lawyer to "help him out at the deposition." *Id.* at 3, ¶ 6. Respondent told the other lawyer that he was "'not licensed' in the federal courts of the Eastern District of Virginia." *Id.* Later, Respondent asked the other lawyer to "'cover' a final pre-trial conference and a hearing on a motion for summary judgment." *Id.* at 4, ¶ 7. The other lawyer declined. *Id.* The Virginia Order states that subsequently the other lawyer "learned that the case was dismissed on the motion for summary judgment, as well as the facts suggesting that Respondent had not been forthright concerning the status of his license." *Id.* at 4, ¶ 8.

II. ANALYSIS

1. Reciprocal Disciplinary Order Recommended

Identical discipline is imposed in reciprocal cases, unless the respondent demonstrates, by clear and convincing evidence, that one or more of the five exceptions set forth in D.C. Bar R. XI, § 11(c) applies. D.C. Bar R. XI, § 11(f); *In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992).⁴ Where the respondent does not contest the imposition of identical reciprocal discipline and thus offers no evidence that any exception applies,

⁴ D.C. Bar R. XI, § 11(c) provides that "Reciprocal discipline shall be imposed unless the attorney demonstrates . . . 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."

the Board's function is limited to reviewing the other jurisdiction's 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)). *See also In re Cole*, 809 A.2d 1226, 1227 n.3 (D.C. 2002) (per curiam) (when respondent does not object, imposition of identical discipline "should be close to automatic, with minimum review by both the Board and this court").

In this matter, Respondent, represented by counsel, not only "does not contest the imposition of identical reciprocal discipline," he has affirmatively expressed his consent to reciprocal discipline so long as the effective date for the commencement of the discipline is October 11, 2007. We agree with Bar Counsel that the appropriate starting date for Respondent's District of Columbia suspension is October 11, 2007, the day on which Respondent filed an affidavit that, as supplemented on November 15, 2007, is in full compliance with D.C. Bar R. XI, § 14(g). Accordingly, with one minor qualification, we recommend that the Court impose the sanction proposed by Bar Counsel in this matter, which would incorporate the terms of the Virginia Order, in the form of a six-month suspension followed by a three-year period of probation subject to the conditions spelled out in that order.

One condition in the Virginia Order provides that should "Respondent fail to comply with the terms" of the order, "he shall receive "a three (3) year suspension . . . in addition to the six (6) month suspension" imposed in the order. Virginia Order at p. 8, ¶ 4. Although the Virginia Order appears to leave no discretion regarding the sanction for a violation of its post-suspension terms, we cannot exclude the possibility that, should

circumstances be presented that would make a three-year suspension unduly harsh and beyond what is reasonably necessary to protect the public, the Fairfax County Court might entertain a request by Respondent to amend the order or afford him some other appropriate relief from the Virginia Order's literal terms.⁵ To make it clear that the District of Columbia Court would have the option of affording Respondent relief similar to any relief the Fairfax County Court might grant him from the mandatory three-year suspension provided in the Virginia Order as the sanction for any violation of the Virginia Order's terms, we recommend that the disciplinary order in this matter provide that the sanction for Respondent's failure to fulfill the probationary condition be (a) revocation of the probation, and (b) suspension from the practice of law for three years, *unless his Virginia sanction for the same failure to comply with the Virginia Order is less than a suspension for three years, in which case, he may be given a sanction that is identical to the Virginia sanction.*

2. D.C. Bar R. XI, § 14(g) Considerations

Bar Counsel took issue with the "Affidavit of Compliance with D.C. Bar Rule XI, § 14," which Respondent filed with the Board on May 2, 2007. The affidavit "consist[ed] of hand-written notations on a form affidavit that [Bar Counsel] provided to Respondent for the purpose[] of assisting him in drafting his own affidavit." Letter from Bar Counsel to the Court, dated May 3, 2007. The affidavit was insufficient, in Bar Counsel's view, because it failed to comply with the requirement that the respondent demonstrate "*with supporting proof*, that the attorney has fully complied with the provisions of the order and

⁵ Virginia disciplinary law, like the law of American jurisdictions generally, holds that "[a] proceeding to discipline an attorney is not a criminal proceeding and the purpose is not to punish him but to protect the public." *Green v. Virginia State Bar ex. rel. Seventh Dist. Comm.*, 652 S.E.2d 118, 124 (Va. 2007).

with” Section 14. D.C. Bar R. XI, § 14(g)(1) (emphasis added). In particular, as Bar Counsel pointed out, Respondent made no effort to support assertions in his affidavit:

(a) that he had notified “all clients involved in litigated matters or administrative proceedings in any court of the District of Columbia, or in pending matters before any District of Columbia government agency, of the order of suspension and of [his] consequent inability to act as an attorney after April 10, 2007,” or

(b) that he had “moved *pro se* in the court or agency in which the proceeding is pending for leave to withdraw.”⁶ Record Index 5 at 2-3.

Bar Counsel’s May 3, 2007 letter also stated as follows:

Bar Counsel is also troubled by the possible conflict between statements regarding clients in pending litigated matters in Respondent’s affidavit and statements in Respondent’s “Goldberg Affidavit,” dated April 10, 2007.

Bar Counsel, in his May 3, 2007 letter, did not identify “the possible conflict” that “troubled” him, but at the Board’s direction, Bar Counsel filed a supplemental statement attaching Respondent’s “Goldberg Affidavit.” *See* Record Index 9. In that affidavit, Respondent stated that “[s]ince [the] effective date of the Virginia State Bar suspension (March 7, 2007), I have not practiced law before any agency or court regulated by the District of Columbia Court of Appeals.” *Id.* In an apparent conflict with that statement, Respondent’s Section 14 affidavit, however, stated that he had “promptly notified . . . all clients involved in litigated matters or administrative proceedings in any court of the

⁶ We note that Respondent not only had provided no support for these two assertions, his affidavit does not identify (i) any of the clients he claims he has notified, (ii) any adverse counsel notified, or (iii) any tribunal before which he was practicing at the time of his suspension. His affidavit thus fell short of the Section 14(g)(1) requirement that his affidavit demonstrate his assertions “with particularity.” D.C. Bar R. XI, § 14(g).

In addition, although his May 2, 2007 affidavit stated that he had “promptly delivered to all clients being represented in pending matters any papers or other property to which the clients are entitled,” as D.C. Bar R. XI, § 14(d) requires, Respondent also provided no supporting evidence of that assertion.

District of Columbia, or in pending matters before any District of Columbia government agency” and had “delivered to all clients being represented in pending matters any papers or other property to which the clients [were] entitled.” *See* Record Index 5 at 3-4.

Presumably in response to Bar Counsel’s May 3, 2007 letter, Respondent, on October 11, 2007, filed another affidavit that appears designed to comply with D.C. Bar R. XI, § 14(g). Record Index 10. Again, he attests that he gave notice of his suspension to his District of Columbia clients at the time the Court entered its interim suspension order, but again his affidavit statements are not made with particularity and no supporting proof has been provided.⁷ And again, Bar Counsel filed a notice of noncompliance. Record Index 11.

Finally, on November 15, 2007, Respondent filed “Beattie’s Supplement to Rule XI Affidavit” to rectify the insufficiencies in his previous affidavits. Record Index 12. Bar Counsel, on January 4, 2008, filed a supplemental statement in which it accepts Respondent’s November filing as compliant with the requirements under D.C. Bar R. XI, § 14 and recommends that “any final discipline imposed relate back to the date of Respondent’s affidavit filed on October 11, 2007.” Record Index 14. We agree.

⁷ Respondent’s second Section 14 affidavit also contains the same conflict with his previously filed “Goldberg Affidavit.” Compare paragraph 4 in the “Rule XI Affidavit of Michael J. Beattie” (Record Index 10) with the statement in Respondent’s “Goldberg Affidavit” that since March 7, 2007, he has “not practiced law before any agency or court regulated by the District of Columbia Court of Appeals.” Record Index 9.

III. RECOMMENDATION

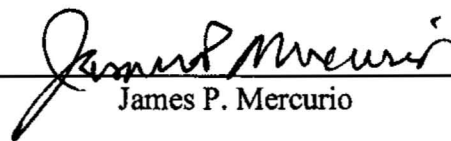
The Board recommends that, as reciprocal discipline in this matter, the Court enter an order suspending Respondent Michael J. Beattie from the practice of law in the District of Columbia for a period of six months to be followed by a three-year period of unsupervised probation, which shall be subject to the condition that Respondent shall not be held by the Virginia disciplinary system to have failed to comply with the terms set forth on pages 6-7, paragraphs 2 and 3, of the Order of Suspension, With Terms, entered on February 13, 2007, by the Fairfax County Court in *Virginia State Bar v. Beattie*, Case No. CL2006-10927.

Should the above condition not be fulfilled at any time during Respondent's probation, the probation order herein shall be revoked and Respondent shall be suspended for a period of three years, unless his Virginia sanction for failure to comply with the Virginia Order is less than a suspension for three years, in which case, he may be given a sanction that is identical to the Virginia sanction.

We further recommend that Respondent's suspension be deemed, for purposes of reinstatement, to commence on October 11, 2007, the day on which Respondent filed an affidavit that, as supplemented on November 15, 2007, is in full compliance with D.C. Bar R. XI, § 14(g).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____


James P. Mercurio

Dated: **MAR - 3** 2008

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