

DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
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RANDY McRAE,	:	
	:	D.C. App. No. 14-BG-1063
Respondent.	:	Board Docket No. 14-BD-074
	:	Bar Docket No. 2014-D206
A Suspended Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 430494)	:	

REPORT AND RECOMMENDATION OF THE  
BOARD ON PROFESSIONAL RESPONSIBILITY

This matter is before the Board on Professional Responsibility (the “Board”) pursuant to an order of the District of Columbia Court of Appeals (the “Court”) directing the Board to determine the nature of the final discipline to be imposed based on Respondent’s convictions of felony theft, in violation of Maryland Criminal Code § 7-104, and uttering a counterfeit document, in violation of Maryland Criminal Code § 8-602. Specifically, the Board is to review the elements of the crimes to determine whether they involve moral turpitude within the meaning of D.C. Code § 11-2503(a) (2001). For the reasons that follow, the Board finds that Respondent’s convictions involve moral turpitude *per se*, requiring his disbarment under D.C. Code § 11-2503(a).

BACKGROUND

Respondent was admitted by motion to the District of Columbia Bar on November 5, 1991, and assigned Bar Number 430494. Respondent was convicted in the Circuit Court for Prince George’s County, Maryland, of three counts of felony theft, in violation of Maryland Criminal Code § 7-104, and one count of uttering a counterfeit document, in violation of Maryland Criminal Code § 8-602. On August 1, 2014, Respondent was sentenced to a one-year

term of imprisonment, with all but 48 days to be served on weekends, followed by three years of supervised probation. Respondent was also ordered to pay \$50,000 in restitution.

Respondent did not report his criminal convictions to the Court and the Board as required by D.C. Bar R. XI, § 10(a). On September 18, 2014, after learning of Respondent's convictions from the prosecutor in the Maryland criminal case, Bar Counsel filed with the Court a certified copy of the criminal judgment and indictment. On September 29, 2014, the Court temporarily suspended Respondent pursuant to D.C. Bar R. XI, § 10(c) and directed the Board to institute a formal proceeding to determine the nature of Respondent's offenses and whether they involve moral turpitude within the meaning of D.C. Code § 11-2503(a). Order, *In re McRae*, No. 14-BG-1063 (D.C. 2014).

On October 20, 2014, Bar Counsel filed with the Board a statement recommending Respondent's disbarment on the grounds that his convictions of felony theft and uttering a counterfeit instrument involve moral turpitude *per se*. In response, Respondent conceded that he was convicted of felony theft and uttering a counterfeit document, but did not take a position on the question of moral turpitude. Respondent instead proposed that the Board stay this matter pending disposition of his post-conviction motion to reconsider sentence filed in Prince George's County pursuant to Maryland Rule of Criminal Procedure § 6-220, which provides for the imposition of probation before judgment as an alternate disposition.<sup>1</sup> In a reply, Bar Counsel

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<sup>1</sup> Maryland Rule of Criminal Procedure § 6-220 provides, in relevant part:

[w]hen a defendant . . . is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions if: (i) the court finds that the best interests of the defendant and the public welfare would be served; and (ii) the defendant gives written consent after determination of guilt or acceptance of a nolo contendere

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maintains that under *In re Hirschfeld*, 622 A.2d 688, 690 (D.C. 1993), the Board should file its recommendation on moral turpitude with the Court, notwithstanding the pendency of Respondent's request for discretionary relief.

### ANALYSIS

D.C. Code § 11-2503(a) requires the mandatory disbarment of a member of the District of Columbia Bar convicted of a crime of moral turpitude. To determine whether a crime is one of moral turpitude, the Board "examine[s] whether the prohibited conduct is base, vile or depraved, or whether society manifests a revulsion toward such conduct because it offends generally accepted morals." *In re Sims*, 844 A.2d 353, 362 (D.C. 2004) (citing *In re Colson*, 412 A.2d 1160 (D.C. 1979) (en banc) and *In re McBride*, 602 A.2d 626 (D.C. 1992) (en banc)). Once the Court has determined that a particular crime involves moral turpitude *per se*, disbarment must be imposed. *See Colson*, 412 A.2d at 1165. The certified copy of the criminal judgment entered against Respondent, which Bar Counsel filed with the Court on September 18, 2014, is conclusive evidence of Respondent's commission of the crimes. D.C. Bar R. XI, § 10(f). Where the attorney has multiple convictions, disbarment is mandated by § 11-2503(a) when any one of the convictions involves moral turpitude *per se*. *See, e.g., In re Hoover-Hankerson*, 953 A.2d 1025, 1026 (D.C. 2008) (per curiam) (citing *In re Lipari*, 704 A.2d 851, 852 (D.C. 1997)).

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plea." The provision further states that if a defendant consents to and receives a stay of the entering of judgment, the defendant waives the right to appeal from the judgment of guilt.

The Court has held that felony theft in violation of Article 27, § 342 of the Maryland Criminal Code, the predecessor to Maryland Criminal Code § 7-104, constitutes a crime of moral turpitude *per se*. See *In re Taylor*, Bar Docket No. 277-99 at 3-4 (BPR June 19, 2000) *recommendation adopted*, *In re Taylor*, 765 A.2d 546 (D.C. 2001); see also *In re Schoenecker*, 50 A.3d 457, 458 (D.C. 2012) (per curiam) (“It is well settled in our case law, moreover, that felony crimes involving intentional theft or fraud . . . are crimes of moral turpitude.”). Additionally, the Court has held that uttering a counterfeit document in violation of D.C. Code § 22-3241 (formerly cited as D.C. Stat. 1981 § 22-3841), also involves moral turpitude *per se*. See *In re Schwartz*, 619 A.2d 39, 39 (D.C. 1993) (per curiam). For purposes of the moral turpitude analysis, D.C. Code § 22-3241 is indistinguishable from Respondent’s uttering conviction under Maryland Criminal Code § 8-602, in that both crimes require proof of intent to defraud.<sup>2</sup> Thus, both Respondent’s crimes constitute moral turpitude *per se*, warranting his disbarment under D.C. Code § 11-2503(a).

Finally, we reject Respondent’s request to stay these proceedings pending resolution of his motion to reconsider sentence by the Maryland trial court. A petition for discretionary review does not affect the finality of a conviction for purposes of disbarment pursuant to D.C. Code § 11-2503(a). See *In re Bereano*, 719 A.2d 98, 98 n.1 (D.C. 1998) (appended Board Report) (neither a remand to the trial court for resentencing, nor the filing of a petition for rehearing and rehearing *en banc*, affects the finality of a conviction for purposes of imposing

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<sup>2</sup> Maryland Criminal Code § 8-602 provides that “[a] person, with intent to defraud another, may not issue or publish as true a counterfeit instrument or document listed in § 8-601 of this subtitle.” Similarly, D.C. Code § 22-3241(b) provides that “[a] person commits the offense of forgery if that person makes, draws or utters a forged written instrument with intent to defraud or injure another.”

discipline under Section 11-2503(a)); *see also Hirschfeld*, 622 A.2d at 690 (notwithstanding the filing of a direct appeal of the underlying criminal conviction, the Board should file its recommendation with the Court, which will take final action upon receipt of a certified copy of the final judgment on appeal).

Accordingly, there is no basis to stay this proceeding. The Board will instead forward its recommendation to the Court, for a determination of final discipline.

### CONCLUSION

For the foregoing reasons, the Board recommends that the Court disbar Respondent pursuant to D.C. Code § 11-2503(a) based on his conviction of crimes involving moral turpitude *per se*. Respondent's disbarment should run, for purposes of reinstatement, from the date he files an affidavit that fully complies with the requirements of D.C. Bar R. XI, § 14(g). D.C. Bar R. XI, § 16(c); *see In re Slosberg*, 650 A.2d 1329, 1331 (D.C. 1994).

### BOARD ON PROFESSIONAL RESPONSIBILITY

By: /JFB/  
John F. Barker

Dated: December 29, 2014

All members of the Board concur in this Report and Recommendation except Mr. Carter, who is recused, and Mr. Bernius, who did not participate.