

DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY

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|---------------------------------------|---|-------------------------|
| In the Matter of:                     | : |                         |
|                                       | : |                         |
| W. BRADNEY GRIFFIN,                   | : |                         |
|                                       | : |                         |
| Respondent.                           | : | D.C. App. No. 07-BG-750 |
|                                       | : | Bar Docket No. 165-07   |
|                                       | : |                         |
| A Member of the Bar of the            | : |                         |
| District of Columbia Court of Appeals | : |                         |
| (Bar Registration No. 459202)         | : |                         |

REPORT AND RECOMMENDATION OF THE  
BOARD ON PROFESSIONAL RESPONSIBILITY

This reciprocal discipline case is based on an order of the Vermont Professional Responsibility Board (the “Vermont Board”) suspending W. Bradney Griffin (“Respondent”) from the practice of law for 30 days, to be followed by 90 days of probation, for failure to cooperate with a disciplinary investigation in that jurisdiction. The Vermont Board found that Respondent’s failure to cooperate violated Vermont Rule of Professional Conduct 8.4(d), which prohibits “conduct that is prejudicial to the administration of justice.”

The Board on Professional Responsibility (the “Board”) recommends that the District of Columbia Court of Appeals (the “Court”) impose identical reciprocal discipline, to be effective July 31, 2007, the date on which Respondent filed an affidavit pursuant to D.C. Bar R. XI, §14(g).

I. BACKGROUND

Respondent was admitted to the District of Columbia Bar on August 7, 1998, but has been administratively suspended for non-payment of bar dues since September 2002. He is also admitted to practice in Vermont and New York.

On July 19, 2007, Bar Counsel filed with the Court a certified copy of the Vermont Board's order suspending Respondent for 30 days and thereafter placing him on probation for 90 days, during which time he was required to respond to inquiries by Vermont's Disciplinary Counsel.<sup>1</sup> By order of August 1, 2007, the Court suspended Respondent on an interim basis, directed him to show cause why identical discipline should not be imposed, and instructed Bar Counsel to advise the Board of its position regarding reciprocal discipline. Order, *In re Griffin*, No. 07-BG-750 (D.C. Aug. 1, 2007).

In a statement filed with the Board on August 13, 2007, Bar Counsel recommends identical reciprocal discipline, in the form of a 30-day suspension, plus a 90-day probation subject to the conditions in the Vermont order of discipline. Respondent has not opposed this recommendation and has submitted an affidavit attesting that he has not practiced law in the District of Columbia since the date of his suspension in Vermont. Affidavit of Respondent, filed July 31, 2007.

## II. THE VERMONT PROCEEDINGS<sup>2</sup>

In July 2006, an ethics complaint was filed against Respondent in Vermont. Vermont Disciplinary Counsel contacted Respondent on multiple occasions seeking information. Although the Vermont Rules required Respondent to cooperate with these inquiries, he did not do so. On October 16, 2006, Vermont Disciplinary Counsel filed a petition charging Respondent with violating Vermont Rule 8.4(d) for failing to cooperate with disciplinary counsel. Respondent was served with the petition by certified mail,

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<sup>1</sup> Respondent did not notify Bar Counsel of his Vermont discipline as required by D.C. Bar R. XI, § 11(b). Instead, Bar Counsel learned of the order directly from the Vermont Board. See Statement of Bar Counsel at 3.

<sup>2</sup> The facts set forth in this section are drawn from the Vermont Board's order imposing discipline.

restricted delivery, and accepted delivery of the petition on October 19, 2006.

Respondent did not respond to the petition or file a response to the underlying complaint. On motion of Vermont Disciplinary Counsel, the charges in the petition were deemed admitted. Vermont Disciplinary Counsel thereafter filed a written request for sanctions, supported by a memorandum of law. By letter dated November 22, 2006, the Vermont Hearing Panel notified Respondent that he could request a hearing and submit a memorandum explaining why sanctions should not be imposed. Respondent neither requested a hearing nor filed a memorandum opposing sanctions.

The Vermont Board suspended Respondent from the practice of law for 30 days, during which time he was to file a response to the inquiry of Disciplinary Counsel. This was followed by a period of 90 days' probation, during which Respondent was to respond promptly to all requests for information and make himself available for deposition by Disciplinary Counsel. In his affidavit, Respondent reports that he has satisfied these conditions and was automatically reinstated to the practice of law on June 11, 2007.

### III. RECIPROCAL DISCIPLINE

There is a presumption in favor of imposing identical reciprocal discipline that may be rebutted by the establishment, through clear and convincing evidence, of one or more of the five exceptions set forth in D.C. Bar R. XI, § 11(c).<sup>3</sup> D.C. Bar R. XI, § 11(f); *see In re Zilberberg*,

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<sup>3</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.

612 A.2d 832, 834 (D.C. 1992). When, as here, a respondent does not contest reciprocal discipline, 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 identical reciprocal discipline, and Respondent does not oppose it. "Where there has been no objection from the attorney to the imposition of reciprocal discipline . . . we find it *virtually* impossible to imagine a situation where the imposition 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, we have examined the record and find nothing that rises to the level of an obvious miscarriage of justice. Respondent had notice of the Vermont proceedings and has acknowledged in correspondence with the Clerk's Office that he has also received notice of this reciprocal proceeding. Letter filed July 31, 2007, from Respondent to Garland Pinkston, Jr., Esquire, Clerk, D.C. Court of Appeals. That Respondent filed an affidavit pursuant to D.C. Bar R. XI, § 14(g) further demonstrates that he was aware of these proceedings and made a choice not to contest the imposition of reciprocal discipline.

Though our Court generally declines to impose reciprocal discipline based solely on the respondent's default in the foreign jurisdiction, it will do so: (1) the respondent had notice of the foreign charges; (2) nothing in the record suggests that the respondent (a) was procedurally prevented from offering a defense on the merits, or (b) asserted a substantial defense to the

allegations of misconduct at any stage of the foreign proceedings; and (3) the respondent does not contest our reciprocal proceedings. *See generally In re Dobbyn*, Bar Docket No. 381-06 (BPR May 15, 2007) (discussing authorities regarding reciprocal discipline based on deemed admissions of respondents who defaulted in foreign proceedings). There is also no question that failure to cooperate with an inquiry by disciplinary authorities is misconduct in the District of Columbia. The sanction here is reasonable and within the range of sanctions that would be imposed if the charges were prosecuted in an original proceeding in the District of Columbia. *See, e.g., In re Artis*, 883 A.2d 85, 91-92 (D.C. 2005) (30-day suspension and full compliance with court order enforcing subpoena *duces tecum* as condition of reinstatement); *In re Scanlon*, 865 A.2d 534, 535 (D.C. 2005) (per curiam) (30-day suspension with reinstatement conditioned upon filing a response to the disciplinary complaint and completion of six hours of CLE); *In re Beller*, 802 A.2d 340, 341 (D.C. 2002) (per curiam) (30-day suspension with reinstatement conditioned upon cooperation with Bar Counsel).

Respondent filed an affidavit on July 31, 2007, attesting, “I do not practice law in the District of Columbia, and have never taken any matters involving the practice of law within the District of Columbia, nor offered any legal advises [*sic*] to anyone concerning matters under the Laws of the District of Columbia.” Bar Counsel urges that Respondent’s suspension should date from this affidavit, suggesting that it is implicit that Respondent had no parties to notify of his suspension and no property to return. Statement of Bar Counsel at 4 n.4, 7 n.7. We agree that, under the circumstances, there is no need for Respondent to supplement his affidavit to make explicit what is clearly implicit. Consequently, Respondent has completed, *nunc pro tunc*, his suspension and probationary period.

#### IV. CONCLUSION

Based upon the foregoing, we recommend that the Court impose upon Respondent identical reciprocal discipline of a 30-day suspension, to run, *nunc pro tunc*, from July 31, 2007, the date on which Respondent filed an affidavit in compliance with D.C. Bar R. XI, §14(g), followed by 90-days' probation subject to the conditions imposed by the Vermont Board.

#### BOARD ON PROFESSIONAL RESPONSIBILITY

By: Deborah J. Jeffrey  
Deborah J. Jeffrey

Dated: **DEC 20 2007**

All members of the Board concur in this Report and Recommendation except Mr. Smith, who did not participate.