DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	)	
	)	
SUZANN L. BECKETT	)	Bar Docket No. 174-02
D.C. Bar No. 417612,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

This matter comes before the Board on Professional Responsibility (the "Board") as a result of discipline imposed upon Respondent, Suzann L. Beckett, by a three-member Reviewing Committee of the State of Connecticut Statewide Grievance Committee. The Board has concluded that the imposition of a reprimand is appropriate identical reciprocal discipline.

I. BACKGROUND

Respondent is a member of the Bar of the District of Columbia Court of Appeals (the "Court"), having been admitted on March 8, 1989. Respondent currently maintains inactive status in this jurisdiction. During the period of the misconduct in question, Respondent was also a member of the Connecticut Bar.

By a decision of a three-member Reviewing Committee of the Connecticut Statewide Grievance Committee, dated October 12, 2001, Respondent was publicly reprimanded. Respondent did not appeal the Reviewing Committee's decision. After learning of the Connecticut disciplinary action through the American Bar Association National Lawyer Regulatory Data Bank,[1] on December 10, 2002, Bar Counsel filed with the Court a certified copy of the order of the Statewide Grievance Committee imposing public reprimand on Respondent.

[1] Respondent did not report the Connecticut discipline to Bar Counsel as required by D.C. Bar R. XI, § 11(b).

On January 14, 2003, the Court issued an order directing Bar Counsel to inform the Board of her position regarding reciprocal discipline within thirty days and directing Respondent to show cause before the Board, within ten days thereafter, why identical, greater, or lesser discipline should not be imposed. *In re Suzann L. Beckett*, No. 02-BG-1443.

Respondent did not respond to the Court's show cause order, and has not participated in this proceeding. Bar Counsel recommends that the Board impose a Board reprimand as identical reciprocal discipline. Bar Counsel asserts that none of the exceptions in D.C. Bar R. XI, § 11(c) apply and that a reprimand would fall within the range of sanctions that might be imposed for comparable conduct in an original case in this jurisdiction. We agree.

This matter presents the vexing "disciplining court" issue which we addressed in *Greenspan* and two other orders which are issued today: *In re Leslie Silverman*, BDN 504-02 & 045-04, and *In re Robert Silverman*, BDN 145-02.

II. THE CONNECTICUT PROCEEDING

A hearing was held before a three-member Reviewing Committee of the Connecticut Statewide Grievance Committee on June 5, 2001, pursuant to Connecticut Practice Book § 2-35.[2] The hearing addressed a disciplinary complaint filed against Respondent on February 5, 2001, and the record of a resultant determination of probable cause of misconduct filed by the New Britain/Hartford Judicial District Grievance Panel on April 17, 2001.[3] Respondent was present and testified at the hearing. The Reviewing Committee set forth its findings of fact in a two-page opinion, the substance of which is set forth below.

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[2] The pertinent provisions of the Connecticut Practice Book appear in the Appendix to the Statement of Bar Counsel and are also appended hereto for the convenience of the Court and others reviewing this Report.

[3] *See generally* Connecticut Practice Book § 2-29 (procedures for grievance panels); *see also id*. § 2-32(f) (probable cause determination procedures).

Complainant, a former client, sought arbitration of a fee dispute between herself and Respondent, which Respondent refused. Complainant then filed a small-claims action in the Connecticut Superior Court seeking $650.00 in unearned fees. Respondent filed an answer stating that she already had issued a $350.00 refund to Complainant. Complainant denied that she had received the refund, and she was awarded a judgment in the amount of $650.00 (plus $30.00 in costs). Respondent's motion to reopen the record was denied. Shortly thereafter, Respondent notified Complainant that she had filed for bankruptcy. Complainant then sent a letter to Respondent that, among other things, sought documentation supporting Respondent's claim of having previously provided a refund. Respondent did not respond to the letter or provide the requested documentation.

Respondent testified at the disciplinary hearing that she had no doubt that she had sent a check to Complainant for $350.00, together with a cover letter, in 1999. Respondent also testified that she was unable to find a copy of the cover letter or any other documentation supporting her statement. She testified that she had written the refund check by hand, rather than on the computer as she normally would have done, and that the account on which the check had been written had since been closed. The Reviewing Committee noted that after the disciplinary complaint was filed, Respondent sent Complainant a check for $350.00.

The Reviewing Committee credited Complainant's testimony. Observing that Respondent offered no supporting documentation, the Reviewing Committee declined to credit her claim of having made a fee refund to Complainant, particularly in light of her refusal to arbitrate the fee dispute and her subsequent bankruptcy filing. Based on the foregoing, the Committee found that Respondent's assertion in the small-claims lawsuit that she had sent a fee

refund to Complainant violated the following three Connecticut Rules of Professional Conduct ("CRPC"):

(1) CRPC 3.1,[4] in that the statement was a frivolous controverting of an issue;

(2) CRPC 3.3(a)(1),[5] in that it was a false statement of material fact to a tribunal; and

(3) CRPC 8.4(4),[6] in that by making the statement, Respondent engaged in conduct prejudicial to the administration of justice.[7]

The Reviewing Committee publicly reprimanded Respondent for the violations found.

III. IMPOSITION OF RECIPROCAL DISCIPLINE

A. "Disciplining Court"

Reciprocal discipline will be imposed in the District of Columbia upon an attorney who is the subject of disciplinary action by a "disciplining court." *See* D.C. Bar R. XI, § 11(b). D.C. Bar R. XI, § 11(a) defines a "disciplining court" as:

> any court of the United States as defined in Title 28, Section 451 of the United States Code, the highest court of any state, territory, or possession of the United States, and *any other agency or tribunal with authority to disbar or suspend an*

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[4] CRPC 3.1 provides in pertinent part: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." The counterpart District of Columbia Rule of Professional Conduct ("D.C. Rule") 3.1 is identical.

[5] CRPC 3.3(a)(1) states "A lawyer shall not knowingly: (1) Make a false statement of material fact or law to a tribunal . . . ." D.C. Rule 3.3(a)(1) is identical.

[6] CRPC 8.4(4) provides: "It is professional misconduct for a lawyer to . . . (4) Engage in conduct that is prejudicial to the administration of justice." The rule is substantively similar to its counterpart, D.C. Rule 8.4(d), which provides: "It is professional misconduct for a lawyer to . . . (d) Engage in conduct that seriously interferes with the administration of justice." The prior version of D.C. Rule 8.4(d) used the phrase "conduct prejudicial," but the current version, which was in effect at the time of Respondent's Connecticut misconduct, refers to "conduct that seriously interferes with the administration of justice." Comment [2] states that Rule 8.4(d)'s prohibition against conduct that "seriously interferes with the administration of justice" includes conduct proscribed by the former rule, which prohibited "conduct prejudicial to the administration of justice."

[7] The Reviewing Committee declined to find that Respondent's misconduct violated two other rules that had been charged: CRPC 3.4(2) (falsification of evidence) and CRPC 3.4(5) (in trial, alluding to matters not supported by admissible evidence).

> *attorney from the practice of law* in any state, territory, or possession of the United States.

Id. (emphasis added). If the Reviewing Committee is not a "disciplining court," reciprocal discipline would not be appropriate and Bar Counsel would have to choose between initiating an original disciplinary proceeding against Respondent or not seeking any discipline whatsoever. *See In re Greenspan*, BDN 279-01 (BPR July 30, 2004); *In re Robert Silverman*, BDN 145-02 (BPR Dec. 16, 2004).

1. The Connecticut Disciplinary System

In the instant matter, a duly appointed Reviewing Committee of the Connecticut Statewide Grievance Committee publicly reprimanded Respondent. The 21-member Statewide Grievance Committee may act as a full committee or in three-member subcommittees called "Reviewing Committees." *See* Connecticut Practice Book § 2-35. Grievance Committee members are appointed by the judges of the Connecticut Superior Court. *Id*. § 2-33. The Statewide Grievance Committee is created by Order of the Connecticut Supreme Court. Conn. Practice Book § 2-33. That court has the authority to suspend or disbar, as does the Connecticut Superior Court. Conn. Practice Book §§ 2-44, 2-47(a). The sanction powers of the Connecticut Statewide Grievance Committee and its Reviewing Committees are limited, among other things, to reprimands, a non-suspensory sanction. *See* Connecticut Practice Book § 2-37(a)(1)–(7).

Although neither the Statewide Grievance Committee nor its Reviewing Committees has the authority to disbar or suspend attorneys, decisions of the Connecticut Statewide Grievance Committee and its Reviewing Committees are reviewable by the Connecticut Superior Court, which itself has the power and authority to suspend or disbar attorneys. *See* Connecticut Practice Book § 2-44. The Connecticut Superior Court may *affirm* reprimands issued by the Statewide

Grievance Committee and its Reviewing Committees, but it may not impose a more severe sanction in those cases. *See* Connecticut Practice Book § 2-38(f).

2. Is the Connecticut Reviewing Committee a "Disciplining Court"?

We agree with Bar Counsel that the Connecticut Reviewing Committee is a "disciplining court" pursuant to the terms of Rule XI. This conclusion is consistent with our resolution of the identical jurisdictional issue in an earlier Connecticut reciprocal matter, *In re Dixon*, BDN 480-95 & 178-96, Order (BPR July 22, 1996), and our recent decision in *In re Greenspan*, BDN 279-01 (BPR July 30, 2004).

In ordering identical reciprocal discipline of a Board reprimand in *Dixon*, the Board determined that although the Statewide Grievance Committee and its Reviewing Committees are not empowered to suspend or disbar, they are part of an overall disciplinary system operated by a court (the Connecticut Superior Court) having that authority and overseeing the work of its subordinate arms. It would be anomalous, the *Dixon* Board reasoned, to conclude that a reprimand which is challenged by an attorney and affirmed by the Connecticut Superior Court would be subject to reciprocal discipline, whereas an attorney could escape reciprocal discipline simply by not appealing a decision by the Statewide Grievance Commission or its Reviewing Committee, thereby avoiding review by the Superior Court. *Id*. at 5.

Similarly, in *Greenspan*, a majority of the Board found that a reasonable interpretation of D.C. Bar R. XI, § 11(a) is to accord "disciplining court" status to entities that are appointed by and whose decisions are appealable to higher bodies, which themselves have disbarment or suspension authority. The *Greenspan* decision, following *Dixon*, thus created the following methodology for determining what constitutes a disciplining court:

> The Board will examine the disciplinary scheme in the original jurisdiction to determine that: 1) the administrative body imposing discipline is a part of an

> attorney disciplinary system; 2) the administrative body is exercising disciplinary authority pursuant to rules or regulations promulgated by a court which itself has authority to disbar or suspend attorneys in that jurisdiction; and 3) the administrative body's imposition of discipline is consistent with that delegated authority.

Greenspan, slip op. at 26-27. Our order of even date in *In re Robert Silverman*, BDN 145-02, is to the same effect.

Accordingly, under the rationale of *Dixon* and *Greenspan*, we conclude that the public reprimand ordered by the Connecticut Reviewing Committee qualifies as disciplinary action by a "disciplining court" for purposes of D.C. Bar R. XI, § 11(b).[8] Any other interpretation would conflict with overarching principles of deference due to foreign jurisdictions' discipline and disciplinary structures. In addition, denying "disciplining court" status to the Connecticut Reviewing Committee (and similar disciplinary bodies in other jurisdictions) would unnecessarily burden our system, necessitating *de novo* proceedings in what should instead be the presumed imposition of identical reciprocal discipline.

B. Standard for Reciprocal Discipline

D.C. Bar R. XI, § 11(f)(2) establishes a rebuttable presumption in favor of the imposition of identical reciprocal discipline unless the respondent demonstrates, or the Court finds on the face of the record by clear and convincing evidence, that one or more of the five exceptions set forth in D.C. Bar R. XI, § 11(c) applies.[9] *See* D.C. Bar R. XI, § 11(c) and (f); *In re Zdravkovich*,

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[8] We acknowledge that the Court has not directly addressed the jurisdictional issue whether the Connecticut Statewide Grievance Committee and its Reviewing Committees qualify as "disciplining courts" under D.C. Bar R. XI, § 11(a) because *Dixon* involved an uncontested Board reprimand. *Greenspan* is now pending before the Court.

[9] 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

831 A.2d 964, 968 (D.C. 2003) (citing *In re Gardner*, 650 A.2d 693, 695 (D.C. 1994); *In re Zilberberg*, 612 A.2d 832, 834-35 (D.C. 1992)). When, as here, neither Bar Counsel nor the respondent contests the imposition of reciprocal discipline, the role of the Board is limited: "[T]he most the Board should consider itself obliged to do [in cases whether neither Bar Counsel nor the attorney opposes imposition of identical discipline] 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)); *In re Cole*, 809 A.2d 1226, 1227 n.3 (D.C. 2002) (per curiam) ("[I]n such circumstances, the imposition of identical discipline should be close to automatic, with minimum review by both the Board and this court.").

The Court has explained that "[u]nderlying our strict standard in reciprocal bar discipline cases is not only the notion that another jurisdiction has already afforded the attorney a full disciplinary proceeding, but also the idea that there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority." *Zdravkovich*, 831 A.2d at 969 (citations omitted). Here, Respondent has failed to make any effort to rebut the presumption of reciprocal discipline, thereby "effectively default[ing]" on this issue. *See In re Goldsborough*, 654 A.2d 1285, 1287 (D.C. 1995).

C. Reciprocal Discipline Is Appropriate Here

In accordance with our limited role, we have examined the record and find that no grave or obvious miscarriage of justice would result through the imposition of the identical reciprocal

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discipline in the District of Columbia; or (5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

discipline of a Board reprimand. *See Childress*, 811 A.2d at 807. First, Respondent was accorded due process in Connecticut. She had notice of and was afforded an opportunity to participate in the disciplinary proceedings, and she did so. Second, on this record, there is no suggestion that there was any infirmity of proof. Respondent had the opportunity to introduce documentary evidence supporting her position but offered none. The Connecticut Reviewing Committee stated that it based its decision on clear and convincing evidence, and there is nothing in the Connecticut record to suggest otherwise. Third, it is clear that Respondent's misconduct in Connecticut would violate the analogous D.C. Rules 3.1, 3.3(a)(1), and 8.4(d).[10] *See*, *e.g.*, *In re Owens*, 806 A.2d 1230 (D.C. 2002) (per curiam) (Rules 3.3(a)(1), 8.4(c), and 8.4(d) violated where attorney made false statements to a tribunal to cover up the fact that she had attempted to eavesdrop on testimony in violation of judge's sequestration order); *In re Spikes*, BDN 276-97 (BPR July 30, 2003) (Rule 3.1 violated by frivolous suit against disciplinary authorities) (pending Court review on respondent's exception).

Under D.C. Bar R. XI, § 11(c)(4), reciprocal discipline shall be imposed unless "the misconduct established warrants substantially different discipline" in the District. For the reasons described below, the Board concludes that imposition of the identical sanction of a Board reprimand would not constitute a grave miscarriage of justice because a reprimand would not be substantially different than the discipline that would have been imposed had Respondent's misconduct been considered as an original matter. *See In re Benjamin*, 698 A.2d 434 (D.C. 1997) (sanction of public censure was within the range of sanctions that might be imposed in

[10] Bar Counsel invites us to apply the rules of the original jurisdiction (here, Connecticut) in reciprocal matters, just as we do in original matters under Rule 8.5's choice of law provisions. *See* Statement of Bar Counsel at 12 & n.8. She suggests that doing so would enable D.C. lawyers licensed in multiple jurisdictions to rely on Rule 8.5 in choosing which rules to apply to work undertaken outside D.C. *Id.* at 13. We need not reach that argument here because D.C. Rules 3.1, 3.3(a), and 8.4(d) are identical or substantially identical to their Connecticut counterparts, CRPC 3.1, 3.3(a)(1), and 8.4(4). Whether Connecticut or D.C. Rules are applied thus would not affect our recommended sanction.

non-reciprocal case involving two misrepresentations to court and, thus, imposition of a reciprocal discipline in the form of a public censure would not create grave injustice).

D. Functionally Equivalent Discipline

Precedent exists for imposing a non-suspensory sanction for misconduct somewhat comparable to Respondent's. A case in point is *In re Paugh*, BDN 481-94 (BPR Mar. 5, 1996), where the Board reprimanded a respondent for misrepresenting to a court that he had filed, on his client's behalf, a "Suggestion in Bankruptcy," when he had not done so, in violation of Rules 3.3(a), 8.4(c), and 8.4(d). *See also In re Margulies*, No. 88-1032 (D.C. 1989) (public censure imposed for misrepresentation to Bar Counsel, neglect, and conduct prejudicial to the administration of justice); *In re Rosen*, 481 A.2d 451, 454 (D.C. 1984) (citing *In re Rosen*, M-69-81 (D.C. Nov. 20, 1981) (public censure for false explanation of failure to appear in court)); *In re Gutjahr*, BDN 278-79, Order (BPR Sept. 11, 1981) (Board reprimand for misrepresenting filing of INS form, in violation of predecessor to Rule 3.3(a)(1)); *In re Confidential (JEK)*, BDN 235-78 (BPR Nov. 29, 1979) (informal admonition for false notarization on affidavit filed with court).

We conclude that Respondent's Connecticut public reprimand, which was based on her misrepresentation to a Connecticut court, does not differ substantially from the discipline imposed in the District of Columbia for violations of Rules 3.1, 3.3(a)(1), and 8.4(d) and, thus, imposing identical reciprocal discipline would not create a miscarriage of justice. A Board reprimand is equivalent to a reprimand issued by the Reviewing Committee of the Connecticut Statewide Grievance Committee. *See Dixon*, BDN 480-95 & 178-96. Accordingly, the appropriate sanction here is a Board reprimand.

IV. CONCLUSION

For the foregoing reasons, the Board concludes that Respondent's misconduct warrants identical reciprocal discipline in the District of Columbia. Respondent therefore is hereby reprimanded by the Board on Professional Responsibility.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____
Martin R. Baach
Chair

Dated: December 17, 2004

All members of the Board concur in this Order. Mr. Wolfson has filed a separate Concurring statement joined by Mr. Klein, Mr. Williams, Ms. Helfrich and Mr. Mercurio.

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SUZANN L. BECKETT	:	Bar Docket No. 174-02
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Respondent.	:	

CONCURRING STATEMENT OF MEMBER PAUL R.Q. WOLFSON

I did not join the Board's report and recommendation in *In re Greenspan*, BDN 279-01 (BPR July 30, 2004), because I did not agree that a body that neither itself is the highest court of a state nor itself has the power to suspend or disbar attorneys qualifies as a "disciplining court" under D.C. Bar R. XI, § 11(a). I was also concerned about the potentially broad reach of the Board's three-part test in *Greenspan*, which, I noted, could conceivably encompass prosecutorial bodies such as the Office of Bar Counsel. It appears, however, that the Board is willing to limit the reach of the Board's language in *Greenspan*, as demonstrated by the Board's conclusion in *In re (Leslie) Silverman*, BDN 504-02 & 045-04, that the Maryland Grievance Commission is not a "disciplining court." Moreover, the Board's recommendation in *Greenspan* is currently before the Court of Appeals, which will soon provide much needed clarification in this area.

Given this situation, I believe that we should give *Greenspan* precedential effect for bodies that are functionally similar to the Massachusetts Board of Bar Overseers at issue in that case. It is not entirely clear to me whether the Reviewing Committee of the Connecticut Statewide Grievance Committee is such a body. Some of the powers of the Statewide Grievance Committee seem to resemble prosecutorial rather than adjudicative functions. *See* Conn. Practice Book § 2-36 (Grievance Committee may direct disciplinary counsel to file a presentment against respondent in Connecticut Superior Court). Moreover, it does not appear

that the State Grievance Committee even has the power to *recommend* a sanction of suspension or disbarment to the Connecticut courts; the most it can do is issue a reprimand, which may be affirmed or set aside on appeal in the Connecticut courts. On the other hand, in the case of an appeal to the Superior Court from a Committee reprimand, the reviewing court "shall not substitute its judgment for that of the statewide grievance committee or reviewing committee as to the weight of the evidence or questions of fact." Conn. Practice Book § 2-38(f).

If we were encountering this body for the first time, I might conclude that it is not a "disciplining court," even assuming that the result (although not all the language) in *Greenspan* is correct. As the Board notes, however, the Board previously concluded that this very body is a "disciplining court" in *In re Dixon*, BDN 480-95 & 178-96 (BPR July 22, 1996), and the Board expressly reaffirmed *Dixon* and *Greenspan*. Thus, although I do not join the Board's report, because of its reliance on the problematic language in *Greenspan*, I concur in the Board's decision to issue a reprimand. Respondent remains free, of course, to seek review of this decision in the Court of Appeals in order to secure a resolution of the "disciplining court" issue.

By: _____
Paul R.Q. Wolfson
Vice Chair

Dated: December 17, 2004

This Concurring Statement is joined by Mr. Klein, Ms. Williams and Ms. Helfrich. Mr. Mercurio also joins in this Concurring Statement with the exception of the first sentence.