DISTRICT OF COLUMBIA BAR

DISCIPLINARY SYSTEM STUDY COMMITTEE

PROPOSED CHANGES IN THE DISCIPLINARY SYSTEM OF THE DISTRICT OF COLUMBIA: FINAL REPORT AND RECOMMENDATIONS

Members of the Committee

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Francis D. Carter	George W. Jones, Jr.
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September 1, 2006

As approved by the D.C. Bar Board of Governors for submission to the District of Columbia Court of Appeals, October 10, 2006.

Proposed Changes in the Disciplinary System of the District of Columbia: Final Report and Recommendations

Executive Summary

Recommendations

- Authorize the Office of Bar Counsel ("OBC") to enter into a consent to discipline agreement in any matter in which OBC and a Respondent agree as to facts, violations and the appropriate discipline in matters that do not present an issue of first impression. The consent to discipline agreement would not represent a plea bargain. The consent to discipline agreement would be presented to a Board on Professional Responsibility ("BPR") Contact Member and then to a BPR Hearing Committee at which Respondent and OBC would be present. The Complainant would have the opportunity to attend the hearing. Final approval of the consent to discipline agreement would be by the BPR, except in cases where the sanction is disbarment or a suspension with proof of fitness in which case the final approval remains with the District of Columbia Court of Appeals ("Court").
- Reciprocal discipline cases should be disposed of by a Show Cause process issued by the Court rather than by referral to the BPR.
- Permit the Court to suspend a Respondent for failure to answer a pre-petition order of the BPR about an OBC investigation of alleged serious misconduct. The suspension would be vacated automatically upon the Respondent fulfilling his/her obligation pursuant to the BPR order.
- Permit a finding of violation to be made by a default judgment if a Respondent fails to answer an OBC Petition after notice, provided that OBC presents properly sworn testimony or evidence in support of the allegations of misconduct charged in the petition. The order of default would be set aside on a motion filed by the Respondent which sets forth good cause within 90 days of the Report and Recommendation by the Hearing Committee.
- Eliminate the role of the Hearing Committee and the BPR in uncontested reinstatement cases which would be considered directly by the Court. Contested reinstatement cases would still be heard by a Hearing Committee but then submitted directly to the Court for decision. The BPR is eliminated from the process.
- Empower the BPR to impose final discipline in disciplinary cases that do not involve disbarment or suspensions requiring a Respondent to demonstrate proof of fitness to practice law before reinstatement. All final discipline imposed by the BPR would be subject to discretionary review by the Court.
- Change the investigative confidentiality rules to permit OBC, with the permission of the Chairperson of the BPR, to cooperate with other disciplinary agencies, law enforcement officials, and other attorney disciplinary bodies and related organizations.
- Provide immunity for practice monitors except in cases in which the monitor engages in intentional misconduct or criminal activity.
- Broaden the category of cases eligible for diversion.

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SECTION 1

I. INTRODUCTION

In September 2003, with the concurrence of the District of Columbia Bar Board of Governors, then-D.C. Bar President Shirley Ann Higuchi established the Disciplinary System Study Committee ("Committee") to study certain aspects of the disciplinary system in the District of Columbia and recommend changes to Rule XI of the District of Columbia Court of Appeals ("Court") Rules Governing the D.C. Bar necessary to ensure that the disciplinary system continues to be as efficient, effective and fair as possible. The Board of Governors and the Board on Professional Responsibility ("BPR") agreed to the Committee's charter (attached as Appendix A), which provided that:

> The Bar committee may consider and evaluate, as appropriate, other state models relevant to the review of D.C. Bar Rule XI and address the following issues: [1]
>
> Should procedures be streamlined to expedite the resolution of certain types of disciplinary cases and, if so, what changes should be made? For example, should Bar Counsel and Respondents be allowed to enter into negotiated dispositions and if so, in what kind of cases; under what circumstances; with what type of review of Bar Counsel's actions? Should there be an expedited procedure for reciprocal discipline cases, particularly where the Respondent does not participate? Should there be a streamlined procedure for reinstatement proceedings in certain categories of cases and if so, in what kind of cases and under what circumstances?
>
> Should Bar Counsel be granted broader authority to resolve certain disciplinary matters through diversion and informal admonitions without a full-fledged hearing? If so, what type of disciplinary matters should be included; what type of authority should be granted to Bar Counsel; what type of review, if any, should there be of Bar Counsel's action or proposed action; and what procedures should be followed?
>
> Should the Hearing Committees and/or the BPR be given authority to impose final discipline in certain cases, subject to a disciplinary review, or no review, by the BPR and/or the District of Columbia Court of Appeals? If so, what type of disciplinary matters should be included?
>
> Are there other changes of a procedural or technical nature that should be considered to promote the efficient and effective operation of the disciplinary system?

What, if any, amendments should be made to Rule XI to implement the changes that are being suggested?

If changes in BPR procedures are recommended, what impact would such changes have on other parts of the disciplinary system (the Attorney/Client Arbitration Board, Clients' Security Fund, Lawyer Practice Assistance Committee, Legal Ethics Committee, Lawyer Counseling Committee and the Rules of Professional Conduct Review Committee)?

The Bar committee will not review or comment on any changes to the sources of financing for the disciplinary system, annual budgets, or supplemental budget requests.

[1]To establish some baseline information for the committee's work, the committee will likely choose to look at how our disciplinary system compares to certain other systems on the time for disposition, including such factual questions as: Where are the stages of the process in which significant delays occur in our disciplinary system? What are the factors causing these delays? Given what we may learn from other systems, are there practical ways for them to be addressed?

A. Membership of the Committee

The membership of the Committee reflects the diversity of the Bar and includes community members.

The Chairperson and Vice-Chairperson of the Committee are:

John Payton	Partner at Wilmer Cutler Pickering Hale & Dorr, L.L.P.; former President of the D.C. Bar; former member of a Hearing Committee
Hon. Joan L. Goldfrank	Magistrate Judge, Superior Court of the District of Columbia; former Executive Attorney for the Board on Professional Responsibility

The members of the Committee include:

Patricia A. Brannan	Partner at Hogan & Hartson, L.L.P.; former member of a Hearing Committee; former Chairperson of the Board on Professional Responsibility

Francis D. Carter	Partner at Zuckerman Spaeder, L.L.P.; former member of the D.C. Bar Board of Governors; Respondent's counsel; former sole practitioner; former member of the Board on Professional Responsibility; former member of a Hearing Committee
Devarieste Curry	Solo practitioner; Chairperson of the Practice Management Service Committee[1]; member of the Legal Ethics Committee; former member of the D.C. Bar Board of Governors; former member of the Board of GWAC and former Chairperson of Committees of the Women's Bar Association
Joanne Doddy Fort	Sole practitioner; former Respondent's counsel; former Chairperson of the Board on Professional Responsibility; former member of a Hearing Committee
Shirley Ann Higuchi	Assistant Executive Director of Legal and Regulatory Affairs for the Practice Directorate, American Psychological Association; former President of the D.C. Bar
Vicki C. Jackson	Professor at Georgetown University Law Center; former member of the D.C. Bar Board of Governors
George W. Jones, Jr.	Partner at Sidley Austin L.L.P.; Respondent's counsel; former President of the D.C. Bar; former member of the Legal Ethics Committee
Robert N. Weiner	Partner at Arnold & Porter L.L.P.; former President of the D.C. Bar; Co-Chairperson of the 1991-93 Disciplinary System Review Committee; former Respondent's counsel; former member of a Hearing Committee

The Committee has two public members:

La Verne Fletcher	Mediator at the District of Columbia Alcoholic Beverage Control Board; member of the D. C. Bar Board of Governors; alternate member of a Hearing Committee; former Vice-Chairperson of the Attorney/ Client Arbitration Board

[1] On May 10, 2005, the D.C. Bar Board of Governors approved a name change for the Lawyer Practice Assistance Committee and Program. Effective July 1, 2005, the Committee became known as the Practice Management Service Committee and the Program became known as the Practice Management Advisory Service.

Hallem H. Williams	Senior program manager, Community Justice Program, Court Services & Offender Supervision Agency; former member of the Board on Professional Responsibility; former member of the Legal Ethics Committee; former member of a Hearing Committee

Also serving on the Committee, in their ex officio capacities, are[2]:

James J. Sandman	President of the D.C. Bar
Melvin White	President-Elect of the D.C. Bar

The staff liaisons to the Committee are:

Wallace E. "Gene" Shipp, Jr.	Bar Counsel
Lawrence K. Bloom	Staff Attorney, Office of Bar Counsel
Carla J. Freudenburg	Regulation Counsel
Keith J. Soressi	Regulation Counsel[3]
Heather Bupp-Habuda	Ethics Counsel
Lisa Y. Weatherspoon	Ethics Counsel *

B. The Committee's Review

The Committee used as its basis for the study the questions set forth in the September 8, 2003, letter to then-Chief Judge Annice M. Wagner (see Appendix A). The Committee was not seeking to implement a major restructuring of the current disciplinary system. Rather, it focused on changes that would make the current system more efficient, effective and fair. The Committee's goal was to recommend changes that would assist in reducing the delay inherent in

[2] In addition to acknowledging the current President and President-Elect, the Committee would like to recognize John C. Cruden, President-Elect (2004-2005) and President of the Bar (2005-2006), as well as John C. Keeney, Jr., President-Elect (2003-2004) and President of the Bar (2004-2005), for their diligent contributions to the deliberations of the Committee during their tenures.

[3] On November 4, 2005, Keith J. Soressi resigned as Regulation Counsel and was succeeded by Carla J. Freudenburg, formerly the Director of the Bar's Attorney/Client Relations Program. On October 3, 2005, Heather Bupp-Habuda, formerly Programs Coordinator of the Bar's Attorney/Client Relations Program, was promoted to Legal Ethics Counsel to replace Lisa Y. Weatherspoon,* who is currently the Assistant Executive Attorney for Management to the Board on Professional Responsibility.

resolving complaints while preserving or enhancing fairness to the attorneys and clients involved, reinforcing the Bar's and the Disciplinary System's commitment to peer review through the use of volunteers, and ensuring the transparency of the disciplinary system.

To achieve its goals, the Committee concluded that it would be helpful to review the disciplinary systems of other jurisdictions. The jurisdictions were selected primarily based on elements they have in common with the District of Columbia Bar and its disciplinary system.[4]

The Committee divided its work between two Subcommittees. The Consent to Discipline Subcommittee, chaired by John Payton, focused on whether consent to discipline agreements should be incorporated into the disciplinary system. The Comparable Jurisdiction Subcommittee, chaired by the Honorable Joan L. Goldfrank, focused on identifying and evaluating the "best practices" of selected jurisdictions. The Subcommittees interviewed representatives from the bar counsel offices and/or board on professional responsibility offices of the selected disciplinary systems. In addition, the Committee developed in-depth questionnaires to solicit the information that the Committee wished to obtain (see Appendix C). The information obtained by the Committee is set forth in the report and the accompanying appendices.

The Committee also reviewed information about the disciplinary system in the District of Columbia. The Chairperson and Vice-Chairperson interviewed the then-Bar Counsel and the Executive Attorney for the BPR, and also met with other participants in the disciplinary system, including staff and current and former members of the BPR. The Committee drew as well on the extensive experience of its members with the disciplinary system and on the expertise of the staff liaisons.

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[4] Two Subcommittees reviewed procedures from the following jurisdictions: Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, North Carolina and Virginia. Among the factors that were considered in selecting those jurisdictions were: size of membership, urban populations and similarities in the structures of the disciplinary systems (see Appendix B).

C. Comment Methodology

The Committee solicited written comments on the proposals in its February 28, 2006, draft report from the Bar membership and the public from March 7 to May 5, 2006. In addition, a public hearing was held on March 27 at the D.C. Bar to discuss the Committee's recommendations. The DSS report was available in electronic and hard versions and was made available to Bar members and the public through a variety of methods. The report, an executive summary, and a link to the current District of Columbia Court of Appeals Rule XI were available on the Bar's website. Lead stories about the report, notice of the March 27 public hearing and reminders about the comment deadline were periodically posted on the Bar's homepage. Electronic links to the report were distributed to members in the Bar's March and April 2006 E-brief, to the Bar's Sections leaders, and to members who subscribed to the Legal Ethics Opinion alert service. Hard copies of the report were also mailed to Bar and community leaders. Short articles about the report and solicitation of comments were included in the April and May 2006 issues of the *Washington Lawyer*.

The Committee received ten comments. One author suggested a modification to the format of the Committee's report, but did not comment on the Committee's recommendations. A second author submitted two comments; the author's second comment requested an extension of time in which to make oral comments. Although one of the ten comments was submitted several days after the comment period deadline, the Committee accepted the comment for its consideration. Two of the ten comments were submitted by Bar programs -- the Lawyer Counseling Committee and the Clients' Security Fund. The remaining eight comments were submitted by individual Bar members in their personal capacities.

On May 15, 2006, the Committee met to review and discuss the comments. It considered each of the written comments and the oral comments presented at the March 27 public hearing.

Based on the written and oral comments and its further discussion, the Committee made certain changes to the report.

D. Organization of the Report

This report first provides a discussion of the premises upon which the accompanying recommendations are based and a description of the current disciplinary system. A discussion of each recommendation follows this overview.

II. BACKGROUND ON THE DISCIPLINARY SYSTEM IN THE DISTRICT OF COLUMBIA

A. Overview

The District of Columbia Court of Appeals created the BPR, whose nine members (seven members of the Bar and two public members) are volunteers nominated by the Board of Governors of the Bar and appointed by the Court. The BPR appoints the Bar Counsel and the staff. Funding for the disciplinary system, including the BPR and the Office of Bar Counsel ("OBC"), is through mandatory dues paid by members of the Bar and appropriated through the budget process of the Board of Governors. Cases are heard on the trial level by 54 volunteers who sit on three-member Hearing Committees (two members of the Bar and one public member).

B. Complaints and Investigations

Clients initiate most complaints against attorneys by filing written complaints with the OBC. However, anyone with knowledge of alleged misconduct, including judges and other attorneys, may initiate a complaint. The OBC may also commence an investigation on its own initiative.

When a complaint involves allegations of misconduct that, if true, would state a violation of the D.C. Rules of Professional Conduct, OBC schedules or "dockets" the matter for investigation. Generally, OBC conducts a preliminary review of every complaint before deciding whether to docket the matter to confirm that the attorney is a member of the D.C. Bar and to ascertain whether there are other complaints pending against this attorney. At times, the matter may be "undocketed" to develop the allegations of the complaint more fully, which generally means interviewing the Complainant for more detailed information.[5]

[5] "Undocketed" complaints refer to preliminary inquiries to permit OBC to determine whether a matter should be docketed for investigation. A complaint might be undocketed because it is unfounded on its face, it contains

In the 12 months ending December 31, 2004, OBC received 1,116 complaints. The OBC docketed 428, or 38.4 %, of those complaints, and undocketed 579, or 51.9 %. The remaining 109 complaints involved attorneys representing clients in pending criminal matters, which OBC handles on a separate track. In the 12 months ending December 31, 2005, OBC received 1,380 complaints. The OBC docketed 429, or 31%, of those complaints, and undocketed 752, or 55%. The remaining 199 complaints involved attorneys representing clients in pending criminal matters, which OBC handles on a separate track (see Appendix D). Because complaints involving attorneys representing clients in pending criminal matters are often based on the client's confusion or lack of information about the proceeding in which the attorney is representing him/her, OBC conducts a brief review of the court file to determine if the complaint should be docketed. If OBC can resolve the client's complaint by providing some information or by some other non-substantive step, OBC will do so and will not docket the complaint. In OBC's view, docketing such complaints would require the attorney to withdraw (because of a conflict of interest), which would unnecessarily disrupt the criminal justice system.

In all docketed matters, OBC asks the accused attorney to respond in writing to the allegations. The Office of Bar Counsel provides the attorney's written response to the Complainant for comment or submission of additional information. The Office of Bar Counsel then evaluates the information provided by all parties, and if necessary, conducts a further investigation. The Office of Bar Counsel has subpoena power and may petition the Court to enforce an OBC subpoena.

C. Dispositions

Upon concluding an investigation of a docketed complaint, OBC recommends (1) dismissal of the complaint, (2) diversion, (3) issuance of an informal admonition to the

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allegations which, if true, would not constitute a violation the D.C. Rules of Professional Conduct that would merit discipline, or it is not within the jurisdiction of the disciplinary system.

Respondent, or (4) institution of formal disciplinary charges by filing a petition.[6] If OBC finds clear and convincing evidence of a violation, OBC must proceed with diversion, an informal admonition or a petition. The Office of Bar Counsel does not have any discretion to engage in plea-bargaining or settlement, nor can a case, once petitioned, result in the imposition of discipline without proceeding through all of the established levels of the disciplinary system.

1. Contact Member Approvals

A Contact Member is an attorney member of a Hearing Committee who is assigned by the Executive Attorney of the BPR to review and either approve, reject or request OBC to modify its recommendations for disposition of docketed cases, except diversions, which are approved by a BPR member. In conducting such review, a Contact Member has access to OBC's investigatory file and may discuss the recommendation with the staff. Any attorney member of a Hearing Committee or attorney alternate may act as a Contact Member.

2. Diversions

The Office of Bar Counsel may offer diversion to an attorney only where the investigation reveals minor misconduct. The diversion program is designed to remedy the alleged misconduct of the attorney. If the attorney accepts OBC's offer to enter a diversion program in lieu of other procedures available to OBC, the parties enter into a written diversion agreement, which is subject to review and approval by one BPR member.

The BPR member who reviews the diversion agreement may approve, reject or modify the diversion agreement. The Respondent does not have the right to appeal the BPR member's rejection or modification of a diversion agreement, although the Respondent can reject the reformulated diversion. In the 12 months ending December 31, 2004, OBC entered into eight

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[6] Instead of pursuing an investigation, OBC may recommend to the BPR that a case be deferred because of a related criminal investigation, or related criminal or civil litigation. Such deferrals are allowed under the BPR's rules (Rule 4.1) when there is a substantial likelihood that the pending investigation or litigation will help to resolve the disciplinary matter.

diversion agreements, all of which were approved by a BPR member. In the 12 months ending December 31, 2005, OBC entered into 15 diversion agreements, all of which were approved by a BPR member.

3. Informal Admonitions

An informal admonition is the least severe form of discipline. It consists of a public letter from OBC to an attorney, finding that he or she has violated the D.C. Rules of Professional Conduct. Generally, OBC issues informal admonitions to attorneys who have no disciplinary record and where the misconduct is not significant. The Office of Bar Counsel may issue an informal admonition during the pre-petition phase after approval by a Contact Member or at the direction of the BPR or the Court after the case has been petitioned by OBC and heard by a Hearing Committee. In the 12 months ending December 31, 2004, OBC issued 34 informal admonitions, and in the 12 months ending December 31, 2005, OBC issued 27 informal admonitions.

4. Formal Proceedings

The Office of Bar Counsel files with the BPR any petition that is approved by a Contact Member. The filing of a petition initiates a formal proceeding to determine whether an attorney engaged in misconduct. In the 12 months ending December 31, 2004, OBC filed 22 petitions.[7] In the 12 months ending December 31, 2005, OBC filed 20 petitions.[8]

a) Hearing Committees

Thirty-three volunteers comprise the 12 standing Hearing Committees; there are 21 alternates. The BPR appoints the volunteers who serve on the Hearing Committees. The Hearing Committees constitute the trial level of the disciplinary system. One of the core values of our system is that the perspective and voices of public members are important. For that

[7] In addition, Respondents filed two petitions for reinstatement during 2004.

[8] In addition, Respondents filed seven petitions for reinstatement during 2005.

reason, each three-member Hearing Committee includes one public member. The Committee fully supports the use of volunteers in the disciplinary system because it incorporates peer and community judgments about alleged unethical conduct by attorneys.

Based on the BPR's Annual Report, 25 new matters (22 formal disciplinary proceedings, two petitions for reinstatement, and one reactivated matter following a reinstatement from disability suspensions) were filed with the Hearing Committees in 2004.[9] Twenty-two new matters were filed with the Hearing Committees in 2005. The Hearing Committees conducted 45 hearings and issued reports in 58 matters in 2004, and conducted 13 hearings and issued 11 reports in 2005. As of December 31, 2004, 24 matters were awaiting hearing by a Hearing Committee, and six matters were awaiting Hearing Committee reports.[10] Thus, in calendar year 2004, on average, each Hearing Committee heard about four cases and issued about five reports. The Committee anticipates that its recommendations will reduce the demands on the Hearing Committees. For instance, the "consent to discipline" recommendation should reduce the number of cases requiring full evidentiary hearings before Hearing Committees.

The BPR's Executive Attorney assigns each petitioned case to one of 12 Hearing Committees. The Hearing Committee hears evidence on the record about the charges against an attorney. The Respondent may be represented by counsel; the cost of counsel for an indigent Respondent is borne by the BPR through the budget for the BPR that is funded by Bar dues. The Respondent is entitled to present evidence, to cross-examine OBC's witnesses, to testify in his/her own behalf, and to file a post-hearing brief. The evidentiary hearing before a Hearing Committee is transcribed by a court reporter. Witnesses testify under oath or affirmation.

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[9] "Matters" refers to an ethical complaint, which may be consolidated with additional complaints in a single petition instituting formal disciplinary proceedings.

[10] As of December 31, 2005, 20 matters were awaiting hearing by a Hearing Committee, and five matters were awaiting Hearing Committee reports.

Formal rules of evidence do not apply. The burden is on OBC to prove by "clear and convincing evidence" each alleged disciplinary violation.

b) Hearing Committee Report

The record is closed after receipt of all evidence. Based upon the record, the Hearing Committee issues a public Report and Recommendation ("Report"). The Report includes the Hearing Committee's credibility findings and presents specific factual findings and conclusions of law on each of the alleged rule violations. If the Hearing Committee finds that OBC has proven a violation by clear and convincing evidence, it recommends a disciplinary sanction for the BPR's consideration.

The Hearing Committee can recommend sanctions that include an informal admonition, public reprimand, public censure, probation, suspension for a specific time up to three years, and disbarment. For a suspension, the Hearing Committee may recommend that the Respondent be required to demonstrate proof of fitness to practice before being reinstated to the Bar and allowed to resume the practice of law. A disbarred attorney may seek reinstatement after five years. Disbarred attorneys and attorneys who are required to demonstrate fitness before reinstatement do so in a separate process pursuant to a petition filed by the attorney/Petitioner.

A Hearing Committee can recommend that the Court require the attorney, as a condition of probation or reinstatement, to make restitution (limited to return of fees or property in the hands of the attorney) either to the person injured by the attorney's conduct or to the D.C. Bar Clients' Security Fund ("Fund"), if the Fund has paid a claim on the attorney's behalf. The Hearing Committee can recommend, and the Court may impose, other reasonable conditions, which have included disgorgement of a fee.

c) The BPR Proceedings

The BPR, composed of seven attorneys and two public members, handles four basic types of cases: original discipline cases; reinstatement cases; reciprocal discipline cases; and

criminal convictions referred by the Court. The BPR sits *en banc* in every case. The BPR's particular responsibility in the process is to recommend consistent discipline for similar misconduct.

In all original discipline and reinstatement cases, a Hearing Committee's Report is submitted to the BPR for review. The BPR is required to defer to the factual findings made by the Hearing Committee using a "substantial evidence on the record as a whole" standard, but the BPR is not required to defer to the conclusions of law or the recommendations for disciplinary sanction made by the Hearing Committee. In essence, the BPR acts as an intermediate appellate tribunal, which may affirm, modify or reject the Hearing Committee's recommendation.

d) The BPR Report and Recommendation and Review by the Court

Unless the matter is dismissed or the sanction is an informal admonition or a reprimand that is not contested by the Respondent, all determinations made by the BPR are recommendations to the Court. If neither OBC nor the Respondent seeks review, the matter is placed on the Court's summary calendar. In such a case, the Court reviews the BPR's Report and Recommendation and renders its judgment.

During 2004, the BPR decided 157 matters, including recommendations in 135 matters filed with the Court. Of the 135 BPR recommendations, 64 were based on petitions instituting formal disciplinary proceedings; 43 were reciprocal discipline matters, based on discipline imposed in other jurisdictions; 13 were based on criminal convictions; one matter was remanded from the Court; 11 matters were recommendations for consent disbarment, and three matters were petitions for reinstatement filed by suspended or disbarred attorneys. Of the remaining 22 matters decided by the BPR, the BPR issued four reprimands, directed OBC to issue five informal admonitions, dismissed two matters, referred one criminal conviction to OBC for investigation, and stayed one matter. The BPR also denied motions for disability suspension in two matters, petitioned the Court for an order of disability suspensions in six matters, and in one

matter, petitioned the Court for appointment of a conservator to protect the clients of a deceased attorney. During 2005, the BPR decided 88 matters, including recommendations in 71 matters filed with the Court.

If the case before the Court is a contested matter, the case is scheduled for briefing and oral argument. The Office of Bar Counsel represents the BPR before the Court, unless OBC disagrees with the BPR's Report, in which case the Executive Attorney represents the BPR before the Court.

e) Reciprocal Discipline Cases

The Office of Bar Counsel or the Respondent reports reciprocal matters, i.e., where other jurisdictions have imposed discipline on a member of the D.C. Bar, to the Court. The Court considers whether to suspend a Respondent on an interim basis and usually refers the matter to the BPR.[11] After reviewing the reciprocal matter, the BPR forwards a Report to the Court. In these cases, the Court usually defers to the sister jurisdiction and imposes identical reciprocal discipline.[12]

f) Criminal Convictions

The Office of Bar Counsel or the Respondent reports criminal conviction matters to the Court. The Court considers whether to suspend a Respondent on an interim basis and generally refers the matter to the BPR. In cases involving attorneys who have been convicted of crimes, the proceeding is governed by D.C. Code Section 11-2503(a). The issue for the disciplinary system is what sanction is warranted by the criminal conduct; attorneys do not have the opportunity to retry the facts underlying the conviction. Certain crimes involve moral turpitude

[11] The OBC downloads on an annual basis all disciplinary actions that have been reported to the American Bar Association (ABA) database in Chicago. These names are compared to the D.C. Bar membership records to discover any unreported disciplinary actions.

[12] Reciprocal discipline is subject to Rule XI, § 11 which provides exceptions to the presumption of reciprocal discipline, such as where a serious procedural irregularity or substantive obstacle is shown, or where identical discipline is not available among the sanctions permitted in the District of Columbia.

per se. Conviction of a crime involving moral turpitude leads to disbarment. The moral turpitude inquiry may be satisfied by examining the elements of the offense for which the attorney has been convicted and in some cases the facts underlying the conviction. The BPR analyzes the issue and recommends a disposition but the Court imposes final discipline. Where the crime of which the Respondent is convicted does not involve moral turpitude *per se*, the matter is referred to a Hearing Committee to determine if the specific facts involve moral turpitude. When the matter is referred to a Hearing Committee, OBC may also charge disciplinary rule violations based on the underlying conduct.

D. Confidentiality

Under Rule XI, original disciplinary proceedings are confidential until a Contact Member approves a petition instituting formal disciplinary proceedings or OBC issues an informal admonition.

E. Motions Practice

There is a substantial motions practice before the BPR. Presently motions decided by the BPR Chairperson include: Motions for Extensions of Time for Filing Briefs; Motions to Compel Responses in Investigations; Motions for Disability Suspensions; Motions for Emergency Suspensions Based upon Great Public Harm; Motions to Appoint a Conservator; Motions for Consent to Disbarment; Motions for Protective Orders; and Motions for Conditions of Practice. In addition, the Hearing Committees have a limited motions practice including: Motions for Continuances and Extensions of Time for Filing Briefs; Motions for Bill of Particulars; Motions for Discovery; Motions for Deferrals; and Motions for Protective Orders.

Generally, BPR staff takes the lead in preparing disposition of motions matters for the Chairperson, including the drafting of orders. BPR staff also often assists Hearing Committee members in disposing of their motions. In addition, BPR staff prepares for review and disposition all diversions, administrative complaints and probation orders.

SECTION 2

I. GUIDELINES FOR REVIEW

A. Efficiency, Effectiveness and Fairness

The purpose of the disciplinary system is to protect the public, promote confidence in the integrity of lawyers and the legal system, and deter unethical behavior by members of the District of Columbia Bar. The process is governed by Rule XI. As set forth below, our disciplinary system includes three tiers, and even if there are no contested facts or legal issues, matters resulting in discipline must proceed through the entire system, with limited exceptions such as diversions. In the approximately thirty years of its existence, the disciplinary system has generated a significant body of law.

The Committee recognizes that the system's volunteers and staff are diligent and thorough and the system itself is effective and fair. The Committee does not doubt that disciplinary matters receive a full and fair review. There is concern, however, about delays in processing cases through the system. The goals underlying the system would be better met if matters were resolved more quickly, without sacrificing essential procedural safeguards and the quality of decision making.

In reviewing the system, the Committee concluded that not every case needs to proceed through all three levels of review. The Committee undertook the task of determining where review could be streamlined without sacrificing fairness and effectiveness. The Committee concluded that a balance must be reached between ensuring adequate due process for the attorney against whom allegations have been made and expediting the process of handling grievances in order to protect the public and the integrity of the profession. In striking this balance, the Committee also wanted to ensure that an expedited system does not have the unintended consequences of having a disproportionate detrimental effect on minorities or sole practitioners or a benefit for attorney members of large firms. In interviews with representatives

of other jurisdictions, Committee members asked if they maintained any records to determine whether the procedures they implemented had a greater impact on minorities or sole practitioners compared to other groups. The jurisdictions did not retain such data. Nevertheless, the Committee recommends certain safeguards to protect against an unfair impact on any segment of the Bar.

The Committee discussed time guidelines for the disciplinary system at considerable length. While the Committee is not recommending specific time guidelines or requesting the BPR to study them at this time, the Committee believes it is appropriate to suggest that at some time in the future the BPR should consider whether adopting specific time guidelines and goals for each stage of the disciplinary system would be a useful and productive exercise. The Committee believes that time guidelines may provide a mechanism for tracking the disposition of cases in our disciplinary system, identifying bottlenecks in the system, determining the potential need for additional resources, and measuring improvements in the operation of the system.

In recommending how to promote greater efficiency, effectiveness and fairness in the disciplinary system, the Committee considered the likely overall impact of its recommendations on each level of the disciplinary system. Several recommendations (consent to discipline, temporary suspension for failure to respond to a BPR order in cases involving allegations of serious misconduct, elimination of a Hearing Committee and the BPR in uncontested reinstatement cases, elimination of referral of reciprocal discipline cases to the BPR in most cases, and empowering the BPR to issue final discipline in certain cases) are designed to make the system more efficient and fair and to reduce unnecessary delay in the disposition of disciplinary cases. The Committee considered both the role that is assigned to each level of the disciplinary system and the amount of work that occurs at each level, and it attempted to rebalance some of the responsibilities to increase the efficiency of the disciplinary system.

Partial implementation of these recommendations could result in burdening certain parts of the system. Nonetheless, the Committee appreciates that the Board of Governors or the Court may decide to adopt only some of its recommendations.

B. Volunteers

The legal profession in the District of Columbia has been entrusted by the Court with significant self-regulation. The disciplinary system could not function without the hard work and dedication of the 54 volunteers who serve on the 12 standing Hearing Committees and as alternates and the work of the nine volunteers who serve on the BPR for up to two three-year terms.

The Committee recognizes that, over the course of their terms, volunteers experience conflicting demands on their time from their professional and personal lives. While most volunteers successfully juggle the demands, on occasion these demands have produced delays in the efficient and timely processing of a disciplinary matter. At these times, the volunteers have sought and received additional assistance by the staff of the Office of the Executive Attorney.[13]

The Committee has sought to identify procedural changes that will allow the dedicated volunteers to focus their efforts on the matters that most need their attention. The Committee identified the "best practices" used in jurisdictions that rely heavily on volunteer decision makers to process disciplinary cases through their systems. The Committee attempted to determine whether such practices could work within our disciplinary system.

[13] From the 1993-94 fiscal year to the 2003-04 fiscal year, the authorized staff levels for the BPR increased from three full-time equivalents to nine full-time equivalents. Since the Committee was established, the BPR on its own initiative, also has explored training programs and other measures to strengthen the support of the volunteers, within existing resources. More recently, the BPR's backlog of cases has been substantially reduced.

The Committee found a wide variation in the way volunteers participate in other jurisdictions. In Michigan and New Jersey, for example, the disciplinary system uses significantly more volunteers.[14] In Illinois, attorneys are routinely paid to draft reports for hearing committees and the disciplinary board, instead of having volunteers perform that function. In Maryland, no volunteers are used as decision makers at the trial or appellate levels of the disciplinary system. Additionally, a number of states are making increased use of consent discipline, thereby reducing the workload of volunteers.

The Committee is unanimous in its view that volunteers should remain the backbone of the disciplinary system, and that they should continue to be the primary authors of the reports that the disciplinary system issues. Their participation incorporates peer and community judgments about alleged unprofessional conduct by attorneys. At the same time, the Committee believes there is a need to explore new techniques, such as the expanded use of consent to discipline agreements and the elimination of a level of decision making, where appropriate, to increase the efficiency of the system. These changes would also relieve some of the volunteers' workload.

C. Transparency

In its efforts to improve the efficiency, effectiveness and fairness of the disciplinary system, the Committee is sensitive to the paramount need to protect the public, the importance of the integrity of the self-regulatory process, and the transparency of the system. We are committed to the current system, which is open to the public from the time a petition is filed. When reviewing methods for handling consent to discipline agreements and moving uncontested matters more quickly, the Committee aimed to ensure that the Complainant is involved, the

[14] Michigan and New Jersey each has about 400 to 500 volunteers participating in their respective disciplinary system. The Committee does not take a position on whether the number of volunteers or Hearing Committees in the D.C. disciplinary system should be increased, especially in light of the BPR's recent initiatives to address this issue in other ways. Under Rule XI, whether additional volunteers would promote the efficient and effective operation of the disciplinary system is left to the discretion of the BPR (see Appendix E).

decision-making process transparent, and the public and Bar informed of the disciplinary actions taken against attorneys who violate their ethical duties. While the Office of Bar Counsel has enjoyed a 33% reduction in its backlog since 2004, the tools that this report offers to the disciplinary system will be of great assistance in addressing those areas of continued delay. In addition, several recommendations (consent to discipline, elimination of the Hearing Committee and the BPR in uncontested reinstatement cases, elimination of referral of reciprocal discipline cases to the BPR, empowering the BPR to impose final discipline in certain cases) will allow all aspects of the disciplinary system to focus its resources on the more complex and contested cases.

II. DISCUSSION OF THE COMMITTEE'S RECOMMENDATIONS

A. Consent to Discipline

Background

Currently, OBC has limited authority to dispose of an original complaint without presenting it for review by all three tiers of the disciplinary system, i.e., the Hearing Committee, the BPR and the Court. This requirement is true even where a violation can be proved by clear and convincing evidence and even when the facts and proposed discipline are uncontested. The three-tiered review process is used to resolve original complaints except in the following three circumstances:

1. Consent to disbarment pursuant to Rule XI, § 12.[15] The Office of Bar Counsel may file a consent to disbarment petition with the BPR. The petition is reviewed by the Chairperson who issues a short Report and Recommendation and forwards the matter to the Court which imposes the disbarment.
2. Diversion pursuant to Rule XI, § 8.1. The Office of Bar Counsel may offer diversion in certain cases of minor misconduct. A member of the BPR acting as a Contact Member reviews and approves the diversion agreement.[16]
3. Informal admonition pursuant to Rule XI, § 3(a)(5). The Office of Bar Counsel may offer an informal admonition, the lowest level of discipline, which can be imposed without the involvement of all three tiers of the disciplinary system, if the Respondent accepts the informal admonition.

In 2002, 41 of the 108 (38%) original docketed complaints that were not dismissed were resolved using these three mechanisms. In 2003, 52 of the 115 (45%) original docketed complaints that were not dismissed were resolved using these three mechanisms. In 2004, 52 of

[15] The Committee is not recommending any change in the manner in which consents to disbarment are processed.

[16] The Committee is not recommending any change in the manner in which diversions are processed.

the 105 (49%) original docketed complaints that were not dismissed were resolved using these three mechanisms. In 2005, 49 of the 73 (67%) original docketed complaints that were not dismissed were resolved using these three mechanisms.

The Committee believes that the adoption of a consent to discipline procedure in this jurisdiction would further increase the number of cases resolved without all three tiers of the disciplinary system reviewing the case. Twenty-eight jurisdictions have adopted various types of consent to discipline provisions. Some provisions grant their bar counsels the authority to resolve petitions involving more than minor misconduct and consent disbarments by some form of a consent to discipline. Through the use of various consent to discipline procedures, bar counsels in those jurisdictions have resolved 25-50% of the prosecutions in their jurisdictions (see Appendix F).

The Committee rejected a consent to discipline process that involved either plea negotiations of the sort that are such an important part of the criminal justice system or negotiated settlements that are essential to disposition of ordinary civil litigation. The Committee also rejected the notion that a sanction should be mitigated simply because the Respondent consented to discipline. The Committee concluded that a speedy resolution of a disciplinary matter is a benefit in and of itself. Therefore, the Respondent should not further benefit in the form of a reduced sanction for participating in an expedited process. Consequently, we concluded that consent discipline must be consistent with the discipline ordinarily imposed for similar misconduct.

Critics of the current three-tiered system claim that it causes unnecessary delay in the resolution of uncontested cases and that it should be streamlined by expanding the existing consent to discipline provisions. Any expansion of the existing consent to discipline procedures must maintain the integrity and transparency of the current disciplinary system. Thus, the Committee explored mechanisms that other jurisdictions have implemented to ensure

transparency in their consent to discipline process. Illinois achieves transparency by requiring that all consent to discipline cases be presented in a public hearing that includes the participation of the Complainant. In addition, the hearing transcript, the recommended disposition and the disciplining order are all part of the public record. These are critical elements for any consent to discipline process.

In developing a process that permits consent to discipline, the Committee also considered how to handle the facts to which a Respondent would stipulate in his/her affidavit in support of a consent to discipline petition in the event that the consent to discipline petition was not subsequently approved.[17] The Committee did not favor the Illinois process under which a Respondent's affidavit is deemed null and void if the consent to discipline is rejected, and the stipulated facts cannot be used in future proceedings.

The Committee rejected the Illinois model because we strongly believe that a Respondent who swears to the accuracy of certain facts is bound by that oath. The Committee also believed that it would be unfair to require a Respondent to submit an affidavit in the consent to discipline petition and then if the BPR rejects the consent to discipline petition, allow OBC to use the affidavit as affirmative evidence to satisfy its burden of proving the misconduct. To do so would be to deny the Respondent his/her right to require OBC to prove its case.

In contrast to the Illinois model, the California model binds the parties to the stipulated facts, regardless of whether its Supreme Court rejects or changes the conclusions of law or the disposition. In California, neither the Respondent nor the disciplinary prosecutor can recant the facts to which he/she has stipulated, except where the court grants relief from stipulated facts to

[17] The Committee notes that the proposed rule does not preclude the parties from reconstituting the agreement after rejection, if that can be effectuated without engaging in plea bargaining.

prevent a miscarriage of justice or for other extraordinary reasons.[18] In addition, neither party may introduce evidence to prove or disprove stipulated facts. The Committee drew from the California procedure in that we concluded that it is more consistent with the core values of our disciplinary system to require an attorney to be bound by facts to which he or she swore to under oath.

Recommendation

The Committee recommends that Rule XI be amended to permit OBC and the Respondent to consent to discipline in any misconduct case that does not present a legal issue of first impression and the range of comparable discipline has been established. These cases should be adjudicated in an expedited fashion as described below.

The Committee recommends the adoption of a rule that would prohibit the OBC from using the Respondent's affidavit to satisfy its burden of proof of the alleged misconduct. However, the OBC may prove the misconduct averred to in the Respondent's affidavit with evidence independent of the affidavit. The OBC could use the sworn affidavit, if necessary and if the Respondent testifies, to impeach the testimony of the Respondent.

The consent to discipline process should not be available in cases that present legal issues of first impression and/or where a range of comparable discipline has not been established. It should only be available in cases where there is precedent addressing the legal issues; where there is an established range of discipline for similar misconduct; and where the proposed discipline is within the established range.

Finally, the consent to discipline should be detailed and the orders should be available as precedent for purposes of determining comparable sanctions in other disciplinary cases.

[18] Under the California procedure the sworn affidavit may be used for some purposes even if a decision maker rejects the consent discipline. Rule 131, Title II of California's State Bar Court Proceedings.

Proposed Process

The Office of Bar Counsel would investigate a docketed complaint. At any time after a complaint is docketed, OBC or the Respondent could initiate the consent to discipline process. The consent to discipline process could also be initiated by a Contact Member during his/her review of OBC's file when a charging petition is proposed by OBC. The Contact Member may suggest that OBC and the Respondent consider the use of a consent to discipline petition if his/her review of the file suggests that there is no genuine dispute in the case with respect to the facts and the alleged misconduct.

The Office of Bar Counsel and the Respondent shall prepare a Joint Consent to Discipline Petition ("Consent Petition") including:

1. A statement of the complaint that brought the matter to OBC's attention;
2. A stipulation to the facts and charges, including the disciplinary rules that have been violated, as agreed by OBC and the Respondent; and
3. An agreed upon sanction, including an analysis of comparable precedent and circumstances in mitigation or aggravation.

The Respondent shall attach to the Consent Petition an affidavit similar to the affidavit required in the current rule for disbarment by consent. The affidavit sworn by the Respondent would include averments that:

1. The attorney's consent is freely and voluntarily rendered, and the attorney is not being subjected to coercion or duress, and is fully aware of the implications of consenting to discipline;
2. The attorney is aware of the currently pending investigation, or proceeding involving allegations of misconduct;
3. The attorney acknowledges that the material facts set forth in the Consent Petition are true and form the basis of the alleged misconduct;

4. The attorney submits to the consent to discipline because the attorney believes that, if disciplinary proceedings based on the alleged misconduct were brought, the attorney could not successfully defend against the allegations.

In addition, the attorney may include in his or her affidavit any facts in mitigation. Bar Counsel may include with the Consent Petition a statement setting forth admissible evidence of any facts in aggravation.

If the Consent Petition is submitted before the OBC files a section 8(c) petition or after the OBC has filed a section 8(c) petition but before the original Hearing Committee concludes a hearing, the Consent Petition along with OBC's complete investigative file shall be reviewed by a Contact Member.[19] The Contact Member would be charged with reviewing the file to ensure that all misconduct in the investigative file or in the section 8(c) petition, if one exists, has been identified and is supported by admissible evidence included in the Consent Petition and that no plea bargain has been made in order to agree to the consent to discipline and the agreed upon sanction. If the Contact Member finds admissible evidence of facts substantiating charges of misconduct that are not included in the Consent Petition, the Contact Member will not approve the Consent Petition and will return the file to OBC for further revision of the Consent Petition or for disposition of the case under the traditional hearing process.

If the Contact Member approves the filing of the Consent Petition, the Consent Petition will be assigned for a hearing to a new Hearing Committee other than the original Hearing Committee that began a hearing on the section 8(c) petition (except where the hearing on the section 8(c) petition was completed). The Consent Petition would be provided to the new Hearing Committee and to the Complainant prior to the proceeding.

[19] A Rule XI, section 8(c) petition is the petition filed by OBC, after approval by a Contact Member, which initiates the prosecution of an original case.

The Hearing Committee Chairperson would schedule a hearing on the Consent Petition as soon as possible. The hearing would be a public proceeding on the record with OBC and the Respondent present. The Complainant would be provided notice of the hearing and, if present at the hearing, would be available to respond to questions from the Hearing Committee. The purpose of providing notice of the consent to discipline hearing to a Complainant is to provide transparency of a consent to discipline proceeding to the public. This provision differs from a section 8(c) petition proceeding, where the Complainant is not provided notice of the hearing before a Hearing Committee.

The Hearing Committee would be required: (1) to determine whether the Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Consent Petition and agreed to the sanction that is set forth in the Consent Petition; (2) to determine whether the consent to discipline has disposed of all of the issues of alleged misconduct for which there is appropriate evidentiary support presented in the complaint and charged in the section 8(c) petition, if filed; and (3) to determine facts relevant to the recommended sanction, including evidence that would tend to mitigate or aggravate the sanction recommendation and any other information necessary for the Hearing Committee to make findings and recommendations on the Consent Petition. The Hearing Committee may inquire of the Complainant's view on the Consent Petition and the agreed upon sanction, if the Complainant is present at the hearing. At the conclusion of the hearing, the Hearing Committee shall place on the record its findings and conclusions and either its recommendation that the Consent Petition should be approved by the BPR or its decision that the Consent Petition is rejected. If the Hearing Committee recommends that the Consent Petition should be approved, it will file the consent to discipline record, including the transcript of the hearing, with the BPR for its review.

If the Hearing Committee concludes that the attorney's consent is knowing and voluntary, the BPR may approve the Consent Petition if it does not raise any legal issues of first

impression and if the recommended sanction is consistent with the discipline ordered in cases involving similar misconduct. If the BPR accepts the recommended sanction, it will issue a brief order imposing the sanction if it does not require a showing of fitness to practice as a condition of reinstatement. If the recommended sanction requires a showing of fitness to practice before reinstatement, the BPR will issue a Report in support of the Consent Petition, and transmit its Report along with the record of the Consent Petition to the Court and issue a temporary suspension order pursuant to section 9(c) of Rule XI.

The BPR will reject the Consent Petition if the BPR concludes that there is not substantial evidence of record to support a finding made by the Hearing Committee, or if the BPR concludes that the sanction in the Consent Petition is not consistent with sanctions imposed in comparable cases, or if it finds that the underlying case raises legal issues that are ones of first impression. The BPR shall issue an order including its reasons for rejecting the Consent Petition and referring the case to OBC or the original Hearing Committee that had been assigned to conduct a hearing on the section 8(c) petition, if one had been approved by a contact member, for proceedings pursuant to the BPR Rules. If the BPR concludes that the sanction that was consented to is not comparable, OBC and the Respondent may jointly petition the BPR to impose the sanction that the BPR finds to be comparable. If the BPR rejects a Consent Petition that was filed before OBC issued a section 8(c) petition, the BPR will remand the case to OBC. If the BPR rejects a Consent Petition that was filed after an OBC section 8(c) petition was approved by a Contact Member, the BPR will remand the case to the original Hearing Committee that had been assigned to conduct a hearing on the section 8(c) petition or refer it to a new Hearing Committee if one was not originally assigned. The case will then proceed to a traditional hearing pursuant to BPR Rules. The Hearing Committee assigned to hear a contested section 8(c) petition will not be a committee that heard a Consent Petition, except where the original Hearing

Committee had heard all of the evidence involving the section 8(c) petition prior to considering the Consent Petition.

In the proceeding before the Hearing Committee after a Consent Petition is rejected, OBC can use the facts set forth in the Respondent's affidavit only for impeachment purposes, if the Respondent chooses to testify. Neither OBC nor the Respondent may appeal the decision on the Consent Petition by the Hearing Committee to the BPR. If the BPR rejects a Consent Petition, either OBC or the Respondent may appeal the rejection of the petition to the Court, but only after the BPR has decided the case involving the section 8(c) petition.

The Committee concludes that it would be fair for the original Hearing Committee to consider a Consent Petition if OBC and the Respondent reach an agreement on a consent to discipline after the original Hearing Committee concludes the hearing on the section 8(c) petition and makes an oral announcement of its preliminary determination of whether a violation of a disciplinary rule has been found but before the original Hearing Committee issues a Report on the hearing. The original Hearing Committee must consider the four criteria set forth above in reviewing the Consent Petition. If necessary, the Hearing Committee may schedule a hearing to consider the four criteria set forth above. If the original Hearing Committee does not make an oral announcement of a preliminary determination of whether it finds a violation of a disciplinary rule at the close of a hearing pursuant to Board Rule 11.10 and a consent to discipline is submitted by OBC and the Respondent, the Consent Petition will be submitted to a new Hearing Committee.

The Hearing Committee will not file a Report on its hearing of the section 8(c) petition unless the BPR rejects the consent to discipline. The BPR will decide the case based on the consent to discipline record and will approve the Consent Petition if it satisfies all of the criteria set forth above.

If OBC and the Respondent reach an agreement on a consent to discipline after the original Hearing Committee has issued a Report on the hearing but before the case is considered by the BPR, the Consent Petition shall be filed with the BPR for its review and consideration. The BPR will review only the Consent Petition based on the record before the Hearing Committee (and without considering the Hearing Committee's Report).

The Consent Petition, the proceeding involving the petition, and the disciplining order in a consent to discipline case shall be a matter of public record. The order shall contain a description of the agreed-upon facts and misconduct, the Rules of Professional Conduct that were violated, and the sanction that was imposed. This detail will allow the orders to be cited as precedent for purposes of determining comparable sanctions in other disciplinary cases.

Finally, the Committee recommends that the BPR submit to the Court, at least twice a year, a summary of the cases disposed of by Consent Petitions.

Proposed Rule

Rule XI, Section 8. Investigations and Hearings

(b) *Disposition of investigations.*

Upon the conclusion of an investigation, Bar Counsel may, with the prior approval of a Contact Member, dismiss the complaint, informally admonish the attorney under investigation, institute formal charges, or enter into a consent to discipline petition to be reviewed by a Hearing Committee and the Board; or may, with the prior approval of a member of the Board on Professional Responsibility, enter into a diversion agreement...

Rule XI, Section 12.1: Consent to Discipline

(a) *Availability of consent to discipline.*

An attorney who is the subject of an investigation or a pending proceeding based on allegations of misconduct may consent to discipline other than disbarment at any point prior to the issuance of final discipline. Consent to discipline may resolve original investigations that do

not present matters of first impression on legal issues, provided that any proposed discipline is within the range of discipline ordinarily imposed for similar misconduct and does not involve any promise by the Office of Bar Counsel to dismiss charges that have been brought or to forego bringing charges that have not been brought already. Neither a Hearing Committee nor the Board may inquire of Bar Counsel or the Respondent whether the parties considered entering into a consent to discipline, nor may a Hearing Committee or the Board consider in imposing a sanction whether the Respondent offered or declined to enter into a consent to discipline.

(b) *Documentation of consent to discipline.*

A consent to discipline must be documented by a joint consent to discipline petition, and an affidavit of the attorney who is the subject of the investigation or pending proceeding. The documentation of a consent to discipline at any stage of a disciplinary proceeding shall be submitted to the Executive Attorney.

(1) A consent to discipline petition shall include:

(i) A statement of the nature of the matter that was brought to Bar Counsel's attention;

(ii) A stipulation of facts and charges, including citation to the Rules of Professional Conduct that the attorney has violated, and

(iii) An agreed upon sanction, with a statement of relevant precedent and any circumstances in aggravation or mitigation of sanction that the parties agree should be considered.

(2) The consent to discipline petition shall be signed by both Bar Counsel and the attorney being disciplined.

(3) The attorney shall submit in support of a consent to discipline petition an affidavit that includes averments that:

(i) The consent is freely and voluntarily rendered, and the attorney is not being subjected to coercion or duress, and is fully aware of the implications of consenting to discipline and Bar Counsel has made no promises to the attorney other than what is contained in the consent to discipline petition;

(ii) The attorney is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct;

(iii) The attorney acknowledges that the material facts upon which the allegations of misconduct set forth in the accompanying consent to discipline petition are true; and

(iv) The attorney submits to the consent to discipline petition because the attorney believes that the attorney cannot successfully defend against disciplinary proceedings based on the alleged misconduct.

(4) The affidavit may recite any other facts that the attorney chooses to present in mitigation of sanction.

(c) *Review Factors to be considered by Contact Member, Hearing Committee and Board.*

A Contact Member, the Hearing Committee and the Board shall consider the following four factors in reviewing a consent to discipline petition:

(i) the attorney entered into the consent to discipline knowingly and voluntarily;

(ii) the facts support the admissions of misconduct;

(iii) the sanction is consistent with the range of discipline imposed for similar misconduct; and

(iv) the matter does not involve a legal issue of first impression.

(d) *Contact Member review.*

Where Bar Counsel and the attorney enter into the consent to discipline either before a Rule XI, section 8(c) petition has been issued in the matter or after a section 8(c) petition has

been referred to a Hearing Committee but before the Hearing Committee has held a hearing, the Executive Attorney shall assign the consent to discipline to a Contact Member for review and approval. Bar Counsel shall make the complete investigatory file available to the Contact Member. The Contact Member shall review the file and approve the consent to discipline if all misconduct that is substantiated in the investigative file or substantiated and charged in the section 8(c) petition (if Bar Counsel has prepared one at the time of the consent to discipline) has been included in the consent to discipline. If the Contact Member finds substantiated allegations of misconduct (whether in the file or in a section 8(c) petition) that is not included in the consent to discipline, the Contact Member will not approve the consent to discipline and will return the file to Bar Counsel for revision of the consent to discipline petition or further proceedings under section 8.

(e) *Hearing Committee review.*

(1) Review of consent to discipline before hearing record is closed.

Upon approval of a consent to discipline by a Contact Member under section 12.1(c), the Executive Attorney shall assign the consent to discipline petition and attorney affidavit to a Hearing Committee for review. Where a section 8(c) petition in the matter already has been approved by a Contact Member and assigned to a Hearing Committee but the hearing has not been completed, the consent to discipline petition and affidavit shall be assigned to a new Hearing Committee. The section 8(c) proceeding shall be held in abeyance until the BPR has decided the consent to discipline petition.

(2) Review of consent to discipline after Hearing Committee record has been closed.

If Bar Counsel and the attorney file a consent to discipline petition with the Executive Attorney after the original Hearing Committee has completed a hearing on the merits of a section 8(c) petition but before the Hearing Committee issues its Report and

Recommendation, the Executive Attorney shall immediately submit the consent to discipline to the original Hearing Committee for review. In conducting its review, the original Hearing Committee shall only consider the consent to discipline petition and the evidence submitted with it and shall not consider the record involving the section 8(c) petition.

(3) Hearing Committee process.

A Hearing Committee receiving a proposed consent to discipline shall hold a limited evidentiary hearing. The Office of Bar Counsel shall provide to any Complainant in advance of such a hearing the consent to discipline petition and affidavit, with notice of the hearing and of the Complainant's opportunity to be present. The Hearing Committee shall hold a public hearing on the record. The Hearing Committee may question Bar Counsel, the attorney, the complainant or any other witness as to the facts, violations, and agreed upon sanction. The Hearing Committee reviewing the consent to discipline shall place on the record its recommendation of approval of the consent to discipline if it finds that:

(a) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the consent to discipline petition and agreed to the sanction that is set forth in the consent to discipline petition; and

(b) The sanction is consistent with the range of discipline imposed for similar misconduct, including any findings of fact in aggravation or mitigation of sanction that the Hearing Committee considers in reaching the conclusion regarding consistency of sanction (but without considering the fact of consent to discipline as a mitigating factor).

A Hearing Committee that has already held a hearing on the merits of the section 8(c) petition before the consent to discipline petition is filed shall place on the record its findings and recommendation only on the consent to discipline petition, unless it rejects

the consent to discipline petition in which case it shall file a report with the Board only on the hearing on the merits of the petition filed pursuant to section 8(c).

If the Hearing Committee held a hearing on the merits and it rejects the consent to discipline petition, it shall notify Bar Counsel and the Respondent of its rejection and provide Bar Counsel and the Respondent the opportunity to revise the consent to discipline petition. The Hearing Committee would review any revised consent to discipline petition presented by Bar Counsel and the Respondent.

(f) *Board review.*

A Hearing Committee's recommendation for approval of a consent to discipline petition shall be reviewed by the Board. If a Hearing Committee has filed its report and recommendation on a section 8(c) petition and Bar Counsel and the attorney thereafter submit a proposed consent to discipline petition, the Board shall review the consent to discipline petition based on the record before the Hearing Committee involving only the consent to discipline petition and without the benefit of further filings or the Hearing Committee's Report and Recommendation concerning the section 8(c) petition. The Board shall approve the consent to discipline petition if it determines that there is substantial evidence of the factors set forth in section (c) of this Rule.

If the Board accepts a recommended consent to discipline petition involving a sanction that does not include a requirement that the attorney show fitness before reinstatement, the Board shall issue an order imposing the recommended sanction. If the Board accepts a recommended consent to discipline petition involving a sanction that includes a requirement that the attorney demonstrate fitness before reinstatement, the Board shall issue a Report and Recommendation submitting the consent to discipline to the Court for imposition of a final sanction and an order of temporary suspension as provided by section 9(c) of Rule XI.

(g) *Restrictions on approval of consent to discipline.*

Neither the Hearing Committee nor the Board may *sua sponte*, modify a proposed consent to discipline. Neither the Hearing Committee nor the Board may approve a consent to discipline if the consent to discipline petition does not include all of the substantiated and charged misconduct included in the section 8(c) petition that was approved by a Contact Member.

(h) *Resumption of proceedings after rejection of a consent to discipline.*

If the Hearing Committee or the Board rejects a proposed consent to discipline, the Executive Attorney shall assign the proceeding so it will resume as if no consent to discipline had been submitted unless a hearing on the merits has already been completed. If the section 8(c) petition had not yet been assigned to a Hearing Committee, it will be assigned to a new Hearing Committee from the one that considered the consent to discipline petition. No Board review is available from the rejection of a consent to discipline by a Hearing Committee. Either party may seek Court review from the rejection of a consent to discipline by the Board, but only after the Board has decided the section 8(c) petition. If the proceeding is resumed after a consent to discipline has been rejected, Bar Counsel may only use an admission in the consent to discipline affidavit for impeachment purposes.

(i) *Public record of proceedings.*

The proceeding involving a consent to discipline petition and the order disciplining an attorney on consent to discipline shall be a matter of public record. The order shall include a description of the misconduct, the specific Rule of Professional Conduct that was violated and the sanction that was imposed. The consent to discipline petition and the attorney's affidavit supporting discipline by consent shall be available to the public. Any order imposing discipline based on a consent to discipline may be cited as precedent for purposes of determining comparable sanctions in other disciplinary cases involving any attorney.

(j) *Report to the Court.*

The Board shall submit to the Court, at least twice a year, a list of cases disposed of by consent to discipline. The list shall include a description of the charges, a brief summary of agreed to facts and the sanction imposed.

B. Reciprocal Discipline

Background

Rule XI, § 11 governs reciprocal discipline. Reciprocal discipline cases are matters based on discipline imposed on a member of the D.C. Bar by a foreign disciplining court. Under the existing procedure, the Court refers the matter to the BPR for consideration and a recommendation to the Court. If an attorney has been suspended or disbarred by a foreign jurisdiction, the Court temporarily suspends the attorney while that matter is under consideration.

The BPR Rule 8.1 requires OBC to file a statement with the BPR setting forth its position on whether reciprocal discipline is appropriate. The Office of Bar Counsel's statement addresses the five factors set forth in Rule XI, § 11 that may give rise to an exception to the presumption of reciprocal discipline. The Office of Bar Counsel files this statement without the benefit of knowing whether the Respondent contests any factor. In 2002, the BPR handled 29 reciprocal discipline matters, which constituted 37% of its recommendations. In 2003, the BPR handled 24 reciprocal discipline matters which constituted 18% of its recommendations. As of December 31, 2004, the BPR had pending 51 reciprocal discipline matters under various stages of consideration. In 2002, OBC handled 31 reciprocal discipline matters, compared to 27 in 2003 and 58 in 2004. In 2005, OBC handled 61 reciprocal discipline matters (see Appendix G).

Recommendation

The Committee recommends that Rule XI be amended to provide that upon receipt of a certified copy of an order of discipline from a foreign disciplining court, the Court issue a show cause order, directing the attorney to show cause directly to the Court within 30 days as to why the identical discipline imposed in the foreign jurisdiction should not be imposed by this Court. If Rule XI were so amended, the Court would no longer refer the matter to the BPR for its consideration and recommendation to the Court. The Court could refer a matter to the BPR in exceptional circumstances, such as where there is no counterpart in the District of Columbia to

the discipline imposed by its sister jurisdiction. In such case, OBC would file a pleading with the Court about the issue.

The adoption of this recommendation would allow the resources of the OBC and the BPR to be directed elsewhere, including original jurisdiction cases.

Proposed Rule

Rule XI, Section 11. Reciprocal Discipline

(b) *Notification.*

...Upon learning that an attorney subject to the disciplinary jurisdiction of this Court has been disciplined by another disciplining court, Bar Counsel shall obtain a certified copy of the disciplinary order and file it ~~with the Board and~~ with this Court...

(c) *Standards for reciprocal discipline.*

...Unless there is a finding by the Court, or if referred to the Board, by the Board under (1), (2), or (5) above that is accepted by the Court, a final determination by a disciplining court outside the District of Columbia or by another Court in the District of Columbia that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in this Court.

(d) *Temporary suspension and show cause order.*

Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by a disciplining court outside the District of Columbia or by another court in the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding. ~~and directing the attorney to show cause within thirty days from the date of the order why the identical discipline should not be imposed. The attorney's response to the order to show cause shall be filed with the Board, which for good cause shown may extend the time for filing a response for a period not to~~

~~exceed thirty days.~~ The Court shall forthwith issue an order to the attorney to show cause why identical reciprocal discipline should not be imposed. The attorney shall file a response to the show cause order within thirty days of the date of the order. Bar Counsel may reply to the attorney's response to the show cause order no later than fifteen days after service or may object to the imposition of reciprocal discipline based upon the factors set forth in Rule XI § 11(c) not later than fifteen days after the attorney's response was due. Where identical discipline is not available in the District of Columbia, Bar Counsel shall file a pleading with the initial filing of the certified copy recommending an appropriate non-identical sanction or requesting that the matter be referred to the Board within fifteen days after the attorney's response was due. Bar Counsel shall mail a copy of its pleading to the attorney.

~~(e) *Recommendation by the Board.*~~

(~~f~~) (e) *Action by the Court.*

~~(f) (1) When no opposition to the recommendation of the Board has been timely filed, and when the Court does not direct that the matter be considered under paragraph (2) of this subsection, the Court will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing an opposition.~~

~~(f) (2) In matters not falling under paragraph (1) of this subsection,~~ The Court shall impose the identical discipline unless the attorney demonstrates, or the Court finds on the face of the record on which the discipline is predicated, by clear and convincing evidence, that one or more of the grounds set forth in subsection (c)~~(b)~~ of this section exists. If the Court determines that the identical discipline should not be imposed, it shall enter such order as it deems appropriate, including referral of the matter to the Board for its further consideration and recommendation. If the Court determines that it would benefit from a review by the Board, it shall enter an order referring the matter to the Board for its consideration and recommendation.

(g) ~~*Action when reciprocal discipline is not recommended.*~~

(~~h~~)(f) *Action when identical reciprocal discipline is not imposed.*

If the Court concludes that identical reciprocal discipline should not be imposed, it shall accept the facts found by the disciplining court unless it has made a finding under (1), (2) or (5) of subsection (c) of this Section. If the Court has made a finding pursuant to one of these subsections, the Court shall direct Bar Counsel to institute such proceedings as may be appropriate. In the absence of such a finding, the Court shall impose final discipline.

(g) Present § (h) remains the same but is relettered.

C. Failure to Respond to an Order of the BPR and Failure to Answer a Petition

Background

The Committee considered two circumstances where a Respondent's failure to participate in the disciplinary process unnecessarily burdens the resources of the system and the time of the staff and the volunteers: 1) where a Respondent fails to respond to an Order of the BPR, and 2) where a Respondent fails to respond to formal charges (a petition). Of the 60 matters that were prosecuted by OBC in 2003, 19 of those matters included charges for failure to cooperate during the investigation. In 25 of the 60 matters prosecuted, the Respondent failed to answer the petition. Of the 24 matters that were prosecuted by OBC in 2004, five of those matters included charges for failure to cooperate during the investigation. In seven of the 2004 cases, the Respondent failed to answer the petition, but in one of the cases, the Respondent appeared at the hearing and stipulated to facts before the Hearing Committee. In one case, the Respondent cooperated in the investigation but failed to file an answer to the petition. Of the 22 matters that were prosecuted by OBC in 2005, five of those matters included charges for failure to cooperate during the investigation. In those five cases, the Respondent failed to answer the petition (see Appendix H).

If a Respondent fails to respond to a request for information in the course of OBC's investigation, the OBC generally files a motion with the BPR to compel a response. On occasion, OBC may also seek an order from the Superior Court of the District of Columbia to compel a response pursuant to a subpoena. If a Respondent fails to respond to OBC, the BPR Order and/or a Superior Court Order, OBC charges the attorney with a failure to cooperate, a

violation of Rules 8.1(b) and 8.4(d) of the Rules of Professional Conduct.[20] The Office of Bar Counsel's practice has been to charge the Respondent with a failure to cooperate count and not to pursue the underlying substantive allegations. OBC completes its investigation of the substantive allegations to the extent possible, and the case is administratively dismissed pending receipt of the Respondent's response or Respondent's Petition for Reinstatement. If the Hearing Committee finds a failure to cooperate violation and the Respondent has a prior history of similar misconduct, the recommended sanction is typically a short-term suspension or a suspension until the Respondent files a response to the petition. In some cases, the Respondent may also be required to prove fitness before reinstatement.

If a Respondent fails to answer OBC's Petition and Specification of Charges, the procedures of BPR Rule 7.7 govern. If the petition is based upon an oath made upon personal knowledge, the facts are deemed to be established as alleged in the petition. If the petition is based upon an oath made upon other than personal knowledge, OBC must present competent proof of the factual allegations in the petition. The Respondent who has not filed an answer to a petition may attend the hearing, cross-examine OBC's witnesses, testify on his/her own behalf (but may not present the testimony of others or present non-testimonial evidence), file post-hearing briefs on all issues if asked to do so by the Hearing Committee and present a plea or testimony in mitigation of sanction. Under BPR Rule 11.11, the failure to proffer evidence at the evidentiary hearing operates as a waiver of the right to present such evidence unless otherwise ordered by the BPR for good cause shown pursuant to a motion filed prior to the date of oral argument in the formal proceedings before the BPR.

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[20] See Comment 3 to District of Columbia Rules of Professional Conduct Rule 8.4(d). The Court's Rules Governing the D.C. Bar also address an attorney's duty to respond to disciplinary inquiries: Rule XI § 8(a) states that an attorney has the obligation to respond to OBC's written inquires during the investigative stage and that the attorney's failure to respond is grounds for OBC to ask the BPR for an appropriate order; Rule XI § 8(e) requires the Respondent, when charged by OBC, to file an answer to the petition within 20 days of service of the petition. Rule XI § 2(b) states that the failure to respond to a written inquiry of the Court or the BPR without asserting in writing grounds for refusing to do so constitutes grounds for discipline; Rule XI § 2(c) states that the failure to respond to an inquiry or comply with an order is not a violation, if the order is reversed, vacated or set aside during the process.

The Hearing Committee and the BPR may decide a case without participation by the Respondent. In such a case, however, the burden of proving any violation by clear and convincing evidence based on sworn proof remains with OBC. See *In re Williams*, 464 A.2d 115, 118-119 (D.C. 1983).

Currently, under Rule XI § 3(c), the BPR Chairperson or Vice-Chairperson may authorize the BPR to petition the Court for a temporary suspension or probation if the petition is supported by an affidavit showing that the attorney about whom the petition is filed appears to pose a substantial threat of serious harm to the public. Upon a proper showing, the Court may issue an order temporarily suspending the attorney or temporarily placing the attorney on probation, or both. If the order restricts the attorney's maintenance or use of a trust account, the order can serve as an injunction barring the bank from making further payments from the account on any obligations, except as provided by the Court. The order precludes the attorney from accepting new cases or other legal matters but does not preclude the attorney from continuing to represent existing clients during the thirty-day period after issuance. Rule XI § 3(d) provides that the temporary suspension can be lifted by a petition filed with the Court. The petition is set for an immediate hearing before the BPR or a panel of three members of the BPR, either of which must submit a Report to the Court for its consideration.

The Committee focused on recommending a procedure that would expedite the proceedings in cases involving serious misconduct whereby an attorney's refusal to respond to OBC's legitimate inquiries delays the time when the alleged misconduct is considered by the disciplinary system. Such cases often force OBC to devote resources to requiring a response that could be more productively allocated to handling other cases. An attorney's failure to respond to a BPR or Court order and an attorney's failure to respond to a petition seriously obstruct the system's capacity for self-regulation on which the integrity of the disciplinary system depends.

However, the Committee approached the failure to respond to a BPR or Court order and the failure to answer a petition differently.[21]

1. Failure to Respond to a Pre-Petition Order of the BPR or the Court

In considering its goal to develop recommendations that are efficient, effective and fair, the Committee concluded that for self-regulation to work, attorneys must respect the system and respond accordingly. The Committee determined that in order to maintain the integrity of the disciplinary system, it is critical to require an attorney accused of serious misconduct to respond to a BPR Order in an effort to secure the attorney's participation in the process to resolve allegations of misconduct. The Committee believes that there should be a serious consequence if the attorney fails to participate in the process where there are allegations of serious misconduct.

The Committee considered whether in situations involving allegations of serious misconduct a temporary suspension would be appropriate. The Committee also considered whether such a temporary suspension for failure to respond to a BPR Order, even if appropriate in some circumstances, is too severe where it would exceed the sanction for the underlying alleged misconduct at issue.

The Committee believes that § 3(c) of Rule XI should include additional authority for the temporary suspension of an attorney who fails to respond to a pre-petition Order of the BPR to enable the disciplinary process to operate with the requisite integrity. The Committee concluded that amending § 3(c) to allow the Court to issue a temporary suspension order where an attorney fails to respond to a BPR Order is an appropriate and necessary procedural mechanism to promote attorney cooperation in cases involving allegations of serious misconduct.

Pursuant to the existing § 3(c), the BPR must attach to its petition for the temporary suspension of an attorney an affidavit showing that "an attorney appears to pose a substantial threat of serious harm to the public." The proposed revision to § 3(c) would require the BPR to

[21] For a comparison of interim and default suspension rules in other jurisdictions, see Appendix I.

demonstrate that the underlying complaint alleges serious misconduct, that the Respondent had not responded to a BPR Order directing a response to OBC's legitimate inquiries, and that OBC had proven notice to the Respondent or that publication was made. The proposed rule sets forth a definition of the term "serious misconduct." Serious misconduct includes allegations of misappropriation, commingling, criminal conduct (except for criminal contempt), overdraft of trust accounts, and three or more incidents of neglect that establish a pattern of serious neglect in the pending investigation.

An attorney temporarily suspended pursuant to the new procedure would be required to comply with the requirements set forth in § 14 of Rule XI, just as an attorney suspended pursuant to the existing rule is required to do. Pursuant to § 14(f), an order of suspension is effective thirty days after entry of the order. If the attorney responded to the BPR Order prior to the effective date of the order, the suspension would not go into effect. The Court order suspending the attorney should provide that the attorney is temporarily suspended until Bar Counsel files a notice with the Court that the attorney filed a response with OBC. In this manner, the attorney's reinstatement is automatic when he or she files a response. The OBC shall immediately file a notice with the Court after receipt of an attorney's response. This mechanism satisfies the purpose of providing for a temporary suspension for an attorney who has failed to respond to a pre-petition BPR Order, that is, to secure a response from the attorney.

The suspension would be a matter of public record and accessible on the D.C. Bar's website. The order and the web page notice of suspension would not include confidential information relating to the underlying Complaint but would only serve to inform the Bar and the public that the Respondent is suspended based upon his/her failure to respond to an Order of the BPR.

2. Failure to File Answer to Petition

The Committee also considered the use of a default judgment against attorneys who fail to answer the petition filed by OBC. The Committee is interested in protecting the consuming public and preventing a Respondent from delaying the imposition of discipline simply by declining to respond to charges.

The Committee reviewed the best practices of other jurisdictions to determine how they handle these types of cases. The Committee found that some jurisdictions handle these cases by defaults. Representatives of the Michigan disciplinary system informed the Comparable Jurisdiction Subcommittee that 20-30% of their cases involved defaults by Respondents.[22] A default judgment means that the bar counsel may go forward with a disciplinary case without the respondent's participation. Moreover, a default judgment is entered after the bar counsel proves that the respondent received notice of a petition charging allegations of misconduct and failed to respond to the petition. After a default judgment is entered, the burden of proof to demonstrate the substantive allegations by clear and convincing evidence remains with the bar counsel.

Recommendation

A. Failure to Respond to an Order of the BPR

We recommend modifying § 3 of Rule XI by including language in § 3(c) and (d) to allow the Court to issue an order temporarily suspending an attorney who fails to provide a response to an Order of the BPR in cases involving allegations of serious misconduct. The Committee considers an attorney's assertion in writing grounds for refusing to respond to constitute a response. If and when the attorney responds to the BPR Order, the temporary suspension would be lifted, and the investigation would proceed in its normal course. OBC would immediately notify the Court of the attorney's response.

[22] Rule 9.115(D)(2) of the Michigan Court Rules of 1985 provides for defaults when an attorney fails to file an answer to a petition charging professional misconduct. See also Colorado Supreme Court Rule 251.15.

The Committee also considered how to handle the underlying case during the period of suspension for failure to respond to the BPR's Order. The Committee decided that OBC should have the discretion to determine whether or not to proceed with formal charges on the underlying complaint, based on its investigation. (Compare BPR Rule 14.7 (BPR may enter a temporary order holding in abeyance any formal disciplinary proceeding because of the attorney's disability or addiction)). The Committee thus recommends that the BPR adopt a rule giving OBC discretion to determine whether to hold a formal disciplinary proceeding in abeyance or to proceed with formal charges where an attorney has been temporarily suspended for failure to respond to an order of the BPR and/or failure to file an answer to the petition.

Proposal for Temporary Suspension Where a Respondent Fails to Respond to an Order of the BPR About a Bar Counsel Investigation of Alleged Serious Misconduct

1. The Office of Bar Counsel will send the Respondent an initial letter requesting a response. The letter along with the complaint will be sent by regular mail to the preferred address registered with the D.C. Bar (B Letter). The letter will also contain a notice that failure to respond may result in discipline and/or a temporary suspension and include information about the Bar's services and programs.
2. If the Respondent fails to reply to the initial letter, OBC will send a follow-up letter by regular mail to all known addresses (D Letter). The letter will state that it is the second request and contain a notice that failure to respond may result in discipline and/or a temporary suspension and information about the Bar's services and programs.
3. If the Respondent still fails to provide a response, except if the Respondent asserts in writing grounds for refusing to respond, OBC may file a Motion to Compel with the BPR setting forth the efforts to contact the Respondent. The motion shall state whether the Respondent has actual notice of the pending investigation. The

Office of Bar Counsel shall serve a copy of the motion on the Respondent by registered mail.

4. The BPR may issue an order compelling a response if it finds that the Respondent has failed to provide a response to a legitimate request from OBC in an investigation, except if the Respondent asserts in writing grounds for refusing to respond. The Order of the BPR should be personally served on the Respondent, if at all possible, or published if personal service is not feasible.

5. If the Respondent fails to respond to the BPR Order in a case involving allegations of serious misconduct, except if the Respondent asserts in writing grounds for refusing to respond, OBC may move the BPR to file a petition with the Court seeking an order temporarily suspending the attorney for failure to respond to the Order of the BPR. The Office of Bar Counsel shall serve its motion on the Respondent by registered mail or personal service.

6. The BPR may file a petition with the Court seeking the temporary suspension of a Respondent who fails to respond to the BPR Order, where OBC's investigation involves allegations of serious misconduct, except if the Respondent asserts in writing grounds for refusing to respond. The BPR shall attach an affidavit to its petition showing that the underlying complaint alleges serious misconduct, that the Respondent had not responded to OBC's legitimate inquiries, and that OBC had proven notice to the Respondent or that publication had been made. Based on the BPR petition and attached affidavit, the Court may temporarily suspend the respondent.

7. A Court order temporarily suspending a Respondent shall provide that the attorney is suspended until OBC files a notice with the Court that the Respondent filed a response. Immediately after OBC receives a response to the BPR Order,

OBC shall file a notice with the Court stating that the respondent filed a response to the BPR Order. The Respondent shall be reinstated upon his or her filing of a response with OBC.

B. Failure to Answer Petition

We also recommend adding Rule XI § 8(f) to permit default against attorneys who fail to file an answer to the petition involving allegations of serious misconduct. If the attorney files a late answer to the Petition, the Hearing Committee may set aside the default for good cause shown.

Proposed Procedures if a Respondent Fails to Answer Bar Counsel's Petition

1. Once a Contact Member has approved a petition, OBC will effect personal service or cause the publication of notice to the Respondent pursuant to a Court Order.
2. If a Respondent fails to answer the specification of charges set forth in a petition, OBC may move the Hearing Committee Chairperson to enter a default for failure to answer.

3. The Hearing Committee may enter a default judgment based upon the evidentiary showing by OBC that Respondent had actual notice of the petition or that it had caused notice of the petition to be published as approved by the Court and that OBC presented clear and convincing documentary and/or testamentary evidence that the Respondent engaged in the alleged misconduct.[23] The Hearing Committee may also consider evidence in aggravation.

4. A default judgment is not effective until 14 days after the issuance of the Hearing Committee's order. An order entering a default judgment is a part of the Hearing Committee Report to the Board. A Respondent may file a motion with the

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[23] This process is required by the Court's observations on proper procedures in cases that involve default. In *In re Williams*, 464 A.2d 115, 118-19 (D.C.1983), the Court explained:

"It is well settled that disciplinary proceedings are quasi-criminal in nature and that an attorney who is the subject of such proceedings is entitled to procedural due process safeguards. *In re Ruffalo*, 390 U.S. 544, 550, 88 S.Ct. 1222, 1225, 20 L.Ed.2d 117 (1968); *In re Thorup*, 432 A.2d 1221, 1225 (D.C.1981); *In re Burka*, 423 A.2d 181, 185 (D.C.1980) (en banc); *In re Colson*, 412 A.2d 1160, 1164 (D.C.1979) (en banc); *In re Wild*, 361 A.2d 182, 184 (D.C.1976). The procedural requirements which apply in attorney disciplinary proceedings are analogous to those of other "contested cases." *In re Thorup, supra*, 432 A.2d at 1225. The burden of proving the charges rests with Bar Counsel and factual findings must be supported by clear and convincing evidence. *Id.*; Internal Rules of Board on Professional Responsibility, Chapter 8, No. 5; *In re Smith*, 403 A.2d 296, 302 (D.C.1979).

The Hearing Committee conducted no hearings on the charges herein. It received no sworn evidence either physical or testimonial. Relying solely upon Rule XI, § 7(2), it deemed the unsworn "Specification of Charges" as laid out in the Bar Counsel's unsworn petitions to be admitted facts and adopted them pro forma as its findings of fact. Finding multiple violations of the Disciplinary Code, the Hearing Committee then recommended the sanction of disbarment. Thus, resulting from respondent's failure to answer the charges against him, we have a finding of disciplinary violations and a recommendation of disbarment which is not based on any proof under oath. This result cannot withstand a due process attack.

The Hearing Committee, before concluding that disbarment is a proper sanction, should have proceeded with an *ex parte* hearing to establish by sworn evidence that the specification of charges was true. It is true that respondent, by failing to answer, would have by virtue of D.C.App.R. XI, § 7(2), admitted the allegations. This rule presupposes, however, that the admission is one giving weight to sworn evidence--evidence with respect to which the Bar Counsel must carry the burden. As we have previously noted disciplinary proceedings are quasi-criminal in nature. Persons charged with crime in our courts cannot be convicted on default judgments unsupported by proof. Moreover, actual proof must support default judgments in some civil cases (such as divorce decrees or money damages where there is any uncertainty as to the amount of damage). This is the rationale employed by the Supreme Court in *Klapprott v. United States*, 335 U.S. 601, 611-12, 69 S.Ct. 384, 388-89, 93 L.Ed. 266, modified, 336 U.S. 942, 69 S.Ct. 384, 93 L.Ed. 1099 (1949), in setting aside a judgment by default in a denaturalization proceeding.

...

Moreover, because Bar Counsel has not yet met the burden of proving before the Hearing Committee the truth of the specifications, respondent has not waived his right to challenge the merits of these specifications. We, therefore, order this matter remanded to the Committee for a full hearing with all attendant safeguards."

Hearing Committee within this 14-day period showing good cause why the default order should not be entered.

5. A Respondent may subsequently file an answer and a motion to set aside the default order and any Hearing Committee's Report within 90 days of the default order. A Respondent may file a motion to set aside the default order and any Hearing Committee's Report beyond the 90-day period if the Respondent asserts a lack of subject-matter or personal jurisdiction or a claim of manifest injustice.
6. If the Hearing Committee Chairperson grants the motion to set aside the default, the case will be set for hearing.

Proposed Rule

Rule XI, Section 2. Grounds for Discipline

(c) *Review of board orders and inquiries.*

If an attorney objects in writing to an order or written inquiry of the Board, the objection shall be noted, but review of the order or inquiry by the Court shall not be available as permitted by § 9(g) (except as provided in § 18(c) with respect to subpoenas) until all proceedings before the Board have been concluded. If the Board imposes ~~or recommends the imposition of~~ a disciplinary sanction, the attorney may then seek review of the previously challenged order or inquiry by filing an appropriate motion or pleading with the Court…

Rule XI, Section 3. Disciplinary Sanctions

(c) *Temporary suspension or probation.*

(1) On petition of the Board authorized by its Chairperson or Vice Chairperson, supported by an affidavit showing that an attorney appears to pose a substantial threat of serious harm to the public or failed to respond to an order of the Board in a matter, where Bar Counsel's investigation involves allegations of serious misconduct, the Court may issue an order, with such notice as the Court may prescribe, temporarily suspending the attorney or imposing temporary

conditions of probation on the attorney, or both. "Serious misconduct" includes allegations of misappropriation, commingling, criminal conduct, except criminal contempt, overdraft of trust accounts, and three or more incidents of neglect that establish a pattern of serious misconduct in the pending investigation. Any order of temporary suspension or probation which restricts the attorney's maintenance or use of a trust account shall, when served on any bank maintaining an account against which the attorney may make withdrawals, serve as an injunction barring the bank from making further payment from the account on any obligation except in accordance with restrictions imposed by the Court. An order of temporary suspension issued under this subsection shall preclude the attorney from accepting any new cases or other legal matters, but shall not preclude the attorney from continuing to represent existing clients during the thirty-day period after issuance of the order; however, any fees tendered to the attorney during that thirty-day period or at any time thereafter while the temporary suspension is in effect shall be deposited in a trust account, from which withdrawals may be made only as directed by the Court. The order of temporary suspension for failure to respond to a Board order shall not disclose information about the substance of the Complaint against the attorney.

(d) *Dissolution or amendment of orders of temporary suspension or probation.*

An attorney temporarily suspended for failure to file a response to a Board order pursuant to subsection (c) shall be reinstated and the temporary suspension dissolved upon the filing of a response with Bar Counsel. Bar Counsel shall immediately file a notice with the Court and the Board when the attorney has filed a response. An attorney temporarily suspended or placed on probation pursuant to subsection (c) may for good cause request dissolution or amendment of the temporary order by petition filed with the Court, which shall also be served on the Board and on Bar Counsel. A petition for dissolution shall be set for immediate hearing before the Board or a panel of at least three of its members designated by its Chairperson or, in the Chairperson's absence, by the Vice Chairperson. The Board or its designated panel shall hear the petition

forthwith and submit its report and recommendation to the Court with the utmost speed consistent with fairness. Upon receipt of the report, the Court shall consider the petition promptly, with or without a hearing as the Court may elect, and shall enter and appropriate order.

Rule XI, Section 8. Investigations and Hearings

(f) *Failure to answer and default.*

Notwithstanding any action taken pursuant to Rule XI, § 3(e), if the attorney fails to answer a petition as provided by § 8(e) of this rule, Bar Counsel may file a motion for default with the Hearing Committee to which this matter has been assigned; the motion must be supported by sworn proof of the charges in the specification and proof of actual notice of the petition or proper publication as approved by the Court. The Hearing Committee Chairperson may enter an order of default and the petition shall be deemed admitted subject to ex parte proof by Bar Counsel sufficient to prove the allegations based upon documentary evidence, sworn affidavits, and/or testamentary evidence. An order of default is limited to the allegations set forth in Bar Counsel's petition and shall be included in the Hearing Committee's report and recommendation filed with the Board. The Hearing Committee shall issue its report and recommendation based upon Bar Counsel's documentary and/or testamentary evidence or sworn affidavit. An order of default shall not take effect until fourteen (14) days after the date on which the order is issued and shall be vacated upon the granting of a motion filed by the Respondent within such 14-day period showing good cause why the default should not be entered. The Hearing Committee Chairperson shall set aside the default order for failure to answer pursuant to motion filed by the attorney that sets forth good cause within 90 days of the filing of the report and recommendation by the Hearing Committee. A default order may be set aside after the 90 day period upon a showing that a failure to set aside would result in a manifest injustice.

(~~f~~) (g) *Discovery.*

D. Reinstatement Cases

Background

Often, reinstatement proceedings for attorneys who have been disbarred or suspended with a requirement that they show fitness require eighteen months to three years from the time the petition for reinstatement is filed until it is finally decided. This long period for disposition of a petition for reinstatement is particularly burdensome on a Respondent whose misconduct warranted only a short suspension.

The existing procedures for disposition of petitions for reinstatement are described in the Court's Rules Governing the District of Columbia Bar. Rule XI, § 16(d) permits the dismissal of a petition for reinstatement if the attorney is not eligible for reinstatement (insufficient time has elapsed or the petition is insufficient or defective on its face). Rule XI, § 16(d) also requires that a reinstatement petition be assigned to a Hearing Committee for a Report and that the Report be reviewed by the BPR. Rule XI, § 16(e) permits the Court to enter an appropriate order if the petition is unopposed before the matter is filed with the Court.

Recommendation

We recommend expediting reinstatement procedures when matters become uncontested at any level. Reinstatement decisions would remain with the Court. We further recommend expediting contested reinstatements by eliminating BPR review. The Court is the authority that grants admission to the Bar. The reinstatement process for those disbarred or suspended with a requirement to demonstrate fitness to practice law as a condition of reinstatement is an admissions question. Eliminating a level of review will increase the speed of the process in fairness to the attorney but allow the Court to make the ultimate decision as to reissuing a license in both contested and uncontested cases.

Step by Step Process

A. Investigation

1. Upon receipt of a Motion for Reinstatement and companion Reinstatement Questionnaire, OBC shall conduct an appropriate investigation of the material facts alleged in the Reinstatement Questionnaire.

2. The Office of Bar Counsel will review any proven or alleged misconduct by the attorney, of which OBC is aware (including any "follow- on" cases).[24]

B. Uncontested Cases

1. After reviewing the Motion for Reinstatement and companion Reinstatement Questionnaire and after an appropriate investigation, if OBC determines that the reinstatement should be unopposed, OBC will submit a Report to the Court.

2. The Report shall set forth the results of OBC's investigation and shall indicate why OBC is satisfied that the attorney has met the criteria for readmission, including those factors set forth in *In re Roundtree*, 503 A.2d 1215 (D.C. 1985).

3. If the Court rejects the uncontested readmission, the Court may deny the petition or refer the matter to a Hearing Committee for hearing.

C. Contested Cases

1. If OBC opposes reinstatement, a Hearing Committee will hear the matter at the earliest possible time available on the Hearing Committee's docket.

2. The Hearing Committee shall file a Report with the Court within 60 days following receipt of the final briefs.

3. The Report will proceed directly to the Court, without BPR review.

[24] A "follow-on" case is a subsequently docketed investigation involving the same Respondent.

Proposed Rule

Rule XI, Section 16. Reinstatement

(e) *Uncontested Petitions for Reinstatement.*

A Petition for Reinstatement by a disbarred or a suspended attorney who is required to prove fitness to practice as a condition of reinstatement, which is uncontested by Bar Counsel following a suitable investigation, and upon motion by the parties, may be considered by the Court on the available record and the pleadings. If the motion is denied, the Court may order that the reinstatement petition be referred to a Hearing Committee for an evidentiary hearing.

(f) *Hearing Committee report.*

Within 60 days after the conclusion of its hearing and receipt of the final briefs by the parties, or upon the passing of the deadline for filing such briefs, the Hearing Committee shall in every case submit to the Court a report containing its findings and recommendation, together with a record of its proceedings and any briefs of the parties. The record shall include a transcript of the hearing.

~~(e)~~ (g) *Petition for reinstatement–Action by the Court.*

Upon the filing of the Hearing Committee's ~~Board's~~ findings and recommendation, the Court shall schedule the matter for consideration in accordance with the general rules governing civil appeals. Whenever possible, a petition for reinstatement shall be transmitted to the division of the Court which imposed discipline. ~~If the petition is unopposed, the Court in its discretion may grant it, or may enter any other appropriate order, without further briefing or argument.~~

~~(f)~~ (h) *Conditions of reinstatement.*

~~(g)~~ (i) *Resubmission of petitions for reinstatement.*

E. Final Discipline Imposed by the Board on Professional Responsibility

Background

The current system of attorney discipline in the District of Columbia requires that all original investigations which result in formal charges be tried by a Hearing Committee composed of three individuals (two attorneys and one public member) who issue proposed findings of facts, conclusions of law and recommended sanctions to the BPR. Following briefs and oral argument, the BPR files a report with the Court, which reviews each matter before it imposes discipline. Rule XI, § 3(a)(1),(2),(3),(6) and (7) requires action by the Court for imposition of any discipline that is greater than a BPR reprimand. Rule XI, § 9(c) and (d) requires the BPR to submit a report to the Court unless the BPR dismisses the matter, the BPR orders a reprimand, or the BPR orders OBC to issue an informal admonition.

The Committee considered the question of whether the BPR should have the authority to impose final discipline. A threshold question is whether final decisions in disciplinary cases are core functions of the Court that cannot be delegated. Sections 11-2501, 11-2502 and 11-2503 of the D.C. Code address the Court's delegation authority. D.C. Code § 11-2501 empowers the Court to make rules as it deems proper, on the examination, qualification and admission of members of its Bar and further authorizes the Court to regulate the censure, suspension and expulsion of members of the Bar. The Court created and authorized the BPR to regulate the practice of law, including imposing some disciplinary sanctions.

The report of the 1993 D.C. Bar Disciplinary System Review Committee, co-chaired by Robert Weiner and Barry Cohen, ("Weiner-Cohen Committee") addressed the issue of final action at the BPR level. It concluded that the BPR reviewed every disciplinary case extensively and recommended that final discipline of uncontested, non-serious cases could be final at the BPR level thereby reducing the burden on the Court. The Weiner-Cohen Committee recommended that contested matters be subject to the Court's review, stating, "We are unaware

of any precedent in the District of Columbia law depriving a party of a right of judicial review of administrative action, and we see no good reason for denying that right to a lawyer who may be deprived of his/her profession by the action of the BPR" (see Appendix I).

The Court traditionally defers to BPR's decisions in original jurisdiction cases. The BPR's review of all cases has provided a high level of consistency about the legal issues considered and the sanctions imposed. Some other jurisdictions ensure the efficiency of their disciplinary systems, while maintaining effectiveness and fairness, by having one or two levels of adjudication in some circumstances. The Committee considered the 1993 Weiner-Cohen Report's recommendation on final action at the BPR level. Ten years of experience since the issuance of the Weiner-Cohen Report and the practices of other jurisdictions persuade the Committee that BPR should have authority to impose final discipline, subject to the discretionary review by the Court. The Committee proposes that the BPR's Order be final, with the right to apply for discretionary review to the Court in cases with sanctions less than suspension with a requirement to demonstrate proof of fitness to practice law as a condition of reinstatement or disbarment. In cases involving suspensions with fitness or disbarment, we recommend that the Court impose the final discipline but the sanction should become effective with the issuance of the BPR's Opinion and Order.

The Committee considered that the additional level of review by the Court rarely results in a different sanction from the BPR recommendation, can cause significant delay in the imposition of discipline, can cause the Court to review unnecessary matters adding to its significant workload, and does not permit the matter to be resolved at an earlier time in uncontested matters (see Appendix G).

Although the Committee recommends that the Court grant certain authority to the Board to enter final orders in a limited category of cases, it further suggests that the Court retain discretionary jurisdiction to review all disciplinary cases. The Committee also recommends that

the Court grant review in cases that present new or novel issues of substantive disciplinary law, in cases where sanction recommendations appear to depart from the range of sanctions imposed for similar misconduct in other cases, and for such other reason as the Court deems appropriate. Finally, the Committee recommends that there should be review of right by the Court of cases in which the Board recommends disbarment or a suspension with a requirement that the attorney show fitness before reinstatement. The Committee also recommends that a Respondent should be credited with the time he or she was suspended while the matter is pending review by the Court, only if the Respondent has complied with the requirements of Rule XI, § 14.

Proposed Rule

Rule XI, Section 1. Jurisdiction

(a) *Persons subject to disciplinary jurisdiction.* All members of the District of Columbia Bar, all persons appearing or participating *pro hac vice* in any proceeding in accordance with Rule 49(c)(1) of the General Rules of this Court, all persons licensed by this Court Special Legal Consultants under Rule 46(c)(4), and all persons who have been suspended or disbarred by this Court or suspended by the Board on Professional Responsibility (hereinafter referred to as "the Board") are subject to the disciplinary jurisdiction of this Court and its Board.~~on Professional Responsibility (hereinafter referred to as "the Board.)~~

Rule XI, Section 3. Disciplinary Sanctions

(a) *Types of discipline.*

Any of the following sanctions may be imposed on an attorney for a disciplinary violation:

(1) Disbarment by the Court;

(2) Suspension by the Court or the Board for an appropriate fixed period of time not to exceed three years. Any order of suspension may include a requirement that the attorney furnish proof of rehabilitation as a condition of reinstatement. In the absence of such a requirement, the

attorney may resume practice at the end of the period of suspension without further order of the Court or the Board;

(3) Censure by the Court or the Board;

(7) Probation imposed by the Court or the Board, ~~or imposed by the Board with the consent of the attorney and the approval of the Court~~, for not more than three years...

Rule XI, Section 4. The Board on Professional Responsibility

(e) *Powers and duties of the Board.*

(8) To reprimand, censure, or suspend attorneys subject to the disciplinary jurisdiction of the Court and the Board.

(g) *Providing information to the Court.*

Upon request from the Court, in the exercise of its duty to oversee the disciplinary system, the Board shall provide to the Court for its review the file in any case~~s~~ ~~or cases, including those which have been concluded by dismissal, informal admonition, or reprimand.~~

Rule XI, Section 6. Bar Counsel

(a) *Powers and duties.*

(3) Upon prior approval of a Contact Member, to dispose of all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of the Court, by dismissal or informal admonition or by referral of charges, except consent to discipline or diversion as set forth in § 8.1(c) & § 12.

Rule XI, Section 7. The Executive Attorney

(4) To forward to the Court the ~~findings and recommendations of the Board,~~ order of discipline imposed by the Board or in cases involving a recommendation of disbarment or a suspension in which fitness is recommended, findings and recommendations by the Board together with the record of the proceedings before the Hearing Committee and the Board. The Executive Attorney shall forward the record of proceedings before the Hearing Committee and

the Board when requested by the Court in cases resulting in sanctions other than disbarment or a suspension in which fitness is recommended.

(9) To argue before this Court the position of the Board, when designated by the Board to do so, in any case in which Bar Counsel disagrees with a report and recommendation and/or decision of the Board.

Rule XI, Section 9. Post-hearing Proceedings

(c) *Disposition by the Board.*

Promptly after the conclusion of oral argument or, if there is no argument, promptly after reviewing the Hearing Committee record, the Board shall either ~~adopt or modify the recommendation of the Hearing Committee,~~ remand the case to the Hearing Committee for further proceedings, suspend without proof of fitness, issue a public censure, or reprimand the attorney, direct Bar Counsel to issue an informal admonition to the attorney, or dismiss the petition. The Board may also recommend disbarment or a suspension requiring proof of fitness to practice law as a condition of reinstatement to the court, in which case the Board shall enter an appropriate order beginning the period of disbarment and/or suspension while the matter is pending review by the Court, unless the Court or the Board orders otherwise.

(d) Report of the Board.

~~Unless the Board dismisses the petition or remands the case, or unless the matter is concluded by a reprimand or a direction for an informal admonition,~~ The Board shall promptly prepare a report containing its findings, conclusions and its order of discipline or recommendations to the Court. The Executive Attorney shall submit the order and report of the Board~~, together with the entire record,~~ to the Court and shall serve a copy thereof on the attorney. The order of the Board will be conclusive and the discipline of the Board will be final subject to a writ of review to the Court except in cases in which the Board imposes a suspension with a requirement that the attorney demonstrate proof of fitness to practice law as a condition of

reinstatement or disbarment, which shall be subject to review by the Court as a matter of right. The Court has discretionary authority to review an order of the Board in all cases.

(e) *Writ of review or exceptions to the ~~report~~ Board's disposition of petition.*

The attorney or Bar Counsel, or both, may file with the Court a request for a writ of review from the ~~exceptions to the~~ order and report of the Board or an exception in those cases involving a suspension requiring proof of fitness as a condition of reinstatement or disbarment within twenty days from the date of service of a copy thereof. The Court, for good cause shown, may grant an additional period for filing ~~exceptions,~~ a request for review not to exceed twenty days.

~~(f) *Exceptions when no report is filed.*~~

(~~g~~) ~~(1) *Appeal by right*~~ *proceedings before the Court.*

~~(1)~~ Upon the filing of exceptions ~~under subsection (e) or subsection (f) of this section, and in all cases arising under section 8 in which the Board's recommended sanction includes a requirement that the attorney make a showing of fitness before reinstatement,~~ in those cases involving a Board recommendation for a suspension requiring proof of fitness to practice law as a condition of reinstatement or disbarment, the Court shall schedule the matter for consideration in accordance with applicable court procedures. ~~If the matter has come before the Court under subsection (f) of this section, the Court may order the Board to file a report setting forth its findings of fact and the reasons for its decision. Upon conclusion of the proceedings, or upon consideration of the report if no exceptions are filed,~~ The Court shall enter an appropriate order as soon as the business of the Court permits. In determining the appropriate order, the Court shall accept the findings of fact made by the Board unless they are unsupported by substantial evidence of record, and shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. Unpublished opinions in disciplinary cases decided on or after April

1, 1991, shall not be deemed binding precedent by the Court except as to appropriateness of sanctions.

~~(g) (2)~~

(g) *Appeal by permission–proceeding before the Court.*

In those cases in which the Board has entered an Order of discipline, the attorney or Bar Counsel may file a writ of review. The writ of review shall set forth the reasons why the Court should review the matter which may include any of the following:

(1) The matter presents new or novel issues of substantive disciplinary law which requires the Court review;

(2) The matter involves an issue concerning the scope or applicability of a disciplinary rule upon which the Court has not ruled;

(3) The factual findings of the Board were not based on substantial evidence of record;

(4) The sanction imposed or recommended by the Board is inconsistent with the sanctions imposed in cases involving similar misconduct and/or the evidence of mitigation or aggravation; or

(5) For such other reason as the Court deems appropriate.

The Court shall enter an appropriate order as soon as the business of the Court permits. In determining the appropriate order, the Court shall accept the findings of fact made by the Board unless they are unsupported by substantial evidence of record, and shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted.

(i) *Court review of final actions by the Board.*

In any disciplinary proceeding ~~in which a dismissal, an informal admonition, or a reprimand is contemplated or effected~~, the Court shall have the right to review the matter on its own motion and to enter an appropriate order, including an order directing further proceedings.

Rule XI, Section 14. Disbarred and Suspended Attorneys

(e) *Imposition of discipline pendente lite.*

The Court or the Board, *sua sponte* or on motion, may order that the discipline ~~recommended by the Board~~ shall take effect pending the Court's determination of the merits of the case.

(f) *Effective date of discipline.*

Except as provided in sections 10, 11, and 13 of this rule and in subsection (e) of this section, an order of disbarment or suspension shall be effective thirty days after entry of the Board's order unless the Court or the Board directs otherwise...

F. Cooperation with Law Enforcement

Background

Rule XI, § 17(a), (c) & (e), as well as BPR Rule 2.19, do not permit OBC to disclose to law enforcement officials attorney criminal conduct which comes to its attention. Likewise, during the investigative stage, OBC cannot communicate to other disciplinary authorities professional misconduct which comes to its attention unless the other authorities are already involved in a concurrent investigation. Nor does Rule XI, § 17(e) permit OBC, except by motion to the Court, to cooperate with the Committee on Admissions, the Committee on Unauthorized Practice, and in certain respects, the Clients' Security Fund. The motion process can be cumbersome, is public, and requires notice to the Respondent, whereas communication with law enforcement often requires speed and confidentiality.[25]

Recommendation

We recommend that OBC, with the permission of the BPR Chairperson or the Chairperson's designee, be allowed to disclose information to the appropriate authorities about the status of complaints either during the course of the investigation of such complaints or after the investigation has been closed. However, this rule does not establish a right on the part of outside entities, including law enforcement, to the confidential information sought. The Committee recognizes that there are legitimate purposes for which OBC should be authorized to disclose confidential information, such as where there is ongoing criminal activity or where another jurisdiction's disciplinary authority has a valid interest. The BPR should specify in its rules the circumstances in which OBC may be authorized to disclose otherwise confidential information and the manner in which OBC would be allowed to communicate such information.

[25] For a comparison of rules prohibiting contact with law enforcement in other jurisdictions, see Appendix I.

Proposed Rule

Rule XI, Section 17. Confidentiality

(e) *Limited disclosure on motion.*

The Court on motion, filed *ex parte* and under seal by Bar Counsel, may authorize disclosure of otherwise confidential information to ~~the Committee on Admissions, the Committee on Unauthorized Practice, or~~ a duly constituted grand jury for use in the performance of its official duties. Bar Counsel's motion shall be filed only in response to grand jury subpoena. For good cause shown, the Court on motion may authorize disclosure of otherwise confidential information through discovery in any civil action, subject to such protective order as the Court may deem appropriate or may authorize disclosure of otherwise confidential information to local, state or federal governmental agencies not associated with law enforcement or attorney discipline subject to appropriate protections of confidentiality. ~~With respect to the Clients' Security Trust Fund, Bar Counsel shall follow the procedures prescribed in the Notice to the Bar dated November 21, 1986, which is Appendix C to these Rules.~~

(f) *Cooperation with Law Enforcement and other Disciplinary Authorities.*

Notwithstanding any other provision of this Rule, Bar Counsel may file a written request with the Board and with the written permission of the Chairperson of the Board or the Chairperson's designated Board member for good cause shown, and subject to such limitations and conditions as the Chairperson may impose, pursuant to Board rules governing such requests (including but not limited to appropriate protections of confidentiality), may communicate information about any disciplinary matter, including the pendency of a complaint, the status of any investigation and the disposition of such matters, to law enforcement agencies, the Committee on Admissions, the Committee on Unauthorized Practice, the Clients' Security Fund, or state or federal attorney disciplinary agency, board or committee that has a legitimate interest

in such matter, either during the course of Bar Counsel's investigation or following such an investigation.

G. Immunity for Practice Monitors

Background and Recommendation

Section 19(a) of Rule XI currently states that "members of the Board, its employees, members of the Hearing Committees, Bar Counsel, and all assistants and employees of Bar Counsel shall be immune from disciplinary complaint under this rule..." Practice monitors and others within the disciplinary system, however, are not explicitly covered. Practice monitors and financial monitors are members of the Bar who agree to assist the disciplinary system when an attorney is placed on probation and the conditions of probation include monitoring of the attorney's practice and/or professional finances. Practice monitors are often reluctant to serve when they discover that the rule does not state that they are not immune from suit. Their service is essential to the disciplinary system because the use of probation is only feasible with the appointment of monitors.

The Committee discussed the potential for abuse or an embarrassing situation that might arise from granting immunity in such a broad way. It is conceivable that a volunteer monitor would engage in misconduct in connection with monitoring duties. A rule of complete immunity would insulate such actions from prosecution. The Committee thus rejected a rule of complete immunity; instead it concluded that immunity for all but intentional misconduct and criminal action was, on balance, a small cost to encourage volunteers to assist in the disciplinary system. Therefore, the Committee proposes the following modification.

Proposed Rule

Rule XI, Section 19. Miscellaneous Matters

(a) *Immunity.*

Complaints submitted to the Board or Bar Counsel shall be absolutely privileged, and no claim or action predicated thereon may be instituted or maintained. Members of the Board, its employees, members of Hearing Committees, Bar Counsel, and all assistants and employees of

Bar Counsel, all persons engaged in counseling, evaluating or monitoring other attorneys pursuant to a Board or Court order or a diversion agreement, and all assistants or employees of persons engaged in such counseling, evaluating or monitoring shall be immune from disciplinary complaint under this rule and from suit for any conduct in the course of their official duties. The immunity provided in this Rule for counseling, evaluating or monitoring other attorneys is not intended to, and does not, protect from prosecution or disciplinary action, any person or any assistant or employee of such person, who, in the course of performing his/her duties, engages in intentional misconduct or criminal activities.

H. Diversion

Background and Recommendation

Rule XI, § 8.1(b)(1) restricts who is eligible for diversion. Section 8.1(b)(1) does not permit diversion if the attorney's conduct resulted in, or is likely to result in, prejudice to a client or another person. It is often very difficult to calculate whether the conduct is likely to result in prejudice. In most circumstances, the disciplinary inquiry is initiated after the conduct has occurred and if there has been no prejudice, the determination of whether prejudice is still possible, or likely, can be speculative. The Committee recommends deleting the language, "or is likely to result in." The deletion of this language would enable OBC to refer more cases to diversion.

The Committee also recommends allowing OBC to refer cases for diversion where the attorney has engaged in conduct that constitutes a criminal offense involving driving under the influence and operating a motor vehicle while impaired. The Committee concluded that OBC should be able to consider this limited category of criminal offenses for diversion in order to encourage substance-abusing attorneys to pursue treatment. If an attorney engages in treatment as the result of a diversion referral, not only would the member of the Bar benefit but the consumers of legal services also would benefit.

Proposed Rule

Rule XI, Section 8.1. Diversion

(b) *Limitations on diversion.*

Diversion shall be available in cases of alleged minor misconduct, but shall not be available where:

(1) the alleged misconduct resulted in~~, or is likely to result in,~~ prejudice to a client or another person;

(2) discipline previously has been imposed or diversion previously has been offered and accepted, unless Bar Counsel finds the presence of exceptional circumstances justifying a waiver of this limitation;

(3) the alleged misconduct involves fraud, dishonesty, deceit, misappropriation or conversion of client funds or other things of value or misrepresentation; or

(4) the alleged misconduct constitutes a criminal offense under applicable law, except for the offenses of driving under the influence and operating a motor vehicle while impaired (or a similar conviction in another jurisdiction).

I. Effective Date for Implementation of Rule Changes

The Committee recommends the following method for implementation of its recommendations:

1. Consent to discipline should be available at any stage of the existing process thirty days after adoption of the pertinent rule changes.
2. The changes to the rules governing reciprocal discipline should be applicable to all new cases received in the OBC after the adoption of the pertinent rule changes.
3. The change to the temporary suspension provision for an attorney's failure to respond to a BPR Order should be applicable to all BPR Orders requiring a response issued 30 days after the adoption of the pertinent rule changes.
4. The default procedure for failure to answer a petition should be applicable to all petitions approved by the Contact Member 30 days after the adoption of the pertinent rule changes.
5. Uncontested petitions for reinstatement pending at any level of the system when the pertinent rule change is adopted should proceed directly to the Court.

6. Contested petitions for reinstatement filed before the adoption of the pertinent rule changes should be processed under the existing procedures, unless the parties agree to use the new procedure with the approval of the BPR.
7. Cooperation with law enforcement should be permissible 30 days after the adoption of the pertinent rule changes.
8. The Committee is of the view that immunity for monitors confirms the existing unwritten expectation and should be available at any time.
9. Diversion should be available under the terms of the changed rule in any case pending at any stage of the disciplinary process 30 days after adoption of the pertinent rule changes.
10. The Board's authority to issue final discipline should govern all cases in which a petition was approved by a Contact Member 30 days after the adoption of the pertinent rule changes.

J. Implementation

The goal of the Committee's recommendations is to reduce the present work load in each part of the disciplinary system, allowing existing resources to be used more efficiently, effectively and fairly to handle new matters and to avoid the creation of a backlog of cases. In an effort to determine whether the recommendations, if accepted by the Court, achieve what they are meant to accomplish, the Committee also recommends that a new committee be established three years after the rules have been amended to review the impact of the changes. The new committee will have to wait a period of time before assessing the impact. The new committee should determine what period of time is appropriate. This Committee believes that it would be instructive for the new committee to examine the number and percentage of cases handled by consent to discipline agreement, the number and percentage of cases being disposed of by the BPR rather than the Court, the length of time it takes a case to be processed through the disciplinary system, including the length of time a case is pending at each stage of the process, and the impact of the changes on the work load of OBC, the Hearing Committees, the staff of the BPR, the BPR and the Court.

The Committee further recognizes that resources may be necessary to enable the disciplinary system to collect data sufficient to track the effectiveness of any adopted changes on the new cases entering the system and to track the impact of the changes on the staffing of the disciplinary system.

III. IMPACT OF THE RECOMMENDATIONS ON THE D.C. BAR REGULATORY SYSTEM

In response to the Committee's charter, the Committee requested the D.C. Bar staff to submit its views about the possible impact the recommendations set forth in this report might have on the operations of the Bar. The following are the D.C. Bar staff's views.

The Regulation Counsel department of the District of Columbia Bar conducts several programs and services designed to provide remedial and prospective direction to attorneys and their clients in three general categories:

-- Attorney/Client Relations, involving the Attorney/Client Arbitration Board ("ACAB") and the Clients' Security Fund ("Fund");

-- Lawyer Assistance Services, comprised of the Practice Management Advisory Service ("PMAS") and the Lawyer Counseling Program ("LCP"); and

-- Professional Conduct Regulation Programs, which consist of the Legal Ethics Committee ("LEC") and the Rules of Professional Conduct Review Committee ("RPC").

In order to maximize the delivery of services and outreach, while minimizing the impact on resources needed to achieve these goals, the Regulation Counsel department relies heavily on volunteers. Currently, Regulation Counsel oversees 179 practice volunteers[26] and 111 committee members.

The impact of an accelerated disciplinary system and increased flexibility afforded to OBC because of the recommended changes to Rule XI cannot yet be quantified. If the proposed changes to Rule XI are adopted, the increase in program activity will need to be tracked after the new procedures go into effect. The scope and impact to the programs would be best understood after implementation of the rule changes and review.

[26] Practice volunteers comprise ACAB arbitrators and mediators, PMAS practice monitors and LCP volunteers.

It is foreseeable, however, that increases in requests for services by attorneys who are referred by the disciplinary system or who voluntarily seek assistance would occur in the Lawyer Assistance Programs and in Attorney/Client Relations. Finally, it is foreseeable that there will be a fiscal impact on the Clients' Security Fund.

A. Lawyer Assistance Programs

The Bar programs and services most likely to be affected by the proposed changes in the disciplinary system are the PMAS and LCP.

1. Practice Management Advisory Service (formerly the Lawyer Practice Assistance Program)

The Practice Management Advisory Service was designed to assist lawyers with practice-related problems that often lead to disciplinary charges and other complaints by clients and the public. At present, the PMAS offers four services to Bar members: the Management ResourceLine, a telephone resource available to answer questions and provide information on a wide variety of practice management issues; on-site practice management assessments, which involves a thorough management review of a law firm or practice; practice management publications; and the Practice Monitor Program.

The Practice Monitor Program provides remedial assistance to Bar members who are in diversion from the formal disciplinary process to address minor misconduct, who have asserted disability in pending disciplinary matters, or who have been placed on probation by the disciplinary system. The PMAS trains and provides practice monitors to attorneys who are facing disciplinary action. Bar members who are eligible to be diverted out of the formal disciplinary process, or who allege a disability, or are eligible for probation in lieu of suspension, may participate in this program. The PMAS has 11 practice monitors, who are available to the BPR or OBC to be assigned periodically to review and report on specific management aspects of

another Bar member's practice, with the goal of improving the monitored member's practice and thereby avoiding future disciplinary charges.

If the Court adopts the proposed modification on the use of diversions, there would be a greater opportunity to offer diversion as an alternative to discipline, and there would be more individuals who need monitors appointed to assist them.

With the availability of consent to discipline agreements, OBC and the BPR would also have more flexibility to require, as part of the agreement, that attorneys receive the help they need, whether it be the assignment of a monitor, the requirement to attend practice management sessions with the PMAS or participation in counseling sessions with the Lawyer Counseling Program.

2. Lawyer Counseling Program

Through the use of volunteers and staff, the Lawyer Counseling Program provides free confidential services that include assessment, referral and short-term counseling to attorneys on a range of issues. Although the LCP began as a service to respond to attorneys who suffer from the ravages of alcohol and drug addiction, the program has grown out of necessity to address issues relating to work stress, family crises and mental health issues.

If the Court grants OBC the authority to enter into consent to discipline agreements, OBC would have the option of requiring, as a condition to the consent agreement, the attorney to contact the Lawyer Counseling Program for an assessment and review. If OBC had authority to refer more cases to the LCP as a result of consent to discipline agreements, and as members became more aware of the possibility that this authority would be exercised, attorneys might also voluntarily seek assistance in behavior modification before the behaviors reached a level that would warrant disciplinary action.

B. Attorney/Client Relations Program

1. Clients' Security Fund

Consent to discipline agreements and the ability to issue temporary suspensions could also have an impact on the Clients' Security Fund of the District of Columbia Bar ("Fund"), a program administered under the auspices of the Attorney/Client Relations Program. The Fund could experience an initial increase in claims because of the reduction in time that it would take to dispose of a case through the disciplinary process as well as an actual net increase in applications for reimbursement from the Fund.

The Fund is a trust fund created by the Court to reimburse clients whose attorneys have dishonestly retained money, property or some other thing of value that belongs to the clients. The Fund is comprised of five Trustees (members of the Bar) who are appointed by the Court. The Fund's Trustees are not authorized to reimburse a client who asserts that an attorney failed to represent the client successfully or overcharged the client. Ordinarily, the Fund is a fund of last resort. Reimbursement from the Fund is discretionary, turning on the equities of the claims presented. Based on a decision by the Board of Governors, the Fund must be kept at a yearly level of $750,000.00.

When investigating a claim, a Trustee makes an independent determination as to whether a Bar member has engaged in dishonest conduct. After the completion of the investigation, the investigating Trustee presents a recommendation about the disposition of the claim to the other Trustees, who vote to approve or deny the claim for reimbursement, or to refer the claimant to another entity.

Reimbursement from the Fund is permitted only when the following conditions are satisfied:

The attorney against whom a claim has been filed has died, retired, been disbarred or suspended; or the attorney has been declared by a court to be bankrupt or mentally incompetent;

or a court has entered a civil or criminal judgment against the attorney based on the alleged dishonest conduct at issue;

The attorney was acting as either an attorney or a fiduciary when the dishonest conduct occurred;

The money, property or other thing of value for which reimbursement is sought was in actual or constructive possession of the attorney; and

The loss to the claimant for which reimbursement is sought resulted from dishonest conduct on the part of the attorney, such as theft, embezzlement, fraudulent misrepresentation, or other wrongful taking of the claimant's property.

As noted, an order of discipline is one of a list of "jurisdictional triggers" that must be met for the Trustees to approve reimbursement of a claim. In some cases an attorney who is being investigated by a Trustee is also the subject of a complaint pending in the disciplinary system. When the investigating Trustee has made an independent determination that dishonest conduct occurred and that the claimant suffered a reimbursable loss, the Trustees cannot issue a decision and pay the claim until the Court has issued the order of discipline. In some cases, the Fund has had to wait years because of the length of time required for the disciplinary complaints against the attorney to be resolved by the disciplinary system.

In situations where it does not appear that there is a disciplinary recommendation pending, but the Trustee's independent investigation indicates that dishonest conduct occurred, and there is no other "jurisdictional trigger," the Trustees will deny the claim without prejudice, and invite the claimant to re-file when/if a "jurisdictional trigger" is met.

If the Court grants OBC the authority to enter into consent to discipline agreements, then it is likely that there would be quicker dispositions of the claims the Trustees would have ultimately reimbursed because the claims would meet the required criteria for reimbursement and could be processed more expeditiously. As the ability to enter into consent to discipline

agreements becomes standard practice, any initial increase in claim payouts that might occur could level out as the Trustees become familiar with the time required to conclude a disciplinary matter. The Fund may also experience an impact as a result of the recommendation to allow for the temporary suspension of attorneys who fail to respond in disciplinary matters. Currently, a suspension of an attorney, for any reason, will act as a "jurisdictional trigger" for the Fund to reimburse a client. For example, the Trustees have determined as a policy matter that the issuance of an administrative suspension for the failure to pay mandatory dues is sufficient to trigger jurisdiction. In this instance, even though the suspension may not be related to the conduct at issue before the Trustees, if the Trustee determines, after his or her independent investigation of the claim before the Trustees, that dishonest conduct occurred and that there is a reimbursable loss, the Trustees can pay the claim because the status of the attorney would be listed as "suspended."[27]

If the Court grants the BPR the authority to request an order for temporary suspension based on an attorney's failure to respond to a BPR order, there is a potential for additional payouts of claims that may not have initially met the required "jurisdictional trigger" of suspension or disbarment because the Fund's rules do not require that the suspension relate to the underlying conduct upon which the Fund claim is based. In addition, because there is no statute of limitations on claims made to the Fund, there may be additional claims filed from the claimants who previously might have chosen not to apply to the Fund because the "jurisdictional trigger" of suspension/disbarment had not yet been met.

The fiscal impact on the Fund as a result of a broader basis upon which to satisfy the "jurisdictional trigger" is not currently known. Obviously, if jurisdiction is triggered sooner and

[27] Although the potential exists that additional claims will meet a "jurisdictional trigger" as a result of the authority to order an temporary suspension as a result of the failure to respond to a BPR order, in the past three years, only five cases qualified for payment because the attorney failed to pay mandatory dues. Of the five cases, two of the attorneys were ultimately suspended for disciplinary reasons.

under more circumstances, that could affect the number of payouts. An increase in the number of payouts could increase the draw on member dues.

Conclusion

In summary, it is possible that, if the recommended changes are adopted, the caseloads of certain Regulation Counsel Programs would be affected. Although the precise impact cannot be determined until the recommended changes have been in effect for a period of time, it is foreseeable that referrals from the disciplinary system would increase the activities of the Lawyer Assistance Programs and the Attorney/Client Relations Programs. In addition, although it is too early to determine the exact fiscal impact on the Fund, it appears that the Fund not only may be expected to pay out claims more expeditiously, but it also may be expected to pay additional claims as a result of the BPR's ability to request orders for temporary suspensions by the Court for an attorney's failure to respond to a BPR order.

Just as the disciplinary system's greater reliance on making referrals to the regulatory programs would have an impact on each of the programs' caseloads, there could be an increase in self-referrals. As attorneys become more aware of the options that the disciplinary system may have to ensure that the ethical standards are maintained by the profession, they might on their own initiative, or through the intervention of colleagues and family members, become more willing to seek or accept remedial help. In short, at-risk attorneys operating on the margins of successful practice may become more motivated to take a more pro-active approach to address potential problems before their behaviors warrant disciplinary action.

SECTION 3

APPENDICES

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APPENDIX A

Reexamination of Disciplinary Proceedings Under DC Bar Rule XI

DCBAR

DISTRICT OF COLUMBIA BAR

September 8, 2003

The Honorable Annice M. Wagner
Chief Judge
District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, DC 20001

Via Hand-Delivery

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Re: Reexamination of Disciplinary Proceedings Under D.C. Bar Rule XI

Dear Chief Judge Wagner:

The leadership of the District of Columbia Bar ("D.C. Bar") and the Board on Professional Responsibility ("BPR") have agreed on a methodology for establishing a committee to study certain aspects of the disciplinary system in the District of Columbia.

Consistent with the approach used with the Special Committee to Study the Disciplinary System in 1981 and the Disciplinary System Review Committee in 1992, the study committee will be appointed by the D.C. Bar Board of Governors. The Bar committee will be led by John Payton and consist of eleven members, including two non-lawyers, to be appointed by the Board of Governors, with recommendations from the BPR. The Bar committee will prepare a report and recommendations regarding the scope of work outlined below.

The Bar committee may consider and evaluate, as appropriate, other state models relevant to the review of D.C. Bar Rule XI and address the following issues:[1]

1. Should procedures be streamlined to expedite the resolution of certain types of disciplinary cases and, if so, what changes should be made? For example, should Bar Counsel and respondents be allowed to enter into negotiated dispositions and if so, in what kind of cases; under what circumstances; with what type of review of Bar Counsel's actions? Should there be an expedited procedure for

[1] To establish some baseline information for the committee's work, the committee will likely choose to look at how our disciplinary system compares to certain other systems on the time for disposition, including such factual questions as: Where are the stages of the process in which significant delays occur in our disciplinary system? What are the factors causing these delays? Given what we may learn from other systems, are there practical ways for them to be addressed?

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reciprocal discipline cases, particularly where the respondent does not participate? Should there be a streamlined procedure for reinstatement proceedings in certain categories of cases and if so, in what kind of cases and under what circumstances?

2. Should Bar Counsel be granted broader authority to resolve certain disciplinary matters through diversion and informal admonitions without a full-fledged hearing? If so, what type of disciplinary matters should be included; what type of authority should be granted to Bar Counsel; what type of review, if any, should there be of Bar Counsel's action or proposed action; and what procedures should be followed?

3. Should the Hearing Committees and/or the BPR be given authority to impose final discipline in certain cases, subject to a discretionary review, or no review, by the BPR and/or the District of Columbia Court of Appeals? If so, what type of disciplinary matters should be included?

4. Are there other changes of a procedural or technical nature that should be considered to promote the efficient and effective operation of the disciplinary system?

5. What, if any, amendments should be made to Rule XI to implement the changes that are being suggested?

6. If changes in BPR procedures are recommended, what impact would such changes have on other parts of the disciplinary system (the Attorney/Client Arbitration Board, Clients' Security Fund, Lawyer Practice Assistance Committee, Legal Ethics Committee, Lawyer Counseling Committee and the Rules of Professional Conduct Review Committee)?

The Bar committee will not review or comment on any changes to the sources of financing for the disciplinary system, annual budgets, or supplemental budget requests.

The final report of the Bar committee and any recommendations will be provided to the Board of Governors. The Board of Governors will consider the report and recommendations of the Bar committee and, after consultation with the BPR and consideration of any comments by other members of the Bar, will make any necessary and appropriate recommendations for changes to the Court.

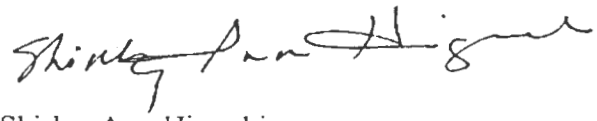
The BPR believes that this Bar committee structure is an appropriate alternative to the Court-sponsored study described in the BPR's letter to you on July 30, 2003. While the BPR and OBC will have a staff liaison to the Bar committee and will provide the Bar committee with such information as may be requested, the final recommendations of the Bar committee will be those of the Board of Governors. In this way, the BPR will remain free to provide

the Court with its independent comments on the results of the Bar committee's study and any recommendations made by the Board of Governors.

This proposal is being presented to the Board of Governors for approval on September 9, 2003. Following approval by the D.C. Bar Board of Governors, the Bar will transmit to you a separate document describing the committee members and the proposed schedule. The Bar expects that the first meeting of the Bar committee will be on or about October 1, 2003.

We hope this update will be of assistance to the Court in light of our prior correspondence. Thank you for your continuing interest in this important work.

Sincerely,



Shirley Ann Higuchi
D.C. Bar President

Timothy J. Bloomfield
Chair, Board on Professional Responsibility

cc: D.C. Bar Board of Governors
Board on Professional Responsibility
Katherine A. Mazzaferri, Esq.
Elizabeth J. Branda, Esq.
Joyce E. Peters, Esq.

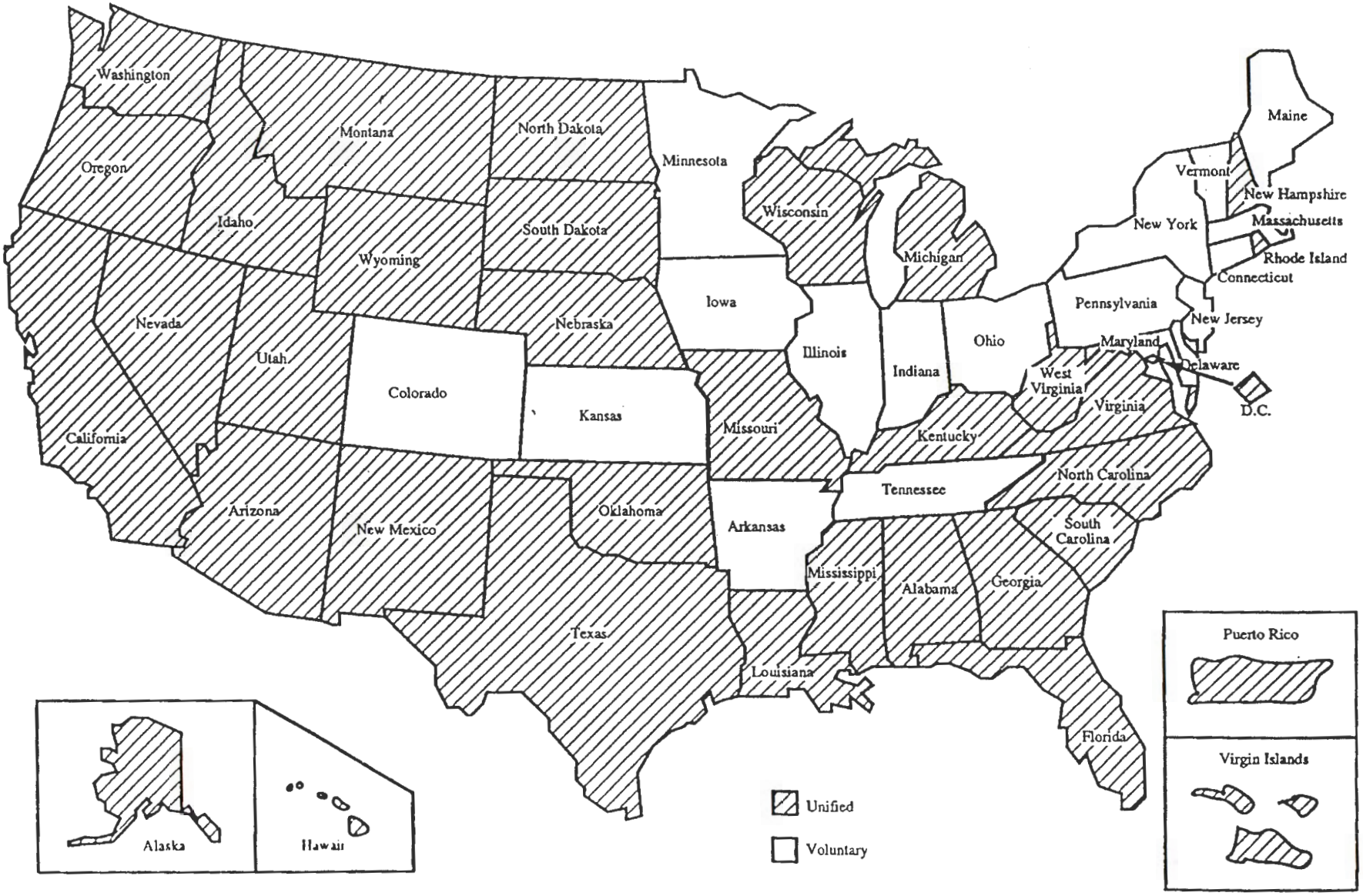
Appendix B

Type of Bar Association Grid

This grid is from the American Bar Association Division for Bar Services

Jurisdictional Analysis

Type of Bar Association: Unified vs. Voluntary



ABA Division for Bar Services
December 1994

Jurisdictional Analysis

Jurisdiction	Type of Bar	Membership	Annual Complaints	Docketed Cases	Cases Disposed
Illinois	Voluntary	73,661	6182	6183	
Louisiana	Mandatory	19,000	3000-3200	1800	
Maryland	Voluntary	31,224	1559	475	435
Massachusetts	Voluntary	47,000	6062	1200	322
Michigan	Mandatory	35,748	3557	103	163
Minnesota	Voluntary	30,000	1200-1500	488	446
New Jersey	Voluntary	76,486		1400-1500	
North Carolina	Mandatory	16,869	1900	1900	
Virginia	Mandatory	24,000	4000	1000	1311
District of Columbia	Mandatory	78,879	1333	477	443

Appendix C

Comparable Jurisdiction Questionnaire

Negotiated Disposition Questionnaire

Comparable Jurisdictions

1. How many active bar members do you have?

2. What is the total number of complaints you receive each year, including complaints you do not pursue, for example, because the respondent is not a member of your bar?

   How many complaints are investigated?

3. Do you categorize the types of complaints that you receive by subject matter (theft, dishonesty, etc)? Do you categorize them by type of practitioner (e.g., solo, firm, government, etc.)?

   If yes, for what purpose do you categorize the complaints?

   If yes, is it possible to share the data with us?

   Have you noticed any significant trends?

4. What are the stages in your disciplinary system?

   How many cases do you currently have in each stage? What is defined as a "case" in your system? Is it one client complaint, or do you bundle multiple complaints into a "case"?

   Which stages use volunteers as decision makers?

   How many volunteers are involved in each stage?

   Do you keep track of the average time between stages?

   If so, are you able to share the data with us?

5. Do you have time requirements for completing each stage of the process?

   If yes, how are the time requirements set (Bar Counsel, Board, Court Rule)? Is there a statute of limitations or laches rule?

   If yes, what are your time requirements for each stage?

   Are you able to meet the requirements within your current system?

Are there any rule or statutory consequences if the time requirements are not met? If so, what are they?

How do you define cases that are "overdue" or included in your "backlog"?

What is the percentage of cases that are still not disposed of after:
30 days_____ 60 days_____ 90 days_____ 120 days_____ Other_____

What statistical information do you keep about any backlog?

6. Who adjudicates the cases at the trial level?

   How many cases are decided on an annual basis?

7. How many levels of appellate review do you have?

   Who adjudicates the cases at each level?

   How many cases are heard on an annual basis at each level?

   Is appellate review discretionary at any stage? If so, how does that process work? How often is review granted, and in what type of case?

   Are any decisions or types of cases excluded from appellate review? In other words, at what levels can a case become final?

   If yes, which ones?

8. At what point is your system open to the public?

9. What is the size of the attorney staff for Bar Counsel? ____ Support Staff? _____ law clerks? ____ investigators? ____ other professionals (such as accountants?___ other? ____

10. What is the size of the attorney staff for your Review Board/Board Office? ____ Support Staff? ____ law clerks? ____ case managers ____ other? ____

    How many volunteers does the staff support?

    What are the responsibilities of the volunteers? Do they draft their own recommendations or orders disposing of cases on the merits or on motions? Are these form recommendations/orders or the equivalent of judicial opinions?

    How often do the volunteers meet? How many cases do they decide in a month/year?

What are the responsibilities of the staff? Do they draft some or all of the case dispositions decided by the volunteers?

Is there a separate case mangers' office/clerk's office, or does the attorney staff supervise case management?

11. What is the size of the attorney staff that supports your trial level adjudicator? ____ Support Staff ____ law clerks _____ case managers' ____ other? ____

How many volunteers does the staff support?

What are the responsibilities of the volunteers? Do they draft their own recommendations or orders disposing of cases on the merits or on motions? Are these form recommendations/orders or the equivalent of judicial opinions?

How often do the volunteers meet? How many cases do they decide in a month/year?

What are the responsibilities of the staff? Do they draft some or all of the case dispositions decided by the volunteers?

Is there a separate case managers' office/clerks' office, or does the attorney staff supervise case management?

11a. [In any system that uses volunteers]: Who recruits and trains the volunteers in the system? What training materials and legal updates are the volunteers provided? Who organizes that effort?

12. Who appoints Bar Counsel and the Executive Attorney/Review Board Attorney? Are there term limits for the positions of Bar Counsel and Executive Attorney/Review Board Attorney?

If yes, what are they?

13. Who approves the filing of charges and the dismissal of charges?

What is the size of the staff that supports the entity that makes this decision?

14. Do you have the ability to enter into negotiated dispositions?

If yes, how do you define "negotiated disposition"?

If yes, when was it implemented?

If yes, insert Negotiated Disposition Questionnaire here

If no, has this ever been considered or contemplated?

If considered, why was it not implemented?

If you had implemented negotiated dispositions but no longer offer this option, please explain why this option is no longer offered?

15. How does your system handle reciprocal discipline cases?

    How many reciprocal discipline cases does your system handle each year?

    What is the standard of review for reciprocal cases?

16. How do you handle respondents who fail to respond to original complaints? To petitions by Bar Counsel? Reciprocal cases? Who claim or evidence disability as a basis for not responding?

17. Does your system have procedures that allow cases to be expedited?

    If yes, what are the procedures and to what types of cases do they apply?

18. Do you provide for an administrative suspension or an interim suspension while a case is pending? Must a petition by Bar Counsel be filed before an interim suspension can be sought?

    If yes, how does it work? Who can seek an interim suspension? How often are they granted?

19. Has a study of your disciplinary system been conducted within the last five years?

    If a study has been conducted within the last five years, may we obtain a copy of the report?

    What changes, if any, were recommended after your disciplinary system was reviewed?

    Were the changes implemented?

    If no, why not?

    When was your system last reviewed?

    Did your system implement any changes or respond in any way to the ABA's McKay Commission's Report?

20. Are you considering any other changes to your present system?

21. Have any other changes been considered and not been implemented?

    If yes, what are they and why were they not implemented?

22. What would you describe as the strengths of your system? What do you see as the weaknesses in your system?

23. What would you like to see changed in your disciplinary system?

24. What disciplinary systems in other jurisdictions have served as a model for your disciplinary system and why?

Negotiated Dispositions

1. Does your jurisdiction use the term "negotiated dispositions"?

   If yes, how do you define a "negotiated disposition"?

   Does your jurisdiction consider a plea bargain to be a negotiated disposition?

2. Does a negotiated disposition involve a hearing?

   If yes, what body conducts the hearing and for what purpose?

3. Are there types of cases that are excluded from resolution by a negotiated disposition? Are there respondents who cannot avail themselves of negotiated dispositions?

   If yes, which type of case and which respondents are excluded and why?

4. Are negotiated dispositions used more often in particular situations?

   If yes, in what types of situations?

5. Is diversion offered in your jurisdiction?

   If yes, is diversion considered a negotiated disposition?

   For what types of misconduct would diversion be available?

6. Do you have a process for handling any other disciplinary matters without a formal hearing process that is not called a negotiated disposition or a diversion?

   If yes, what is the process? What types of cases are eligible for resolution by this process?

7. How long has your jurisdiction offered the option of negotiated dispositions?

8. Why were negotiated dispositions included as an option?

9. What was the process that led you to decide to use negotiated dispositions?

Was there public input?

What has been the public reaction to negotiated dispositions?

10. What steps were taken and what resources were needed to implement the option of negotiated dispositions?

11. Is a negotiated disposition confidential?

    If it is confidential, is there any information about the negotiated disposition that is made available to the complainant? To the public?

    Is the respondent able to negotiate a confidentiality provision?

12. Who makes the decision to offer a negotiated disposition? Who reviews the decision to offer a negotiated disposition? Who approves the offer?

13. Are standards, guidelines or restrictions placed on Bar Counsel's ability to negotiate a disposition?

    If yes, what are the standards, guidelines or restrictions?

14. Is the sanction a determining factor for Bar Counsel when offering a negotiated disposition? Is the sanction a determining factor for the respondent when entering into a negotiated disposition?

    If no, what is the determining factor?

15. What process is followed to ensure that the respondent understands what disposition he or she has agreed to accept?

    Are there special procedures or certain criteria used to make certain that a respondent is not coerced into negotiating a disposition?

    If yes, what are they?

16. What type of record is made to reflect the terms of the negotiated disposition?

    Is the misconduct to which the respondent agrees stated on the record and if so how and by whom?

Are form documents submitted to the adjudicator reflecting the terms of the negotiated disposition? If so, please provide us with a copy of the form.

17. Who reviews and approves a proposed negotiated disposition that has been accepted by the Bar Counsel and the respondent? What happens if a proposed negotiated disposition is rejected or modified by any of the approving authorities?

18. How often is a proposed negotiated disposition modified or rejected by any of the reviewing authorities?

19. How many cases were resolved by negotiated dispositions in each of the past three years? What percentage of the docketed caseload does this number represent in each of those years?

20. How many negotiated settlement offers have been rejected by the respondents?

21. Are the ranges of remedial measure of sanctions different in negotiated dispositions than in fully litigated cases?

22. Has the use of negotiated dispositions reduced the time to resolve a docketed case in your disciplinary system?

    If yes, by how much?

23. How long does it take to resolve negotiated disposition cases as compared to cases that go through the full disciplinary system?

24. Has the availability of negotiated dispositions affected Bar Counsel's caseload? Has it affected the adjudicator's caseload?

    If yes, how has the caseload been affected? When did the change become apparent?

25. What impact has the use of negotiated dispositions had on the staffing and resource needs of the Bar Counsel's office? On the staffing and resource needs of the adjudicator's office? On the staffing and the resource needs of the Bar?

26. Has a study or evaluation been conducted of your use of negotiated dispositions?

    If yes, may we have a copy?

27. Have you made any determination about the impact of the use of negotiated dispositions on (1) the rate of recidivism in your disciplinary system or (2) on particular types of practitioners (e.g. solos, or attorneys of a certain age, race or gender)?

    If yes, what measurement or statistics did you use and what were the results?

28. What is the precedential value of a negotiated decision?

29. What use is made of the record of a negotiated disposition in later disciplinary proceedings against the same respondent or in reinstatement proceedings?

30. Are practice monitors or probation monitors used in connection with some negotiated dispositions?

    If yes, how frequently are they used?

31. Are there costs associated with the use of negotiated dispositions that are assessed to the respondent?

    If yes, what are they?

32. Have you done any studies to determine whether costs is a factor in the decision to enter into a negotiated disposition? Can you provide a copy of the study?

Appendix D

Disciplinary Statistics

OFFICE OF BAR COUNSEL
STATISTICAL REPORT
September 2004

	This Period	Year to Date	Last Year to Date	12 Months Ending This Period
Complaints Received by Bar Counsel	7	330	336	471
Docketed Complaints	42	462	532	622
Undocketed Complaints	0	97	122	139
CJA Complaints	**49**	**889**	**990**	**1232**
Total Complaints Received				
Reinstatements	0	3	3	4
Criminal Convictions	0	7	9	10
Reciprocals	2	50	20	57

Matters Pending Investigation	This Period	Last Period
Less than 90 Days	45	77
More than 90 Days	382	384
Total Cases Pending Investigation	**427**	**461**
Pending Deferrals	**24**	**19**

Recommendations Submitted to Board for Approval	This Period	Last Period	Abatements
Petitions	1	3	3
Informal Admonitions	6	1	
Dismissals	44	9	
Deferrals	6	0	
Subtotal	**57**	**13**	
Diversions	0	0	
Total Recommendations Submitted	**57**	**13**	

Dispositions Approved by Contact Member	This Period	Year to Date	Last Year to Date	12 Months Ending This Period
Petitions	1	22	32	47
Informal Admonitions	4	26	31	32
Dismissals	51	216	214	330
Deferrals	5	19	13	27
Total Dispositions Approved	**61**	**283**	**290**	**436**
Diversions Approved by Board	0	6	4	9

CJA Complaints	This Period	Last Period
CJA Complaints Remaining at End of Previous Period	11	13
CJA Complaints Received/Reopened in Period	0	3
Total CJA Complaints	**11**	**16**
CJA Complaints Closed in Period	10	5
CJA Complaints Docketed in Period	0	0
Total CJA Complaints Disposed in Period	**10**	**5**
CJA Complaints Pending Investigation at End of Period	**1**	**11**

TABLE I

DISCIPLINARY COMPLAINTS RECEIVED

Calendar Year	Number Complaints Received
1994	1398
1995	1498
1996	1516
1997	1612
1998	1689
1999	1454
2000	1314
2001	1376
2002	1393
2003	1333

TABLE II

DISCIPLINARY PROCEEDINGS INSTITUTED

Calendar Year	Complaints Docketed	Informal Admonitions	Petitions Submitted for CM Approval	Diversions Approved
1994	524	59	51	N/A
1995	526	32	42	8
1996	531	40	50	20
1997	519	28	54	25
1998	560	29	68	18
1999	455	34	41	17
2000	421	42	43	7
2001	434	31	22	16
2002	575	29	37	9
2003	477	37	57	7

TABLE III

UNDOCKETED AND CJA COMPLAINTS

Calendar Year	Total Complaints	Undocketed Cases		CJA Cases	
		Number	*% Total*	*Number*	*% Total*
1994	1398	702	50.2%	172	12.3%
1995	1498	824	55.0%	148	9.9%
1996	1516	857	56.5%	143	9.4%
1997	1612	870	54.0%	223	13.8%
1998	1689	883	52.3%	246	14.6%
1999	1454	800	55.0%	199	13.7%
2000	1314	662	50.0%	231	18.0%
2001	1376	680	49.4%	262	19.1%
2002	1393	644	46.2%	174	12.5%
2003	1333	692	51.9%	164	12.3%

Appendix E

Volunteers in other Jurisdiction's Disciplinary Systems

Volunteers in the Disciplinary System

Jurisdictions	Volunteers	OBC/BPR Staffing	Who writes reports	Notes	Final Order
Illinois	125	OBC – 35 Lawyers	Independent Contractors	$600,000.00 per year for contractors	Supreme Court *Board reprimand may be imposed without Court order
Louisiana	180	OBC – 11 Lawyers Board – 4 Lawyers 1 Law Clerk	Staff	Board handles all personnel matters, bill collection, computer programming, including web design, web maintenance (data base, tracking and MIS management), publication of Bar Journal; disciplinary review and CLE training	Board decisions final in public reprovals and probations if no objections
Maryland	422	OBC – 9 Lawyers	Bar Counsel	2 page pre-printed form used for orders. Very fast system based on Peer Review, mediation, and client involvement The process is not confidential	Court of Appeals
Massachusetts	150	OBC – 17 Lawyers Board – 4 Lawyers	Volunteers with staff assistance		Court
Michigan	425	OBC – 14 Lawyers Board – 2 Lawyers	Hearing panel volunteers; board staff may assist	Special masters utilized (panel reviews SM's record)	Hearing panel/board orders can constitute final order without court approval
Minnesota	500	OBC - Lawyers	Volunteer Committee		Supreme Court

Jurisdictions	Volunteers	OBC/BPR Staffing	Who writes reports	Notes	Final Order
New Jersey	500	Board – 7 Lawyers OBC – 10 Lawyers 12 - Investigators 11 – Auditors	Trial level – board volunteers; Appeals level- staff		Ethics Committee Disciplinary Review Board on appeals Supreme Court on Disbarments
North Carolina		Board – 12 OBC – 6 Lawyers	Volunteers		Hearing Committee can issue all final orders
Virginia	224	OBC - 10 investigators 14 lawyers	Bar counsel writes draft reports for District Hearing volunteers. Volunteer committee writes final order. Disciplinary Committee Volunteers writes its orders from start to finish		The District Committees issues final orders in public reprimand cases. The Disciplinary Board issues final orders in suspension and revocation cases.
D.C.*	75	Board – 3 Lawyers 1 Case manager OBC – 12 Lawyers 2 Professional staff	Volunteers with staff assistance		Court

- Data collected from reports and charts distributed at the May 5, 2004, Thirty-First Annual Disciplinary Conference.
- Staffing statistics reflect professional staff only.

Appendix F

Consent Discipline in Jurisdictions Throughout the U.S.

Information collected by John Van Bolt, Executive Director of Michigan's Attorney Discipline Board

Discipline by Consent in Jurisdictions Interviewed by Subcommittee

Consent Discipline in Jurisdictions Throughout the U.S.

Information collected by John Van Bolt, Executive Director of Michigan's Attorney Discipline Board

JURISDICTION	RULE-STATUTE	PERCENTAGE
ARIZONA	Arizona Rule 56 [Discipline by Consent]	Approx. 33%
ARKANSAS	Arkansas Supreme Court Disciplinary Procedures, Section 20.B	Formal Complaints disposed of by consent: 2003: 56 out of 185 (30%) 2002: 35 out of 178 (20%) 2001: 13 out of 135 (10%)
CALIFORNIA	Rules of Procedure of the State Bar of California, Rules 133 and 135	Attachment: Sample Stipulation Regarding Facts, Conclusions of Law and Disposition
COLORADO	Chapter 20, Colorado Rules of Civil Procedure, Rule 251.22 [Discipline Based on Admitted Misconduct]	54%
CONNECTICUT	Superior Court Rules, Section 2-82, Eff 1-1-04	
DISTRICT OF COLUMBIA	Rule XI Section 12-Disbarment by Consent Section 8.1-Diversion Section	
GEORGIA	Rule 4-227 [Petitions for Voluntary Discipline]	Estimated at 75% (includes both public and private discipline)
IDAHO	Rule 514 [Imposition of Sanctions by Consent]	Not extensively used
ILLINOIS	Supreme Court Rule 762(B)	Average over past 5 years: 45% Attachment: Sample Petition to Impose Discipline on Consent
INDIANA	Indiana Admission and Discipline Rule 23 Section 11(C) [Conditional Agreement for Discipline] and Section 17 [Consent to Discipline and Resignation]	
LOUISIANA	Supreme Court Rule 19, Section 20	
MARYLAND	Rule 16.772 [Consent to Discipline or Inactive Status]	For FY 2003: 5 of 17 disbarments (30%) 16 of 35 suspensions (46%)

JURISDICTION	RULE-STATUTE	PERCENTAGE
MASSACHUSETTS	Supreme Court Judicial Court Rule 4:01, Section 8(3)	For FY 2003: 24 of 27 Public Reprimands (89%) 13 of 31 "Term Suspensions" (42%) 6 of 8 "Indefinite Suspensions" (75%) 5 of 21 "Resignation and Disbarments" (24%)
MICHIGAN	Michigan Court Rule 9.115(F)(5) [Discipline by Consent]	2003: See breakdown by type of discipline, next page
MISSOURI	No specific rule. See attached sheet.	
MONTANA	Rule 26 [Discipline by Consent]	In formal cases, 34% resulted in formal discipline by consent; 41 % resulted in a private admonition by consent; and 25% resulted in formal discipline after a formal hearing (i.e., no consent)
NEVADA	Rule 113 [Discipline by Consent]	
NEW JERSEY	Rule 1:20-10, Part (b)	
OHIO	Ohio Rules of Court Governing Procedure on Complaints and Hearing, Section 11 [Consent to Discipline)	
OREGON	Rule 3.6 [Discipline by Consent]	Estimated 60-70%
PENNSYLVANIA	Pennsylvania Rules of Disciplinary Enforcement, Rule 215 (consent to disbarment only)	
SOUTH CAROLINA	Rule 21	For FY 2003: Consents were 25 of 33 Public Disciplinary Opinions (76%)
TENNESSEE	Tennessee Supreme *Court* Rule 9, Section 16	Approx. 10%

JURISDICTION	RULE-STATUTE	PERCENTAGE
TEXAS	OLD RULE: Texas Rules of Disciplinary Procedure 2.13 – Investigatory committees could negotiate a sanction with an attorney after finding just cause AS OF JANUARY 1, 2004: Investigatory Hearing eliminated and new rule does not specifically refer to negotiated settlement.	
VERMONT	Rule 8 of Supreme Court Administrative Order 9	
VIRGINIA	Rules of the Virginia Supreme Court, Part 6, Section IV, Paragraph 13(B)(6)(a)(9) [District Committees], and 13(B)(5)(c) [Disciplinary Board]	
WASHINGTON	Rules for Enforcement of Lawyer Conduct (ELC), 9.1 - Stipulations	Has ranged from 33% to 50% in recent years.
WISCONSIN	Supreme Court Rules 22.09 and 22.19 [Consensual Private and Public Reprimands/Petition for Consensual License Revocation]	Approx. 50% by consent in FY 2003
WYOMING		24 of 25 Public Discipline/ Reinstatement cases in 2003 (96%)

Discipline by Consent in Jurisdictions Interviewed by Subcommittee

Jurisdiction	% Cases Resolved by Consent	Plea Bargain Allowed	Process
Illinois*	45%	No	Informal process OBC meets with Respondent with memo of appropriate disposition Only cases with clear facts, law and precedent are suitable
Louisiana*	25-30%	No	
Maryland+	30% Disbarment 46% Suspension	Yes	Used when attorney admits conduct and case law supports discipline If sanctions are imposed the Court gets involved
Massachusetts+	89% Public Reprimand 42% Term Suspension 75% Indefinite Suspension 24% Resignation/Disbar 36% Discipline Order	Yes	Functions like criminal plea bargains Stipulation, discipline and full statement of facts are made public
Michigan*	34%		
Minnesota		Yes	May stipulate disbarment Agreements are reviewed by the Court
New Jersey		No	Discipline by Consent is generally not used The attorney must admit to all of the facts Discipline becomes public only if the agreement is rejected
North Carolina		No	
Virginia	12%	Yes	Subcommittees approve low level agreed upon dispositions up to public reprimand with terms Cases are public unless resolved within 21 day private discipline period And the discipline is an admonition or dismissal with terms

*percentages constitute total number of "disposed of cases"
+percentages represent the number of "disposed of cases" by type of case

Appendix G

(Reciprocated Statistics in D.C. and Other Jurisdictions)

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2000

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
98-BG-1491 99-BG-889	Disbarment w/restitution of $15000 plus 6% interest	12/5/99	Disbarment w/restitution of $15000 plus 6% interest	1/13/00
99-BG-1390	Public Censure	10/25/99	Public Censure	2/3/00
98-BG-1751	60-day suspension nunc pro tunc January 7, 1999	10/19/99	60-day suspension nunc pro tunc January 7, 1999 (Recip.) (Identical)	2/3/00
99-BG-270	Disbarment w/restitution as ordered by the Hearing Committee	1/13/99	Disbarment w/restitution as ordered by the Hearing Committee	2/10/00
98-BG-1519	3-month suspension	11/19/99	3-month suspension (Recip.) (Identical)	2/17/00
97-BG-2075	Dismissed w/out prejudice because already disbarred	11/19/99	Dismissed w/out prejudice (Recip.) (Non-Identical)	2/17/00
99-Bg-341	Public Censure	12/27/99	Public Censure (Recip.) (Identical)	3/2/00
00-Bg-89	Consent Disbarment	1/31/00	Consent Disbarment	3/2/00
99-Bg-1314	Consent Disbarment	2/24/00	Consent Disbarment (Recip.) (Reciprocal Issue Moot)	3/23/00
97-Bg-1362	Disbarment w/fitness	3/3/98	5-year suspension (Recip.) (Identical)	3/23/00
99-Bg-823	30-day suspension stayed; 1-year probation w/conditions (1) only take matters competent in (2) take two CLE credits (1=PR, 1=probate), (3) provide proof to BC of completed courses, (4) consult seasoned attorney when need to, and (5) not be subject to a disciplinary proceeding during pendency of proceedings	6/17/99	30-day suspension stayed; 1-year probation w/conditions (1) only take matters competent in (2) take two CLE credits (1=PR, 1=probate), (3) provide proof to BC of completed courses, (4) consult seasoned attorney when need to, and (5) not be subject to a disciplinary proceeding within the year	3/30/00
99-BG-651	6-month suspension nunc pro tunc to 4/19/99	2/10/00	6-month suspension nunc pro tunc to 4/19/99 (Recip.) (Identical)	3/30/00
98-BG-230 98-BG-478	Disbarment	7/6/99	Disbarment (Recip.) (Crim.)	3/30/00
00-BG-120	Public Censure	2/8/00	Public Censure	3/30/00
98-BG-446	30-day suspension	3/5/99	30-day suspension (Crim.)(Recip.)(Non-identical)	3/30/00
98-BG-331	Disbarment; pending resolution of R's criminal appeal	11/23/98	Disbarment (Crim.)	4/13/00
98-BG-1094	Disbarment (Recip.)	9/12/99	Disbarment (Recip.)	4/13/00
97-BG1454	Disbarment nunc pro tunc April 20, 1995; pending judgment of conviction	12/23/97	Disbarment nunc pro tunc April 20, 1995	4/27/00
99-BG-649	90-day suspension	5/20/99	90-day suspension (court appends board report)	4/27/00
99-BG-1070	30-day suspension (non-identical)	3/3/00	30-day suspension (Recip.)(Non-identical)	4/27/00
98-BG-548	Consent Disbarment	2/28/00	Consent Disbarment	5/4/00
98-BG-1549	Disbarment (Crim.)	10/7/99	Disbarment (Crim.)	6/8/00
99-BG-1721	Consent Disbarment	4/24/00	Consent Disbarment (Crim.)	6/8/00
97-BG-1507	Dismissal (Recip.) (Non-identical)	12/31/98	Dismissed (Recip.) (Non-identical)	6/15/00

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2000

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
98-BG-161	Disbarment (Recip.)	10/8/99	Disbarment (Recip.)	6/15/00
98-BG-1295	Disbarment (Recip.)	7/12/99	Disbarment (Recip.)	6/15/00
94-BG-1280	Disbarment (Crim.)	11/4/99	Disbarment (Crim.)	6/29/00
97-BS-1872	Disability Suspension	10/25/99	Disability Suspension (§ 13)	6/29/00
99-BG-736	30-day suspension (Recip.)	11/5/99	30-day suspension w/fitness (Recip.)	6/29/00
99-BG-4	Disbarment (Recip.)	11/4/99	Disbarment (Recip.)	7/6/00
97-BG-195	Disbarment	3/22/99	Disbarment (Crim.)	7/13/00
96-BG-1409	One year's suspension w/ fitness	7/20/99	1-year suspension w/ fitness	7/13/00
99-BG-140	Disability suspension	6/15/00	Disability Suspension (Section 13.)	7/27/00
98-BG-748	Sixty days' suspension stayed; 2 years' probation w/conditions	5/28/99	60-day suspension stayed; 2 year probation w/ conditions	7/27/00
98-BG-846	Disability suspension w/matters held in abeyance pending removal of disability suspension	11/23/99	Held in abeyance pending removal of disability suspension (Recip.)	8/31/00
99-BG-652	Disability suspension w/matters held in abeyance	11/23/99	Disability Suspension (Section 13.)	8/31/00
00-BG-917	30-day suspension	7/26/00	30-day suspension	9/14/00
98-SP-594	N/A	N/A	Criminal Contempt	9/21/00
99-BG-1248	Public censure (Recip)	7/25/00	Public Censure (Recip.)	9/28/00
99-BG-646	Consent disbarment	9/14/00	Consent Disbarment	10/5/00
94-BG-21	Three-year suspension nunc pro tunc January 24, 1994 w/fitness	11/19/00	3-year suspension nunc pro tunc January 24, 1994 w/fitness	10/12/00
99-BG-57	60-day suspension w/fitness (Recip.)	12/2/99	60-day suspension w/fitness (Recip.)	10/26/00
99-BG-1537	Thirty days' suspension	11/23/99	30-day suspension	11/2/00
99-BG-267	Disbarment	2/14/00	Disbarment (Recip.)	11/2/00
99-BG-551	Six months suspension w/fitness	3/3/00	6-month suspension w/fitness (Recip.)	11/2/00
97-BG-1508	Disbarment (Recip.)	3/6/00	Disbarment (Recip.)	11/16/00
00-BG-836	Reinstatement	6/30/00	Reinstatement	11/16/00
99-BG-1072	Reciprocal. Functional equivalent of MD Reprimand=Public Censure	6/13/00	Public Censure (Recip.)	11/16/00
99-BG-1112	6-month suspension (non-identical reciprocal)	6/19/00	Non-identical Reciprocal; 6-month suspension	11/16/00
99-BG-964	Disbarment	7/28/99	Disbarment	11/22/00
97-BG-1095	Disbarment	7/2/98; 11/19/99	Disbarment	11/22/00
00-BG-395	30-day suspension, stayed; 2 years probation w/ practice monitor & psych treatment	4/12/00	30-day suspension, stayed; 2 years probation w/ practice monitor & psych treatment	11/22/00
99-BG-1083	Reciprocal Disbarment (GA)	8/23/00	Disbarment (Identical Recip.)	11/22/00

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2000

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
98-BG-1058	6-month suspension with fitness	5/8/00	6-month suspension nunc pro tunc June 28, 1999 w/fitness	12/14/00
99-BG-56 00-Bg-122	Reciprocal Disbarment (Recip.)	5/26/00	Disbarment (Non-identical Recip.)	12/14/00
00-BG-1530	Disbarment (Consent)	12/1/00	Consent Disbarment	12/21/00
97-BG-114	90-day suspension - satisfaction of judgment prior to reinstatement	1/24/97	90-day suspension w/restitution prior to reinstatement	12/28/00
99-BG-1499	Disbarment	11/16/99	Disbarment	12/28/00
99-BG-769	30-day suspension w/fitness (Recip.)	05/24/00	30-day suspension w/fitness (Recip.)	12/28/00
99-BG-1073	Disbarment (Recip.)	03/29/00	Disbarment (Recip.)	12/28/00
99-BG-5	1-year suspension nunc pro tunc February 25, 1999 w/fitness (Recip.)	01/14/00	1-year suspension nunc pro tunc February 25, 1999 w/fitness (Recip.)	12/28/00

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2001

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
99-BG-1207	2-year suspension w/fitness (Recip.)	6/15/00	2-year suspension w/ fitness (Recip.)	1/4/01
99-BG-604	6-month suspension w/fitness (Recip.)	01/05/00	6-month suspension w/fitness (Recip.)	1/11/01
99-BG-1113	Indefinite suspension w/fitness w/the right to apply for reinstatement after reinstatement in Maryland or after 5 years, whichever occurs first	05/26/00	Indefinite suspension w/ fitness w/the right to apply for reinstatement after reinstatement in Maryland or after 5 years, whichever occurs first	1/11/01
99-BG-1149	Disbarment (Crim.)	06/19/00	Disbarment (Crim.)	1/11/01
00-BG-1637	Disability Suspension	12/21/00	Disability Suspension	1/18/01
00-BG-1636	Disability Suspension	12/22/00	Disability Suspension	1/18/01
99-BG-1625	2-year suspension w/fitness; vacatur of suspension upon showing of satisfaction of California's probation order; nunc pro tunc 7/21/99; (Recip.)	06/30/00	2-year suspension w/fitness; vacatur of suspension upon showing of satisfaction of California's probation order; nunc pro tunc to 7/21/99; (Recip.)	1/25/01
99-BG-1208	Revocation of license w/the right to apply for reinstatement after reinstatement in Virginia or after 5 years, whichever occurs first	07/12/00	Revocation of license w/the right to apply for reinstatement after reinstatement in Virginia or after 5 years, whichever occurs first	1/25/01
98-BG-1147	3-year suspension w/fitness	07/31/98	Disbarment	1/25/01
99-BG-1362	Disbarment (Recip.)	07/25/00	Disbarment (Recip.)	1/25/01
99-BG-1498 & 00-BG-954	Public reprimand (Recip.)	12/29/00	N/A	N/A
99-BG-479	Reinstatement denied; 9-month suspension w/fitness (Recip.)	05/24/00	Reinstatement denied; 9-month suspension w/fitness (Recip.)	2/1/01
98-BG-1850	Indefinite suspension; w/the right to apply for reinstatement after reinstatement in Maryland or after 5 years, whichever occurs first w/fitness	7/20/00	Indefinite suspension; w/the right to apply for reinstatement after reinstatement in Maryland or after 5 years, whichever occurs first, w/fitness (Recip.) (Identical)	2/1/01
00-BG-914	6-month suspension w/condition to pay $1,711.19 to estate	7/21/00	6-month suspension w/condition to pay $1,711.19 to estate	2/1/01
00-BG-4	Disbarment	7/25/00	Disbarment (Recip.) (Identical)	2/1/01
98-BG-1500	Indefinite Suspension; w/the right to apply for reinstatement after reinstatement in Maryland or after 5 years, whichever occurs first, w/fitness, plus two years supervision with quarterly reports upon reinstatement	7/20/00	Indefinite Suspension; w/the right to apply for reinstatement after reinstatement in Maryland or after 5 years, whichever occurs first, w/fitness, plus two years supervision upon reinstatement (Recip.)	2/8/01
99-BG-645	Indefinite Suspension; w/the right to apply for reinstatement after reinstatement in Virginia or after 5 years, whichever occurs first	7/7/00	Indefinite Suspension; w/the right to apply for reinstatement after reinstatement in Virginia or after 5 years, whichever occurs first (Recip.)	2/8/01
00-BG-915	Reinstatement Recommended	7/21/00	Reinstatement granted	2/15/01
99-BG-55	Indefinite Suspension; w/the right to apply for reinstatement after reinstatement in Maryland or after 5 years, whichever occurs first w/ reinstatement conditioned on fitness, employment of an attorney monitor for two years and completion of 12 hours CLE w/in the first two years of practice (Recip.)	7/20/00	Indefinite Suspension; w/the right to apply for reinstatement after reinstatement in Maryland or after 5 years, whichever occurs first w/ reinstatement conditioned on fitness, employment of an attorney monitor for two years and completion of 12 hours CLE w/in the first two years of practice (Recip.)	3/1/01

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2001

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
99-BG-342	Disbarment (Crim.)	2/8/00	Consent Disbarment	3/1/01
00-BG-953	One Year Suspension w/fitness	7/17/00	1-year suspension w/fitness	3/1/01
00-BG-1464	Public Censure	11/8/00	Public Censure	3/1/01
99-BG-54	Indefinite Suspension (Recip.)	7/12/00	Indefinite Suspension (Recip.)	3/15/01
99-BG-1624	18 months w/all but 30 days suspended, nunc pro tunc January 4, 2001 (Ident. Recip.)	9/22/00	18-month suspension, nunc pro tunc January 4, 2000; stayed on condition Respondent serve 30-suspension & comply w/conditions imposed in California	3/15/01
00-BG-416	9-month suspension nunc pro tunc to 1/13/99 & 2-year probation with practice monitor and provide BC with monthly reports the first year and quarterly thereafter.	2/14/00	9-month suspension nunc pro tunc January 13, 1999 and 2-year probation w/condition that Respondent be supervised by an approved practice monitor who will report to BC and the Board monthly for the first year and thereafter quarterly (Recip.)	3/22/01
00-BG-952	Disbarment	7/28/00	Disbarment	3/22/01
98-BG-1592	2-year suspension stayed and placed on unsupervised probation w/condition that Respondent refrain from violating disciplinary rules of any jurisdiction which he is a member (Recip.)	7/26/99	2-year suspension stayed and place on unsupervised probation w/condition that Respondent refrain from violating disciplinary rules of any jurisdiction which he is a member (Recip.)	4/5/01
01-BG-814	4-month suspension w/2-months stayed, followed by a 1-year period of unsupervised probation. Also, Respondent cannot be the subject of complaint that results in disciplinary action.	6/27/00	4-month suspension w/2-months stayed followed by a 1-year period of unsupervised probation. Ct. rejected Board's condition that Respondent cannot be the subject of complaint that results in disciplinary proceeding b/c speculative whether a complaint will result in discipline.	4/5/01
97-BG-1322	6-month suspension nunc pro tunc July 28, 1998 w/2 years probation with conditions	4/7/00	6-month suspension nunc pro tunc July 28, 1998 w/2 years probation with conditions and restitution	4/12/01
01-BG-173	30-day suspension	2/9/01	30-day suspension	4/12/01
98-BG-1322	1-year suspension	6/19/00	1-year suspension nunc pro tunc July 3, 2000 (Crim.)	4/19/01
99-BG-1074 99-BG-1287	Indefinite Suspension; w/the right to apply for reinstatement after reinstatement in United States Bankruptcy Court for the District of Maryland or after 5 years, whichever occurs first (Recip.)	11/17/00	Indefinite Suspension; w/the right to apply for reinstatement after reinstatement in United States Bankruptcy Court for the District of Maryland or after 5 years, whichever occurs first (Recip.)	5/10/01
99-BG-1206	License revocation w/the right to apply for reinstatement after reinstatement in Virginia or after 5 years, whichever occurs first (Recip.)	11/9/00	License revocation w/the right to apply for reinstatement after reinstatement in Virginia or after 5 years, whichever occurs first (Recip.)	5/17/01
00-BG-765	Disbarment; Restitution a condition of reinstatement.	6/20/00	Disbarment; Restitution a condition of reinstatement.	5/24/01
99-BG-1440	9-month suspension w/restitution & CLE requirements; Must certify having read the District of Columbia Bar's "Voluntary Standards of Civility in Professional Conduct."	11/02/99	9-month suspension w/restitution & CLE requirements	6/7/01
00-BG-1465	Disbarment	11/14/00	Disbarment	6/7/01

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2001

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
01-BG-298	Reinstatement w/ conditions	03/12/01	Reinstatement w/ conditions	6/7/01
00-BG-1058	Informal Admonition	07/27/00	Informal Admonition	6/7/01
00-BG-123 00-BG-1577	30-day suspension w/fitness	07/12/00	30-day suspension w/fitness	6/7/01
00-BG-967	Public Censure	03/21/01	Public Censure	6/14/01
00-BG-1360	3-month suspension w/fitness (Recip.)	03/09/01	3-month suspension w/fitness (Recip.)	6/28/01
99-BG-1490	Disbarment (Crim.)	05/11/03	Disbarment (Crim.)	6/28/01
00-BG-837	Public Censure	07/07/00	Public Censure	7/12/01
98-BG-1758	Disbarment nunc pro tunc to 4/14/99 (Recip.)	01/19/01	Disbarment nunc pro tunc to 4/15/99 (Recip.)	7/19/01
99-BG-1148	5-year suspension w/fitness (Recip.)	11/14/00	5-year suspension w/fitness (Recip.)	7/19/01
99-BG-477	Suspended with leave to apply for reinstatement if granted in Virginia, or after five years, whichever occurs first	09/20/00	Dismissal; Schoeneman reinstated in D.C. (Recip.)	7/26/01
00-BG-230	6-month suspension	03/06/00	6-month suspension	8/2/01
00-BG-313	30-day suspension nunc pro tunc to 4/13/00	5/10/01	30-day suspension nunc pro tunc to 4/13/00 (Recip.)	8/2/01
01-BG-336	Dismissed Reciprocal matter as moot	7/31/01	Reciprocal matter dismissed as moot	8/22/01
00-BG-692	90-day suspension (Recip.)	5/25/01	90-day suspension (Recip.)	8/23/01
00-BG-518	Public Censure (Recip.)	5/10/01	Public Censure (Recip.)	8/23/01
99-BG-1023	30-day suspension	8/3/99	Remanded to the BPR to recommend a disposition in light of all the changes identified by the HC	8/30/01
	3-year suspension w/ fitness	5/3/02	18-month suspension w/ fitness	7/22/04
00-BG-1568	30-day suspension (Recip.)	11/7/99	30-day suspension nunc pro tunc to 11/30/00 (Recip.)	8/30/01
99-BG-1518	Disbarment	11/18/01	1-year & 60-day suspension; reinstatement conditioned upon compliance w/Rule XI, ' 16(d)	9/13/01
00-BG-1561	Consent Disbarment	9/6/01	Consent Disbarment	9/20/01
01-BG-1179	Consent Disbarment	9/5/01	Consent Disbarment	9/20/01
00-BG-231	Disbarment (Recip.)	07/15/00	Disbarment (Recip.)	10/4/01
99-BG-1081	30-day suspension stayed; 2- year probation w/ conditions	7/31/01	30-day suspension stayed; 2-year probation w/ conditions	10/25/01
99-BG-1647	Disbarment (Recip.)	7/27/01	Disbarment (Recip.)	11/1/01
99-BG-1359	Disbarment (Recip.)	12/12/00	Disbarment (Recip.)	11/8/01
00-BG-312	1-year suspension w/fitness (Recip.)	5/10/01	1-year suspension w/fitness (Recip.)	11/15/01
00-BG-813	Disbarment (Recip.)	5/2/01	Disbarment (Recip.)	12/6/01
01-BG-98	Reprimand (Recip.)	11/14/01	Closed	12/20/01

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2001

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
00-BG-835	Disbarment	6/19/01	Disbarment	12/27/01
00-BG-1372	Disbarment (Recip.)	7/29/01	Disbarment (Recip.)	12/27/01

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2002

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
98-BG-1847	Direct to HC to determine if there is moral turpitude under the facts	3/9/01	Disbarment (Crim.)	1/17/02
01-BG-61	1-year suspension	1/17/01	1-year suspension	1/31/02
01-BG-906	Disbarment	7/16/01	Disbarment	1/31/02
01-BG-981	6-month suspension w/fitness	7/27/01	6-month suspension w/fitness	1/31/02
00-BG-1422 01-BG-62	Disbarment (Recip.)	6/18/01	Disbarment (Recip.)	1/31/02
99-Bg-112	Disbarment (Crim.)	6/19/01	Disbarment (Crim.)	2/14/02
00-BG-1634	Disbarment (Crim.)	7/27/01	Disbarment (Crim.)	2/21/02
00-BG-184	2-year suspension nunc pro tunc March 2, 2000, stayed execution of all except 60-days suspension and placed on unsupervised suspension probation w/conditions (Recip.)	7/30/01	2-year suspension nunc pro tunc March 27, 2000, stayed execution of all except 60-days suspension and placed on2-year unsupervised suspension probation w/conditions (Recip.)	2/28/02
00-BG-1635	2-year suspension nunc pro tunc January 19, 2001 w/fitness subject to vacfur if summarily reinstated in MD	7/27/01	2-year suspension nunc pro tunc January 19, 2001 w/fitness	3/7/02
00-BG-250	Disbarment	7/27/01	Disbarment (Crim.)	3/14/02
00-BG-1338	Disbarment (Crim.)	7/30/01	Disbarment (Crim.)	3/14/02
01-BG-1438	Public Censure	11/16/01	Public Censure	3/28/02
00-BG-911	6-month suspension	7/20/00	6-month suspension	3/28/02
01-BG-47	1-year suspension w/fitness, including proof of mental fitness	7/31/01	1-year suspension w/fitness, including proof of mental fitness (Recip.)	3/28/02
01-BG-783	Dismiss	9/1/01	Dismissed	4/18/02
00-BG-46	Disbarment	4/25/01	Disbarment (Recip.)	4/18/02
00-BG-1421 00-BG-1595	5-year suspension w/fitness	11/30/01	5-year suspension w/fitness (Recip.)	4/18/02
01-BG-337	6-month suspension nunc pro tunc May 7, 2001 (Recip.)	12/21/01	6-month suspension nunc pro tunc May 7, 2001 (Recip.)	4/25/02
00-BG-1374	30-day suspension w/ 2-year unsupervised probation w/ condition he file quarterly reports w/ BPR & BC re: alcoholism	4/30/01	Indefinite Suspension pursuant to 138	5/6/02
00-BG-221	1-year suspension (Non-identical Recip.)	7/31/01	Remanded to the BPR on the issue of Sanction	5/23/02
01-BG-853	Disbarment (Non-identical discipline. NY: 2-year suspension)	11/30/01	Disbarment (Recip.)	5/23/02
01-BG-1528	No additional sanction b/c of earlier disbarment but as a condition of reinstatement restitution to Respondent's client in the amount of $500.00	12/10/01	No additional sanction b/c of earlier disbarment but as a condition of reinstatement restitution to Respondent's client in the amount of $500.00	6/6/02
01-BG-731	Petition for reinstatement denied	5/25/01	Petition for Reinstatement Denied	6/6/02
99-BG-1420 01-BG-688	90 day suspension, nunc pro tunc August 22, 2001, followed by 9 months unsupervised probation (Identical Reciprocal); and be required to file evidence that he has performed 20 hours of pro bono work as required by the Utah Court	12/27/01	90-day suspension followed by 9 months of unsupervised probation, both nunc pro tunc August 22, 2001 (Consolidated Recip. Crim.)	6/6/02

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

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DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
01-BG-299	Disbarment (remanded)	3/8/01 & 4/2/02	Disbarment	6/13/02
01-BG-193	2-year suspension w/fitness (Identical Recip.)	11/30/01	2-year suspension w/fitness (Recip.)	6/13/02
02-BG-451	6-month suspension stayed w/medical disability	[illegible]	6-month suspension stayed w/medical disability	6/27/02
01-BG-994	Disbarment (CAFFERTY)	7/31/01	Disbarment (Cafferty)	7/3/02
01-BG-1000	18-month suspension stayed but for 60 days nunc pro tunc July 19, 2001	4/11/02	18-month suspension stayed but for 60 days nunc pro tunc July 19, 2001 (Recip.)	7/3/02
02-BG-426	30-day suspension w/reinstatement conditioned upon cooperation w/BC	4/25/02	30-day suspension w/reinstatement conditioned upon cooperation w/BC	7/3/02
01-BG-[illegible]	Disbarment	[illegible]	Disbarment	7/25/02
00-BG-1346	Public Censure	11/13/01	Public Censure (Recip.)	8/22/02
01-BG-1208	90-day suspension nunc pro tunc October 26, 2001	6/14/02	90-day suspension nunc pro tunc October 26, 2001 (Recip.)	8/22/02
02-BG-788	30-day suspension	7/12/02	30-day suspension	9/26/02
01-BG-692	Disbarment	[illegible]	Disbarment (Recip.) (Identical)	9/26/02
01-BG-921	Disbarment	2/21/02	Disbarment (Recip.) (Identical)	9/26/02
01-BG-1049	Public censure w/order for Respondent to reimburse a witness in the amount of $728.41 for travel expenses	7/26/02	Public censure w/order for Respondent to reimburse a witness in the amount of $728.41 for travel expenses (Recip.) (Identical)	9/26/02
01-BG-980	Disbarment	3/14/02	Disbarment (Recip.) (Identical)	9/26/02
02-BG-719	Consent Disbarment nunc pro tunc July 24, 2002	8/9/02	Consent Disbarment nunc pro tunc July 24, 2002	9/26/02
00-BG-552	Disbarment	5/8/00	Remand to the BPR on issue of recklessness	10/3/02
	6-month suspension plus 3-hours of continuing legal education on proper handling of entrusted funds	7/2/03		
02-BG-222	30-day suspension stayed w/Respondent placed on probation for 1 year, subject to the condition that Respondent be supervised by a Board-appointed monitor who will provide quarterly reports to the BPR and BC	3/6/02	30-day suspension stayed w/Respondent placed on probation for 1 year, subject to the condition that Respondent be supervised by a Board-appointed monitor who will provide quarterly reports to the BPR and BC	10/10/02
02-BG-496	DISBARMENT BY CONSENT	9/19/02	Consent Disbarment	10/10/02
02-BG-929	DISBARMENT BY CONSENT	[illegible]	Consent Disbarment	10/10/02
01-BG-356	90 DAYS' SUSPENSION	3/19/02	90-day suspension w/fitness (Recip.)	11/7/02
01-BG-1209	THREE YEARS' SUSPENSION	[illegible]	3-year suspension w/fitness (Recip.)	11/7/02
01-BG-1227	DISBARMENT	4/16/02	Disbarment (Crim.)	11/14/02
01-BG-563	DISBARMENT	[illegible]	Disbarment	11/27/02
01-BG-687	DISBARMENT	4/8/02	Disbarment Crim.)	11/27/02
01-BG-1207	ONE YEAR'S SUSPENSION	[illegible]	1-year suspension w/fitness (Recip.)	12/5/02
	ONE YEAR'S SUSPENSION W/FITNESS		1-year suspension w/fitness w/inquiry there under	

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DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
01-BG-995	W/INQUIRY THEREUNDER PRIMARILY DIRECTED TO THE FEE DISGORGEMENT ISSUE	7/31/01	primarily directed to the fee disgorgement issue, in connection with his representation of individuals in a potential class-action consumer claim.	12/19/02
01-BG-1579	30-day suspension w/order to complete at least two continuing legal education courses totaling six hours within one year of the entry of the order	12/26/01	30-day suspension w/order to complete at least two continuing legal education courses totaling six hours within one year of the entry of the order	12/19/02
01-BG-1108	Public Censure (Recip.)	10/31/02	Public Censure (Recip.)	12/19/02

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DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
98-BG-1472	Disbarment (Crim.)	7/16/02	Disbarment (Crim.)	1/16/03
02-BG-18	Disbarment (Crim.)	7/16/02	Disbarment (Crim.)	1/16/03
02-BG-1392	Consent Disbarment	12/18/02	Consent Disbarment	1/23/03
02-BG-716	One year suspension (Recip.)	7/31/01	Remanded to determine which appropriate: Public Censure or further proceedings	5/23/02
	On Remand: Public Censure (Recip.)	6/26/02	Public Censure (Recip.)	1/23/03
02-BG-89	Public Censure (Recip.)	12/4/02	Public Censure (Recip.)	1/30/03
01-BG-1535	Disbarment (Recip.)	7/16/02	Disbarment (Recip.)	1/30/03
01-BG-1536	Disbarment (Recip.)	7/18/02	Disbarment (Recip.)	1/30/03
01-BG-92	Public Censure (Recip.)	12/3/02	Public Censure (Recip.)	2/6/03
01-BG-1361	Disbarment (Crim.)	7/26/02	Disbarment (Crim.)	2/6/03
02-BG-787	Reinstatement Petition denied	7/12/02	Reinstatement Petition denied	2/13/03
01-BG-1380	Disbarment (Recip.)	7/29/02	Disbarment (Recip.)	2/20/03
96-BG-1214	Disbarment (Crim.)	7/31/02	Disbarment (Crim.)	2/27/03
02-BG-139	Disbarment	2/14/02	Disbarment	2/27/03
00-BG-2	1-year and 1-day suspension w/fitness (Recip. Ident.)	12/23/02	1-year and 1-day suspension w/fitness (Recip.) (Identical)	2/27/03
02-BG-1414	Consent Disbarment	03/05/03	Consent Disbarment	3/27/03
02-BG-845	Disbarment Disbarment	07/26/02 4/8/03	Disbarment	5/1/03
02-BG-772	90-day suspension	07/10/02	90-day suspension	5/8/03
02-BG-1283	Consent Disbarment	04/22/03	Consent Disbarment	5/8/03
02-BG-513	Disbarment	12/17/02	Disbarment (Crim.)	5/22/03
01-BG-663	Disbarment (Recip. Ident)	10/31/02	Disbarment (Recip.) (Identical)	5/29/03
99-BG-1626	30-day suspension	12/10/99	Remand to the BPR for state of mind on premium billing issue	6/5/03
01-BG-920	30-day suspension w/fitness	12/09/02	30-day suspension w/fitness (Recip.) (Non-Identical)	6/5/03
02-BG-331	Disbarment	12/31/02	Disbarment (Recip.) (Identical)	6/5/03
01-BG-1578	90-day suspension w/fitness	12/23/02	90-day suspension w/fitness.(Recip.) (Non-Identical)	6/12/03
00-BG-28	Consent Disbarment	06/12/03	Consent Disbarment	7/3/03
02-BG-660	60-day suspension w/fitness and restitution in the amount of $350 w/interest	06/14/02	60-day suspension w/fitness and restitution in the amount of $350 w/interest	7/10/03
03-BG-662	Consent Disbarment	06/24/03	Consent Disbarment	7/24/03
02-BG-0855	6-month suspension w/fitness	07/31/02	6-month suspension w/fitness	7/31/03
01-BG-751	90-day suspension w/fitness and proof of restitution as directed by the BPR	05/31/01	90-day suspension w/fitness and proof of restitution as directed by the BPR	8/28/03
03-BG-841	Consent Disbarment	08/06/03	Consent Disbarment	8/28/03

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DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
99-BG-1569	Disbarment	07/05/02	Disbarment	9/11/03
01-BG-96	9-month suspension w/fitness (Recip.)	03/11/02	9-month suspension w/fitness (Recip.)	9/11/03
01-BG-1453	Public Censure	11/21/01	Public Censure	9/18/03
02-BG-539	Disbarment (Recip.)	03/28/03	Disbarment (Recip.)	9/25/03
02-BG-429	DISBARMENT	7/27/03	Disbarment (Recip.)	10/2/03
03-BG-1000	DISBARMENT BY CONSENT	9/10/03	Consent Disbarment	10/2/03
02-BG-498 02-BG-1130	DISBARMENT	2/20/03	Disbarment (Recip.)	10/9/03
00-BG-1214	PUBLIC CENSURE	11/7/02	Public Censure (Recip.) IN MARYLAND R HAD NEGOTIATED DISCIPLINE, BUT IT WAS NOT PUBLISHED; DCCA SAID R HAD WAIVED RIGHT TO OBJECT AS NON IDENTICAL DISCIPLINE BY NOT OBJECTING AT BPR LEVEL	11/6/03
01-BG-485	30 DAY SUSPENSION	7/11/03	30-day suspension nunc pro tunc to October 16, 2002	11/26/03
02-BG-270	DISBARMENT	7/2/03	Disbarment (Recip.)	12/4/03
00-BG-493	3 YEAR SUSPENSION WITH ONE YEAR SUSPENDED IN FAVOR OF PROBATION FOR TWO YEARS	4/27/00	3-years suspension w/1-year suspended in favor of probation for two years or until his therapist concludes and advises Bar Counsel that therapy is no longer necessary. As a condition of probation, the court directed the quarterly submission of certificates from Weiss= treating therapist confirming Weiss= continued good faith participation in therapy.	12/11/03
01-BG-36	Indefinitely Suspension w/the right to reapply for reinstatement after five years or upon reinstatement in Maryland whichever occurs first (Recip)	6/30/03	Indefinitely Suspension w/the right to reapply for reinstatement after five years or upon reinstatement in Maryland whichever occurs first (Recip)	12/18/03
10-BG-1387	Disbarment w/the requirement upon reinstatement that Respondent demonstrate that he has made restitution as ordered by the Supreme Court of Washington (Recip.)	6/30/03	Disbarment w/the requirement upon reinstatement that Respondent demonstrate that he has made restitution as ordered by the Supreme Court of Washington (Recip.)	12/18/03
02-BG-1155	Public Censure (Recip.)	7/17/03	Public Censure (Recip.)	12/18/03

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DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
02-BG-1450	[illegible]	12/22/02	Remanded to the BPR for further consideration	1/8/04
02-BG-974	Disbarment	8/29/02	Disbarment	1/15/04
03-BG-102	[illegible]	7/17/03	Public Censure	1/22/04
03-BG-789	120-day suspension w/reinstatement conditioned on full compliance with Bar Counsel's requests for information and proof of fitness to practice law	7/29/03	120-day suspension w/reinstatement conditioned on full compliance with Bar Counsel's requests for information and proof of fitness to practice law	2/3/04
03-BG-302	Reciprocal, but not identical	7/30/03	Petition for reinstatement denied	2/12/04
01-BG-1065	30-day suspension (Recip.)	7/17/03	30-day suspension (Recip.)	2/12/04
02-BG-56	Revocation	10/31/02	Disbarment	2/12/04
02-BG-70	Revocation	12/30/02	Disbarment	2/12/04
02-BG-349	6-month suspension	6/25/03	6-month suspension, nunc pro tunc to May 5, 2003	3/4/04
98-BG-1384	Disbarment	7/11/02	Remand to the BPR w/instructions to remand to it to the HC for a determination as to whether Respondent was convicted of an offense involving moral turpitude on the facts.	3/11/04
03-BG-53	Disbarment	7/31/03	Consent Disbarment	3/11/04
03-BG-807	Adopted HC Report rec'd that Respondent's petition for reinstatement be granted, upon certain conditions.	7/31/03	Petition for Reinstatement from Disability Suspension granted w/the following conditions: Respondent shall continue his consultation with the District of Columbia Bar's Lawyers Counseling Program, as well as his participation in Alcoholics Anonymous, for a period of at least three years after reinstatement, and he shall report to Bar Counsel and the board concerning those consultations, on a schedule to be set by the board, every six months. Respondent shall be under the supervision of a financial monitor, who is to be appointed by the board, for one year following his reinstatement and shall meet with the monitor every three months, on a schedule to be set by the monitor, in order to formulate and execute a plan to meet his financial obligations (both past due and current), including, inter alia, money owed to the Client Security Fund, and money owed for child support and back taxes, and the monitor shall submit quarterly reports to the board and to Bar Counsel detailing Respondent's progress; and within one year of reinstatement, Respondent shall complete District of Columbia Bar Continuing Legal Education courses in civil litigation, probate and estate, and business organization, and within the same period of time shall also complete a course in legal ethics and a course in law practice management. In addition, the court directed Bar Counsel to reactivate three matters which have been held in abeyance, in conformity with the court's order, pending Respondent's suspension on account of disability and within sixty days of the date of the opinion, advise the board regarding her views as to what, if any, action should be taken in a fourth matter with respect to the possible imposition of reciprocal discipline.	3/25/04
02-BG-69	Reciprocal, but not ID, sanction of 30 days' suspension and reinstatement conditioned upon fitness & refund.	7/25/03	30-day suspension w/reinstatement conditioned upon fitness and showing documentation of a $1,500 refund to Respondent's former client in the Maryland matter (Recip.)	3/25/04
04-BG-26	Consent Disbarment	3/5/04	Consent Disbarment	4/1/04

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01-BG-959 02-BG-1302	30-day-suspension w/fitness Disbarment in (Cases consolidated on 3/4/04)	8/29/02 11/26/03	Disbarment (Recip.)	4/8/04
04-BG-47	Consent disbarment	3/15/04	Consent Disbarment	4/8/04
02-BG-863	30-day suspension stayed w/ 1-year probation w/ conditions 30-day suspension	7/31/02 5/13/03	30-day suspension	4/29/04
02-BG-1220	Indefinite Suspension w/the right to reapply for reinstatement upon a showing of fitness after five years or upon reinstatement in Maryland whichever occurs first	10/24/03	Indefinite Suspension w/the right to reapply for reinstatement upon a showing of fitness after five years or upon reinstatement in Maryland whichever occurs first (Recip.) (Identical)	5/6/04
03-GB-76	Disbarment	10/24/03	Disbarment	5/13/04
03-BG-82	Disbarment (Recip.)	11/7/03	Disbarment (Recip.)	5/27/04
03-BG-581	Public Censure (Recip.)	11/24/03	Public Censure (Recip.)	5/27/04
03-BG-1258	Petition for Reinstatement denied	11/12/03	Petition for Reinstatement denied	5/27/04
03-BG-1299	Public Censure w/conditions	11/24/03	Public Censure and ordered to participate in the D.C. Bar's Lawyer Counseling Program and submit quarterly reports of attendance and compliance from the program until he is released from the program	6/3/04
03-BG-578	60-day suspension and 3 hours CLE in Ethics and Responsibility	6/10/03	30-day suspension	6/17/04
97-BG-327	1 year suspension w/fitness	12/10/03	1 year suspension w/fitness	6/24/04
01-BG-887	6-month suspension nunc pro tunc August 28, 2001	5/20/04	6-month suspension nunc pro tunc August 28, 2001	6/24/04
02-BG-662	Public Censure (Recip.)	3/18/04	Public Censure (Recip.)	7/15/04
03-BG-771	6-month suspension nunc pro tunc April 18, 2002	7/25/03	6-month suspension	7/15/04
04-BS-567	Any formal disciplinary proceedings be held temporarily in abeyance, until a determination is made by the Board and/or the Court that Respondent is not incapacitated	6/10/04	Indefinite Suspension based on Disability	7/15/04
04-BS-750	N/A	N/A	Indefinite Suspension based on Disability	7/15/04
99-BG-1023	30-day suspension	8/3/99	18-month suspension w/fitness	7/22/04
04-BG-281	Disbarment; stayed with Respondent placed on three years of probation w/conditions	3/25/04	Disbarment; stayed with Respondent placed on three years of probation subject to the conditions imposed by the Board in its report and recommendation	7/22/04
02-BG-1285	Public Censure	11/14/02	Public Censure and 2-year probation subject to practice monitor w/conditions	8/5/04
03-BG-285	6-month suspension (Recip.)	12/31/03	6-month suspension (Recip.)	8/5/04

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03-BG-800	30-day suspension w/condition that Respondent cooperate w/BC and fitness	7/30/03	30-day suspension w/condition that Respondent cooperate w/BC and fitness	8/5/04
03-BG-1084	1-year suspension (Recip. - identical)	5/20/04	1-year suspension (Recip. - identical)	8/5/04
02-BG-1178	Disbarment w/ restitution and interest	10/28/02	Disbarment w/ restitution and interest	8/5/04
01-BG-514	1-year suspension nunc pro tunc June 18, 2001 Dismissed	1/29/04 7/30/04	Dismissal	8/13/04
04-BG-433	Public Censure w/ conditions	5/4/04	Public Censure w/ BPR recommended conditions of practice	8/19/04
02-BG-786	18-month suspension w/ fitness	7/12/02	Disbarment w/reinstatement conditioned upon payment of full restitution to his client, with interest at the rate of 10%, and the Clients' Security Trust Fund of the District of Columbia Bar, with interest at the legal rate	9/2/04
03-BG-389	Disbarment (Recip. - identical)	2/24/04	Disbarment (Recip. - identical)	9/16/04
03-BG-191	Indefinitely Suspension w/the right to apply for reinstatement after Respondent is reinstated in Maryland or after five years, whichever occur first. If Respondent is summarily reinstated in Maryland either without objection from Maryland Bar Counsel or without a hearing, he may seek vacatur of the fitness requirement pursuant to the guidelines set forth in Board Rule 8.7. (Recip.)	2/23/04	Indefinitely Suspension w/the right to apply for reinstatement after Respondent is reinstated in Maryland or after five years, whichever occur first. If Respondent is summarily reinstated in Maryland either without objection from Maryland Bar Counsel or without a hearing, he may seek vacatur of the fitness requirement pursuant to the guidelines set forth in Board Rule 8.7. (Recip.)	10/7/04
03-BG-538	90-day suspension	5/30/03	90-day suspension	10/7/04
03-BG-1273	Petition for Reinstatement denied	11/7/03	Reinstatement Petition dismissed	10/7/04
04-BG-1131	Consent Disbarment	9/14/04	Consent Disbarment	10/7/04
02-BG-701	Disbarment (Recip. - identical)	3/11/04	Disbarment (Recip. - identical)	10/21/04
03-BG-374	6-month suspension (Recip. - non-identical)	3/5/04	6-month suspension (Recip. - non-identical)	10/21/04
03-BG-1088	Public Censure (Recip. - functionally identical)	7/27/04	Public Censure (Recip. - functionally identical)	10/21/04
03-BG-767	Reinstatement denied	7/23/03	Reinstatement Denied	10/28/04
02-BG-718	Disbarment w/condition that Respondent comply w/the Supreme Court of Georgia's restitution requirement (Recip. - identical)	3/19/04	Disbarment w/condition that Respondent comply w/the Supreme Court of Georgia's restitution requirement (Recip. - identical)	11/4/04
98-BG-1384	Disbarment	7/10/02	Disbarment	11/10/04
03-BG-413	Disbarment	3/22/03	Disbarment	11/10/04
02-BG-1218	Disbarment (Recip. – identical)	7/30/03	Disbarment (Recip. - identical)	11/24/04

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03-BG-997	Disbarment (Recip. – identical)	4/15/04	Disbarment (Recip. – identical)	11/24/04
02-BG-1073	90-day suspension w/reinstatement conditioned on a showing of compliance with all outstanding requests for information by Bar Counsel and fitness	4/19/04	90-day suspension w/reinstatement conditioned on a showing of Compliance with all outstanding requests for information by Bar Counsel and fitness	12/02/04
04-BG-1390	Consent Disbarment	11/5/04	Consent Disbarment	12/04/04
03-BG-847	13-month suspension (Recip. – identical)	9/27/04	13-month suspension (Recip. -identical)	12/16/04
03-BG-1342	Disbarment	4/14/04	Disbarment	12/16/04
04-BS-1407	Consent Disbarment	11/19/04	Consent Disbarment	12/16/04
01-BG-1577	Consent Disbarment	11/9/04	30-day suspension (Recip. – non-identical)	12/30/04
03-BG-623 04-BS-1485	Consent Disbarment	12/10/04	Consent Disbarment	12/30/04
03-BG-801	60-day suspension	7/30/03	30-day suspension w/fitness	12/30/04
04-BG-428	2-year suspension; stayed for 3 years w/conditions (Recip. – identical)	11/12/04	2-year suspension; stayed for 3 years w/conditions (Recip. – identical)	12/30/04
04-BG-994	Consent Disbarment	11/17/04	Consent Disbarment	12/30/04
04-BG-1217	Consent Disbarment	12/13/04	Consent Disbarment	12/30/04

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DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - If Reciprocal: identical or non-identical	DCCA Opinion Date
04-BG-432	30-day suspension w/reinstatement conditioned upon Respondent filing a response to the disciplinary complaint and his completion of 6 hours of continuing legal education courses in the areas of legal ethics and professional responsibility	5/4/04	30-day suspension w/reinstatement conditioned upon filing a response to the disciplinary complaint and completion of six hours of CLE in the area of legal ethics and professional responsibility	1/6/05
04-BG-453	Disbarment w/reinstatement conditioned on restitution to the client's estate in the amount of $73,850, less any amount Respondent can establish he has already returned to that estate, plus interest at the rate of six percent annum, compounded quarterly, on each unreturned withdrawal made from the estate calculated from the date of withdrawal to the date of repayment	5/6/04	Disbarment w/reinstatement conditioned on restitution to the client's estate in the amount of $77,000, less any amount Respondent can establish he has already returned to that estate, plus interest at the rate of six percent annum, compounded quarterly, on each unreturned withdrawal made from the estate calculated from the date of withdrawal to the date of repayment	1/13/05
02-BG-1133 02-BG-1377	3-year suspension w/fitness	5/12/04	3-year suspension w/fitness	1/13/05
01-BG-1558 04-BG-166	19 month and 2 week suspension to run consecutive to the conclusion of Respondent's suspension in Hines I w/fitness (Recip. - functional identical)	9/17/04	25-month and 2 week w/fitness; if summarily reinstated in Maryland, may seek vacatur of the fitness requirement pursuant to the guidelines set forth in Board Rule 8.7 (Recip. - functionally identical)	2/2/05
02-BG-770 02-BG-1156 03-BG-537 04-BG-005	Disbarment (Recip.)	6/24/04	Disbarment (Recip. - functional equivalent)	2/2/05
04-BG-452	Reinstatement denied	5/6/04	Reinstatement Denied	2/10/05
03-BG-808 04-BG-395	3 year suspension w/fitness and reinstatement conditioned on making restitution to one client in the amount $2,250 plus interest at the legal rate and to another client in the amount of $1,500 plus interest at the legal rate.	7/31/02	3-year suspension w/fitness and reinstatement conditioned on making restitution to one client in the amount $2,250 plus interest at the legal rate and to another client in the amount of $1,500 plus interest at the legal rate.	2/17/05
03-BG-1343	Public Censure	12/10/03	Public Censure w/the requirement that Respondent complete a course in Professional Responsibility	3/3/05
04-BG-918	Disbarment	7/30/04	Disbarment	3/3/05
04-BG-326	Disbarment	7/28/04	Disbarment	3/10/05
00-BG-552	6-month suspension plus 3 hours of CLE on proper handling of entrusted funds	7/2/03	6-month suspension with the requirement that she attend three hours of continuing legal education courses concerning the handling of entrusted funds and cooperate with a practice monitor following her period of suspension and before she resumes the practice of law. In addition, upon reinstatement, Respondent shall be on probation for a period of six months and during that period shall continue to be subject to the oversight of the practice monitor.	3/17/05
02-BG-219	Consent Disbarment	3/1/05	Consent Disbarment	3/17/05

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04-BG-707	Board Reprimand (On Remand for Sanction Issue)	6/16/04	Board Reprimand	3/17/05
05-BG-154	Disability Suspension	3/4/05	Indefinite Suspension	3/24/05
03-BG-736 04-BG-470 04-BG-1014	Disbarment	12/8/04	Disbarment for moral turpitude with other matters dismissed without prejudice	4/7/05
02-BG-771 03-BG-102	Disbarment	7/29/04	Disbarment (Recip. - identical)	4/14/05
03-BG-769	Disbarment	4/21/04	Disbarment	4/14/05
04-BG-525 04-BG-1147	Disbarment	6/24/04	Disbarment w/reinstatement conditioned upon restitution to his former clients as follows: (1) to Mr. Sharpe, $500 plus interest at 6% per annum, compounded quarterly from May 24, 2002, the date that the client discharged Respondent, and (2) to Mr. Russell, $750 with interest at 6 % per annum compounded quarterly and calculated from July 12, 2002, the date the client discharged Respondent	4/14/05
95-BG-293	Indefinite suspension (Recip. - identical)	12/23/04	Indefinite Suspension (Recip. - identical)	4/21/05
02-BG-717	Disbarment (Recip. –identical)	10/20/04	Disbarment (Recip. – identical)	5/5/05
04-BG-917	Reinstatement Denied	7/30/04	Reinstatement Denied	5/5/05
00-BG-1274	Disbarment	12/21/01	Disbarment (Recip. – non-identical)	5/26/05
03-BG-1259	Indefinite suspension	11/3/04	60-day suspension	5/26/05
00-BG-121	Disbarment	3/23/04	Disbarment	6/9/05
05-BG-398	Public Censure	4/25/05	Public Censure (Recip.)	6/9/05
02-BG-91	30-day Suspension	2/7/02	30-day suspension	6/16/05
96-BG-271	Disbarment	4/21/04	Disbarment	6/16/05
02-BG-1264 03-BG-1487	Disbarment (Recip. – identical)	9/29/04	1-year suspension w/restitution in the amount of $10,000 w/interest at the legal rate beginning no later that November 9, 1995, as a condition of reinstatement and Disbarment (Recip. - identical)	6/16/05
04-BG-245	30-day suspension (Recip. - identical)	2/2/04	30-day suspension (Reciprocal - identical)	6/23/05
04-BG-248	2 year suspension; stayed w/Respondent placed on two years of unsupervised probation on the condition that Respondent comply w/the conditions of the North Carolina State Bar Consent Order (Recip. - identical)	12/2/04	2-year suspension, stayed and place on 2 years of unsupervised probation with conditions set forth in Sections 1 (a)-(h) in the consent order issued by the North Carolina State Bar Committee (Recip. - identical)	6/30/05
05-BG-396	Public Censure	4/22/05	Public Censure	6/30/05
04-BG-1218	Disability Suspension	6/8/05	Disability Suspension	7/7/05
05-BG-413	60-day suspension w/restitution to the dient with interest at the legal rate, to run consecutively w/Respondent's 30-day suspension in a failure to cooperate matter	5/2/05	60-day suspension w/reinstatement conditioned on making restitution to the client in the amount of $750 plus interest at 6% annum and further ordered that the 60-day suspension run consecutive to Respondent's suspension in another matter	7/7/05

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2005

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
05-BG-206	Reinstatement granted conditioned upon (1) his disgorgement of $57,068, plus interest calculated at the legal rate of 6 percent from August 24, 1997 to September 24, 2004, to the District of Columbia Bar Clients' Security fund, (2) his agreement that he will turn over to that fund any tax benefits he might realize as a consequence of that disgorgement and (3) his satisfactory completion of a CLE course on Professional Responsibility.	3/18/05	Reinstatement conditioned upon 1) Respondent's disgorgement to the District of Columbia Bar Clients' Security Fund ("Fund") of $57,068 (this being the full amount of Respondent's attorney's fees received in the matter leading to Respondent's suspension, minus expenses and taxes paid), plus interest calculated at the legal rate of 6%, such entire amount having heretofore been placed into an escrow account established by Respondent, 2) Respondent's agreement that he will turn over to that Fund any tax benefits he might realize as a consequence of that disgorgement, and 3) Respondent's satisfactory completion of a CLE course on Professional Responsibility.	7/14/05
02-BG-430	18 month suspension (Recip. - non-identical)	2/18/05	18-month suspension (Recip – non-identical)	7/21/05
04-BG-430	Public Censure (Recip. - functionally identical)	6/2/05	Public Censure (Recip. - functionally identical)	7/21/05
04-BG-1476	30-day suspension w/reinstatement conditioned upon Respondent's responding to Bar Counsel's inquiries and fitness.	12/7/04	30-day suspension w/reinstatement conditioned on both Respondent's responding to Bar Counsel's inquiries in the pending disciplinary investigations and fitness	7/21/05
05-BG-766	Consent Disbarment	7/22/05	Consent Disbarment	8/18/05
04-BG-305	5-month suspension w/all but 60 days stayed (Recip. - identical)	6/23/05	5-month suspension w/all but 60 days stayed (Recip. - identical)	8/25/05
04-BG-920	Informal Admonition	7/23/04	Public Censure and ordered to be placed on probation for 3 years and furthered ordered as a condition of probation to pay restitution to the clients in the amount of $250 plus interest	8/25/05
04-BG-1240	Public Censure (Recip. - functionally identical	7/19/05	Public Censure (Recip. - functionally identical)	8/25/05
05-BG-581	6-month suspension	6/13/05	6-month suspension	8/25/05
03-BG-803	30-day suspension	7/30/03	30-day suspension	9/1/05
03-BG-211	30-day suspension w/reinstatement conditioned upon Respondent's compliance w/BC's subpoena duces tecum and Court order enforcing it	3/10/03	30-day suspension w/reinstatement conditioned upon his compliance with Bar Counsel's subpoena duces tecum and the Court order enforcing it	9/8/05
03-BG-171	9-month suspension	2/27/03	9-month suspension	9/15/05
04-BG-846 04-BG-993	Consent Disbarment	8/12/05	Consent Disbarment	9/15/05
05-BG-203	Public Censure (Recip. - functionally identical)	7/20/05	Public Censure (Recip. - functionally identical)	9/15/05
05-BG-787	60-day suspension, stayed in favor of 2 years suspension w/conditions	7/29/05	60-day suspension, stayed in favor of 2 years suspension w/conditions	9/22/05
03-BG-1138	Indefinite Suspension (Recip. - identical)	7/18/05	Indefinitely suspended w/right to apply for reinstatement after reinstated in Maryland or after five, whichever occurs first (Recip. - identical)	9/29/05
04-BG-341	1-year suspension w/fitness (Recip. - identical)	12/22/04	1-year suspension w/fitness (Recip. - functional equivalent)	9/29/05

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2005

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
05-BG-850	Indefinite Suspension	8/11/05	Disability Suspension	9/29/05
03-BG-1054	Disbarment (Recip. - functionally identical)	12/29/04	9-month suspension subject to the conditions imposed in Maryland (Recip. - identical)	10/6/05
04-BG-1436	Disbarment (Recip. - functionally identical)	3/1/05	Disbarment (Recip. - functionally identical)	10/6/05
04-BG-148	Disbarment (Recip. - functionally identical)	7/28/05	90-day suspension (Recip. - identical)	10/13/05
04-BG-306	60-day suspension; stayed in favor of 18 month probation, subject to the terms and conditions of probation imposed by the Supreme Court of California (Recip. - identical)	7/15/05	60-day suspension; stayed in favor of 18 months probation w/conditions (Recip. - identical)	10/13/05
04-BG-339	1-year suspension w/fitness and restitution to a client in the amount of $300 plus interest at the legal rate	4/14/04	1-year suspension w/fitness and restitution as follows: (a) $300 to former client Carolyn Pyatt with six percent interest from October 21, 1999; (b) $2,705 to Washington Physical Medicine Center with six percent interest from June 14, 1999; and (c) $320 to Dr. Michael Redlich with six percent interest from March 3, 1998	10/20/05
02-BG-1375	Disbarment (Recip. - identical)	9/27/04	Disbarment (Recip. - identical)	10/27/05
03-BG-998	Disbarment (Recip. - identical)	12/21/04	Disbarment (Recip. - identical)	10/27/05
05-BG-128	Public Censure	7/28/05	Public censure	10/27/05
05-BG-784	90-day suspension	7/27/05	90-day suspension	10/27/05
05-BG-1070	Consent Disbarment	9/30/05	Consent Disbarment	11/3/05
04-BG-808	Disbarment; in the alternative 18 months if the DCCA finds negligent misappropriation	7/15/04	18-month suspension	11/10/05
04-BG-916	60-day suspension w/fitness and ordered to make restitution to the client in the amount of $3,500 plus interest	7/30/04	60-day suspension w/restitution to the client in the amount of $3,500, plus interest at the legal rate of 6% and fitness	11/10/05
03-BG-624	90-day suspension w/ fitness and compliance w/BC's request for information	6/26/03	180-day suspension conditioned upon (1) Cater's full compliance w/Bar Counsel's requests for information regarding the underlying complaints of misconduct in three matters; 2) a satisfactory showing by Cater that she has been rehabilitated and is fit to practice law in the District of Columbia; and 3) proof that full restitution has been made to two estates	11/23/05
04-BG-783	Disbarment (Recip. - identical)	4/4/05	Disbarment (Recip. - identical)	11/23/05
04-BG-195	90-day suspension w/ fitness and conditioned upon Respondent demonstrating full compliance w/BC's request for information in Cater I	3/5/04	90-days beginning after Respondent served the 180-day period of suspension imposed in Cater I w/reinstatement conditioned upon (1) Cater's full compliance with Bar Counsel's requests for information regarding the underlying complaints in four pending Bar Counsel investigations; and (2) a satisfactory showing by Cater that she has been rehabilitated and is fit to practice law in the District of Columbia	12/1/05
04-BG-340	5-year suspension w/fitness (Recip. - functionally identical)	4/5/05	5-year suspension w/fitness (Recip. - functionally identical)	12/8/05

DISTRICT OF COLUMBIA COURT OF APPEALS DECISIONS

JANUARY - DECEMBER 2005

DCCA #	BPR Recommendation	BPR Report Date	DCCA Opinion - if Reciprocal: identical or non-identical	DCCA Opinion Date
05-BG-1345	Consent Disbarment	11/21/05	Consent Disbarment	12/8/05
03-BG-1345	Public Censure (Recip. - functionally identical)	7/9/04	Public Censure (Recip. - functionally identical)	12/15/05
04-BG-27	60-day suspension, stay execution of the suspension during an unsupervised probationary period of six months, and require Ponds to file, within the six-month probationary period and as a condition of vacating the suspension, proof of completion of a continuing legal education course on legal ethics course on legal ethics or criminal practice covering conflicts of interest	1/22/04	30-day suspension w/reinstatement conditioned upon Respondent filing w/the Board on Professional Responsibility and Bar Counsel a certification that he has completed a continuing legal education course on legal ethics or criminal practice covering conflicts of interest	12/15/05
04-BG-474	Disbarment (Recip. - identical)	6/7/05	Disbarment (Recip. - identical)	12/15/05
03-BG-1090 04-BG-1486	Disbarment (Recip. - identical)	5/31/05	Public Censure (Recip. - not identical) & 5-year suspension w/fitness (Recip. - not identical)	12/22/05
04-BG-1 04-BG-243	Disbarment stayed pursuant to Kersey and placed on 3 years monitored probation subject to terms and conditions	5/12/05	(Recip. - identical)	12/22/05
05-BG-470	Consent Disbarment, nunc pro tunc to August 8, 2005	12/8/05	Disbarment; stayed and Respondent placed on three years of probation subject to the conditions imposed by the Board in its Report and Recommendation	12/22/05
05-BG-1205	Consent Disbarment, nunc pro tunc to August 8, 2005	12/8/05	Consent Disbarment	12/29/05
04-BG-478	2-year suspension, stayed in favor of 2 years probation w/conditions (Recip. - identical)	7/28/05	2-year suspension; stayed in favor of 2 years probation subject to the conditions set forth in the Texas Grievance Committee judgment	12/30/05

Reciprocals and Reinstatement Cases

Jurisdiction	Number of Reciprocals	Process	Number of Reinstatements	Process
Illinois	18		8	Administrator acts as realtor Reinstatement unlikely for disbarred or suspended lawyers
Louisiana				
Maryland		Cases filed directly with Court Show Cause order entered by Court Comparability of sanction and process Considered	4.42%	No routine hearing OBC can opine on worthiness for reinstatement
Massachusetts	50 per year	Cases filed directly with Court A single justice hears the case and enters order		
Michigan	5-7 per year	Resolved by consent or default 3		
Minnesota			3	
New Jersey	15-20	Cases filed directly with Review Board No hearing		Reinstatement permitted if OBC doesn't object
North Carolina		follow precedent		
Virginia		show cause process Disciplinary board imposes same discipline	1	5 year waiting period Pay all costs associated with underlying discipline Pass Virginia portion of the Bar Exam Make-up CLE requirements
District of Columbia	60 as of September 30, 2004	Matter referred from Court to BPR for Report and Recommendation.	3	Matter referred to Hearing Committee for Report and Recommendation, then BPR and Court.

APPENDIX H

Failure to Cooperate Statistics

Failure to Respond Petitions

2000*

BDN	Date Petition Approved	Motion to Compel: date filed and date granted by BPR	Failure to Respond to a BPR Order to Compel a Response	Failure to Respond to a Petition in the "Failure to Respond to a BPR Order" Cases
363-98 520-98 017-99	1/27/00	10/7/98 and 1/19/99 1/19/99 and 2/12/99 2/18/99 and 5/21/99	X	X
169-98	4/24/00	6/25/98 and 5/24/99	X	X
086-99	5/2/00	7/8/99 and 9/14/99	X	Consent to Disbarment
130-98 324-99	5/5/00	No Motion to Compel 10/27/99 and No record of Motion being granted by BPR	X	Petition withdrawn 11/9/00
291-99	7/27/00	12/1/99 and 1/28/00	X	Case dismissed
055-00	8/7/00	4/27/00 and 5/26/00	X	Answered Ethical Complaint 1/23/04
426-99	9/18/00	6/28/00 and 7/17/00	Respondent filed Unopposed Motion Seeking Temporary Suspension	Respondent Indefinitely Suspended 1/18/01
091-00	11/20/00	7/13/00 and 8/2/00	X	Joint Stipulations filed w/BPR 1/29/01
205-00 256-00	12/22/00	10/10/00 and 11/8/00 9/26/00 and 10/13/00	X	Joint Stipulations filed w/BPR 1/29/01

Failure to Respond Petitions

2001*

BDN	Date Petition Approved	Motion to Compel: date filed and date granted by BPR	Failure to Respond to a BPR Order to Compel a Response	Failure to Respond to a Petition in the "Failure to Respond to a BPR Order" Cases
228-00	1/9/01	11/18/00 and 11/13/00	X	X
224-98	3/27/01	5/3/00 and 5/17/00 (Motion to Enforce Subpoena filed w/DCCA)	X	X (Case dismissed; Petition reinstated and Resp. served on 7/27/04)
396-00	6/5/01	1/17/01 and 3/16/01	X	Consent to Disbarment
003-99 049-99 123-99 330-99 361-99 303-00	6/27/01	3/24/99 & 7/17/00 and 8/29/00 3/24/99 and 8/29/00 No Motion to Compel	X	Consent to Disbarment
504-97	11/9/01	12/7/00 and 5/10/01	X	Signed Joint Stipulations of Fact from Resp. 2/19/02
156-01	12/3/01	6/7/01 and 7/26/01	X	Answered Petition 12/18/01

* 11 out of 29 petitions were filed for failure to cooperate.

Failure to Respond Petitions

2002*

BDN	Date Petition Approved	Motion to Compel: date filed and date granted by BPR	Failure to Respond to a BPR Order to Compel a Response	Failure to Respond to a Petition in the "Failure to Respond to a BPR Order" Cases
139-01	1/16/02	7/26/01 and 8/30/01	X	Answered Petition 3/25/02
243-01	5/9/02	9/10/01 and 10/3/01	X	Answered Petition 5/29/02
288-01 361-01 369-01	7/16/02	11/9/01 and 12/5/01 12/13/01 and 3/20/01	X	Answered Petition 10/25/02
066-02	7/22/02	4/3/02 and 5/2/02	X	X
372-01 428-01	8/1/02	12/14/01 and 2/20/02 2/19/02 and 3/21/02	X	Answered Ethical Complaint 10/30/02
416-01	9/24/02	4/30/02 and 5/29/02	X	X
020-02	9/25/02	5/6/02 and 5/29/02	X	Answered Petition 11/5/02
423-01	11/1/02	3/19/02 and 4/5/02	X	Answered Ethical Complaint 11/4/02 and Answered Petition 12/6/02

* 11 out of 36 petitions were filed for failure to cooperate.

2003*

BDN	Date Petition Approved	Motion to Compel: date filed and date granted by BPR	Failure to Respond to a BPR Order to Compel a Response	Failure to Respond to a Petition in the "Failure to Respond to a BPR Order" Cases
123-02 162-02 176-02	12/2/02	6/12/02 and 8/6/02	X	X
208-02	1/27/03	7/10/02 and 8/28/02	X	X
442-02 498-02 516-02	4/11/03	1/14/03 and 1/29/03	X	X
105-01 150-02 247-02	4/11/03	7/3/02 and 8/28/02 (denied) 7/3/02 and 8/28/02 No Motion to Compel Filed	X N/A	X
406-02	4/24/03	11/14/02 and 1/13/03	X	X
398-01	4/23/03	7/3/02 and 8/6/02	X	X
554-02 001-03 009-03 010-03	5/1/03	3/4/03 and 3/27/03	X	X
504-02	7/11/03	3/10/03 and 3/27/03	X	Answered Petition 8/15/03
052-03	9/30/03	4/11/03 and 6/10/03	X	Answered Petition 10/29/03
071-03	10/15/02	7/21/03 and 9/4/03	X	Answered Petition 12/19/03
100-03 167-03 188-03	10/16/03	7/18/04 and 9/4/03	X	X
2003-D199 2003-D254 2003-D291 2003-D313 2003-D327	12/4/03	10/27/03 and 11/14/03	X	X

BDN	Date Petition Approved	Motion to Compel: date filed and date granted by BPR	Failure to Respond to a BPR Order to Compel a Response	Failure to Respond to a Petition in the "Failure to Respond to a BPR Order" Cases
2003-D362 2003-D382 2003-D406 2003-D409 2003-D413	12/9/03	No Motion to Compel Filed	N/A	X

* 32 out of 57 petitions were filed for failure to cooperate.

2004*

BDN	Date Petition Approved	Motion to Compel: date filed and date granted by BPR	Failure to Respond to a BPR Order to Compel a Response	Failure to Respond to a Petition in the "Failure to Respond to a BPR Order" Cases
D197-01	12/27/02	8/23/02 and 9/19/02	X	X
D047-04	5/26/04	3/23/04 and 4/14/04	X	X
D219-04	9/3/04	7/1/04 and 7/20/04	X	X
D079-04	7/21/04	4/21/04 and 5/13/04	X	X
D112-04	7/21/04	4/21/04 and 5/13/04	X	X
D408-03	2/27/04	No motion to compel filed w/ BPR	N/A	X
D212-98	4/1/04	No motion to compel filed w/ BPR	N/A	X (no answer filed, but Respondent stipulated)

* 7 out of 24 petitions were filed for failure to cooperate.

2005*

BDN	Date Petition Approved	Motion to Compel: date filed and date granted by BPR	Failure to Respond to a BPR Order to Compel a Response	Failure to Respond to a Petition in the "Failure to Respond to a BPR Order" Cases
D184-01	10/19/05	1/24/02 and 3/25/02	X	X
D496-02	10/19/05	7/18/05 and 8/3/05	X	X
2004-D201	8/31/05	3/22/05 and 4/6/05	X	X
2004-D278	11/30/04	10/6/04 and 10/27/04	X	X
2005-D057	2/27/04	9/26/03 and 10/15/03	X	X

* 5 out of 22 petitions were filed for failure to cooperate.

APPENDIX I

National Organization of Bar Counsel Survey Chart Regarding Failure to Cooperate Issues

NATIONAL ORGANIZATION OF BAR COUNSEL
SURVEY CHART REGARDING FAILURE TO COOPERATE ISSUES

	Interim suspension?	Default?	Both ?	Rule prohibiting contact with law enforcement?
Alabama	Y (Summary Suspension)	Y (After charges filed)	Y	N
Alaska				
Arizona				
Arkansas				
California	N	N	N	N
Colorado	Y	Y	Y	N (Do it at discretion)
Connecticut	N	N	N	N (Do it all the time)
Delaware	N	Y (For failure to answer petition)	N	N
D.C.	N	N	N	Y
Florida	N	Y (Only at trial level)	N	N
Georgia	N	N	N	N
Hawaii	Y	N	N	N
Idaho	Y	Y	Y	N
Illinois	N	Y	N	N (Authorized to respond to law enforcement subpoena)
Indiana	Y	N	N	N (May do it w/leave of court)
Iowa	Y (As of 7/1/05)	Y (For failure to respond to formal charges)	Y	N
Kansas				
Kentucky				
Louisiana	N	N	N	N (Permitted when appropriate)
Maine	N	N	N	N
Maryland	N	N	N	N (Permitted)
Massachusetts				
Michigan	N	Y	N	N
Minnesota				
Mississippi				
Missouri	N	N	Y	Y
Montana				
Nebraska	Y	Y (For failure to file an answer to charges in the Supreme Court)	Y	N (With permission of the Court)
Nevada				
New Hampshire	Y	Y (For failure to answer formal charges)	Y	N (Permitted by rule)
New Jersey	Y	Y (After file formal complaint)	Y	N (Permitted under specified circumstances)
New Mexico				
New York 2nd Dept.	Y	Y	Y	N (After ex parte approval

	Interim suspension?	Default?	Both ?	Rule prohibiting contact with law enforcement?
				from the Court)
New York 9th District	Y	Y	Y	N (For good cause shown)
North Carolina				
North Dakota				
Ohio	N	Y	N	Y
Oklahoma				
Oregon	N	Y (If fails to file a responsive pleading or appear at formal disciplinary proceeding)	N	N
Pennsylvania				
Rhode Island	Y	Y	Y	N
South Carolina				
South Dakota				
Tennessee	Y	Y	Y	N
Texas				
Utah	N	Y	N	N (To protect the public)
Vermont	Y	Y (After charges filed)	Y	N
Virginia	Y	N	N	N (But must notify Respondent unless would prejudice investigation)
Washington				
West Virginia				
Wisconsin				
Wyoming				

APPENDIX J

District of Columbia Code sections 11-2501, 11-2502 and 11-2503

1993 Weiner Report

CHAPTER 25. ATTORNEYS.

Sec.
11-2501. Admission to bar; regulations; prior admission.
11-2502. Censure, suspension, or disbarment for cause.
11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.
11-2504. Censure, suspension, or disbarment by other courts.

§ 11-2501. Admission to bar; regulations; prior admission.

(a) The District of Columbia Court of Appeals shall make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion.

(b) Members of the bar of the District of Columbia Court of Appeals shall be eligible to practice in the District of Columbia courts.

(c) Members of the bar of the United States District Court for the District of Columbia in good standing on April 1, 1972, shall be automatically enrolled as members of the bar of the District of Columbia Court of Appeals, and shall be subject to its disciplinary jurisdiction. (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2501; 1981 Ed., § 11-2501.)

Section references. — This section is referenced in § 47-2853.04.

CASE NOTES

ANALYSIS

Abuse of discretion.
Admission to bar.
Applicability.
Authority of court.
Court rules.
Disclosure of records.
Felony conviction.
Scope of authority.

Abuse of discretion.

District court abused its discretion by deciding two novel and unsettled questions of District of Columbia law, which did not present a substantial federal question; whether the Court of Appeals possesses a delegable subpoena power and whether the Board On Professional Responsibility complied with the regulations of the court in exercising whatever subpoena power it has. Doe v. Board on Professional Responsibility of D.C. Court of Appeals, 717 F.2d 1424 (D.C. Cir. Sept. 16, 1983).

U.S. District Court abused its discretion by proceeding to trial, after federal claims had been dismissed, on local claims that a District of Columbia attorney's breach of fiduciary duty gave rise to conflicts of interest and alleged disclosure of client confidences; whether the attorney's conduct violated standards of professional conduct adopted pursuant District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code § 11-2501 et seq., and whether disgorgement of fees was an appropriate remedy had never been addressed by District of Columbia courts. Financial Gen. Bankshares v. Metzger, 680 F.2d 768 (D.C. Cir. May 18, 1982).

Admission to bar.

Recommendation of the Committee of Admissions that the applicants who had been convicted of a felony be admitted to the bar was approved under D.C. Code § 11-2501 (a); since the court had plenary authority over bar admissions, it rejected the rule excluding former felons from the bar, on the basis that a few persons who have been convicted of felonies became sufficiently rehabilitated to meet the ethical requirements of the legal profession.

CHAPTER 25. ATTORNEYS

§ 11-2501. Admission to bar; regulations; prior admission.

Section references. — This section is referenced in § 47-2805.02 and § 47-2853.04.

CASE NOTES

Authority of court.

Fact that an attorney was automatically enrolled in the unified District of Columbia Bar upon its creation rather than admitted in the normal fashion was of no consequence to the District of Columbia Board on Professional Responsibility's disciplinary authority over her, as under D.C. Code § 11-2501(c), persons automatically enrolled are subject to the Board's jurisdiction; under D.C. Bar R. XI, § 1(a), all members of the District of Columbia Bar are subject to the disciplinary jurisdiction of the appellate court and its Board on Professional Responsibility. In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

CASE NOTES

ANALYSIS

Disbarment.
Disbarment upheld.
Fraud or theft.
Moral turpitude.
—Espionage.
—Sexual abuse.
—Traffic violations.
Pardon.

Disbarment.

Attorney's executed plea agreement to felony theft in violation of 18 U.S.C.S. § 641 was proof of a criminal conviction for felony theft under D.C. Bar R. XI, § 10(f), and deemed to involve moral turpitude per se; therefore, pursuant to D.C. Code § 11-2503, the attorney was disbarred. In re Patterson, 833 A.2d 493, 2003 D.C. App. LEXIS 690 (2003).

Where an attorney pleaded guilty to felony bank fraud in violation of 18 U.S.C.S. § 1344, the attorney's disbarment was mandatory under § 11-2503(a) because bank fraud is a crime of moral turpitude per se. In re Trikeriotis, 814 A.2d 960, 2003 D.C. App. LEXIS 4 (2003).

Disbarment upheld.

Where a lawyer was convicted of racketeering conspiracy in Florida, the lawyer was disbarred in the District of Columbia on the grounds of moral turpitude under § 11-2503(a), and not as a reciprocal discipline. In re Shore, 817 A.2d 834, 2003 D.C. App. LEXIS 85 (2003).

Fraud or theft.

Because mail fraud and wire fraud were crimes of moral turpitude per se, attorney's conviction of those crimes in federal court mandated his disbarment from the practice of law in the District of Columbia. In re Evans, 793 A.2d 468, 2002 D.C. App. LEXIS 48 (2002).

Because perjury, conspiracy to commit wire fraud, and conspiracy to obstruct justice are crimes of moral turpitude per se, an attorney's convictions of those crimes mandated disbarment. In re Gormley, 793 A.2d 469, 2002 D.C. App. LEXIS 49 (2002).

Moral turpitude.

— Espionage.

Conspiracy to commit espionage and attempt to commit espionage, in violation of 18 U.S.C.S. §§ 793(b) and 794(a), were crimes of moral turpitude per se; therefore, an attorney convicted of helping her husband spy for East Germany and other countries was subject to automatic disbarment. In re Squillacote, 790 A.2d 514, 2002 D.C. App. LEXIS 10 (2002).

— Sexual abuse.

An attorney was disbarred pursuant to D.C. Code § 11-2503(a), because the attorney's guilty plea to misdemeanor sexual contact in violation of D.C. Code § 22-4106 constituted a crime of moral turpitude, as the evidence demonstrated that the attorney sufficiently understood the wrongfulness of his behavior and was aware that the minor victim was legally incapable of consent. In re Bewig, 791 A.2d 908, 2002 D.C. App. LEXIS 34 (2002).

— Traffic violations.

Attorney was disbarred after he pled guilty, in New York, to leaving the scene of a fatal

and it preferred individualized determinations of moral fitness to an overinclusive categorization excluding all previous felons. In re Manville, App. D.C., 538 A.2d 1128 (1988).

Applicability.

In forfeiture action, where defendant was represented by Florida attorney who was a member of the District Bar, the Superior Court's entry of default decree as a sanction against defendant in partial reliance on Sup. Ct. Civ. R. 101(a)(1), which required an attorney to maintain office in District or to obtain co-counsel in District, was an abuse of discretion, since under D.C. Code § 11-2501(a)(b), the rule and the restriction was void and unenforceable. Haynes v. District of Columbia, App. D.C., 503 A.2d 1219 (1986).

Authority of court.

Congress vested in the District of Columbia Court of Appeals the authority and responsibility for determining the method of admitting attorneys to the practice of law in the District of Columbia. Harper v. District of Columbia Comm. on Admissions, App. D.C., 375 A.2d 25 (June 2, 1977).

Court rules.

Board of Professional Responsibility was created by the Court of Appeals, pursuant to the authority to regulate the practice of law in the District of Columbia courts under D.C. Code § 11-2501(a); the Board issued a protective order to prevent disclosure of the identity of persons providing information to Bar Counsel concerning a member of the Bar and a second order holding Bar Counsel immune from member's disciplinary complaint in handling the allegation pursuant to D.C. App. R. XI, § 9 that makes Bar Counsel immune from suit for any conduct in the course of official duties. In re Nace, App. D.C., 490 A.2d 1120 (1985).

Disclosure of records.

Where FBI recorded materials sought by Bar counsel were relevant to a pending disciplinary proceeding, the appellate court, as ultimate adjudicator of the disciplinary proceeding, had jurisdiction to determine whether disclosure of the records in question was required. In re Tucker, App. D.C., 689 A.2d 1214 (1997).

Felony conviction.

In cases where an applicant for admission to the bar committed a felony or other serious crime, the committee on admissions should weigh the need for an independent investigation; where the applicant committed so serious a crime as homicide, such an independent investigation should invariably be conducted. In re Manville, App. D.C., 494 A.2d 1289 (1985).

Scope of authority.

In plaintiffs' suit for injuries alleging the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law (Committee) illegally investigated them for improperly holding themselves out as authorized to practice law in the District, the lower court properly granted summary judgment to Committee members who were not serving as mere investigators, but were preparing a case for trial and were officials with absolute immunity when acting within the scope of their authority. Simons v. Bellinger, 643 F.2d 774 (D.C. Cir. Jan. 4, 1980).

Applied On Petition to Amend Rule 1 of Rules Governing Bar, App. D.C., 431 A.2d 521 (1981); In re McBride, App. D.C., 602 A.2d 626 (1992).

Cited in Landise v. Mauro, App. D.C., 725 A.2d 445 (1998).

§ 11-2502. Censure, suspension, or disbarment for cause.

The District of Columbia Court of Appeals may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with this application or admission is sufficient cause for the revocation by the court of such person's admission. (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2502; 1981 Ed., § 11-2502; June 13, 1994, Pub. L. 103-266, § 1(b)(112), 108 Stat. 713.)

CASE NOTES

ANALYSIS

Evidence.
—Sufficient.
Suspension.

Evidence.

— Sufficient.

The court of appeals exercised its power to discipline a member of the bar of the District of Columbia for misconduct under D.C. Code § 11-2502 and suspended an attorney from the practice of law for one year after respondent's conviction for filing a false tax return in violation of 26 U.S.C.S. § 7206 (1); respondent had his employer pay $8,000 of respondent's annual salary to his fiancee, who reported the $8,000 as her income, and respondent did not declare the $8,000 as his own income until filing an amended tax return. In re Kerr, App. D.C., 611 A.2d 551 (1992).

Suspension.

Lawyer was suspended from the practice of law in the District of Columbia for 60 days and required to return fees in the amount of $500.00 where it had been shown by clear and convincing evidence that the lawyer had, without any contrition, neglected his obligations to two clients. In re Santana, App. D.C., 583 A.2d 1011 (1990).

Pursuant to D.C. Code § 11-2502, respondent was ordered suspended from the practice of law in the District of Columbia for 180 days, with proof of fitness to practice law required before reinstatement, for conduct prejudicial to the administration of justice; the court adopted the Board on Professional Responsibility's findings of fact as supported by substantial evidence that respondent had been given a six-month suspension by Maryland for making false statements to a bank on behalf of a client and then failed to attend meetings and supply necessary information to the suspension. In re Greenspan, App. D.C., 578 A.2d 1156 (1990).

Applied In re McBride, App. D.C., 602 A.2d 626 (1992).

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

(a) When a member of the bar of the District of Columbia Court of Appeals is convicted of an offense involving moral turpitude, and a certified copy of the conviction is presented to the court, the court shall, pending final determination of an appeal from the conviction, suspend the member of the bar from practice. Upon reversal of the conviction the court may vacate or modify the suspension. If a final judgment of conviction is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and such person shall thereafter cease to be a member. Upon the granting of a pardon to a member so convicted, the court may vacate or modify the order of disbarment.

(b) Except as provided in subsection (a), a member of the bar may not be censured, suspended, or expelled under this chapter until written charges, under oath, against that member have been presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally, or if it is established to the satisfaction of the court that personal service cannot be had, a certified copy of the charges and order shall be served upon that member by mail, publication, or otherwise as the court directs. After the filing of the written charges, the court may suspend the person charged from practice at its bar pending the hearing thereof. (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2503; 1981 Ed., § 11-2503; June 13, 1994, Pub. L. 103-266, §§ 1(b)(113), (114), 108 Stat. 713.)

CASE NOTES

ANALYSIS

Constitutionality.
Complaint under oath.

Conspiracy conviction.
Disbarment.
Disbarment upheld.
Double jeopardy.
Due process.
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—Sufficient.
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Mitigating factors.
Moral turpitude.
—Bribery.
—Controlled substance.
—Fraud.
—Illegal drug trafficking.
—Mitigating factors.
—Not found.
—Sexual abuse.
—Tax evasion.
—Theft.
Pardon.
Practice and procedure.
Reciprocal disciplinary proceedings.
Reinstatement denied.
—Resignation.
Temporary suspension.
Time limits.

Constitutionality.

D.C. Code § 11-2503(a) which makes disbarment of an attorney for conviction of an offense involving moral turpitude, both mandatory and permanent, in all cases in which a pardon has not been granted is constitutional because Congress created the District of Columbia Court of Appeals and the Superior Court pursuant to its plenary power under U.S. Const. art. I, § 8, cl. 17, and when exercising this Article I authority, Congress is not constrained by the separation of powers considerations which operate within the states with respect to judicial authority. In re Kerr, App. D.C., 424 A.2d 94 (Nov. 17, 1980).

Complaint under oath.

Bar counsel's complaint under oath need not be based on personal knowledge, but may be based on information and belief. In re Morrell, App. D.C., 684 A.2d 361 (1996).

Where a lawyer was not afforded adequate due process protections in formal disciplinary proceedings against the lawyer, the recommendation of disbarment by the Board on Professional Responsibility (Board), was not imposed, and remand for a new hearing was required; since the petitions against the lawyer contained an oath by Assistant Bar Counsel that probable cause existed to refer the charges to a hearing, they did not fulfill the oath requirement of D.C. Code § 11-2503(b), since Bar Counsel had no personal knowledge of the facts upon which the charges were based and had sworn not to the truth or falsity of those facts, but only to the existence of probable cause. In re Williams, App. D.C., 464 A.2d 115 (1983).

Conspiracy conviction.

A conspiracy offense, to which an attorney entered a plea of guilty, involved moral turpitude and was grounds for disbarment. In re Hernandez, App. D.C., 753 A.2d 1014 (2000).

Disbarment.

Defendant was convicted of 14 felonies in federal court, and because some of the crimes had been recognized as those of moral turpitude per se the defendant was disbarred. In re McGough, App. D.C., 605 A.2d 605 (1992).

In re Kerr, 424 A.2d 94 (D.C. 1980) expressly

overruled; D.C. Code § 11-2503(a) no longer construed to require disbarment of an attorney for life upon conviction of a crime involving moral turpitude; further, attorneys disbarred for conviction of a crime involving moral turpitude entitled to petition for reinstatement after five years of disbarment. In re McBride, App. D.C., 602 A.2d 626 (1992).

Attorney was disbarred for crimes of moral turpitude because the attorney had been convicted of federal bank fraud and second-degree fraud, and any crime of which intent to defraud was an essential element inherently involved moral turpitude. In re Rosenbleet, App. D.C., 592 A.2d 1036 (1991).

One who aids and abets an offense that is within the purview of D.C. Code § 11-2503 (a) shall be permanently disbarred pursuant to that statute. In re McBride, App. D.C., 578 A.2d 1102 (1990).

Disbarment upheld.

An attorney would be disbarred where he was convicted in New York of the misdemeanor offense of second degree offering of a false instrument for filing, which does not require proof of a specific intent to defraud, and where the hearing committee found that the attorney's actions constituted moral turpitude. In re Mason, App. D.C., 736 A.2d 1019 (1999).

Double jeopardy.

Disbarment resulting from an attorney's conviction of crime deemed to involve moral turpitude does not violate constitutional proscription against double jeopardy. In re Sharp, App. D.C., 674 A.2d 899 (1996).

Due process.

Procedures for determining moral turpitude under subsection (a) of this section satisfy due process requirements. In re Sharp, App. D.C., 674 A.2d 899 (1996).

Court rejected an attorney's argument that due process required that the attorney be granted a hearing to present evidence of the circumstances surrounding his conviction of a crime of moral turpitude so that the District of Columbia Court of Appeals Board on Professional Responsibility (Board) could consider any mitigating factors because, while D.C. Code § 11-2503 (a) made such a hearing necessary so that the attorney would have an opportunity to be heard, the determination that a conviction involved moral turpitude ended the inquiry. In re Campbell, App. D.C., 572 A.2d 1059 (1990).

Attorney was deprived of the right to participate in a hearing as to whether the attorney should be suspended from practice for several violations of the D.C Code of Professional Responsibility, where there was an improper service of the notice of charges against the attorney; the case was remanded for a new hearing, because there was no evidence that the attorney received actual notice of such charges, when certified mail letters were returned undelivered, and where Bar Counsel should have tried to serve the attorney in person. In re Washington, App. D.C., 513 A.2d 245 (1986).

Election law offenses.

Former congressman convicted of conspiracy with an administrative assistant to violate a federal statute prohibiting solicitation of campaign contributions from government contractors, a misdemeanor, had committed a serious crime, and the former congressman was ordered immediately suspended from the practice of law and the matter referred to the Board of Professional Responsibility for recommendation as to whether the election law offense was a "crime involving moral turpitude" under D.C. Code § 11-2503. In re Flood, App. D.C., 437 A.2d 175 (1981).

Embezzlement.

Conviction of embezzlement by bankruptcy trustee mandated disbarment. In re Greenspan, App. D.C., 683 A.2d 158 (1996).

Violation of Virginia's embezzlement statute was a crime of moral turpitude requiring attorney's disbarment, where conviction under that statute required a wrongful and fraudulent intent. In re Eberhart, App. D.C., 678 A.2d 1023 (1996).

Evidence.

— Admissible.

Board on Professional Responsibility (Board) erred in not considering an affidavit by a Special Agent of the Federal Bureau of Investigation agent which detailed the circumstances surrounding an attorney's conviction of threatening a prospective prosecution witness in a federal criminal proceeding and cast the conduct in a very damaging light, and because the record, with the affidavit accorded appropriate weight, pointed towards moral turpitude and disbarment, the case was remanded to the Board for further proceedings. In re Shillaire, App. D.C., 549 A.2d 336 (1988).

Final judgment.

Because collateral attacks such as claims of ineffective assistance of counsel take place after a "final judgment of conviction," the court may impose disciplinary measures pursuant to this section while a collateral attack of a respondent's underlying conviction is ongoing. In re Matzkin, App. D.C., 665 A.2d 1388 (1995).

Fraud and perjury.

Disbarment was ordered where an attorney not only embarked on a scheme to perpetrate an intentional fraud, but perjured himself in testimony which he gave at the criminal trial

resulting from that scheme. In re White, App. D.C., 698 A.2d 483 (1997).

Fraud or theft.

Attorney was disbarred, where federal statute under which he was convicted required proof that he knowingly and fraudulently appropriated to his own use property belonging to bankruptcy debtor's estate. In re Sugarman, App. D.C., 677 A.2d 1049 (1996).

Findings.

The court of appeals adopted the Board of Professional Responsibility's recommendation that respondent should be suspended from the practice of law for one year based upon his conviction for filing a false tax return in violation of 26 U.S.C.S. § 7206 (1) and the Board's findings that the statutory elements of the respondent's crime did not involve moral turpitude per se and that respondent is therefore not required to be disbarred under D.C. Code § 11-2503 (a). In re Kerr, App. D.C., 611 A.2d 551 (1992).

The court adopted the findings and recommendations of the District of Columbia Court of Appeals Board on Professional Responsibility that respondent's conviction for possession with intent to distribute cocaine involved a crime of moral turpitude and therefore disbarred respondent from the practice of law in the jurisdiction pursuant to D.C. Code § 11-2503 (a). In re Mendes, App. D.C., 598 A.2d 168 (1991).

— Sufficient.

Court of appeals approved and adopted the findings of the Board of Professional Responsibility that respondent's conviction for obstruction of justice of administrative proceedings, 18 U.S.C.S. § 1505, was an offense involving moral turpitude under D.C. Code § 11-2503(a) and therefore respondent was disbarred from the practice of law. In re Laurins, App. D.C., 576 A.2d 1351 (1990).

Court of Appeals adopted the findings of the Hearing Committee and Board on Professional Responsibility that respondent's conviction for one felony count of willful tax evasion and six misdemeanor counts of willful failure to pay taxes were not crimes involving moral turpitude within the meaning of D.C. Code Code § 11-2503(a); however, respondent's alleged pathological gambling addiction was not a defense or a mitigating factor in considering respondent's sanctionable actions, and respondent had been disciplined previously for tax offenses so the court ordered respondent disbarred from the practice of law. In re Shorter, App. D.C., 570 A.2d 760 (1990).

Hearing.

Crime to which respondent pleaded guilty was one which inherently involved moral turpitude, obstruction of justice in the Watergate scandal, and the court was compelled by virtue of the statute to order respondent's name stricken from the roll of the members of the bar given that the need for the extensive hearing before the hearing committee and sitting board was obviated by the nature of the offense to which respondent pleaded guilty, and the only proper recommendation, under the circumstances, was that respondent be disbarred. In re Colson, App. D.C., 412 A.2d 1160 (Mar. 23, 1979).

Mail and/or wire fraud.

Attorney was disbarred following his conviction of eight counts of mail fraud pursuant to federal statute. In re Bereano, App. D.C., 719 A.2d 98 (1998).

Disbarment was appropriate where an attorney was convicted of 33 counts of mail and wire fraud. In re Ferber, App. D.C., 703 A.2d 142 (1997).

Where attorney entered an Alford plea under North Carolina v. Alford, 400 U.S. 25, 27 L. Ed. 2d 162 (1970) to fraud by mail and wire, an offense involving moral turpitude, D.C. Code § 11-2503 which initially requires disbarment of an attorney who has been convicted of such an offense also precluded attorney's reinstatement. In re Kerr, App. D.C., 424 A.2d 94 (Nov. 17, 1980).

Misappropriation.

Attorney was disbarred for misappropriating client funds while serving as a fiduciary, in violation of Maryland statute. In re O'Malley, App. D.C., 683 A.2d 464 (1996).

Misdemeanors.

An attorney convicted of a misdemeanor is entitled to a hearing on whether that crime, on its particular facts, involved moral turpitude requiring disbarment. In re Sneed, App. D.C., 673 A.2d 591 (1996).

Mitigation.

Upon conviction of a crime involving moral turpitude, an attorney must be disbarred, regardless of any mitigating factors such as alcoholism. In re Hopmayer, App. D.C., 625 A.2d 290 (1993).

Conviction under New Jersey law of theft by failure to make required disposition of property received was crime of "moral turpitude," requiring an attorney's disbarment under D.C Code § 11-2503(a). The attorney's alcoholism defense, however, was a possible mitigating factor that the District of Columbia Board on Professional Responsibility had not considered; therefore, remand was appropriate. In re Hopmayer, App. D.C., 602 A.2d 655 (1992).

Where attorney pled guilty to a crime of moral turpitude, the court remanded the attorney disciplinary proceeding to the District of Columbia Board of Professional Responsibility for a decision on the issue of whether alcohol-

ism could be a mitigating factor in disbarment cases under D.C. Code Ann. § 11-2503(a); if so, the board would then need to apply the Kersey analysis to determine whether mitigation was warranted for the attorney and whether alternative sanctions could be available. In re Hopmayer, App. D.C., 602 A.2d 655 (1992).

Mitigating factors.

Where the District Board of Professional Responsibility recommended that an attorney disbarred in another state for forgery be disbarred in the District under D.C. Code § 11-2503(a) for per se crimes of moral turpitude, the court remanded the case for a recommendation on whether drug addiction, commencing with the lawful prescription of drugs, if a substantial factor in criminal action underlying a felony conviction, may be a mitigating factor in imposing a disciplinary sanction in a per se crime of moral turpitude. In re Mandel, App. D.C., 605 A.2d 61 (1992).

Moral turpitude.

An attorney was disbarred upon the recommendation of the Board on Professional Responsibility where: (1) He was convicted of two felony counts of violating the federal Travel Act, based on his use of an interstate telephone communication with the intent, inter alia, to promote racketeering and bribery; and (2) the board expressed the view that the statutory sections under which he was convicted set out an offense of moral turpitude. In re Bankston, App. D.C., 749 A.2d 739 (2000).

Attorney's conviction of mail fraud involved moral turpitude per se, and disbarment was therefore the appropriate sanction. In re Fox, App. D.C., 627 A.2d 511 (1993).

Crime of bribery inherently involves moral turpitude, and therefore triggers automatic disbarment. In re Glover-Tonwe, App. D.C., 626 A.2d 1387 (1993).

Conviction for conspiracy to commit wire fraud inherently involves moral turpitude. In re Lobar, App. D.C., 632 A.2d 110 (1993).

Offense of offering a false instrument for filing in the first degree involved moral turpitude per se, requiring that attorney be disbarred. In re Mirrer, App. D.C., 632 A.2d 117 (1993).

Grand larceny as defined by the Commonwealth of Virginia was a crime involving moral turpitude per se, requiring disbarment in the District of Columbia. In re Slater, App. D.C., 627 A.2d 508 (1993).

Attorney's convictions of forgery and grand larceny in the third degree involved moral turpitude per se, and he was therefore disbarred. In re Sluys, App. D.C., 632 A.2d 734 (1993).

Attorney was disbarred, since his convictions of obstruction of justice and of forgery and uttering were considered convictions of crimes involving moral turpitude in the District of Columbia. In re Schwartz, App. D.C., 619 A.2d 39 (1993).

Offense of criminal facilitation of a felony of the second degree, theft by deception, was a crime involving moral turpitude, and respondent was therefore disbarred. In re Untalan, App. D.C., 619 A.2d 978 (1993).

Attorney's conviction, in New Jersey, of theft by deception was an "offense involving moral turpitude" which justified his disbarment. In re Youmans, App. D.C., 617 A.2d 534 (1993).

A lawyer convicted of a misdemeanor shall be entitled to a hearing on whether that crime, on the facts, involves moral turpitude and requires disbarment under D.C. Code § 11-2503 (a); attorney convicted under 18 U.S.C. §§ 1028 (a)(4) and (b)(3) entitled to a hearing to determine whether crime involved moral turpitude. In re McBride, App. D.C., 602 A.2d 626 (1992).

By pleading guilty to the crime of "theft by failure to make required disposition of property received," attorney committed conduct constituting intentional dishonestly for personal gain, which inherently involved moral turpitude under D.C. Code Ann. § 11-2503. In re Hopmayer, App. D.C., 602 A.2d 655 (1992).

Attorney was disbarred following his conviction of fifteen counts of mail fraud pursuant to federal mail fraud statute. In re Krowen, 573 A.2d 786 (1990).

Attorney's violation of 18 U.S.C.S. § 2314 of the National Stolen Property Act, prohibiting interstate transportation in furtherance of fraud, involved moral turpitude per se requiring disbarment under D.C. Code § 11-2503(a). In re Vaccaro, App. D.C., 539 A.2d 1094 (1988).

Bribery under 18 U.S.C.S. § 201(g) was a crime of moral turpitude upon which to base disbarment of a judge where the judge accepted the services of a moving company to move household goods for $60 and where the moving company was a party in cases before the judge; the judge was found guilty of accepting a gratuity knowing that it was being given to the judge for or because of an official act performed or to be performed by the judge as a member of the judiciary. In re Campbell, App. D.C., 522 A.2d 892 (1987).

The Board on Professional Responsibility found that attorney's federal mail and wire fraud offenses involved moral turpitude per se because a specific intent to defraud was required for those convictions; thus, attorney's disbarment was mandated by D.C. Code § 11-2503(a). In re Bond, App. D.C., 519 A.2d 165 (1986).

Court accepted the Board on Professional Responsibility finding that respondent should be disbarred based upon receipt of a copy of a judgment and probation order which indicated that respondent pleaded guilty to three counts

of false pretenses because, as a matter of law, conviction of the crime of false pretenses constituted conviction of a crime involving moral turpitude. In re Anderson, App. D.C., 474 A.2d 145 (1984).

— Bribery.

The acts of an attorney which led to his misdemeanor conviction for attempted bribery warranted a finding of moral turpitude because the acts involved intentional dishonesty for personal gain where the attorney admitted that he paid money to a clerk at the Bureau of Traffic Adjudication money on a number of occasions to "fix" parking tickets for him and where, at the time of his conduct, the attorney knew that such transactions were illegal. In re Tucker, App. D.C., 766 A.2d 510 (2000).

— Controlled substance.

Attorney was disbarred based on felony conviction for criminal sale of a controlled substance; since possession with intent to distribute a controlled substance was a crime of moral turpitude, it followed that crime of actual distribution of substance fell within the same category. In re Valentin, App. D.C., 710 A.2d 879 (1998).

An attorney was disbarred nunc pro tunc to the date of his guilty plea to violations of federal statutes pertaining to conspiracy to import cocaine and obstruction of justice. In re Laguna, App. D.C., 749 A.2d 749 (2000).

Disbarment was appropriate where an attorney was convicted of possession of a controlled substance with intent to distribute, since that is a crime of moral turpitude. In re Bateman, App. D.C., 699 A.2d 403 (1997).

Attorney's involvement in scheme to transport and store narcotics constituted acts of moral turpitude, and his conviction for those acts warranted his disbarment. In re Robbins, App. D.C., 678 A.2d 37 (1996).

Attorney was convicted on federal charges of conspiracy to sell narcotic drugs and conspiracy to receive and conceal narcotic drugs, the Disciplinary Board (now the Board on Professional Responsibility found the offenses involved "moral turpitude" under D.C. Code § 11-2503(a), the Court of Appeals agreed with the Board's characterization of the attorney's offense, and ordered attorney disbarred from the practice of law in the District of Columbia. In re Roberson, App. D.C., 429 A.2d 530 (1981).

— Fraud.

An attorney's conviction of conspiracy to defraud the United States involved moral turpitude per se. In re Lipari, App. D.C., 704 A.2d 851 (1997).

Attorney's participation in scheme to defraud federal government supported finding of moral turpitude, requiring his disbarment. In re Sneed, App. D.C., 673 A.2d 591 (1996).

Attorney's conviction of mail fraud involved moral turpitude per se, warranting his immediate disbarment from practice of law. In re Juron, App. D.C., 649 A.2d 836 (1994).

Offense of mail fraud involved moral turpitude for purposes of subsection (a) of this section, and attorney was therefore disbarred based on his guilty plea to mail fraud and aiding and abetting misapplication of bank funds. In re Zimmer, App. D.C., 637 A.2d 103 (1994).

Conviction of attorney who aided and abetted a client to commit passport fraud in violation of 18 U.S.C.S. § 1028 (a) (4) involved moral turpitude; attorney was disbarred. In re McBride, App. D.C., 578 A.2d 1102 (1990).

— Illegal drug trafficking.

An attorney who was convicted of conspiring to engage in a monetary transaction in property believed to be derived from illegal drug trafficking committed a crime involving moral turpitude where he accepted $30,000 from the purported agent of a South American drug cartel seeking to launder money and where he forwarded checks to the same person on six occasions between August 1995 and February 1996. In re Lee, App. D.C., 755 A.2d 1034 (2000).

— Mitigating factors.

Even when a misdemeanor involves an element which would render the offense moral turpitude per se if a felony, it is still proper for the Board on Professional Responsibility to consider mitigating factors; in such a circumstance, the Board should conduct a broad examination of circumstances surrounding commission of the misdemeanor which fairly bear on the question of moral turpitude in its actual commission, such as motive or mental condition. In re Spiridon, App. D.C., 755 A.2d 463 (2000).

— Not found.

An attorney who was admitted to the bar but never actually practiced law did not commit a crime of moral turpitude when he stole $18 in fares while operating a bus, where one physician testified that the attorney was affected by extreme stress, depression, and alcohol abuse when the incident took place and another physician testified that the attorney suffered from schizoaffective disorder, alcohol abuse, and adjustment disorder with mixed anxiety and depressed mood. In re Spiridon, App. D.C., 755 A.2d 463 (2000).

An attorney may be found to have violated Disciplinary Rule 1-102(A)(4) by engaging in "dishonesty" without necessarily being guilty of conduct involving "moral turpitude," as required by this section. In re Wilkins, App. D.C., 649 A.2d 557 (1994).

Conduct of attorney, which resulted in his conviction of misdemeanor offense of obstruct-

ing justice in Commonwealth of Virginia, did not involve moral turpitude within meaning of D.C. Code § 11-2503(a), where there was a lack of clear and convincing evidence that he acted with specific intent to defraud traffic court by his statements. In re Wilkins, App. D.C., 649 A.2d 557 (1994).

— Sexual abuse.

Definition of crime involving moral turpitude per se was satisfied by attorney's conviction for sexually abusing someone over whom he exercised authority. In re Sharp, App. D.C., 674 A.2d 899 (1996).

— Tax evasion.

Because an attorney's conviction for tax evasion was for a crime of moral turpitude, disbarment was mandatory. In re Casalino, App. D.C., 697 A.2d 11 (1997).

Knowingly assisting clients in submitting false and fraudulent income tax returns to the Internal Revenue Service involves moral turpitude within the meaning of D.C. Code § 11-2503(a). In re McConnell, App. D.C., 502 A.2d 454 (1985).

Where an attorney is convicted of the offense of willfully and knowingly assisting in the preparing and filing of a false and fraudulent tax return—an offense involving moral turpitude—the attorney must be disbarred permanently pursuant to D.C. Code § 11-2503(a). In re McConnell, App. D.C., 502 A.2d 454 (1985).

Where attorney was convicted in the United States District Court for the Eastern District of Virginia of perjury, 18 U.S.C.S. § 1623, and conspiracy to defraud the United States Internal Revenue Service, 18 U.S.C.S. § 371, the Board On Professional Responsibility's finding that both offenses involved moral turpitude, and recommendation of permanent disbarment, was ordered by appellate court. In re Meisnere, App. D.C., 471 A.2d 269 (1984).

— Theft.

The crime of grand theft under California law, requiring as it does a felonious intent to steal or take property in addition to the actual stealing or taking, inherently involves moral turpitude. In re Caplan, App. D.C., 691 A.2d 1152 (1997).

Absent exceptional circumstances, felony theft is considered a crime of moral turpitude. In re Wiley, App. D.C., 666 A.2d 68 (1995).

Attorney was disbarred from practice of law where his prosecution was based on theft of funds in excess of $72,000, and code section under which he was convicted clearly prohibited a crime involving moral turpitude per se. In re Milton, App. D.C., 642 A.2d 839 (1994).

Pardon.

Where petitioner entered a plea of guilty in another jurisdiction to charges that he misappropriated and converted funds for his own personal use, and when he then voluntarily entered an affidavit offering his consent to disbarment in the District, the fact that he may have consented solely because it would have been futile to continue a defense in light of the ministerial disbarment procedure following certification of conviction did not entitle him to reinstatement when a plenary pardon was subsequently issued for his convictions. In re Ezrin, App. D.C., 703 A.2d 1246 (1997).

Practice and procedure.

Because a disbarred attorney could apply for readmission after five years regardless of the nature of the offense, there was no need to refer attorney's case to a hearing committee to determine whether his offense was one of moral turpitude. In re Novick, App. D.C., 619 A.2d 514 (1993).

Once bar counsel has received certified proof that a member of the bar has been convicted of a serious crime, bar counsel should take the following steps: (1) bar counsel should transmit to the court of appeals and to the board on professional responsibility a certified copy of the court record or docket entry evidencing the conviction, so that the court may take immediate action to suspend the attorney; (2) bar counsel should initiate appropriate disciplinary proceedings; (3) once the board has arrived at a recommendation, it should forward its report and recommendation to the court for further action, notwithstanding the pendency of an appeal of the conviction underlying the proposed discipline; (4) bar counsel should deliver to the court a certified copy of the final judgment on appeal of the criminal conviction as soon as it becomes available, so that the court may take final action. In re Hirschfeld, App D.C., 622 A.2d 688 (1993).

Reciprocal disciplinary proceedings.

Nothing in this statute prohibits the establishing of a separate reciprocal disciplinary proceeding for attorneys found guilty of misconduct in another jurisdiction, provided that the reciprocal procedure is constitutional. In re Richardson, App. D.C., 692 A.2d 427 (1997), cert. denied, 522 U.S. 1118, 118 S. Ct. 1056, 140 L. Ed. 2d 118 (1998).

Reinstatement denied.

A disbarred attorney did not establish by clear and convincing evidence his fitness to resume the practice of law where he was unable, after 12 years, to articulate the reasons for his misconduct or to convince the disciplinary board or the court that he would be able to avoid such conduct in the future. In re Borders, App. D.C., 665 A.2d 1381 (1995).

— Resignation.

Board on Professional Responsibility's (Board) finding that a resignation by a member

It is not uncommon, for example, for a Hearing Committee to recommend a suspension in a case in which Bar Counsel sought a lesser sanction. This could not occur if a single adjudicator were appointed because, by definition, such a proceeding could not result in the imposition of a suspension.

The use of single-member adjudicators would also eliminate diversity and the participation of laypersons in the disciplinary process, which would be an undesirable consequence. Each Hearing Committee now includes one layperson, and the BPR has two lay members; efforts are also made to assure that lawyer participants in the disciplinary system are drawn from diverse backgrounds. Single-member adjudication would sacrifice this feature of our disciplinary system, with little or no compensating benefits in expedition.

Our recommendation, then, is to reject ABA Recommendation 11, and to adhere to our current practice on the composition of the administrative hearing and review panels.

L. McKay Recommendation 12: Disposition of Cases by a Hearing Committee, the Board, or Court

The statewide disciplinary board should not review a determination of the hearing committee except upon a request for review by the disciplinary counsel or respondent or upon the vote of a majority of the Board. The Court should not review a matter except: (a) within its discretion upon a request for review of the determination of the Board by the disciplinary counsel or respondent; or (b) upon the vote of a

majority of the Court to review a determination of the hearing committee or Board. The Court should exercise its jurisdiction only in the capacity of appellate review. In any matter finally determined by a hearing committee or the Board, the Court should by per curiam order adopt the findings and conclusions contained in the written report of the committee or Board.

Under current practice, any proposed sanction greater than a public reprimand must be referred to the Court of Appeals, whether or not any party objects. And even for the lesser sanctions of informal admonition and public reprimand, which can be administratively imposed, any party may appeal (as of right) to the Court.

The ABA's recommendation proposes a significant change. It would allow Hearing Committee recommendations to become final if neither party objected, and the BPR did not decide *sua sponte* to review them. It would also allow any BPR recommendation to become final unless a party objected and the Court accepted the appeal (i.e., a certiorari review), or a majority of the Court voted to review the matter, even if uncontested.

This is not the first time that the Bar has considered limiting judicial review or appeals in disciplinary cases. Such a proposal was made to the Board of Governors in 1981, in a study of the disciplinary system by a committee headed by Paul Friedman. See Tab 2. No action was taken on that recommendation.

We believe that considerable reduction in disciplinary cases heard by the Court is desirable (although we are not in accord with the ABA recommendation in some of its specifics). We note, first, that well over 50 percent of the disciplinary matters the Court decides are not contested. Although the Court has, from time to time, revised the BPR's recommendations even in such uncontested cases, for the most part the BPR's recommendations are accepted in their original form. Many of these cases, moreover, are for reciprocal discipline, where the scope of review is quite limited, akin to that for seeking enforcement of a sister jurisdiction's civil judgment. See Court of Appeals Rule XI, Section 11.[17/] Uncontested reciprocal cases, then, would seem to be one category of disciplinary proceedings that do not require judicial review in every instance. So also are uncontested cases where discipline is to be imposed based on a criminal conviction, where the sole issue is the sanction, not the underlying offense. Id. Section 10.

We also believe that most uncontested cases arising originally in our disciplinary system should not require mandatory review in the Court of Appeals. Our disciplinary system has in it an extraordinarily high degree of review even before a matter reaches the Court.

17/ Reciprocal discipline refers to the process of imposing discipline on a D.C. Bar member for misconduct occurring elsewhere and sanctioned by another jurisdiction.

Bar Counsel conducts an investigation and may petition a case only if a Contact Member agrees. The matter is then fully heard by a three-member panel consisting of two lawyers and one layperson. This hearing is on the record with full right of confrontation and cross-examination, and a formal written opinion is prepared.

Next, <u>every case</u> must be reviewed by the full Board on Professional Responsibility inasmuch as the hearing committees have no power to impose any sanction of any kind. This step of the process is like an intermediate appeal and is designed to insure uniformity in the system. Given this extraordinary process of administrative review, there appears to be little reason to further burden the Court with the requirement that it review these cases -- except the most serious of them -- when they are uncontested.

For serious disciplinary cases -- those in which proof of fitness is required prior to reinstatement -- we recommend that they continue to be reviewed by the Court even when uncontested. In this way, the public and the profession will be assured of the Court's continued supervision of the disposition of serious disciplinary matters. Jurisdiction over the Bar is a fundamental responsibility of the Court of Appeals, and the Court's continued active participation in appropriate cases will assure that the disciplinary

system continues to receive policy guidance on its actions.

In contested matters, we disagree with the McKay recommendation that the Court's review be only discretionary. We are unaware of any precedent in District of Columbia law depriving a party of a right of judicial review of administrative action, and we see no good reason for denying that right to a lawyer who may be deprived of his or her profession by the action of the BPR. Notwithstanding the BPR's excellent record in administering the disciplinary system in the District of Columbia, judicial review is a cherished right in the United States and it should not be curtailed in disciplinary matters.

While we do not recommend curtailing the right of judicial review in contested cases, we do recommend that sanctions recommended by the BPR be effective 60 days after the BPR decision, unless stayed by the BPR or the Court.

Under the current system of review, or even one in which only contested cases are reviewed by the Court, lawyers engaged in misconduct may delay their day of reckoning by one to two years by appealing the BPR recommendation. During the period of the appeal, the unethical lawyer is free to prey upon unsuspecting members of the public. Since the victims of lawyer misconduct who appear most frequently in the

disciplinary system are often poor and disadvantaged people who have little other redress against their lawyers, the spectacle here is one of a system that is zealous to protect the rights of the lawyers but which appears, at least on the surface, to place a low value on the rights of their relatively defenseless victims.

A way to address this problem is to expand the use of interim suspensions in the disciplinary system. It is extremely difficult to understand why, after painstaking review by Bar Counsel, a careful trial by a Hearing Committee, and deliberation on a full written record by the Board on Professional Responsibility, the suspension ought not to be presumptively effective at that point, particularly in our disciplinary system where the Court affirms (in full or in substantial part) the recommendations of the BPR in most of the cases it hears. Such a system would limit the ability of respondents to manipulate the Court's process to their advantage and to the disadvantage of the public.

Interim suspensions are currently used in our system in cases involving convictions of crime and reciprocal discipline, where the Court enters an order of suspension at the beginning of the case, although the lawyer is free to move the Court to vacate the interim suspension based upon particularized circumstances.

There may be cases, particularly those where the sanction includes a period of suspension and the BPR's

decision is a close one -- either on the facts or the law -- where a stay pending review would be appropriate. In such cases, the BPR would have the right to stay the effectiveness of its decision, or if it does not do so, the respondent lawyer could move the Court to do so. [18/]

Our recommendations on this subject would also have the salutary effect of reducing the Court's caseload, although that in itself was not a driving consideration. Based on statistics for 1992, approximately one-half of the 55 cases decided that year would not have been considered by the Court on the merits under the Board's recommendation.

In summary, we recommend that all uncontested decisions of the BPR be final, except those serious ones in which the sanction involves a proof of fitness requirement, and that BPR-recommended sanctions be effective within 60 days of the BPR decision, except when stayed by the BPR or by the Court. We believe that this approach best promotes the needs of the

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18/ One additional reason that we recommend that BPR sanctions be presumptively effective when the BPR decides a case is that its sanction recommendations are approved by the Court of Appeals in the overwhelming majority of cases. According to data supplied by the Executive Attorney of the BPR, in the Court's five disciplinary decisions in 1992 in contested cases, the Board's recommended sanction was approved in each one. In 1991 decisions, the BPR's recommended sanction was approved in all (although in one, the Court added a restitution requirement to the suspension). And in 1990, the Court approved the BPR recommended sanction in all seven matters in which a BPR majority made a sanction recommendation. (In an eighth case that year, *the Board split 4-4 on sanction.)*