In Re Goldberg: Standards for Imposing Concurrent Reciprocal Bar Discipline

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When an attorney is sanctioned for violating a bar's disciplinary rules, other jurisdictions where that attorney is admitted must conduct separate adjudications in order to invoke disciplinary sanctions for the same violation. Receiving jurisdictions generally treat the initial finding of wrongdoing as conclusive evidence that the violation occurred. Where the receiving court finds that a sanction in its jurisdiction is appropriate, it then must independently decide the proper sanction. The rule in many jurisdictions is that the second sanction must be identical to the first unless extenuating circumstances render identical discipline clearly inappropriate in the receiving jurisdiction. This view is endorsed by both the American

1. The action of a state court in a disciplinary proceeding has no extraterritorial effect. See In re Van Bever, 55 Ariz. 368, 101 P.2d 790 (1940). A disciplinary action is an in rem action which binds the world. Full faith and credit, however, requires only that every other jurisdiction recognize that a disbarred attorney may not practice in the state rendering the disciplinary judgment. See, e.g., Kentucky Bar Ass'n v. Signer, 533 S.W.2d 534 (Ky. 1976). Even though attorneys are admitted to federal courts by way of state courts, they do not lose their right to practice in federal court when they have lost their right to practice in the underlying state court. Each federal court must decide for itself whether to discipline the attorney. See Theard v. United States, 354 U.S. 278 (1957); 7A C.J.S. Attorney & Client § 121 (1980 & Supp. 1983). See also In re Mackay, 298 F. Supp. 170, 171 (D. Alaska 1969) (attorney suspended by Alaska bar does not automatically lose his right to practice in the United States District Court for the District of Alaska).

2. See, e.g., In re Weaver, 272 Ind. 491, 399 N.E.2d 748 (1980); Annot., 81 A.L.R.3d 1281 (1977). Federal courts, however, accept the results of state disciplinary proceedings merely as competent evidence, not as conclusive proof, of the wrongdoing. Nevertheless, state findings are given great deference. See Wrighten v. United States, 550 F.2d 990 (4th Cir. 1977); In re Abrams, 521 F.2d 1094 (3d Cir.), cert. denied, 423 U.S. 1038 (1975).

3. Even when the forum court accepts the original court's determination of the wrongdoing as conclusive, mitigating factors may make different disciplinary action appropriate in the forum state. See, e.g., In re Van Bever, 55 Ariz. 368, 101 P.2d 790 (1940) (lawyer may have rehabilitated himself in the seven years between California disbarment and Arizona disciplinary proceeding for the same activity). Furthermore, the violation in the original jurisdiction may not be a wrong to which the same (or any) punishment is attached in the forum state. See, e.g., In re Weiner, 530 S.W.2d 222 (Mo. 1975); Florida Bar v. Wilkes, 179 So. 2d 193 (Fla. 1965); see also Annot., 81 A.L.R.2d 1281 (1977).

4. See, e.g., In re Kaufman, 81 N.J. 300, 406 A.2d 972, 973 (1979); Joint Comm. of Prof. Discipline of the App. Judges' Conference and the ABA Standing Comm. on Prof. Discipline, Standards for Lawyers' Discipline and Disability Proceedings, at Standard 10.2 commentary (approved draft 1979) (citing state cases) [hereinafter cited as ABA Disciplinary Standards]. The United States Supreme Court has found that disbar-
Bar Association (ABA)\(^5\) and the District of Columbia.\(^6\)

The Rules of the District of Columbia Court of Appeals Governing the Bar of the District of Columbia (D.C. Bar Rules) require a member of the District's bar who has been the subject of professional discipline elsewhere to disclose this information to the District's Bar Counsel.\(^7\) Under the D.C. Bar Rules, final adjudication of wrongdoing in another jurisdiction conclusively establishes the misconduct in the District of Columbia.\(^8\) The exceptions to this rule encompass situations where due process was lacking in the original jurisdiction\(^9\) or where there was a clear infirmity of proof presented in the original proceeding.\(^10\) Once the misconduct is established, the D.C. Bar Rules require the imposition of discipline identical to that imposed by the foreign jurisdiction\(^11\) unless imposition of identical discipline would result in a grave injustice\(^12\) or the District Rules warrant substantially different disciplinary measures.\(^13\) Additionally, the D.C. Bar Rules would except from penalty an activity sanctioned elsewhere which did not constitute misconduct in the District of Columbia.\(^14\)

Application of the same sanction in the reciprocal discipline situation by a state bar should lead to disbarment from practice before the Court with three exceptions: 1) where there was lack of due process in the state procedure; 2) where there was a clear infirmity of proof at the state hearing; or 3) where disbarring the attorney because of the state court's findings would otherwise constitute a grave injustice. Selling v. Radford, 243 U.S. 46, 51 (1916). Additionally, misconduct in one state may not constitute wrongdoing in another. See Florida Bar v. Wilkes, 179 So. 2d at 197. Moreover, misconduct in one state may warrant substantially less discipline in another state. In re Cook, 67 Ill. 2d 26, 364 N.E.2d 86, 87 (1977). See infra notes 9-14 (discussing D.C. Bar Rules and the exceptions set forth above); see also infra notes 109-18 and accompanying text for discussion of mitigating factors that may result in the imposition of different discipline by the District of Columbia Court of Appeals in a reciprocal discipline situation.

5. See ABA DISCIPLINARY STANDARDS, supra note 4, at Standard 10.2 commentary.
6. See, e.g., D.C. APP. RULES GOVERNING THE BAR, Rule XI § 18(5) [hereinafter cited as D.C. BAR RULES].
7. Id. § 18(1).
8. Id. § 18(6).
9. Id. § 18(5)(a) ("The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process."). See supra note 4 and accompanying text.
10. D.C. BAR RULES, supra note 6, at § 18(5)(b) ("There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject."). See supra note 4 and accompanying text.
11. D.C. BAR RULES, supra note 6, at § 18(5).
12. Id. § 18(5)(c). "The imposition of the same discipline by the Court would result in grave injustice." Id. See supra note 4 and accompanying text.
13. D.C. BAR RULES, supra note 6, at § 18(5)(d). "The misconduct established warrants substantially different discipline in this jurisdiction." Id. See supra note 4 and accompanying text.
14. D.C. BAR RULES, supra note 6, at § 18(5)(e). "The misconduct elsewhere does not
would appear to be a simple matter in theory, but it is not always so in practice, as revealed by the recent case In re Goldberg.\textsuperscript{15} In Goldberg, the District of Columbia Court of Appeals, faced for the first time with interpreting an ambiguity between two provisions of the D.C. Bar Rules,\textsuperscript{16} found that determining which sanction to impose in reciprocal discipline cases involves difficult decisions regarding the purpose of attorney discipline and the meaning of the term "identical discipline."\textsuperscript{17} In resolving the ambiguity, the court delineated an area of judicial discretion by holding that, under the D.C. Bar Rules, it possessed the power to decide whether a temporary suspension could be imposed as reciprocal discipline in the District of Columbia concurrently with the suspension in the original adjudicating jurisdiction.\textsuperscript{18} The Goldberg court decided that, absent additional aggravating factors,\textsuperscript{19} where a member of the District of Columbia Bar is temporarily suspended from practice in another jurisdiction and identical discipline is indicated in the District of Columbia, the District of Columbia Court of Appeals will impose the identical suspension retroactively, to run concurrently with the suspension in the original forum.\textsuperscript{20}

This Note will discuss the manner in which the District of Columbia Court of Appeals handled the question of timing reciprocal suspensions under the D.C. Bar Rules. It will describe how the Goldberg court defined identical suspension and proposed a general framework for determining when courts should invoke identical suspension. This Note will conclude with the suggestion that application of traditionally applied aggravating and mitigating factors to reciprocal discipline can be read into the language of Goldberg to guide the imposition of identical reciprocal suspensions.

I. RECIPROCAL SUSPENSIONS: SHOULD THEY RUN CONCURRENTLY OR INDEPENDENTLY?

A. Did the D.C. Bar Rules Change Past Practice?

The question of the timing of reciprocal suspensions from legal practice has rarely been addressed by state courts. Where a state suspends an attorney for violating its disciplinary code and a second state finds the imposi-

\textsuperscript{15} 460 A.2d 982 (D.C. 1983).
\textsuperscript{16} D.C. BAR RULES, supra note 6, at § 18(5).
\textsuperscript{17} Goldberg, 460 A.2d at 983. See infra notes 46-58 and accompanying text.
\textsuperscript{18} Goldberg, 460 A.2d at 983. See infra notes 59-60 and accompanying text.
\textsuperscript{19} See infra notes 62-67 and accompanying text.
\textsuperscript{20} Goldberg, 460 A.2d at 985.
tion of the same suspension appropriate, reported decisions have favored concurrent suspensions. The District of Columbia appears to have followed this practice before the D.C. Bar Rules were amended to their present form. The D.C. Bar Rules now require that suspension orders of the District of Columbia Court of Appeals shall become effective thirty days after entry, with the exception of those orders imposing reciprocal discipline. Until Goldberg, the District of Columbia Court of Appeals never considered the effect of this 1978 amendment on reciprocal disciplinary procedures.

B. In Re Goldberg: Creating an Interpretation of Identical Reciprocal Discipline Under the D.C. Bar Rules.

Ronald Goldberg was suspended from the practice of law for thirty days by the Maryland Court of Appeals for violations of the Maryland Code of Professional Responsibility. Goldberg violated Maryland Disciplinary

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21. See, e.g., In re Kessler, 89 Ill.2d 151, 433 N.E.2d 643 (1982) (sister state's imposition of sanction persuasive of sanction's propriety, but not binding on Illinois; concurrent suspension imposed in absence of aggravating factors and presence of some mitigating factors); In re Kauffman, 81 N.J. 300, 406 A.2d 972 (1979) (in seeking to impose identical discipline, New Jersey court held that suspension was to run concurrently with indefinite New York suspension; thus, attorney would be allowed to apply for reinstatement in New Jersey only after New York court had reinstated him); Copren v. State Bar, 64 Nev. 364, 183 P.2d 833 (1947) (attorney suspended in Nevada for the remainder of the time left in his California suspension; nonconcurrent suspension of the same length was expressly rejected); In re Brown, 60 S.D. 628, 245 N.W. 824 (1932) (principles of comity dictated that attorney suspended from practice in Wyoming be suspended for same period of time in South Dakota).

22. The only pre-1978 District of Columbia case noted was the unpublished case In re Levanthal, No. 5-49-77 (D.C. Sept. 22, 1977). See Goldberg, 460 A.2d at 984 n.3. In Levanthal, a reciprocal suspension was ordered to run concurrently with that in another state. Id. The Maryland Court of Appeals suspended Levanthal for six months, from March 9, to September 9, 1977. The District of Columbia Court of Appeals originally suspended Levanthal for six months nonconcurrently, the suspension to become effective immediately. The court's order was issued on July 14, 1977, and the suspension was to have run until January 14, 1978. In re Levanthal, No. 5-49-77 (D.C. July 14, 1977), 105 DAILY WASH. L. REP. 1328-29 (July 26, 1977) (order imposing immediate suspension of six months duration). The suspension was subsequently changed so as to run concurrently with the Maryland suspension. In re Levanthal, No. 77-0169 (D.C. Oct. 5, 1977), 105 DAILY WASH. L. REP. 1851 (Oct. 13, 1977) (altering suspension so as to run from Mar. 9, 1977 to Sept. 9, 1977). See Goldberg, 460 A.2d at 984 n.3; In re Dwyer, 399 A.2d 1, 11 (D.C. 1979).

23. D.C. BAR RULES, supra note 6, at § 19(3) ("Except as provided in secs. 15 and 18 of this rule, orders imposing disbarment or suspension shall be effective 30 days after entry.") Id.). Section 19(3) was added to the D.C. Bar Rules in 1978. Goldberg, 460 A.2d at 984.

24. The court characterized the issue as a matter of first impression. Goldberg, 460 A.2d at 984.

Rules 6-101(A)(3), 7-101(A)(1-3), and 9-102(B)(3-4),26 as a result of his entrusting to a secretary work that would have been more properly performed by Goldberg. Specifically, Goldberg failed to supervise his secretary adequately,27 neglected his clients, allowed his client escrow account

26. The disciplinary rules in question provide in part:
DR 6-101 Failing to Act Competently.
(A) A lawyer shall not:

. . . .
(3) Neglect a legal matter entrusted to him.

DR 7-101 Representing a Client Zealously.
(A) A lawyer shall not intentionally:

. . . .
(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules . . . . A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted . . . .
(3) Prejudice or damage his client during the course of the professional relationship.

DR 9-102 Preserving Identity of Funds and Property of a Client.

. . . .
(B) A lawyer shall:

. . . .
(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of a lawyer and render appropriate accounts to his client regarding them.
(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

MD. ANN. CODE, appendix F (MARYLAND CODE OF PROFESSIONAL RESPONSIBILITY).
See MD. ANN. Code Rule 1230 (MARYLAND RULES OF PROCEDURE, ch. 1200, Court Administration) (Rule 1230 adopted the American Bar Association Model Code of Professional Responsibility as the MARYLAND CODE OF PROFESSIONAL RESPONSIBILITY).

The pertinent sections of the DISTRICT OF COLUMBIA CODE OF PROFESSIONAL RESPONSIBILITY are identical to those of the MARYLAND CODE OF PROFESSIONAL RESPONSIBILITY. See NATIONAL CENTER FOR PROFESSIONAL RESPONSIBILITY, AMERICAN BAR ASSOCIATION, CODE OF PROFESSIONAL RESPONSIBILITY BY STATE (M. Proctor, director) (1980) at table 1 [hereinafter cited as CODE OF PROFESSIONAL RESPONSIBILITY BY STATE].

27. Goldberg, 441 A.2d at 339-42. A particularly telling portion of Goldberg's testimony describes the extent of his failure to supervise his secretary:

Then when I came in one day unexpectedly and I found the shades were drawn in the office and the TV set was on Ms. Heckner's desk and the phones were all lit up and no one was on the phones. I asked, "What the hell was going on?" It was a work day. She said, "Well, I was trying to get caught up. I was too busy. I put all
to become overdrawn,\textsuperscript{28} and failed to promptly correct violations of disciplinary rules once he became aware of them.\textsuperscript{29} Because of this conduct, at least two cases in his charge were compromised.\textsuperscript{30} Goldberg was suspended from practice in Maryland for thirty days,\textsuperscript{31} from March 25 to April 24, 1982.\textsuperscript{32}

On March 25, 1982, Goldberg's attorney properly informed the District of Columbia Bar Counsel of Goldberg's Maryland suspension.\textsuperscript{33} Acting according to the D.C. Bar Rules, the District of Columbia Board on Professional Responsibility recommended disciplinary action\textsuperscript{34} on April 12, 1982, with less than two weeks remaining in Goldberg's Maryland suspension.\textsuperscript{35} The Board found that identical reciprocal discipline consisting of a thirty-day suspension in the District of Columbia should be imposed.\textsuperscript{36}

\begin{itemize}
\item[28.] Goldberg's secretary failed to deposit money into the clients' escrow account. Goldberg continued to pay out of the account, causing an overdraft. He was unaware of the overdraft because he did not check his bank statements. When informed of the overdraft by the bank manager, Goldberg did not restore the funds for more than a week. The bank eventually stopped paying the checks. \textit{Id.}
\item[29.] \textit{Id.}
\item[30.] Goldberg failed to file a client's suit, even though he received a fee for supposedly having done so. \textit{Id.} at 341-42. An answer in a second case was not filed, causing a decree to be entered against Goldberg's client. \textit{Id.} In each case, it was suspected that Goldberg left the work to his secretary, who failed to do it. \textit{Id.}
\item[31.] The suspension was to continue after the stated 30 days unless and until all court costs were paid in connection with the Maryland Court of Appeals proceeding. \textit{Id.} at 342-43.
\item[32.] Brief for Respondent at 1, \textit{Goldberg}, 460 A.2d 982 (D.C. 1983).
\item[33.] \textit{Goldberg}, 460 A.2d at 984. Attorneys admitted to the District of Columbia Bar are required to inform the District of Columbia Bar Counsel upon being subjected to disciplinary action in another jurisdiction. Bar Counsel is then to obtain a copy of the order from the other jurisdiction and file the foreign order with the clerk of the District of Columbia Court of Appeals and with the District of Columbia Board on Professional Responsibility. D.C. BAR RULES, supra note 6, at § 18(1). The Maryland Court of Appeals had sent a copy of their order to the District of Columbia Board on Professional Responsibility. The copy was received on Mar. 11, 1982. \textit{Goldberg}, 460 A.2d at 984 n.2.
\item[34.] The District of Columbia Board on Professional Responsibility is charged in professional discipline cases with recommending appropriate action to the court of appeals. D.C. BAR RULES, supra note 6, at § 4. The Board may recommend either dismissal, adoption of a disciplinary sanction, or a de novo review by the District of Columbia Court of Appeals. D.C. BAR RULES, supra note 6, at § 7.
\item[35.] The District of Columbia Court of Appeals made its final decision on disposition of the Goldberg case on Mar. 30, 1983, nearly a year after the Maryland suspension had ended. \textit{Goldberg}, 460 A.2d at 982.
\item[36.] \textit{Id.} at 984. Section 19(3) of Rule XI of the D.C. Bar Rules requires that an order of the District of Columbia Court of Appeals imposing a suspension shall be effective 30 days after entry, except as provided in § 15 (concerning attorneys convicted of serious crimes,
Respondent Goldberg filed exceptions with the District of Columbia Court of Appeals, stating that mitigating circumstances, especially the fact that he voluntarily had refrained from practicing in the District of Columbia during his Maryland suspension, made application of the proposed suspension unjust. In considering Goldberg's arguments, the District of Columbia Court of Appeals initially noted that section 18(5) of D.C. Bar Rule XI requires that identical discipline be imposed barring certain exceptions not present in Goldberg's case. The Court of Appeals held that identical discipline in this case was a thirty day suspension—one of equal length to that administered by Maryland.

The court then turned to the question of when the suspension should commence. Bar counsel argued that the D.C. Bar Rules required every suspension to start thirty days after the order of the District of Columbia Court of Appeals is entered, while Goldberg argued that, if a suspension were to be imposed, it should be imposed nunc pro tunc to run concurrently with his Maryland suspension. Goldberg based his argument on the fact that the United States Court of Appeals for the Fourth Circuit had imposed a retroactive suspension to run concurrently with his Maryland suspension and that the United States District Court for the District of Maryland had not imposed any additional discipline.

The Goldberg court examined the D.C. Bar Rules to determine whether they required the suspension to be imposed prospectively. Section 19(3), which requires a thirty day delay before an order of suspension may become effective, excepts section 18, the reciprocal discipline provision, from its action. Bar Counsel asserted that this exception was limited to a

which was not a factor in Goldberg and § 18. D.C. Bar Rules, supra note 6, at § 19(3). Section 18 is the reciprocal discipline section. A major issue in Goldberg was the determination of whether the § 19(3) 30 day delay was applicable to reciprocal discipline. Goldberg, 460 A.2d at 984. If so, the rule would necessitate prospective application of the suspension. 37. 460 A.2d at 985. Under the D.C. Bar Rules, the District of Columbia Court of Appeals must review a recommendation of the District of Columbia Board on Professional Responsibility if timely exceptions are filed by the attorney who is the subject of the action. D.C. Bar Rules, supra note 6, at § 7(3).

38. 460 A.2d at 984.
40. See supra notes 9-14 and accompanying text.
41. Goldberg, 460 A.2d at 984.
42. Id.
45. Id. Goldberg, 460 A.2d at 986 n.1 (Kelly, J., dissenting in part); See also supra notes 2-3 and accompanying text.
46. D.C. Bar Rules, supra note 6, at § 19(3); see supra note 36.
47. D.C. Bar Rules, supra note 6, at § 18; see supra note 36.
single provision of section 18 which requires that reciprocal discipline in the District of Columbia be deferred until the expiration of any stay of discipline that might have been imposed by the original court. The court held that the thirty day delay in effecting discipline did not apply to reciprocal discipline, reasoning that the plain meaning of section 19(3) excluded section 18 from its action. Furthermore, the Goldberg court applied the principles of statutory construction which dictate that, in resolving alleged conflicts of statutory language, each provision is to be given its maximum effect so long as doing so does not perpetuate an obvious mistake. The court thus held that interpreting the thirty day delay requirement as applicable to the reciprocal discipline section would limit unnecessarily the operation of section 18.

Additionally, the District of Columbia Court of Appeals found that the Bar Counsel's reading of the D.C. Bar Rules created an unnecessary conflict. The court held that identical discipline constituted discipline concurrent in time as well as duration, stating that any other result would increase the punishment beyond that contemplated by the original court. Therefore, the Goldberg court reasoned, interpreting the D.C. Bar Rules to require a thirty day delay before a reciprocal suspension becomes effective would result in punishment greater than that imposed by the original forum. This necessarily would conflict with the rule requiring that disci-

48. D.C. BAR RULES, supra note 6, at § 18(4); see Brief of Bar Counsel at 9 n.2, Goldberg, 460 A.2d 982 (D.C. 1983).
49. Goldberg, 460 A.2d at 985.
50. Id. at 984. Section 19(3) of Rule XI of the D.C. BAR RULES reads in part: "Except as provided in § 18 of this rule, orders imposing disbarment or suspension shall be effective 30 days after entry." D.C. BAR RULES, supra note 6, at Rule XI § 19(3).
51. The court recognized that it was interpreting court rules and not statutes. However, it stated that rules of statutory construction are "commonly used" in interpreting court rules. Id. at 985 n.5 (quoting 3 C. SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 67.10 (4th ed. 1974)).
53. Goldberg, 460 A.2d at 985. If the thirty-day delay provision (§ 19(3) the D.C. Bar Rules) applies to reciprocal discipline, then the reciprocal discipline section (§ 18) must be read restrictively. If § 19(3) does not apply to § 18, then § 18 may be read more expansively, so as to allow both retroactive and prospective application. Conversely, interpreting § 19(3) as exempting only the portion of § 18 regarding stays of discipline in another court (§ 18(4)) restricts the effect of § 19(3), while reading § 19(3) so as to exempt all of § 18 gives the exemption clause its fullest possible effect.
54. Goldberg, 460 A.2d at 985.
55. Id. The punishment is increased in part because the total time of suspension from practice is increased from that contemplated by the original court. Id.
56. Id.
pline be identical. Consequently, preservation of internal consistency in the D.C. Bar Rules demanded that no delay be imposed in the reciprocal discipline situation.

The effect of the court's unwillingness to apply the thirty day-after-order date to reciprocal discipline cases is to render the D.C. Bar Rules silent as to the effective date of sanctions. The Goldberg court held that, when the rules are silent, it has discretion to decide the effective date of the sanction. The court's decision that only concurrent discipline was truly identical discipline in the Goldberg situation prompted the court to exercise its discretion in favor of a retroactive sanction. Moreover, the court indicated that concurrent identical discipline is the preferred sanction in reciprocal discipline cases.

57. D.C. BAR RULES, supra note 6, at § 18(5). See supra note 11 and accompanying text.
58. Goldberg, 460 A.2d at 985.
59. Id. at 983. Exercise of the power to decide the timing of the suspension is consistent with the District of Columbia Court of Appeals' broad power to regulate bar admission and conduct. The court's power was recognized as early as 1823 in Ex parte Burr, 2 D.C. (1 Cranch) 379 (1823) (applying the laws of Maryland as District of Columbia local law). In Burr, it was held that the court had the power to scrutinize, suspend, or summarily disbar an attorney. In 1939, the Court of Appeals, in Mullen v. Canfield, 105 F.2d 47, 48 (D.C. Cir. 1939), held that the court which admits an attorney to a bar may also suspend him unless there exists apparent contrary legislative intent. At the time of Mullen, the authority to discipline members of the District of Columbia Bar was vested in the United States District Court for the District of Columbia. In re Keeler, 380 A.2d 119, 123-25 (D.C. 1977). The district court was "guided by, but not limited to" the ABA Code of Professional Responsibility, and operated under no specific standards as to what conduct should be sanctioned. Id. at 123. The present disciplinary system became effective on April 1, 1972. The Court Reform and Criminal Procedure Act of 1970, passed by the United States Congress, gave the power to discipline the District of Columbia Bar to the District of Columbia Court of Appeals, and required the court of appeals to make rules governing bar discipline. Id. at 124. The plenary authority to discipline lawyers described in Burr and Mullen, however, also has been held to have passed to the District of Columbia Court of Appeals by virtue of the 1970 Act. Id. See D.C. CODE ANN. § 11-2502 (1973); 7 C.J.S. Attorney & Client § 60 (1980) (the legislature may confer the power to suspend or disbar on any court).

Some courts have held that the power of the state's highest court is independent of bar rules. In that regard, statutory provisions have been found to aid the inherent power of the court rather than to give the court only that power which is confined to the limits of the statute. See, e.g., In re Feingold, 296 A.2d 491 (Me. 1972); 7 C.J.S. Attorney & Client § 60 (1980). In Goldberg, the court of appeals did not have to reach the question of whether the D.C. Bar Rules, promulgated pursuant to the Court Reform and Criminal Procedure Act of 1970, were merely advisory. The court found itself to be operating in an interstitial space between provisions of the D.C. Bar Rules. Therefore, its inherent power was declared to be unfettered. Goldberg, 460 A.2d at 983.

60. Goldberg, 460 A.2d at 985. See supra notes 40, 55 and accompanying text.
61. Goldberg, 460 A.2d at 985. The court found that its discretionary power to impose identical discipline was guided by § 18(5) of Rule XI of the D.C. Bar Rules. See supra note 11 and accompanying text. The exceptions listed in § 18(5) were suggested as the circum-
In concluding, the Goldberg court attempted to decide whether Goldberg's case warranted imposing identical discipline under Rule XI, section 18(5) of the D.C. Bar Rules. The court considered factors arising from Goldberg's conduct subsequent to the Maryland suspension order which might mitigate or aggravate the quantum of harm done to the interests which the District of Columbia seeks to further when it administers bar discipline. The court stated that Goldberg's alleged voluntary withdrawal from the practice of law in the District of Columbia constituted an important mitigating factor militating in favor of retroactive discipline. Conversely, his continued practice during that period would have been an aggravating factor, favoring the application of a stronger sanction. The court determined that it could not make a decision regarding the propriety of identical discipline because the record of the proceeding before the District of Columbia Board on Professional Responsibility contained no finding of fact concerning whether Goldberg had actually refrained from practice in the District of Columbia during his Maryland suspension. Therefore, the case was remanded to the Board for further fact finding.

62. See supra notes 11-14 and accompanying text.

63. The court treated § 18(5)(c) of Rule XI of the D.C. Bar Rules as the provision which allowed for the consideration of aggravating and mitigating factors. Section 18(5)(c) allows for the application of different discipline when imposition of identical discipline "would result in grave injustice." Goldberg, 460 A.2d at 985 (quoting D.C. BAR RULES, supra note 6 at Rule XI § 18(5)(c)). See infra note 103 and accompanying text; see also infra note 81 and accompanying text (listing the interests of the District of Columbia in imposing bar discipline).

64. The court also mentioned as a mitigating factor an attorney's prompt notification to the District of Columbia Bar counsel upon being disciplined in another jurisdiction. Failure to notify bar counsel was expressed as an aggravating factor. Goldberg, 460 A.2d at 985. Goldberg was found to have promptly notified the District of Columbia Bar Counsel of his Maryland suspension. Id. See also infra notes 112-15 and accompanying text.

65. See supra note 34 and accompanying text.

66. Goldberg, 460 A.2d at 985-86.

67. Id. On remand the court also allowed the Board to "consider any other evidence bearing on the question of whether the suspension should be concurrent or consecutive." Id. The court retained jurisdiction, however, demanding that the case be returned for entry of a final order. Id. at 985-86. Judge Kelly concurred with the court's reasoning, but found the facts to be sufficient to impose a concurrent reciprocal suspension without remand. Id. at 986 (Kelly, J., dissenting).

On remand, the Board on Professional Responsibility recommended to the District of Columbia Court of Appeals a 30-day suspension to run concurrently with Goldberg's long since expired Maryland suspension. The court so ordered. In re Goldberg, No. M-117-82 (D.C. Mar. 30, 1983), 111 DAILY WASH. L. REP. 1159 (July 16, 1983) (order imposing a 30-day suspension in the District of Columbia, to run from Mar. 25, 1982 to Apr. 24, 1982).
II. IS CONCURRENT RECIPROCAL DISCIPLINE THE MOST IDENTICAL ALTERNATIVE?

The Goldberg court, in deciding that concurrent suspension constituted the most nearly identical form of reciprocal discipline, considered only two of at least four possible sanctions which arguably were identical to the Maryland discipline. The court limited its considerations to concurrent suspensions and a suspension to become effective thirty days after the District of Columbia court order. Two other possible disciplinary measures not considered by the court are discipline to become effective immediately upon court order, and no additional discipline. To determine which of these four possibilities most nearly constitutes identical discipline, the yardsticks by which they may be measured—the goals of lawyer discipline—must first be examined.

A. Evaluating the Purpose of Bar Discipline

The District of Columbia Code of Professional Responsibility (D.C. Code) hints at the purposes of attorney discipline only in its preamble, where it states that “[l]awyers, as guardians of the law, play a vital role in the preservation of society.” The preamble stresses that lawyers have a responsibility both to the legal system and to the society within which they function. The D.C. Code also states that the disciplinary rules and ethical considerations embodied in its text express expected standards governing lawyers' relationships with the public, the legal system, and the legal profession. Lawyer discipline in the District of Columbia, therefore, must be imposed primarily to protect these stated interests.

District of Columbia case law regarding bar discipline reveals an effort to protect the same interests mentioned in the preamble of the D.C. Code. Essentially, these interests are to protect the public, and to maintain the

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68. 460 A.2d at 984.
69. Id. at 985.
70. D.C. BAR RULES, supra note 6, at appendix A. For the purposes of this Note, the DISTRICT OF COLUMBIA CODE OF PROFESSIONAL RESPONSIBILITY [hereinafter cited as D.C. CODE] is identical in all respects to the ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1981), except that the D.C. CODE does not incorporate the footnoted material appearing in the ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY. See CODE OF PROFESSIONAL RESPONSIBILITY BY STATE, supra note 26.
71. D.C. CODE, supra note 70, at Preamble.
72. Id. at Preamble and Preliminary Statement.
73. Id. at Preliminary Statement. Of importance for Mr. Goldberg, the Preliminary Statement also says that “[a] lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.” Id.
74. In re Haupt, 422 A.2d 768, 771 (D.C. 1980); In re Smith, 403 A.2d 296, 300 (D.C. 1979); In re Wild, 361 A.2d 182, 183 (D.C. 1976); District of Columbia Bar v. Kleindienst,
integrity of the legal profession. The case law also adds goals which are not specifically mentioned in the D.C. Code, such as deterrence of prescribed behavior, rehabilitation of the offending lawyer, restitution to harmed clients, and penalizing of the attorney. Legal commentators and the authors of model codes agree with the D.C. Code and the District of Columbia's case law regarding the purpose of professional discipline except to the extent that the latter condones punishment as a purpose of the bar disciplinary system.

Distilling the teachings of the commentators, the District of Columbia's

345 A.2d 146, 147 (D.C. 1975) (the purpose of discipline is protection of the public, not the punishment of the offending lawyer).

75. Haupt, 422 A.2d at 771 and Smith, 403 A.2d at 300 (protection of the courts an additional purpose of bar discipline); Wild, 361 A.2d at 183 and Kleindienst, 345 A.2d at 150 (need to maintain integrity of profession is a factor in determining rigor of discipline imposed). The latter case cites the record of Kleindienst's hearing before the District of Columbia Board of Professional Responsibility. See generally supra note 34. Kleindienst excerpts a portion of the Board's record in which the Board identifies the traditional considerations of District of Columbia bar discipline as: protecting the public from incompetent or unethical lawyers; deterring other lawyers from unprofessional conduct; maintaining public confidence in the profession; and balancing the three above listed considerations against the seriousness of the impact that disciplinary action will have on the life of the punished lawyer.

76. Wild, 361 A.2d at 183-84 (implies that punishment is also a consideration in imposing discipline); Kleindienst, 345 A.2d at 147 (cites as a purpose of discipline deterrence by making an example of the sanctioned lawyer).

77. Kleindienst, 345 A.2d at 148.

78. Haupt, 422 A.2d at 771; Smith, 403 A.2d at 303.

79. Smith, 403 A.2d at 303; Kleindienst, 345 A.2d at 149-52 (Kelly, J., dissenting) (punishment is an unavoidable purpose and is not objectionable when not the primary purpose). See Charlton v. FTC, 543 F.2d 903 (D.C. 1976) ("disbarment [is] designed to protect the public [and] is [a] punishment or penalty imposed on the lawyer").

80. See, e.g., R. ARONSON & D. WECKSTEIN, PROFESSIONAL RESPONSIBILITY IN A NUTSHELL 42 (1980) (the purpose of professional sanctions is to protect the public, not to punish the lawyer); id. at 44-45 (a purpose of the ABA Model Code of Professional Responsibility is to maintain public confidence; discipline should be designed to prevent future violations rather than to punish vindictively); id. at 50-51 (discipline may be increased in the interest of deterrence of other lawyers from engaging in the same conduct; protection of the public and of the administration of justice should determine the degree of the sanction imposed); Steele & Nimmer, Lawyers, Clients and Professional Regulation, 1976 AM. B. FOUND. RESEARCH J. 917, 999-1014 (The current goals of bar discipline include: cleansing the bar of unethical lawyers, deterring unethical conduct, and preserving the profession's public image. The authors' suggested goals of bar discipline include: setting norms for proper ethical behavior, managing attorney-client disputes by setting standards, and supervising the bar administratively to shape behavior.).

The ABA's DISCIPLINARY STANDARDS, supra note 4, although not specifically adopted by the District of Columbia, are also helpful in assessing the proper purpose of sanctions. The ABA DISCIPLINARY STANDARDS state that discipline should be designed to maintain appropriate professional conduct. Id. at Standard 11. Maintenance of appropriate conduct would serve the function of protecting both the public and the judicial system. The ABA DISCIPLI-
Bar Discipline

Bar Discipline

The goals of bar discipline in the District of Columbia may be summarized as follows:

1. To protect the public from unfit lawyers;
2. To protect the judicial system from corruption by unfit lawyers;
3. To maintain appropriate standards for the profession;
4. To maintain public confidence in the profession;
5. To deter lawyers from committing breaches of professional ethics;
6. To punish offending lawyers.\(^8\)

B. Evaluating the Effect of the Alternative Forms of Reciprocal Discipline

A comparison of the four alternative methods of applying arguably identical sanctions reveals which one would best effectuate the purposes of the disciplinary system in a case such as Goldberg. The District of Columbia Court of Appeals could conceivably apply any of the four methods of imposing discipline identical to a suspension originally ordered by another jurisdiction. These alternatives are: no additional discipline in the District of Columbia; a suspension of equal length to be applied retroactively so as to run concurrently with the foreign suspension; a suspension to become effective immediately upon order of the District of Columbia court; and suspension to become effective thirty days after order of the court.\(^8\)

1. No Further Discipline Constitutes Lighter than Identical Discipline

The United States District Court for the District of Maryland considered Goldberg's case and decided not to impose any discipline in addition to that already meted out by the Maryland Court of Appeals.\(^8\) Goldberg claimed not to have practiced law in any federal or state court while sus-

\(^8\)See supra notes 68-69 and accompanying text. This Note considers the last two alternatives together since their practical effect is the same.

\(^8\)See supra note 1. An attorney does not automatically lose his right to practice in federal court even when disbarred by the highest court of the state in which the federal court sits. See supra note 1.
If the District of Columbia adopted the Maryland district court’s approach, the public and the legal system would have been protected from a continuation of Goldberg’s unprofessional activities if, in fact, Goldberg had not practiced in the District of Columbia during his Maryland suspension. However, a decision of record in which the District of Columbia Court of Appeals refrained from imposing discipline would undermine the standards of the legal profession as well as public confidence in the profession. It would also fail to deter lawyers from committing future breaches of the disciplinary rules. The decision could be interpreted by the public and the bar as condoning the behavior, or at the very least, as not condemning it.

The District of Columbia’s failure to impose its own discipline would not constitute identical discipline. Its discipline would be lighter than that imposed by the Maryland court. The Maryland suspension amounted to public recognition of the wrongfulness of Goldberg’s action. If the District of Columbia declined to impose further discipline, there would be no recognition of Goldberg’s wrongdoing in the District. The seriousness of acknowledging an attorney’s wrongdoing cannot be over emphasized. Thus, at least a pro forma suspension by the District of Columbia is necessary for ensuring that its discipline is equal to that imposed by Maryland.

2. Concurrent Suspension Constitutes Identical Discipline

The concurrent reciprocal suspension suggested by the Goldberg court, involving public recognition of the attorney’s wrongdoing through an order suspending the offender, would result in the most nearly identical form of discipline that the District of Columbia could apply. By issuing such a disciplinary order, the District of Columbia would add the necessary publicity to the no-further-discipline approach. Concurrent reciprocal discipline maintains public confidence in the legal system by virtue of the court’s imposition of punishment for wrongdoing. Additionally, imposition of discipline helps to deter other lawyers from unprofessional activities, thereby aiding in the maintenance of the standards of the legal profession.

In Goldberg, District of Columbia Bar Counsel argued that concurrent suspension was not a sufficient punishment because the respondent enjoyed all the rights and privileges of an attorney in the District of Colum-

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84. See Goldberg, 460 A.2d at 985.
85. The Preamble to the D.C. CODE, supra note 70, states that the prospect of losing the respect and confidence of fellow lawyers and society as a whole is the “ultimate sanction” for a lawyer.
Bar Discipline

bria during his Maryland suspension. Additionally, Bar Counsel argued that Goldberg's suspension of practice was not a form of discipline because the withdrawal was voluntary. It is difficult to understand, however, what privileges Goldberg could have enjoyed. Indeed, under Maryland law, he could not have practiced in the District of Columbia as long as his office was located in Maryland. It is true that Goldberg could have exercised the privilege of holding himself out as an attorney in good standing in the District of Columbia during his Maryland suspension. This privilege, however, would have been meaningless since Goldberg could not have actually practiced without violating Maryland's rules. Further, whatever status Goldberg enjoyed from knowing that he was an attorney in good standing in the District of Columbia would be dashed by imposing retroactive discipline.

Admittedly, an order for retroactive discipline would not obviate the fact that Goldberg was allowed to claim membership, albeit without practicing, in the District of Columbia bar after his Maryland discipline, but the benefit of this temporarily unblemished standing is ephemeral at best. It is also a benefit which cannot be removed by either prospective or retroactive action, since it was enjoyed before the District of Columbia Court of Appeals could hear the case. Additionally, imposition of a prospective suspension in an attempt to compensate for the period of time in which Goldberg was a titular member of the District of Columbia bar after his Maryland suspension would have a primarily punitive effect from which neither the public nor the bar would benefit. Goldberg's inactivity served to protect the public and the court system from potential unprofessional conduct even though his withdrawal was voluntary.

3. Suspension Imposed After Order of the District of Columbia Court of Appeals Constitutes Harsher than Identical Discipline

District of Columbia Bar Counsel's brief for the case In Re Berger, which was filed after the Goldberg brief, departs from the position taken

86. Goldberg, 460 A.2d at 986.
87. Id. In reality, Goldberg's withdrawal from practice in the District of Columbia was not essentially voluntary, since he was under the impression that such withdrawal was mandated by Maryland law. Id. Md. ANN. CODE, art. 10, § 1 (1976); 61 Op. Att'y Gen. 43 (Md. 1976).
90. Bar Counsel's Goldberg brief was filed on Aug. 10, 1982. The Berger brief was filed on Nov. 8, 1982. Bar Counsel's Supplemental Memorandum, In re Berger, No. M-125-82 (D.C. 1982). Berger had been suspended from the practice of law in Arizona for six months,
by Bar Counsel in Goldberg.\(^9\)\(^1\) In the Berger brief, Bar Counsel argued that reciprocal discipline cases were exempted from the rule requiring suspension to become effective thirty days after the court's order.\(^9\)\(^2\) Bar Counsel urged that this exception was meant to allow suspensions to become effective immediately upon the court's order.\(^9\)\(^3\) This argument implied that the thirty-day provision, which specifically contemplated use of the period between the issuance of the order and its effective date as an opportunity to wind down business,\(^9\)\(^4\) was unnecessary in reciprocal discipline cases because the process already contained a built-in delay of approximately sixty days.\(^9\)\(^5\)

The Berger argument also leaves imposition of discipline to the court's discretion because, like the Goldberg decision, it stands for the proposition that reciprocal discipline cases are exempted from the thirty-day delay rule. It simply gives the court a rationale for imposing immediate discipline. In practice, it makes little difference whether the reciprocal suspension begins immediately upon the forum court's order or thirty days thereafter. Either an immediate or a thirty-day delay of the District of Columbia suspension would, as the court pointed out,\(^9\)\(^6\) increase the total discipline imposed. Nonconcurrent discipline is especially punitive in a situation like Goldberg's, in which the suspension in the original jurisdiction has run its course. Nonconcurrent discipline would force a lawyer once again to call clients with confidence-shattering news,\(^9\)\(^7\) to reschedule...
cases, and to arrange for coverage of clients' needs by other lawyers. If the "possible loss of . . . respect and confidence is the ultimate sanction," the lawyer would have been sanctioned twice. That is not identical punishment, but additional punishment.

III. CONSIDERATIONS REGARDING THE APPROPRIATENESS OF APPLYING IDENTICAL RECIPROCAL DISCIPLINE IN A SPECIFIC CASE: MITIGATING AND AGGRAVATING FACTORS

As discussed earlier, the District of Columbia Court of Appeals in Goldberg based its analysis of identical discipline on section 18(5) of the D.C. Bar Rules, which requires application of identical discipline except in five specified situations. These exceptions are as follows:

a. When there has been lack of due process in the original forum;

b. When there has been a clear infirmity of proof in the original forum;

c. When imposing identical discipline in the District of Columbia would constitute grave injustice;

d. When the misconduct elsewhere warrants substantially different discipline in the District of Columbia; and,

e. When the misconduct elsewhere does not constitute misconduct in the District of Columbia.

Assume a situation in which the original forum accorded the defendant due process and made its findings of fact based on adequate proof. Further assume that the original forum has disciplinary rules which proscribe the same sort of conduct proscribed in the District of Columbia. Given these assumptions, the only exceptions under D.C. Bar Rule XI that could result in the imposition of a different degree of discipline are situations in which identical discipline in the District of Columbia would constitute a

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98. See D.C. Code, supra note 70 at preamble.
99. See supra notes 40-42, 63 and accompanying text.
100. See supra notes 9-14, 63 and accompanying text.
101. See supra notes 9-14, 63 and accompanying text.
102. Id. at § 18(5)(b). See text of rule, supra note 10.
103. Id. at § 18(5)(c). See text of rule, supra note 12.
104. Id. at § 18(5)(d). See text of rule, supra note 13.
105. Id. at § 18(5)(e). See text of rule, supra note 14.
106. As previously noted, for practical purposes, the Maryland Code of Professional Responsibility is identical to the District of Columbia Code of Professional Responsibility. See supra note 26.
grave injustice, or in which the misconduct in the original forum would warrant substantially different discipline in the District of Columbia.\textsuperscript{107} Such situations would arise either when the District of Columbia attaches substantially different punishment to the same violation, or when the offending attorney has done something after the original adjudication which calls for the imposition of different punishment at the time that the District of Columbia passes judgment.

The \textit{Goldberg} court found none of the situations contemplated in the rule XI exceptions to be present regarding the Maryland decision.\textsuperscript{108} However, the court was unwilling to apply the same discipline without remanding to determine whether developments occurring between the time of the Maryland decision and the time of the District of Columbia order had changed the appropriateness of applying identical discipline.\textsuperscript{109} In remanding the case, the court was concerned that circumstances occurring in the interim might have warranted different discipline in the District\textsuperscript{110} or given rise to some situation which would result in a grave injustice if the court imposed identical discipline.\textsuperscript{111}

The District of Columbia Court of Appeals identified two factors which could aggravate\textsuperscript{112} the situation and cause imposition of a harsher discipline.\textsuperscript{113} These aggravating factors were a lawyer's unreasonable delay in notifying the District of Columbia Bar Counsel of his having been disciplined in another jurisdiction, and a lawyer's practicing law in the District

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\bibitem{107} Section 18(5)(c) excepts identical reciprocal discipline which would result in a grave injustice. \textit{See supra} note 12 and accompanying text. Section 18(5)(d) excepts identical reciprocal discipline when the misconduct elsewhere warrants a substantially different sanction in the District of Columbia. \textit{See supra} note 13 and accompanying text. In \textit{Goldberg}, the court applied §§ 18(5)(c) and (d) of Rule XI of the D.C. \textit{Bar Rules} to determine whether the circumstances surrounding Goldberg's suspension in Maryland and his averred withdrawal from practice for the same period of time in the District of Columbia warranted the application of identical discipline in the District. 460 A.2d at 985.

\bibitem{108} \textit{Goldberg}, 460 A.2d at 984.

\bibitem{109} \textit{Goldberg}, 460 A.2d at 985-86. The court noted there were no findings by the District of Columbia Board on Professional Responsibility as to whether Goldberg voluntarily refrained from practice in the District of Columbia during his Maryland suspension, and remanded for such a finding in order that the appropriate sanction be imposed. \textit{Id}. The court also indicated that harsher discipline would be appropriate if Goldberg had not promptly notified the District of Columbia Bar Counsel of his Maryland discipline. \textit{Id}. at 985.

\bibitem{110} \textit{Id}. at 985-86. \textit{See D.C. Bar Rules}, \textit{supra} note 6, at § 18(5)(d).

\bibitem{111} \textit{Goldberg}, 460 A.2d at 985-86. \textit{See D.C. Bar Rules}, \textit{supra} note 6, at § 18(5)(c). The court also cited § 18(5)(d) to hold open the possibility of applying different discipline in future cases in which the original jurisdiction considers appropriate substantially different discipline than does the District of Columbia. 460 A.2d at 985.

\bibitem{112} \textit{Goldberg}, 460 A.2d at 985.

\bibitem{113} \textit{Id}.
of Columbia while being suspended elsewhere. The converse of these behaviors was viewed by the court as mitigating factors.

Both the District of Columbia case law and legal commentators traditionally have held that aggravating and mitigating factors should be taken into account in dispensing disciplinary sanctions. In identifying two mitigating factors which are consistent with those traditionally recognized, the Goldberg court revealed a willingness to examine aggravating and mitigating circumstances before deciding whether discipline identical to that imposed on an attorney by a foreign jurisdiction is appropriate. Application of this reasoning to all reciprocal discipline cases would make uniform the standards to be applied in determining the proper sanctions for a given violation of the disciplinary rules, whether the violation occurred in the District of Columbia or elsewhere. Such a result would promote truly fair application of reciprocal discipline.

114. Id.
115. Id.
116. See, e.g., In re Haupt, 522 A.2d 768, 771 (D.C. 1980) (disregard for clients was an aggravating factor); see also In re Dedman, 17 Cal. 3d 229, 550 P.2d 1040, 1042-43, 130 Cal. Rptr. 504, (1976) (efforts to ensure that violations would cease, good behavior before and since disciplinary action, and the seeking of psychiatric treatment were mitigating factors); In re Kaufman, 81 N.J. 300, 406 A.2d 972, 973 (1979) (failure to settle accounts of neglected clients, even after suspension in the original jurisdiction, was an aggravating factor); In re Ritger, 80 N.J. 1, 401 A.2d 1094, 1095 (1979) (lack of contrition and failure to reimburse wronged parties were aggravating factors; prior unblemished record, making full restitution and agreement to future employment only with proper supervision were mitigating factors); In re Miller, 68 A.D.2d 544, 418 N.Y.S.2d 69 (N.Y. App. Div. 1979) (74 years of age, long blameless service record, complete restitution, and attorney's already serving a suspension to which time was added were mitigating factors); see also 7 AM. JUR. 2D Attorneys at Law § 52 (1980 & Supp. 1983) (mitigating factors are to be considered in deciding the severity of the sanction to be imposed); 7A C.J.S. Attorney & Client §§ 116(a) n.79-91, 116(b) (1980 & Supp. 1983); Annot., 95 A.L.R.3d 724 (1979 & Supp. 1983) (restitution to client of misappropriated funds is a mitigating factor); Annot., 93 A.L.R.3d 1061, 1091 (1979 & Supp. 1983) (delay in prosecution of disciplinary proceeding is a mitigating factor); Annot., 96 A.L.R.2d 739 (1964) (mental disturbance at the time of lawyer's unethical conduct is mitigating factor).

117. See supra notes 61-64, 109 and accompanying text; see also infra note 118.

118. The traditionally recognized mitigating and aggravating factors considered in imposing bar discipline are listed in the ABA DISCIPLINARY STANDARDS, supra note 4, at Standard 7.1 and commentary. The Standards state that:

The respondent's lack of remorse, his failure to cooperate with the . . . investigation, his failure to voluntarily make [sic] restitution to those injured by his misconduct, his failure to acknowledge and recognize the seriousness of his violation . . . and his record of prior discipline, are factors which have been viewed as "aggravating" . . . .

. . . A willingness to rectify the damage caused by the misconduct, contrition, inexperience, temporary mental aberrations for which the respondent has sought treatment, and restitution prior to the filing of a grievance, have been relied upon by courts as mitigating factors warranting lesser discipline.

Id.
IV. Conclusion

The Goldberg court correctly decided that the only way to impose truly identical discipline upon a lawyer suspended in another jurisdiction who has voluntarily refrained from practice in the District of Columbia during that suspension is to impose a retroactive concurrent suspension. In this way both jurisdictions equally serve the disciplinary goals of bar sanctions. Moreover, the public is protected from the lawyer's unprofessional practice through his absence from practice in each jurisdiction for an equal amount of time. The confidence of the public in each bar is maintained in equal measure by public announcements of suspensions of equal terms. Essentially all of the goals of lawyer disciplinary proceedings are achieved by the two disciplinary steps taken together. Additionally, retroactive concurrent discipline is the least punitive, and therefore the fairest method of accomplishing these goals.

Goldberg also gave guidance as to when identical discipline should and should not be imposed. The court wisely held that, in the absence of aggravating or mitigating factors, concurrent suspension will be warranted. In suggesting how to determine whether such factors exist, the court hinted that the District of Columbia, in order to determine whether identical discipline is appropriate in any given case, may apply those aggravating or mitigating factors it has used in the past to decide the severity of sanctions to be imposed. If the District of Columbia Court of Appeals follows this

Prior to the District of Columbia court hearing, Goldberg had allegedly replaced his secretary, restored the funds to the escrow account, and otherwise attempted to rectify his dealings with clients. Maryland v. Goldberg, 441 A.2d at 339, 341, 342. Goldberg had fully cooperated with the District of Columbia authorities and had refrained voluntarily from practice in the District. Goldberg, 460 A.2d at 984, 986. He had acknowledged his violation and shown contrition. Id. at 984; Maryland v. Goldberg, 441 A.2d at 339, 342. He was found to have been unaware of his secretary's activities until he caught and fired her. His past record was good in that he had always been considered competent prior to this proceeding, and Maryland Bar Counsel had recommended that his punishment be limited to a reprimand. Maryland v. Goldberg, 441 A.2d at 339, 342. Nothing appeared in the record which reasonably could have been considered to be an aggravating factor. Therefore, it appears that the District of Columbia Court of Appeals would not be justified in imposing a second suspension in the District, a sanction too harsh to be called identical discipline. See Goldberg, 460 A.2d at 985.

On remand, the District of Columbia Board on Professional Responsibility recommended a concurrent reciprocal suspension. The District of Columbia Court of Appeals ordered the suspension recommended by the Board. In re Goldberg, No. M-117-82 (D.C. Mar. 30, 1983) (order suspending Goldberg from practice for 30 days nunc pro tunc to run concurrently with suspension in Maryland, March 25 to April 24, 1982).

119. See supra note 81 and accompanying text.
guidance, the result will be a fair determination of the appropriate reciprocal bar discipline.

C. Stephen Lawrence