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Reciprocal Discipline in Federal Courts

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With reciprocal admission becoming more common throughout the Northwest, reciprocal discipline has also become increasingly common. Washington, for example, requires lawyers licensed there to report public discipline imposed in another jurisdiction to the WSBA within 30 days under Rule for the Enforcement of Lawyer Conduct 9.2(a). Idaho has a similar requirement under Bar Commission Rule 513(a)—although the reporting deadline is 14 days. Alaska Bar Rule 27(a) contemplates reasonable notice of discipline without specifying a particular deadline. An Oregon lawyer who is also licensed in Washington, Idaho or Alaska, therefore, faces the prospect of reciprocal discipline in those states if the lawyer is disciplined here.

Lawyers sometimes forget, however, that federal courts also have their own reciprocal discipline rules—just like they have their own admission rules. In this column, we'll look at reciprocal discipline reporting requirements in federal trial and appellate courts around the Northwest.

Federal Trial Courts

In Oregon, LR 83-6(a) requires lawyers admitted to practice before our District Court to notify the court clerk, the Chief Judge and the judges before whom the lawyer currently has matters pending within 14 days of being suspended or disbarred by any court or following a felony conviction in any

jurisdiction. The same rule also requires a lawyer to notify the court if the lawyer has resigned from the bar of any court while a disciplinary investigation was pending that might have resulted in suspension or disbarment. LR 83-6(b) then outlines local procedures for assessing and imposing reciprocal discipline in this federal district.

In Washington, Western District LCR 83.3(c)(6) addresses reciprocal discipline (and, under LCrR 1(a), applies to criminal proceedings as well). Under LCR 83.3(c)(6)(B)-(D), a lawyer admitted to practice in the Western District must “promptly” report suspension or disbarment in any other jurisdiction or the lawyer’s resignation in lieu of discipline. Similarly, under LCR 83.3(c)(7)(A), a lawyer admitted to practice in the Western District must also report a conviction for a felony or a misdemeanor “involving dishonesty or corruption[.]” Eastern District LR 83.3(c), in turn, addresses reciprocal discipline for lawyers admitted in that federal district. Like its Western Washington counterpart, Eastern District LR 83.3(c) requires prompt reporting of suspension, disbarment or resignation in lieu of discipline in any other jurisdiction. The Western and Eastern district rules then go on to outline procedures for imposing reciprocal discipline in those respective venues.

Alaska LCR 83.1(g)(1)(A) (which, under LCrR 1(b), also applies to criminal proceedings) directs the immediate suspension of any lawyer practicing in the District of Alaska when “it appears to the court”—presumably upon notice by the lawyer concerned—that the lawyer has been suspended, disbarred, resigned in lieu of discipline in any other court or was convicted of a “serious crime.” The rule then goes on to outline procedures for seeking reinstatement if the reciprocal discipline imposed was only a corresponding suspension. Idaho LCR 83.5(b)(3) (which, under LCrR 1(f), is also applicable to criminal proceedings) differs from its Northwest counterparts in extending reciprocal discipline beyond suspension and disbarment to members of its bar who are “otherwise disciplined” by another other court. It presumes notice by the lawyer concerned and also applies to resignation in lieu of discipline. Lawyers admitted to practice in the District of Idaho who are convicted of a felony or other “serious crime,” in turn, are required to report their convictions within 14 days under LCR 83.5(b)(2) and “will be immediately suspended[.]” The Idaho rule then addresses local procedures for both the imposition of reciprocal discipline and possible reinstatement.

Federal Appellate Courts

Circuit Rule 46-2(c) requires lawyers admitted to practice in the Ninth Circuit to provide the clerk of the court with a copy of any order or similar notice

that the lawyer has been suspended, disbarred or resigned in lieu of discipline. Circuit Rule 46-2(d)-(h) then go on to outline procedures for reciprocal discipline and potential reinstatement. Similar provisions are included in the local rules of the other federal circuits and Federal Rule of Appellate Procedure 46(b)(1)(A) notes that a member of any federal appellate court bar is “subject to suspension or disbarment by the court if the member . . . has been suspended or disbarred from practice in any other court[.]” U.S. Supreme Court Rule 8(1) echoes the FRAP provision by presumptively disbaring any member of its bar who has been suspended or disbarred by any other court subject to further proceedings if timely sought by the lawyer concerned.

Summing Up

There are two practical reasons for lawyers to be equally attentive to federal court reciprocal discipline notification requirements. First, if a lawyer does not comply with the federal court’s rules, the lawyer will be subject to further discipline in that court. Second, as the District of Oregon notes in a “practice tip” following its rule, timely reporting enhances the possibility of having the respective state and federal periods of suspension overlap and, therefore, the overall effect will be less disruptive on the lawyer’s practice.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is also a former member of the Oregon State Bar Legal Ethics Committee and is a current member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the quarterly Ethics & the Law column for the WSBA *NWLawyer* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB *Ethical Oregon Lawyer*, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.