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Double Trouble: Reciprocal Discipline Reporting Around the Northwest

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A perverse side-effect of the increased availability of reciprocal admission is that reciprocal discipline has also become more common. When we are admitted in another state, we are also submitting to the regulatory jurisdiction of that state's licensing authority regardless of where alleged misconduct may have occurred under state variants of ABA Model Rule of Professional Conduct 8.5(a).¹ In theory—and occasionally in practice—two states may simultaneously prosecute a dual-licensed attorney for the same misconduct.² The far more typical scenario, however, is for one state to prosecute a lawyer and, if discipline results, for other states where the lawyer is licensed to impose reciprocal discipline.

For a Washington lawyer who has been disciplined and who is also licensed in other jurisdictions, recurring questions that follow for other licensed jurisdictions typically begin with: do I have to report and how do I do that? In this column, we'll focus on those two questions around the Northwest. We'll begin from the perspective of a Washington lawyer who has been disciplined in Alaska, Idaho or Oregon and then follow with a Washington lawyer who is disciplined here and is also admitted in those other Northwest states.³ With each, we'll discuss what disciplinary sanctions must be reported and when the report must

be made. Again with each, we'll address both state licensing authorities and federal trial courts in those states.⁴

Before we do, three preliminary points are in order.

First, although ABA Model Rule for Disciplinary Enforcement 22 sets out a suggested approach to reciprocal discipline, state procedures vary widely and can be relatively arcane. Lawyers should carefully review the specific procedures used in the state involved and should get competent help in those jurisdictions if they have questions or anticipate unusual wrinkles in their cases.

Second, lawyers should not expect to litigate their original case anew in another state. Courts in other jurisdictions typically look at two questions in the reciprocal discipline context: (1) was the lawyer afforded adequate due process in the state in which regulatory discipline was imposed? (2) should the lawyer be disciplined in the reciprocal jurisdiction, and, if so, what sanction is appropriate?⁵ The underlying facts leading to a finding of misconduct in the original state, however, are not typically relitigated. The Oregon Supreme Court put it this way in a recent case involving a Washington lawyer who was also licensed in Oregon:

“The reciprocal discipline rule, in effect, codifies a basic principle of issue preclusion: an attorney who has had a full and fair opportunity to litigate the charges leading to discipline meted out in another jurisdiction may not relitigate the fact issues already decided.”⁶

Third, although by far the most likely outcome is that the reciprocal jurisdiction will impose the same sanction, that result is not necessarily foreordained. In *Idaho State Bar v. Everard*, 124 P.3d 985 (Idaho 2005), for example, the Idaho Supreme Court imposed a lesser sanction than the Washington Supreme Court. By contrast, in *In re Page*, 955 P.2d 239 (Or. 1998), the Oregon Supreme Court imposed a more severe sanction than the Washington Supreme Court. When variations result, they are usually the product of some combination of peculiar facts or a difference in disciplinary sanction jurisprudence in that particular state.

Washington

For a Washington lawyer who has been disciplined in another jurisdiction, Washington Rule for the Enforcement of Lawyer Conduct 9.2(a) is straightforward: “Within 30 days of being publicly disciplined, or being transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in this state must inform disciplinary counsel of the discipline or transfer.” ELC 9.4(a) requires similar reporting for a resignation in lieu of discipline in another jurisdiction. The accent in ELC 9.2(a) is on *public* discipline. Alaska, Idaho and Oregon all have variants of “private admonitions” that, by definition, are not public and in Oregon are not considered “discipline.”⁷

In federal court, Western District Local Rule 83.3(c)(6) and Eastern District Local Civil Rule 83.3(c) govern reciprocal discipline. Both federal rules require reporting to the respective Clerks of the Court suspension, disbarment or resignation in lieu of discipline in another jurisdiction. Although neither specifies a deadline, prudence suggests reporting within a reasonable period of the imposition of discipline in another jurisdiction.

Alaska

Reciprocal discipline in Alaska is principally controlled by Alaska Bar Rule 27. Alaska BR 27(a) is worded somewhat ambiguously in that reciprocal proceedings are triggered “upon receipt” of a copy of the order imposing discipline on an Alaska-licensed lawyer in another jurisdiction. The rule implies, but does not explicitly state, that the Alaska lawyer disciplined elsewhere has an obligation to inform the Alaska Bar. Prudence suggests, however, that it would be wiser to be the reporter rather than wait for the jurisdiction imposing the discipline to inform the Alaska Bar. This often has three strategic advantages. First, it avoids appearing “sneaky” in an era where most jurisdictions maintain records of other states where their lawyers are licensed and commonly share disciplinary information with those states.⁸ Second, it eliminates the risk of compounding the original discipline with an accusation that a lawyer who didn’t

promptly report may have violated Alaska RPC 8.1 that generally imposes a duty to cooperate with regulators on disciplinary matters. Third, on a practical level, it allows the lawyer to “control the narrative” at least at the outset in making the report. The Alaska rule is also silent on when a report must be made. Again, however, prudence suggests reporting within a reasonable period following imposition of discipline. Finally, the Alaska rule does not specify to whom the report should be made. Alaska’s Bar Counsel fills the role of both disciplinary and general counsel, however, so reporting to Bar Counsel should suffice.

Alaska BR 27(a) requires reporting of any “discipline.” Washington ELC 13.1 defines discipline to include proceedings resulting in admonition, reprimand, suspension or disbarment. By contrast, ELC 5.8(c) classifies an advisory letter issued by a review committee of the Disciplinary Board as “not a sanction, and is not disciplinary action.”

Like its state counterpart, the duty to report to the Alaska federal district court is somewhat ambiguous—describing reciprocal discipline proceedings as beginning under Local Civil Rule 83.1(f)(1) “whenever it appears to the court” that a triggering disciplinary event has occurred in another jurisdiction. Again, prudence suggests self-reporting for the reasons noted earlier. Unlike its state counterpart, however, the Alaska federal court rule only requires reporting if the

lawyer has been suspended or disbarred. The Alaska federal court rule is silent, however, on the timing for reporting and to whom the report should be directed. As discussed earlier, caution counsels reporting within a reasonable period following the imposition of the original discipline. Reporting to the Clerk of the Court should be sufficient.

Idaho

Idaho Bar Commission Rule 513 addresses reciprocal discipline at the state level. IBCR 513(a) requires an Idaho-licensed lawyer to report a disciplinary “sanction” imposed elsewhere. “Sanction,” in turn, is defined by ICBR 501(o) and 506 as ranging from an “informal admonition” through disbarment. Resignations in lieu of discipline are specifically included within Idaho’s definition of sanction. Even though an “informal admonition” is included as “discipline” by ICBR 506(h), this should not oblige a Washington lawyer to report an advisory letter because those are not defined as “discipline” under Washington ELC 5.8(c). The lawyer disciplined is required to report to the Idaho State Bar’s Bar Counsel within 14 days of the sanction being “imposed.”

In Idaho federal court, Local Civil Rule 83.5(b)(3) governs reciprocal discipline. It contains a degree of ambiguity—being framed as beginning “upon the receipt by this Court” but not specifically stating who is to forward the report.

Similarly, the Idaho federal rule does not include a specific reporting deadline or to whom the report should be directed. As discussed earlier, prudence suggests self-reporting within a reasonable time of the entry of discipline elsewhere.

Again, reporting to the Clerk of the Court should be sufficient. LCR 83.5(b)(3) extends to any “discipline” imposed by another court and includes resignations in lieu of discipline.

Oregon

Although Oregon’s reciprocal discipline procedure is found in Oregon Bar Rule 3.5, the reporting duty is actually included in Oregon RPC 8.1(b) and has an important twist on timing. Oregon RPC 8.1(b) requires an Oregon-licensed lawyer to “report in writing to the disciplinary counsel of the Oregon State Bar the commencement against the lawyer of any disciplinary proceeding in any other jurisdiction.” The Disciplinary Counsel’s Office in Oregon has generally interpreted “commencement” to mean filing of formal disciplinary proceedings by a state regulatory agency rather than simply submission of a grievance.⁹ Reciprocal discipline proceedings under Oregon BR 3.5 then begin either on a “determination of discipline in the other jurisdiction” or a resignation in lieu of discipline.

Oregon’s federal district court rule—Local Rule 83-6(a)—is very specific on reporting: the lawyer involved must submit a report to the Clerk of the Court, the chief judge and any assigned judge in a matter the lawyer is handling within 14 days of the lawyer’s suspension, disbarment or resignation in lieu of discipline elsewhere.

ABOUT THE AUTHOR

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¹ Regionally, Alaska, Idaho, Oregon and Washington have virtually identical versions of ABA Model Rule 8.5(a). Choice of law, in turn, is regulated by state variants of ABA Model Rule 8.5(b) in each.

² See, e.g., *In re Immelt*, 119 Wn.2d 369, 372, 831 P.2d 736 (1992) (reciprocal discipline rule not invoked where Washington prosecuted lawyer directly at the same time he was being prosecuted in Ohio for the same misconduct); *In re Summer*, 105 P.3d 848, 851 (Or. 2005) (noting simultaneous prosecution by Oregon and Idaho for the same misconduct).

³ Although practical limitations confine the discussion here to the Northwest, lawyers admitted elsewhere should carefully examine the reporting requirements in those other jurisdictions.

⁴ Federal appellate courts can also impose reciprocal discipline. Federal Rule of Appellate Procedure 46(c) discusses attorney discipline generally and Ninth Circuit Rule 46-2(b) addresses reciprocal discipline in this federal circuit. U.S. Supreme Court Rule 8.1 covers reciprocal discipline for members of the Supreme Court bar.

⁵ See, e.g., *In re Sione*, 330 P.3d 588, 590 (Or. 2014). A similar standard is used for federal courts in the Ninth Circuit. See generally *In re Kramer*, 282 F.3d 721, 723-25 (9th Cir. 2002); accord *In re Holcomb*, 467 Fed. Appx. 606 (9th Cir. 2012) (citing *Kramer* affirmatively in a case involving a Washington lawyer).

⁶ *In re Sanai*, 383 P.3d 821, 824 (Or. 2016).

⁷ See Alaska Bar Rule 22(d); Idaho Bar Commission Rule 506(g)-(h); Oregon Bar Rule of Procedure 2.3(c)(1); see also *In re Cohen*, 8 P.3d 953, 957-58 (Or. 2000) (admonition not “discipline”).

⁸ Washington ELC 3.5(b), for example, directs the Disciplinary Counsel to report Washington disciplinary sanctions to a lawyer’s other licensed jurisdictions, Washington federal courts and the National Lawyer Regulatory Data Bank. The latter is a national repository maintained by the ABA that compiles public disciplinary information on lawyers provided by cooperating jurisdictions.

⁹ Correspondence with the Oregon State Bar Disciplinary Counsel on file with the author.