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Reciprocal Discipline: The Other Side of the Reciprocity Coin

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A perverse side effect of increased reciprocal admission is increased reciprocal discipline. When a lawyer is admitted to practice in another state, the lawyer also submits to the disciplinary jurisdiction of that other state—even for conduct occurring in the lawyer’s “home” state. The idea is that discipline in one jurisdiction may raise questions regarding the lawyer’s fitness generally.

In this column, we’ll look at three aspects of reciprocal discipline: (1) when does a lawyer have to report? (2) what happens next? and (3) is the same discipline automatic? With each, we’ll focus on Oregon but also look at the corresponding rules in Washington and Idaho.

Reporting

Oregon RPC 8.1(b) requires an Oregon licensee to report any disciplinary action begun in another jurisdiction:

“A lawyer admitted to practice in this state shall, within 30 days after receiving notice thereof, 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.”

Oregon RPC 8.1(b) is based on former Oregon DR 1-103(D), which was adopted in 1983, and has no counterpart in the ABA Model Rules.

Oregon's reciprocal discipline rule differs significantly from its counterparts in Washington and Idaho in both timing and substance. On timing, Washington and Idaho only require reporting once discipline has been *imposed* rather than simply *begun*. Washington Rule for the Enforcement of Lawyer Conduct 9.2(a) and Idaho Bar Commission Rule 513(a) require lawyers to report disciplinary sanctions within, respectively, 30 and 14 days. On substance, as noted, Washington and Idaho require licensees to report the sanction imposed rather than simply that disciplinary proceedings have begun.

What Happens Next?

The mechanics of reciprocal discipline are governed by Bar Rule of Procedure 3.5. When discipline is imposed in another jurisdiction against an Oregon lawyer, the Office of Disciplinary Counsel notifies both the State Professional Responsibility Board and the Supreme Court. The Bar files the disciplinary sanction from the other state with the Supreme Court along with a recommendation by the SPRB on reciprocal discipline in Oregon. The lawyer then has 21 days to respond.

Under BR 3.5(b), the judgment (or equivalent) from the other state is deemed "sufficient evidence . . . that the attorney committed the misconduct described[.]" Therefore, the lawyer's answer under BR 3.5(c) is effectively limited to two questions:

- "(1) Was the procedure in the jurisdiction which disciplined the attorney lacking in notice or opportunity to be heard?

“(2) Should the attorney be disciplined by the court [in Oregon]?”

Under BR 3.5(f), the lawyer has the burden of proof on due process challenges.

Once the lawyer has answered and the Bar has replied, the Supreme Court has the discretion under BR 3.5(e) to: (a) issue a decision based on the record; (b) order oral argument; or (c) refer the case to the Disciplinary Board for a hearing limited to the two questions noted above under BR 3.5(c). If the matter is referred for a Disciplinary Board hearing, it remains subject to further review by the Supreme Court.

Although varying somewhat, the procedures for reciprocal discipline in Washington (ELC 9.2) and Idaho (BCR 513) are generally similar to Oregon.

Is the Same Discipline Automatic?

Although the Oregon Supreme Court often imposes the same discipline as the other state concerned (*see, e.g., In re Humphreys*, 19 DB Rptr 65 (2005) (disbarment here followed the identical sanction in Texas)), that result is not automatic. The Supreme Court discussed its approach to sanctions in reciprocal discipline in *In re Devers*, 317 Or 261, 265, 855 P2d 617 (1993):

“In the usual reciprocal discipline case, the acts of an accused violate the disciplinary rules of both jurisdictions. In determining an appropriate sanction, however, this court focuses on the accused’s misconduct under the Oregon disciplinary rules. We do so because our choice of a sanction vindicates the judicial authority of this jurisdiction, not of the one in which the earlier discipline occurred.”

Accordingly, the Supreme Court may increase the sanction (*see, e.g., In re Page*, 326 Or 572, 955 P2d 239 (1998) (30-day suspension in Oregon followed public reprimand in Washington)) or decrease it (*see, e.g., In re Coggins*, 338 Or 480, 111 P3d 1119 (2005) (Oregon Supreme Court declined to impose reciprocal discipline on a lawyer reprimanded by the Tenth Circuit)).

The Washington and Idaho Supreme Courts have similar discretion under their respective rules (*see generally In re Immelt*, 831 P2d 736 (Wash 1992) (discussing reciprocal discipline in Washington); *Idaho State Bar v. Everard*, 124 P3d 985 (Idaho 2005) (imposing reciprocal discipline)).

On a final note, it is important to remember that under BR 3.5(j), the Bar retains the ability to institute independent charges against an Oregon licensee for conduct occurring anywhere.

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