

What Every Lawyer Should Know About Reciprocal Discipline

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Reciprocal discipline essentially means that a lawyer who is subject to public discipline in one jurisdiction may also be disciplined for the same misconduct in any other jurisdiction where the lawyer is licensed to practice law.

The rationale behind this requirement is that permitting a lawyer who is suspended or disbarred in one jurisdiction to practice in another state exposes the public to an unjustified harm, belittles the legal profession, and generally undermines public confidence in the administration of justice.

What do lawyers in Minnesota need to know about reciprocal discipline?

They should first know that if they are licensed to practice law in another jurisdiction and are subject to public disciplinary charges or discipline in that jurisdiction, they are required to inform the Director's Office under Rule 12(d) of the Rules on Lawyers Professional Responsibility (RLPR).

Another jurisdiction

If a lawyer is subject to public disciplinary charges in another jurisdiction, the Director may commence an investigation under Rule 12(d), RLPR. If the lawyer has already been publicly disciplined, the Director may, without further proceedings, file a petition for reciprocal discipline with the Minnesota Supreme Court.

Lawyers should be aware that, unless the Supreme Court determines otherwise, a final adjudication of misconduct in another jurisdiction conclusively establishes the misconduct in any disciplinary proceedings in Minnesota. This means that a lawyer is not entitled to relitigate the misconduct in the reciprocal Minnesota disciplinary proceeding.

Once a reciprocal petition has been filed, the Supreme Court may impose identical discipline without further proceedings. While a lawyer is not automatically entitled to oral argument or briefing before the Supreme Court on whether identical discipline is appropriate, the court may direct the parties to brief the court concerning whether imposition of identical discipline is appropriate.

Identical discipline is imposed in most reciprocal discipline cases, unless it is determined that the imposition of the same discipline would be unfair or considerably different from discipline previously imposed in Minnesota, or there is evidence that the disciplinary proceedings in the other jurisdiction were unjust.

Minnesota charges

If a lawyer is suspended or disbarred in Minnesota, the lawyer must provide the Director's Office with an affidavit of compliance with Rule 26, RLPR, within 15 days of the disciplinary order.

Under Rule 26, the suspended or disbarred attorney must identify in the affidavit all other jurisdictions in which he or she is licensed to practice law. Upon receipt of this information, the Director notifies the lawyer discipline authority in each state where the suspended or disbarred lawyer is licensed to practice and provides a copy of the disciplinary order. The Director also notifies the National Lawyer Regulatory Data Bank, a national clearinghouse for lawyer discipline decisions that was established by the American Bar Association.

If an attorney is licensed in federal District Court, the Director will notify the clerk of court in the appropriate district.

Disclosure in bar applications

Most lawyers applying for admittance to a state bar from another jurisdiction must provide a record of their discipline history in the jurisdictions where they are licensed to practice law.

Some jurisdictions require that bar applicants obtain a record of their discipline history directly from the lawyer discipline authority where they are licensed to practice law and attach it to their bar application. Other jurisdictions require that bar applicants provide a signed authorization for release of their discipline record.

Upon inquiry from the lawyer or an admission board, the Director will disclose any private or public discipline determinations. (The admission board must have a signed authorization in order for the Director to disclose private discipline determinations such as admonitions or private probation.) This disclosure does not include any complaints which were summarily dismissed or resulted in a determination that discipline was not warranted.

Minnesota lawyers may request a complete record of their discipline history at any time by providing the Director with a signed, written request.