

Whose Rules Apply When a Lawyer Crosses State Lines?

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It has become increasingly commonplace for lawyers to travel to other jurisdictions in the course of representing their clients. That brings up some questions: What agency has the authority to discipline a Minnesota-licensed lawyer for alleged misconduct occurring in a foreign jurisdiction? When that agency acts, what rules of professional conduct apply?

The answers to both of these questions can be found in Rule 8.5 of the Minnesota Rules of Professional Conduct.

Discipline decision

Under Rule 8.5(a), lawyers who hold a Minnesota license will always be subject to the disciplinary authority of Minnesota, no matter where the questioned conduct takes place. Since Minnesota issues the law license in question, it follows logically that Minnesota has the most direct procedural path to imposing restrictions on that license. Minnesota also is not precluded from taking action by the fact that the conduct has already been subject to discipline in another state. It is possible, and expressly considered by the rule, that conduct may be subject to disciplinary action in multiple jurisdictions.

Once the disciplinary authority is identified, it is necessary to determine which rules of professional conduct apply.

Although most rules of professional conduct have similar if not identical goals and principles, the interpretation and application of those principles can vary in ways that could be significant to the handling of the complaint.

The first factual question to address is whether the conduct occurred in connection with a matter pending before a tribunal. If that is the case, then the rules of professional conduct applied will be the rules of the jurisdiction in which the tribunal hearing the matter sits, unless that tribunal has a rule to the contrary.[Ftn 1](#)

For instance, if a Minnesota lawyer represented a client in a marriage dissolution matter filed in a Wisconsin court, and that attorney committed misconduct while taking a deposition related to the proceeding, the rules of Wisconsin should apply.

Of course, lawyers perform duties for their clients other than just appearing in court. For conduct other than that related to a pending case, the rules applied are those from the jurisdiction in which the conduct occurred.

For example, the Director recently received a complaint regarding a Minnesota lawyer who traveled to Illinois to accompany his clients to a shareholder meeting. The attorney expected the meeting to become heated. He brought a small video camera along to record what was said at the meeting, but he did not obtain the consent of any of the attendees except for his clients. Unbeknownst to the lawyer, Illinois law does not allow the recording of a conversation unless there is consent from all parties. Further, Illinois law provides for criminal penalties for a violation of this law.Ftn 2

The Director applied the Illinois rules of professional conduct to determine whether a violation had been committed. There was no pending matter at the time the conduct was committed, so by virtue of MRPC Rule 8.5, Illinois rules governed. As there was little actual harm done, the lawyer was issued a private admonition.

Predominant effect

It is easy to imagine situations in which attorney misconduct in one state will have effects in other states. In such an example, Rule 8.5(b)(2) allows the disciplinary authority to look to the location of the predominant effect of the misconduct in deciding which set of rules to apply.

For instance, the Minnesota Supreme Court recently suspended an attorney who held a dual license in North Dakota and Minnesota.Ftn 3 The attorney had opened an account in a North Dakota bank, which he claimed to use as a client trust account. However, all or nearly all of the funds in that account were the lawyer's own funds. By the lawyer's admission, his purpose in depositing his own funds in the trust account was to hide those funds from his judgment creditors. In connection with these facts, the Director charged the lawyer with a violation of MRPC Rule 8.4(c), which prohibits conduct involving dishonesty, fraud or misrepresentation.

The Supreme Court applied North Dakota's rules to this charge, on the basis that the bank was in North Dakota and no one in Minnesota was directly harmed. For the second charge of misrepresentation to the Director and failure to cooperate with the investigation, the court applied Minnesota's rules, as the predominant effects of this violation were in Minnesota. There was also a third charge of commingling funds in another account which was held at a North Dakota bank. The court considered the location of the account (North Dakota) and the state of residence for the affected clients (North Dakota), as well as the fact that the lawyer had made a misrepresentation regarding the account in his affidavit to lawyer registration personnel in Minnesota. Weighing the effects in both states, the court used the rules of North Dakota. The two states' rules were virtually identical.

The first step in following the rules is to understand what those rules are. If a Minnesota lawyer travels to another state in the course of representing a client, he or she would be well-advised to obtain an understanding of the operative rules of professional conduct prior to performing legal work in that jurisdiction.

¹ Rule 8.5(b)(1), MRPC.

² 720 ILCS 5/14-1. There are limited exceptions to this rule for law enforcement.

³ *In re Overboe*, 745 N.W.2d 852 (Minn. 2008).