



ETHICS AND PROFESSIONAL RESPONSIBILITY

What are Motions for Reciprocal Discipline and Motions for Final Discipline?

By Bonnie Frost

Einhorn, Barbarito, Frost & Botwinick

It is important to ascertain how a respondent's ethical breach arose when one reads an ethics opinion to understand the discipline imposed by the New Jersey Supreme Court. Was the respondent also disciplined in another state? Or, by another tribunal such a federal trial court or circuit court? Was the respondent convicted of a crime? Or, did the respondent only breach New Jersey's ethics rules?

New Jersey Court Rules provide that any lawyer admitted in New Jersey, who may be practicing in another state, practicing before a specialty tribunal (U.S. Patent and Trademark Office, for example), or who are practicing before the federal Courts and who have been disciplined in another state or specialty tribunal, can be disciplined by the New Jersey Supreme Court for that same behavior. This process protects the public in New Jersey from a lawyer who has been disciplined in another jurisdiction and prevents that lawyer from moving to New Jersey to practice with a clean slate unbeknownst to the public who may hire them.

Every lawyer is obligated to advise the Office of Attorney Ethics (OAE) if they have been disciplined in another jurisdiction

or specialty court [Rule 1:20-14(a)(5)]. New Jersey reviews the other jurisdiction's fact finding and looks to the level of discipline imposed to guide its decision making as to what discipline New Jersey will impose.

The OAE gives the lawyer 21 days to submit a brief to show why identical discipline in New Jersey is not warranted. The OAE then makes a motion directly to the Disciplinary Review Board (DRB) for reciprocal discipline. The DRB reviews the record from the other jurisdiction and submits its recommendation for discipline to the Supreme Court for an order.

Rule 1:20-14(a)(5) provides that a final adjudication of discipline of unethical conduct in another jurisdiction "establishes conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state."

New Jersey is not obligated to impose the same discipline another jurisdiction has imposed if that discipline is not within the parameters imposed by New Jersey ethics precedents for similar conduct. Thus, the OAE may argue the attorney should be disciplined more or less severely in New Jersey than they had been in the other jurisdiction. For example, in other states that may disbar a lawyer for a particular offense, New Jersey may not disbar a lawyer for that offense if it is not an offense which would result in disbarment in New Jersey. New Jersey may impose different discipline in circumstances where the behavior "warrants a substantially different discipline," [Rule 1:20-14(a)(4)(d) and Rule 1-20-14(a)(4)(e)]. In the case of *In re Mandell* [227 N.J. 111 (2016)], a Pennsylvania attorney was disbarred but New Jersey only suspended him for one year, reasoning that his ethical infractions warranted "substantially different discipline." In *In re Skripek* [156 N.J. 399 (1998)], a New York attorney was disbarred after he voluntarily resigned as a result of a judicial ruling finding him in contempt of a court order. New Jersey, however, imposed only a reprimand.

In the normal course, New Jersey will impose the same discipline imposed by another jurisdiction as this "promotes the imposition of consistent sanctions for the misconduct of an attorney admitted to practice in multiple states," [See *In re Sigman*, 220 N.J. 141, 154 (2014)].

New Jersey may also make readmission to the New Jersey bar contingent on readmission to another jurisdiction. In *In the Matter of Lankenau* [234 N.J. 261 (2018)], an attorney misused funds belonging to his law firm (in addition to other Rules of Professional Conduct violations). The State of Delaware suspended the attorney for two years, as did New Jersey. However, New Jersey required the suspension to be retroactive to the date of his suspension in Delaware and conditioned his reinstatement in New Jersey on being reinstated in Delaware.

The federal disciplinary process closely tracks that in New Jersey [Lite, *Current N.J. Federal Practice Rules* (GANN) Comment on L.Civ.R. 104.1. L.C.R. 104, 1(b)]. There is a presumption that the federal disciplinary system will impose the same discipline as the state courts to prevent the possibility that a New Jersey lawyer disciplined in the state court system may continue to practice in New Jersey's federal Courts. Nonetheless, it does "retain power to admit and discipline attorney "independently and separately from the state courts," [*In re Abrams*, 521 F. 2d. 1094 (3d. Cir.), cert. den. 4123 U.S. 1038 (1975)].

When a lawyer is indicted or pleads guilty to a crime, they must inform the OAE [*Rule* 1:20-13(a)(1)]. The OAE immediately applies to the Supreme Court for a temporary suspension, as the commission of a serious crime always results in discipline [*Rule* 1:20-(c)(1)]. The OAE then files a motion for final discipline with the DRB based on facts elicited from the criminal conviction or an admission of guilt. As a result of those proceedings, only the level of discipline is in dispute. *Rule* 1:20-13(c)(2) provides that an attorney's guilt will not be revisited in a disciplinary proceeding, but the DRB and the Court may review the "transcripts of the trial or plea and sentencing proceeding, the pre-sentence report, and other relevant documents in order to obtain the 'full picture,'" [*In*

re Spina, 121 N.J. 378, 387 (1990)].

Certain crimes, more often than not, require a certain level of discipline. For example, commission of an act of domestic violence results in a three-month suspension [See *In re Magid*, 139 N.J. 449 (1995); *In re Margrabia*, 150 N.J. 198 (1997)]; failure to file tax returns results in a suspension from 6 months (failure to file) to two years (purposeful evasion) (*In re Touhey*, 156 N.J.547(1999); *In re Rakov*, 155 N.J. 593 (1998)); conviction of the possession of cocaine results in a three-month suspension (*In re Foushee*, 156 N.J. 553 (1999)].

In all cases, the DRB reviews all underlying documents relating to an attorney's ethical infractions, including those presented in motions for reciprocal discipline and in motions for final discipline. The DRB presents its findings and recommendations for a "full" record to the Supreme Court to review. The Supreme Court, itself, then conducts an independent review of the record and determines whether the ethical behavior found by the DRB has been established by clear and convincing evidence when it recommended the quantum of discipline to impose. ■

Next:

When and Why Does the N.J. Supreme Court Order Disbarment?



withum⁺
ADVISORY TAX AUDIT

demand integrity⁺

character matters in the courtroom as justice is never blind to seeking truth. Withum and our team of top forensic and valuation professionals know what it takes to build a winning case. Attorneys of defendants and plaintiffs alike value our unwavering integrity and success record of trying and settling hundreds of cases.

Visit us online to learn more about our Forensic and Valuation Services.
withum.com