

Grievance Administrator,

Petitioner,

v

Leonard C. Jaques, P 15450,

97-261-RD

Decided: February 27, 1998

BOARD OPINION

The Grievance Administrator seeks reciprocal discipline in accordance with MCR 9.104 based upon respondent's suspension from the bar of the United States District for the Eastern District of Texas. The Administrator instituted this action by filing a petition for order to show cause accompanied by a true copy of a memorandum opinion and order entered August 12, 1997 by a United States District Judge in the Tyler Division of the Eastern District of Texas. The respondent has filed a reply which sets forth his objections to the show cause procedure which the Administrator seeks to invoke. Respondent argues instead that, absent specific court rule authorization for such a procedure in a reciprocal discipline matter, the Administrator is bound by the investigation, review, authorization and filing requirements of MCR 9.112, 9.113, 9.114 and 9.115. We disagree. Show cause proceedings are an appropriate vehicle for bringing a reciprocal discipline matter before a hearing panel. The Grievance Administrator's petition for order to show cause is granted.

MCR 9.104 lists and categorizes the acts or omissions by an attorney which constitute misconduct and grounds for discipline in nine numbered subparagraphs. The only reference to reciprocal discipline in subchapter 9.100 appears in the final, unnumbered, paragraph of that rule:

Proof of an adjudication of misconduct in a disciplinary proceeding by another state or a United States court is conclusive proof of misconduct in a disciplinary proceeding in Michigan. The only issues to be addressed in

the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate.

This language has been unchanged since June 1, 1987, the effective date of certain amendments which prompted this staff comment:

The [June 1, 1987] amendments to the final paragraph give foreign adjudications of misconduct full faith and credit by recognizing them as conclusive proof of misconduct. The additional language is taken from the American Bar Association. Standards for Lawyer Discipline and Disability Proceedings. Standard No. 10.2

The respondent's objection to the petition for order to show cause in this case is twofold. First, he argues that as a matter of strict construction Chapter 9.100 of the Michigan Court Rules does not specifically authorize show cause proceedings in a reciprocal discipline matter. Secondly, respondent argues that show cause proceedings based upon an order of discipline entered in a foreign jurisdiction would amount to a denial of due process. Both arguments are without merit.

Respondent notes that MCR 9.112, 9.113 and 9.114 provide the procedures under which the Grievance Administrator must investigate grievances filed against Michigan attorneys by clients and others and under which the Administrator must obtain authorization from the Attorney Grievance Commission to commence public discipline proceedings by the filing of a formal complaint. Respondent also notes that the Supreme Court has provided a different procedure in the case of an attorney who has been convicted of a crime. Under MCR 9.120(B)(3), the Administrator may file with the Board a judgment of conviction. The Board must then refer the proceeding to a hearing panel and order the attorney to show cause why a final order of discipline should not be entered. However, it does not necessarily follow, either under rules of statutory construction or common sense, that because show cause proceedings are allowed in criminal conviction cases they are prohibited under all other

circumstances.

Judgment of conviction cases under MCR 9.120(B)(3) are not "exempt" from a requisite procedure which must otherwise govern all discipline proceedings. The procedure which allows the filing of a judgment of conviction in a criminal case is an evidentiary tool which allows the Administrator to "expeditiously dispose of a case already adjudicated in the courts." Grievance Administrator v Deutch, 455 Mich 149, 161 (1997). While the Court did not specifically articulate a procedure for the handling of reciprocal discipline cases, it is clear that a finding of professional misconduct in a disciplinary proceeding in another jurisdiction is closely analogous to a judgment of conviction entered against an attorney in a criminal proceeding. As with criminal convictions, the filing of proof of an adjudication of misconduct in a disciplinary proceeding by another state or an United States court is an evidentiary tool that allows the Administrator to expeditiously dispose of a case already adjudicated in another jurisdiction.

While respondent urges the strictest possible construction of the court rules, construction of the rules governing discipline proceedings are governed by MCR 9.102(A) which directs:

Subchapter 9.100 is to be liberally construed for the protection of the public, the courts, and the legal profession and applies to all pending matters of misconduct and reinstatement and to all future proceedings, even though the alleged misconduct occurred before the effective date of subchapter 9.100. Procedures must be as expeditious as possible.

When judicial proceedings in another jurisdiction have resulted in findings of professional misconduct, a liberal construction of the rules leads us to conclude that an expeditious disposition by way of show cause proceedings similar to those in a case of a criminal conviction is well within the purview of the Board's authority.

The show cause procedure requested by the Grievance Administrator in this case would, in fact, closely parallel the reciprocal discipline procedure contained in the American Bar

Associations Model Rules for Disciplinary Enforcement drafted by the ABA's Standing Committee on Professional Discipline and approved by the ABA House of Delegates on August 11, 1993. Model Rule 22(b) states:

Rule 22(b) **Notice Served Upon Respondent**. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice [name of state] has been disciplined or transferred to disability inactive status in another jurisdiction, the court shall forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

- 1) A copy of the order from the other jurisdiction; and,
- 2) An order directing that the lawyer or disciplinary counsel inform the court, within [30] days from service of the notice, of any claim by the lawyer or disciplinary counsel predicated upon the grounds set forth in paragraph D, that the imposition of the identical discipline or disability inactive status in this state would be unwarranted and the reasons for that claim.

Paragraph D of that rule enumerates the grounds upon which the attorney may challenge the rebuttable presumption that identical should be imposed, including 1) deprivation of due process in the other jurisdiction; 2) clear infirmity of proof establishing misconduct in the original proceeding; 3) that the imposition of identical discipline would result in grave injustice; or, 4) the misconduct established warrants substantially different discipline in this state.

In this case, the Grievance Administrator has filed a copy of an order demonstrating that respondent has been disciplined in another jurisdiction. The order to show cause requested by the Administrator would serve the same purpose as the notice contemplated by Model Rule 22(b). The challenges available to an attorney under the model rule are mirrored in MCR 9.104 which allows the respondent to address the issues of whether he or she

was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate.

As the commentary to ABA Model Rule 22 notes:

If a lawyer suspended or disbarred in one jurisdiction is also admitted in another jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a lawyer who has been judicially determined to be unfit. . . .

Show cause proceedings incorporating the safeguards in MCR 9.104 provides such protection to the public, the courts and the legal protection.

At the same time, we are mindful of the constitutional right to due process which must be afforded to a respondent attorney. In re Ruffalo, 390 U.S. 544 (1968). Respondent argues that the show cause procedure sought by the Administrator is an effort "to deny respondent an opportunity to litigate the actual merits of the incidents in question." On the contrary, such a procedure simply removes the opportunity to relitigate the Texas discipline proceeding. MCR 9.104, which gives full faith and credit to an order of discipline from another state or a United States court, does not constitute a denial of due process. That rule not only requires an adjudication in a disciplinary proceeding but specifically recognizes the respondent's right to challenge a reciprocal discipline proceeding on the grounds that due process of law was not afforded in the course of the original proceeding.

In short, the order to show cause sought by the Administrator will merely serve as the vehicle to bring the order of suspension from a United States District Court in Texas to the attention of a hearing panel in Michigan. Respondent will have an opportunity to argue that he was not afforded due process of law in the Texas proceedings. If the hearing panel determines that due process was present in the original proceedings, the Grievance Administrator's evidentiary burden of establishing misconduct will be met by

offering proof of the adjudication of misconduct in Texas. The remaining issue before the panel will then be whether imposition of identical discipline in Michigan would be clearly inappropriate. This process, which mirrors Model Rule 22 of the ABA Model Rules of Disciplinary Enforcement and is analogous to MCR 9.120(B)(3), is consistent with the stated purpose of reciprocal discipline under MCR 9.104.

Board Members Elizabeth N. Baker, C. H. Dudley, Barbara B. Gattorn, Grant J. Gruel, Albert L. Holtz, Roger E. Winkelman and Nancy A. Wonch.

Board Members Michael R. Kramer and Kenneth L. Lewis did not participate in this decision.