



## A Primer on Reciprocal Discipline

### Proposed Changes to a Longstanding Disciplinary Procedure Seek Protection of the Public as well as Fairness to Respondents

“YOU MEAN IF I HAVE A BAD DAY in an Oklahoma traffic court, and the trial judge bars me from appearing in that court, the Virginia State Bar will summarily suspend my Virginia law license and require me to show cause why my license should not be further suspended or revoked?” The short answer is no, although existing rules are not perfectly clear about what constitutes another jurisdiction for purposes of reciprocal discipline.

What is reciprocal discipline? It is a disciplinary procedure that determines what, if anything, should be done with the Virginia law license of an attorney who has been suspended or revoked by another jurisdiction for professional misconduct. Virginia's existing reciprocal discipline rule<sup>1</sup> requires the summary suspension of a Virginia lawyer's license upon receipt by the bar of a final suspension or revocation order from another jurisdiction. The attorney is then required to appear before the Virginia State Bar Disciplinary Board to show cause why his or her Virginia law license should not be further suspended or revoked because of the action taken by the other jurisdiction. Additionally, the existing rule allows an attorney to raise three specific contentions in defense, but to suffer the same discipline as imposed in the other jurisdiction if he or she does not file the response within fourteen days of the mailing of the show cause notice, does not meet his or her burden of proof, or fails to appear at the show cause hearing.<sup>2</sup>

Proposed changes to the rule are intended to address the issues created by these summary, default procedures, making them more fair for respondents while protecting the public. Specifically, the proposed changes clarify what constitutes another jurisdiction, provide exceptions to the summary law license suspension requirements, and allow respondents greater opportunities to gather and prepare their defenses without suffering the automatic default provisions of the existing rule.

Every state law licensing jurisdiction has a form of reciprocal discipline. Virginia limits reciprocal discipline to suspensions or revocations only. The imposition of lesser sanctions by other jurisdictions, such as reprimands, cannot lead to reciprocal discipline in Virginia, although it may in some other jurisdictions.

Why have reciprocal discipline? The purpose is to protect the public and prevent lawyers whose misconduct was so severe as to warrant the suspension or revocation of their law licenses in one jurisdiction from immediately practicing law in another jurisdiction without showing by clear and convincing evidence that the same discipline should not be imposed. Reciprocal discipline also prevents licensing authorities from having to relitigate misconduct actions that have been tried to conclusion and finalized in other jurisdictions.<sup>3</sup> Public confidence in the profession is enhanced when lawyers who are admitted in more than one ju-

risdiction are prevented from avoiding the effect of discipline by practicing in another.<sup>4</sup>

What constitutes another jurisdiction? For decades, Virginia did as the majority of other states and imposed reciprocal discipline in disciplinary actions from not only other state licensing authorities, but from federal courts, bankruptcy courts, and some federal agencies that have disciplinary procedures, such as the US Patent and Trademark Office, and the Immigration and Naturalization Service. More recently, however, in the Matter of Sandy Yeh Chang<sup>5</sup>, the Disciplinary Board determined that a United States District Court does not constitute another jurisdiction for purposes of reciprocal discipline. In the Chang matter, the United States District Court for the District of Maryland convened formal disciplinary proceedings. Chang appeared at the hearing, where she presented evidence, called witnesses, and argued the matter before three specially appointed US District Court judges. The three-judge court found that she had committed professional misconduct and recommended the one-year suspension of her privilege to practice law in that court. The US District Court approved the recommendation in accordance with the disciplinary procedures, and Chang's privilege to practice law in that court was suspended for one year with terms.

When she appeared before the Virginia State Bar Disciplinary Board,

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Chang argued that the same discipline would not be appropriate in Virginia because a suspension from federal practice, standing alone, was not as substantial as a complete suspension from the practice of law throughout the commonwealth. The Disciplinary Board held that the US District Court was not another jurisdiction for the purposes of reciprocal discipline, and dismissed the matter. Chang, however, was also admitted to practice in Maryland and the District of Columbia. Both jurisdictions convened reciprocal disciplinary procedures and suspended her license to practice law for two years.<sup>6</sup> In the Maryland action, Chang stipulated to professional misconduct and negotiated the two-year suspension. This resulted in Chang appearing before the Disciplinary Board again, this time on a reciprocal discipline matter deriving from the Maryland state action. On this occasion, the Board suspended her law license for two years, *nunc pro tunc* to the date that the Maryland suspension began.<sup>7</sup>

In subsequent cases, the Disciplinary Board determined that federal courts and bankruptcy courts do not constitute other jurisdictions, and dismissed those matters. Meanwhile, other volunteers in the bar's disciplinary system expressed concern about the requirement for a lawyer's license to be summarily suspended pending a hearing on the matter. These issues and

the default proceedings that result from the untimely filing of an answer led to discussions about revising the rule. The result, following two years of deliberations, is a rewrite that was recently out for public comment.

The proposed changes remove any ambiguity about what constitutes another jurisdiction by providing specific definitions. More significantly, the proposed rule does not allow the summary suspension of a lawyer's license prior to hearing unless the suspension or revocation was imposed by another state licensing jurisdiction and not stayed or suspended. Under the proposed rule, the Board will hear reciprocal actions from federal courts, courts-martial jurisdictions, and other agencies, but will leave those lawyers' law licenses intact until they have had an opportunity to argue their cases before the Disciplinary Board.

The proposed rule also eliminates the default provisions for attorneys who do not timely file written responses, paving the way for greater due process while allowing the Bar a continuance if respondents provide late notice of defenses that they intend to raise. Additionally, the proposed rule allows not only the Board to impose a less severe sanction than the other jurisdiction if circumstances warrant, but it allows the bar to argue for the imposition of a lesser sanction as well.

In sum, the proposed changes bring a combination of clarity, enhanced due

process and the chance for leniency while protecting the public against the wiles of lawyers whose licenses were suspended or revoked elsewhere, without requiring the bar to relitigate matters that have been properly adjudicated and finalized in another jurisdiction.

#### Endnotes:

- 1 See the Rules of Court, Part 6, Section IV, Paragraph 13-24.
- 2 The three specific contentions in the existing rule are: (1) that the proceeding in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a denial of due process; (2) that the imposition by the Board of the same discipline upon the same proof would result in a grave injustice; or (3) that the same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.
- 3 *Annotated Standards for Imposing Lawyer Discipline*, Center for Professional Responsibility, American Bar Association, 2015, p. 102, citing *People v. Bode*, 119 P.3d 1098 (Colo. O.P.D.J. 2005).
- 4 *Standards for Imposing Lawyer Sanctions*, Center for Professional Responsibility, American Bar Association, 1992, p. 26.
- 5 *In the Matter of Sandy Yeh Chang*, VSB Docket No. 13-000-094679, VSB Disciplinary Board, April 16, 2014.
- 6 These jurisdictions allow for the imposition of enhanced sanctions in reciprocal disciplinary actions, unlike Virginia, which requires any discipline imposed to be the same as in the other jurisdiction.
- 7 *In the Matter of Sandy Yeh Chang*, VSB Docket No. 15-000-101215, VSB Disciplinary Board, June 1, 2015.

## Got an Ethics Question?

The VSB Ethics Hotline is a confidential consultation service for members of the Virginia State Bar. Non-lawyers may submit only unauthorized practice of law questions. Questions can be submitted to the hotline by calling (804) 775-0564 or by clicking on the blue "E-mail Your Ethics Question" box on the Ethics Questions and Opinions web page at [www.vsb.org/site/regulation/ethics/](http://www.vsb.org/site/regulation/ethics/).