

Cite as 2009 Ark. 535

SUPREME COURT OF ARKANSAS

No.

IN RE PROPOSED AMENDMENT TO
SECTION 14 OF THE PROCEDURES
OF THE ARKANSAS SUPREME
COURT REGULATING
PROFESSIONAL CONDUCT OF
ATTORNEYS AT LAW

Opinion Delivered October 29, 2009

PER CURIAM

The Procedures Review Subcommittee of the Arkansas Supreme Court Committee on Professional Conduct and the Office of Professional Conduct have submitted a proposed amendment to Section 14 of the Procedures Regulating Professional Conduct of Attorneys at Law that addresses reciprocal discipline. We thank them for their work on this issue and are publishing the proposal, as submitted, for comment.

The proposal would replace current Section 14 (see End Note), and it is set out below. The comment period shall expire December 31, 2009. Comments should be in writing and addressed as follows: Clerk, Arkansas Supreme Court, Attention Professional Conduct, Section 14, Justice Building, 625 Marshall Street, Little Rock, AR 72201.

SECTION 14. RECIPROCAL DISBARMENT, SUSPENSION, OR DISABILITY INACTIVE STATUS.

A. *Executive Director's Duty to Obtain Order of Disbarment, Suspension, or Transfer to Disability Inactive Status.* Within fifteen (15) days after any person admitted to practice in Arkansas is disbarred, suspended, or transferred to disability inactive status by a state or federal

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court or a corresponding disciplinary authority of another jurisdiction, the attorney shall inform the Executive Director of the disbarment, suspension, or transfer. Upon notification from any source that an attorney licensed to practice in Arkansas has been disbarred, suspended, or transferred to disability inactive status by another state or federal court or a corresponding disciplinary authority of another jurisdiction, the Executive Director shall obtain a certified copy of the order imposing such discipline and file it with the Committee on Professional Conduct.

B. *Notice Served upon Respondent.* Upon receipt of a certified copy of an order imposing a disbarment, suspension, or transfer, the Executive Director shall serve on the attorney, as provided in Section 9, a copy of the order and notice that the attorney has twenty (20) days from the day of service to file with the Executive Director any claim by the attorney predicated upon the grounds set forth in Paragraph F, that the imposition of the identical sanction would be unwarranted and the reasons for that claim.

C. *Effect of Stay in Other Jurisdiction.* In the event the disbarment, suspension, or transfer to disability inactive status imposed in the other jurisdiction has been stayed there, any reciprocal sanction imposed in this jurisdiction shall be deferred until the stay expires.

D. *No Claim Filed.* If no claim is filed within twenty (20) days, the Executive Director shall so inform the Committee, which shall proceed to determine the matter by ballot vote consistent with the requirements of Section 10 of these Procedures, to the extent applicable.

E. *Claim Filed.* If a claim is filed within twenty (20) days, the Executive Director may file and serve a response to the claim within fifteen (15) days after the claim is filed. Within fifteen (15) days after service of any such response, the attorney who filed the claim may file a reply. The claim shall be determined by ballot vote consistent with the requirements of Section 10 of these Procedures, to the extent applicable.

F. *Discipline to Be Imposed.* Upon a ballot vote, a Panel of the Committee shall impose the identical disbarment, suspension, or transfer to disability inactive status unless, the panel finds that:

(1) The procedure before the other state or federal court or corresponding disciplinary authority was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Committee could not, consistent with its duty, accept as final the conclusion on that subject; or

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(3) The disbarment, suspension, or transfer imposed would result in grave injustice or be offensive to the public policy of Arkansas; or

(4) The reason for the original transfer to disability inactive status no longer exists.

If the Committee determines that any of those elements exists, the Committee shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

G. *Conclusiveness of Adjudication Before Another State or Federal Court or Corresponding Disciplinary Authority.* In all other aspects, a final adjudication before another state or federal court or corresponding disciplinary authority determining that a lawyer is guilty of misconduct or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this jurisdiction.

H. *Appeal.* A respondent attorney or the Executive Director aggrieved by the action of a Committee Panel on a reciprocal discipline or disability matter may appeal to the Arkansas Supreme Court under the provisions of Section 12 (Appeal) of these Procedures. Neither the attorney nor the Executive Director may request or obtain a public hearing before another Committee Panel on a reciprocal disbarment, suspension, or transfer to disability inactive status.

END NOTE

~~Section 14. Reciprocal disbarment or suspension.~~

~~A. The disbarment or suspension of any person from the practice of law in any other state shall operate as a disbarment or suspension of such person from the practice of law in this State under any license issued to such person by the Arkansas Supreme Court prior to his or her disbarment or suspension in such other state.~~

~~B. Upon presentation of a certified order or other proper document of a tribunal or a corresponding disciplinary authority of another jurisdiction evidencing disbarment or suspension, the Committee by summary proceeding shall cause a like sanction to be imposed and shall notify the Clerk of such action. Notice of the Committee's action shall be sent to the attorney's mailing address of record with the Clerk.~~