

MEMORANDUM

To: Advisory Committee on Rules  
From: Subcommittee – Sup. Ct. R. 37 – Reciprocal Discipline<sup>1</sup>  
Re: # 2017-005. Supreme Court Rule 37 – Reciprocal Discipline  
Date: June 12, 2017

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The subcommittee met to address the issue raised by Eileen Fox, as reflected in a March 15, 2017 memo from me to the Committee. The Court had asked the Committee to consider whether Rule 37 should be amended to include a procedure for determining final discipline in cases in which the court concludes that the imposition of discipline identical or similar to the discipline imposed in another jurisdiction is unwarranted.

The subcommittee recommends that Rule 37(12) be amended as follows (new material is in **[bold and brackets]**; deleted material is in ~~striketrough~~ format):

(12) ***Reciprocal Discipline:***

(a) Upon being disciplined in another jurisdiction, an attorney admitted to practice in this State shall immediately notify the attorney discipline office of the discipline. Upon notification from any source that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the attorney discipline office shall obtain a certified copy of the disciplinary order and shall file it with the court.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the court may enter a temporary order imposing the identical or substantially similar discipline or, in its discretion, suspending the attorney pending the imposition of final discipline. The court shall forthwith issue a notice directed to the attorney and to the ~~professional conduct committee~~ **[Attorney Discipline Office]** containing:

(1) A copy of the order from the other jurisdiction; and

(2) An order directing that the attorney or ~~professional conduct committee~~ **[Attorney Discipline Office]** inform the court within thirty (30) days from service of the notice, of any claim by the lawyer or professional conduct committee predicated upon the grounds set forth in subparagraph (d), that the imposition of the identical or substantially similar discipline in this State would be unwarranted and the reasons for that claim.

(c) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State shall be deferred until the stay expires.

(d) Upon the expiration of thirty (30) days from service of the notice pursuant to subparagraph (b), the court shall issue an order of final discipline imposing the

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<sup>1</sup> The subcommittee was comprised of: Eileen Fox, Clerk, NH Supreme Court, Abigail Albee, Advisory Committee on Rules, Janet DeVito, Attorney Discipline Office General Counsel, Sara Greene, Attorney Discipline Office, Disciplinary Counsel, and Carolyn Koegler.

identical or substantially similar discipline unless the attorney or ~~professional conduct committee~~ **[Attorney Discipline Office]** demonstrates, or the court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) The imposition of the same or substantially similar discipline by the court would result in grave injustice; or

(3) The misconduct established warrants substantially different discipline in this State.

**[(e) If the court determines that one of the factors set forth in paragraph (d) is present, the court shall refer to the matter to the Professional Conduct Committee for its recommendation regarding the discipline to be imposed.]**