

MEMORANDUM

To: Advisory Committee on Rules  
From: Carolyn Koegler  
Re: # 2017-005. Supreme Court Rule 37(12). Reciprocal Discipline.  
Date: March 15, 2017

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New Hampshire Supreme Court Clerk of Court Eileen Fox has submitted the following request to the Committee:

The court requests that the Advisory Committee on Rules review paragraph 12 of Supreme Court Rule 37, which deals with reciprocal discipline. When the court is notified that an attorney has been disciplined in another jurisdiction, this paragraph calls for the court to issue an order giving the respondent attorney and the Professional Conduct Committee an opportunity to advise the court whether they contend that the imposition of identical or similar discipline should be unwarranted, and if so the reasons for their contention. The rule calls for the court to impose identical or substantially similar discipline unless it finds one of three factors set forth in the rule (e.g., that the procedure in the original jurisdiction violated due process). The rule does not include a procedure, however, for determining final discipline if the court finds the existence of one of the factors. The court requests that the committee consider whether the rule should be amended to include a procedure for determining final discipline in these circumstances.

I would be happy to discuss this with you if you have any questions about the current process.

As you may recall, there is currently a subcommittee comprised of advisory rules committee member Abigail Albee, Sherry Hieber (General Counsel, Office of Bar Admissions), Sara Greene (Disciplinary Counsel, Attorney Discipline Office), and Eileen Fox considering whether changes should be made to Supreme Court Rule 37(14), relating to reinstatement and readmission to the Bar. It might make sense for some of the members of that subcommittee to consider this issue as well. Sherry Hieber will probably not wish to participate, but it may make sense to ask Janet DeVito (General Counsel at the ADO) to participate.