

Report 201D

AMERICAN BAR ASSOCIATION  
COMMISSION ON MULTIJURISDICTIONAL PRACTICE  
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, that the American Bar Association adopts the proposed amendments, dated August  
2 2002, to Rules 6 and 22 of the *ABA Model Rules of Lawyer Disciplinary Enforcement* as  
3 follows:  
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5 **RULE 6. JURISDICTION.**

6 A. Lawyers Admitted to Practice. Any lawyer admitted to practice law in this ~~state,~~  
7 jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to  
8 resignation, suspension, disbarment, or transfer to inactive status, or with respect to acts  
9 subsequent thereto which amount to the practice of law or constitute a violation of these Rules or  
10 of the Rules of Professional Conduct [Code of Professional Responsibility] or any Rules or Code  
11 subsequently adopted by the court in lieu thereof, and any lawyer specially admitted by a court  
12 of this ~~state~~ jurisdiction for a particular proceeding ~~;~~ and any lawyer not admitted in this ~~state~~  
13 jurisdiction who practices law or renders or offers to render any legal services in this ~~state~~  
14 jurisdiction, is subject to the disciplinary jurisdiction of this court and the board.  
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16 **RULE 22. RECIPROCAL DISCIPLINE AND RECIPROCAL DISABILITY INACTIVE**  
17 **STATUS.**

18 A. Disciplinary Counsel Duty to Obtain Order of Discipline or Disability Inactive  
19 Status from Other Jurisdiction. Upon being disciplined or transferred to disability inactive status  
20 in another jurisdiction, a lawyer admitted to practice in [~~this state-jurisdiction~~] shall promptly  
21 inform disciplinary counsel of the discipline or transfer. Upon notification from any source that a  
22 lawyer within the jurisdiction of the agency has been disciplined or transferred to disability  
23 inactive status in another jurisdiction, disciplinary counsel shall obtain a certified copy of the  
24 disciplinary order and file it with the board and with the court.

25 B. Notice Served Upon Respondent. Upon receipt of a certified copy of an order  
26 demonstrating that a lawyer admitted to practice in [~~name of state-jurisdiction~~] has been  
27 disciplined or transferred to disability inactive status in another jurisdiction, the court shall  
28 forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

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

30 (2) An order directing that the lawyer or disciplinary counsel inform the court,  
31 within [thirty] days from service of the notice, of any claim by the lawyer or disciplinary counsel  
32 predicated upon the grounds set forth in paragraph D, that the imposition of the identical  
33 discipline or disability inactive status in this ~~state~~ jurisdiction would be unwarranted and the

34 reasons for that claim.

35 C. Effect of Stay in Other Jurisdiction. In the event the discipline or transfer imposed

36 in the other jurisdiction has been stayed there, any reciprocal discipline or transfer  
37 imposed in this state jurisdiction shall be deferred until the stay expires.

38 D. Discipline to be Imposed. Upon the expiration of [thirty] days from service of the  
39 notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline  
40 or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or this court  
41 finds that it clearly appears upon the face of the record from which the discipline is predicated,  
42 that:

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

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

48 ~~(4) (3) The imposition of the same discipline by the court imposed would result in~~  
49 ~~grave injustice or; or be offensive to the public policy of the jurisdiction; or~~

50 ~~(4) The misconduct established warrants substantially different discipline in this~~  
51 ~~state; or~~

52 ~~(5) (4) The reason for the original transfer to disability inactive status no longer~~  
53 ~~exists.~~

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

57 E. Conclusiveness of Adjudication in Other Jurisdictions. In all other aspects, a final  
58 adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has  
59 been guilty of misconduct or should be transferred to disability inactive status shall establish  
60 conclusively the misconduct or the disability for purposes of a disciplinary or disability  
61 proceeding in this state.

## 62 63 **Commentary**

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65 If a lawyer suspended or disbarred in one jurisdiction is also admitted in another  
66 jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is  
67 instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a  
68 lawyer who has been judicially determined to be unfit. Any procedure which so exposes innocent  
69 clients to harm cannot be justified. The spectacle of a lawyer disbarred in one jurisdiction yet  
70 permitted to practice elsewhere exposes the profession to criticism and undermines public  
71 confidence in the administration of justice.

72 Disciplinary counsel in the forum jurisdiction should be notified by disciplinary counsel  
73 of the jurisdiction where the original discipline or disability inactive status was imposed. Upon  
74 receipt of such information, disciplinary counsel should promptly obtain and serve upon the  
75 lawyer an order to show cause why identical discipline or disability inactive status should not be  
76 imposed in the forum state jurisdiction. The certified copy of the order in the original jurisdiction  
77 should be incorporated into the order to show cause.

78 The imposition of discipline or disability inactive status in one jurisdiction does not mean  
79 that every other jurisdiction in which the lawyer is admitted must necessarily impose discipline  
80 or disability inactive status. The agency has jurisdiction to recommend reciprocal discipline or  
81 disability inactive status on the basis of public discipline or disability inactive status imposed by

82 a ~~state~~ jurisdiction in which the respondent is licensed.

83 A judicial determination of misconduct or disability by the respondent in another ~~state~~  
84 jurisdiction is conclusive, and not subject to relitigation in the forum ~~state~~-jurisdiction. The court  
85 should impose identical discipline or disability inactive status unless it determines, after review  
86 limited to the record of the proceedings in the foreign jurisdiction, that one of the grounds  
87 specified in paragraph D exists. This Rule applies whether or not the respondent is admitted to  
88 practice in that jurisdiction. See also, Model Rule 8.5, Comment [1], Model Rules of  
89 Professional Conduct.

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## REPORT

Effective regulation of lawyers engaged in law practice in multiple jurisdictions requires that they be subject to meaningful sanctions for misconduct committed outside the jurisdictions in which they are licensed. As discussed above, a jurisdiction should be able to discipline a lawyer for misconduct that occurred in the jurisdiction, even though the lawyer is licensed only in another jurisdiction. However, the host jurisdiction has a limited array of sanctions at its disposal. Few jurisdictions provide for sanctions, such as fines, that would allow for disciplining out-of-state lawyers other than by restricting their right to practice law in the particular jurisdiction. The host jurisdiction may suspend or disbar the lawyer from practicing in that particular jurisdiction, but doing so would not in itself deprive the lawyer of the right to practice law in the lawyer's home jurisdiction or in other jurisdictions. Only the judiciary in the lawyer's home jurisdiction can suspend or disbar the lawyer from practicing law in that jurisdiction. Effective discipline therefore requires that, when a lawyer engages in misconduct outside the jurisdiction in which the lawyer is licensed, the lawyer be sanctioned appropriately in the jurisdiction in which the lawyer is licensed to practice law.

To address this problem, Rule 22 of the *ABA Model Rules for Lawyer Disciplinary Enforcement* requires a jurisdiction in which a lawyer is licensed generally to accept and reciprocally enforce another jurisdiction's disciplinary decision. Reciprocal enforcement promotes the regulatory interest in ensuring that, when a lawyer practicing in multiple jurisdictions is found by a host jurisdiction to have engaged in sanctionable misconduct, a meaningful sanction will be imposed. The MJP Commission recommends that the ABA renew its efforts to encourage all states to adopt this requirement.

Further, the MJP Commission recommends that the ABA amend the *ABA Model Rules for Lawyer Disciplinary Enforcement* in several ways to clarify their application to lawyers engaged in multijurisdictional practice and to ensure that such lawyers are subject to effective disciplinary enforcement when they engage in disciplinary misconduct in jurisdictions in which they are not licensed to practice law. Rule 6 defines which lawyers are subject to the disciplinary jurisdiction of the highest court in the state. Rule 6 should be amended by removing the brackets around the following language: [, and any lawyer not admitted in this state who practices law or renders or offers to render any legal services in this state]. This change would clarify that the provisions of Rule 6 apply not only to lawyers admitted in the jurisdiction but also to lawyers not admitted in the jurisdiction who are practicing law in the jurisdiction on a temporary or other basis. Rule 22, which specifically addresses reciprocal discipline, should be amended to make it clear that reciprocal discipline is to be imposed based upon the record created by the jurisdiction that imposed the discipline, but that in light of its public policy, the home jurisdiction may impose a different disciplinary sanction from that imposed by the host jurisdiction.