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# STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, v. JAMES C. UNDERHILL, RESPONDENT.

825 N.W.2d 423

Filed January 18, 2013. No. S-12-987.

Original action. Judgment of suspension.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

PER CURIAM.

## INTRODUCTION

The Counsel for Discipline of the Nebraska Supreme Court, relator, has filed a motion for reciprocal discipline against James C. Underhill, respondent. We grant the motion for reciprocal discipline and impose the same discipline as the Colorado Supreme Court, which we understand to be 9 months of suspension effective November 5, 2012, followed by 2 years of probation, followed by 3 months 1 day of suspension if probation is not successful.

## FACTS

Respondent was admitted to the practice of law in the State of Nebraska on December 21, 1982. Respondent was also admitted to the practice of law in the State of Colorado. Respondent's conditional admission filed on September 28, 2012, with the Colorado Supreme Court and accepted on October 1, generally stipulates to trust account violations and neglect of client matters. On October 1, the Colorado Supreme Court entered an order, which stated that respondent is "**SUSPENDED** from the practice of law for a period of **ONE YEAR AND ONE DAY, WITH NINE MONTHS TO BE SERVED AND THREE MONTHS AND ONE DAY TO BE STAYED** upon the successful completion of a **TWO-YEAR** period of probation . . . ." The order stated that the effective date of the suspension was November 5, 2012. On October 15, respondent reported the suspension by the Colorado Supreme Court to the Nebraska Supreme Court's Counsel for Discipline.

On October 23, 2012, the Counsel for Discipline filed a motion for reciprocal discipline pursuant to Neb. Ct. R. § 3-321 of the disciplinary rules. On October 31, we entered an order to show cause as to why we should not impose reciprocal discipline. On November 8, respondent responded to the order to show cause in which he requested that we enter an order with the same conclusion date as set forth in the suspension order by the Colorado Supreme Court. The Counsel for Discipline did not respond to the order to show cause.

## ANALYSIS

The basic issues in a disciplinary proceeding against an attorney are whether discipline should be imposed and, if so, the type of discipline appropriate under the circumstances. *State ex rel. Counsel for Dis. v. Murphy*, 283 Neb. 982, 814 N.W.2d 107 (2012). In a reciprocal discipline proceeding, a judicial determination of attorney misconduct in one jurisdiction is generally conclusive proof of guilt and is not subject to relitigation in the second jurisdiction. *Id.* Based on the record before us, we find that respondent is guilty of misconduct.

Neb. Ct. R. § 3-304 of the disciplinary rules provides that the following may be considered as discipline for attorney misconduct:

> (A) Misconduct shall be grounds for:
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> (1) Disbarment by the Court; or
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> (2) Suspension by the Court; or
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> (3) Probation by the Court in lieu of or subsequent to suspension, on such terms as the Court may designate; or
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> (4) Censure and reprimand by the Court; or
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> (5) Temporary suspension by the Court; or
>
> (6) Private reprimand by the Committee on Inquiry or Disciplinary Review Board.
>
> (B) The Court may, in its discretion, impose one or more of the disciplinary sanctions set forth above.

Section 3-321 of the disciplinary rules provides in part:

> (A) Upon being disciplined in another jurisdiction, a member shall promptly inform the Counsel for Discipline of the discipline imposed. Upon receipt by the Court of appropriate notice that a member has been disciplined in

> another jurisdiction, the Court may enter an order imposing the identical discipline, or greater or lesser discipline as the Court deems appropriate, or, in its discretion, suspend the member pending the imposition of final discipline in such other jurisdiction.

In imposing attorney discipline, we evaluate each case in light of its particular facts and circumstances. *State ex rel. Counsel for Dis. v. Walocha*, 283 Neb. 474, 811 N.W.2d 174 (2012). In his response to our order to show cause, respondent requests that we enter an order with the same conclusion date as set forth in the Colorado suspension order. The October 1, 2012, order of the Colorado Supreme Court stated that respondent is "**SUSPENDED** from the practice of law for a period of **ONE YEAR AND ONE DAY, WITH NINE MONTHS TO BE SERVED AND THREE MONTHS AND ONE DAY TO BE STAYED** upon the successful completion of a **TWO-YEAR** period of probation . . . ." The order further stated that the effective date of the suspension was November 5, 2012. We understand this to mean respondent is disciplined to 9 months of suspension to be served from November 5, 2012, followed by 2 years of probation, followed by 3 months 1 day of suspension if probation is not successful. Our understanding controls the discipline imposed in this case. Therefore, we grant the motion for reciprocal discipline and impose the same discipline as imposed by the Colorado Supreme Court, according to our understanding as set forth above, to run concurrently with the discipline imposed by the Colorado Supreme Court.

## CONCLUSION

The motion for reciprocal discipline is granted. It is the judgment of this court that respondent should be and is disciplined to 9 months of suspension to be served from November 5, 2012, followed by 2 years of probation, followed by 3 months 1 day of suspension if probation is not successful. Respondent shall comply with Neb. Ct. R. § 3-316, and upon failure to do so, he shall be subject to punishment for contempt of this court. He is also directed to pay costs and expenses in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2007) and

Neb. Ct. R. §§ 3-310(P) and 3-323(B) of the disciplinary rules within 60 days after an order imposing costs and expenses, if any, is entered by this court.

JUDGMENT OF SUSPENSION.