Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 09:29 AM CST

Of course, this rule merely creates a presumption. And a claimant can rebut the presumption by showing the claimant is making the claim as of right.[35] But here, Feloney adduced evidence showing that he only cleared Baye's driveway of snow. Even if we assume that this act would have put Baye on notice of Feloney's hostile claim, Feloney's clearing of the driveway did not span the full 10-year prescriptive period. Feloney's use was presumed permissive until he clearly put Baye on notice that he was claiming under right.[36] Ten years have not passed since that time. The district court properly granted summary judgment.

CONCLUSION

We conclude that Feloney's use of Baye's driveway is presumptively permissive. And Feloney did not present any evidence that would create a question of fact as to that question. Accordingly, we affirm.

AFFIRMED.

MILLER-LERMAN, J., not participating.

---

[35] See *Kimco Addition v. Lower Platte South N.R.D.*, 232 Neb. 289, 440 N.W.2d 456 (1989).

[36] See, e.g., *Connot, supra* note 34.

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. MICHAEL JAMES MURPHY, RESPONDENT.

814 N.W.2d 107

Filed June 1, 2012. No. S-12-278.

Original action. Judgment of public reprimand.

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 Michael James Murphy, respondent. We grant the motion for reciprocal discipline and enter a judgment of public reprimand.

FACTS

Respondent was admitted to the practice of law in the State of Nebraska on September 22, 1980. Respondent was also admitted to the practice of law in the State of Iowa. On April 3, 2008, respondent received a public reprimand from the Supreme Court of Iowa. Respondent never reported the public reprimand by the Supreme Court of Iowa to the Counsel for Discipline as required by Neb. Ct. R. § 3-321 of the disciplinary rules.

On April 5, 2012, the Counsel for Discipline filed a motion for reciprocal discipline pursuant to § 3-321. On April 11, we entered an order directing the parties to show cause as to why this court should or should not enter an order imposing the identical discipline, or greater or lesser discipline, as the court deemed appropriate. On April 26, respondent responded by filing a "Resistance to Application for Order to Show Cause," offering an explanation regarding the 2008 public reprimand from the Supreme Court of Iowa and requesting a private reprimand. On May 14, relator filed a statement in response to this court's order recommending that respondent receive a public reprimand, stating that this discipline is the same sanction imposed by the Supreme Court of Iowa and would fully protect the public. Relator also states that respondent has indicated that he wishes to resign from the Nebraska bar upon resolution of this matter.

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. Seyler, ante* p. 401, 809 N.W.2d 766 (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. *State ex rel. Counsel for Dis. v. Loftus*, 278 Neb. 1015, 775 N.W.2d 426 (2009) (citing *State*

ex rel. Counsel for Dis. v. Boose, 277 Neb. 1, 759 N.W.2d 110 (2009)). 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:
>
> (1) Disbarment by the Court; or
>
> (2) Suspension by the Court; or
>
> (3) Probation by the Court in lieu of or subsequent to suspension, on such terms as the Court may designate; or
>
> (4) Censure and reprimand by the Court; or
>
> (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, ante* p. 474, 811 N.W.2d 174 (2012). Respondent has requested for us to enter a judgment of private reprimand; however, pursuant to § 3-304, we cannot enter a judgment of private reprimand. Accordingly, we grant the motion for reciprocal discipline and enter a judgment of public reprimand.

CONCLUSION

The motion for reciprocal discipline is granted. It is the judgment of this court that respondent should be and is publicly reprimanded. Respondent is 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 PUBLIC REPRIMAND.