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STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. PHILIP M. KLEINSMITH, RESPONDENT.

826 N.W.2d 860

Filed February 22, 2013. No. S-12-1164.

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 Philip M. Kleinsmith, respondent. We grant the motion for reciprocal discipline and impose the same discipline as the Arizona Supreme Court, which is a public reprimand and 1 year's probation effective March 20, 2012.

FACTS

Respondent was admitted to the practice of law in the State of Nebraska on August 14, 1989. Respondent was also admitted to the practice of law in the State of Arizona and numerous other jurisdictions. On March 20, 2012, the Arizona Supreme Court issued an order which publicly reprimanded respondent and placed him on probation for a period of 1 year. The order was based on an "Agreement for Discipline by Consent," which generally stipulates to respondent's having filed improper arbitration certificates in numerous cases. This discipline was not self-reported by respondent as required by Neb. Ct. R. § 3-321. The Counsel for Discipline learned of the discipline imposed by the Arizona Supreme Court when it received a copy of an order of reciprocal discipline from the State of Utah.

On December 12, 2012, the Counsel for Discipline filed a motion for reciprocal discipline pursuant to § 3-321 of the disciplinary rules. On December 19, we entered an order to show cause as to why we should not impose reciprocal discipline. On December 31, respondent responded to the order to show

cause in which he consents to an order imposing identical discipline, or greater or lesser discipline, as we deem proper. 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. Underhill, ante* p. 85, 825 N.W.2d 423 (2013). 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.
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> (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 has consented to the entry of a judgment imposing identical discipline, or greater or lesser discipline, as we deem appropriate. The order of the Arizona Supreme Court publicly reprimanded the respondent and placed him on probation for a period of 1 year. We grant the motion for reciprocal discipline, enter a judgment of public reprimand, and place respondent on probation for a period of 1 year, effective March 20, 2012.

CONCLUSION

The motion for reciprocal discipline is granted. It is the judgment of this court that respondent should be and is publicly reprimanded and placed on probation for a period of 1 year, effective March 20, 2012. Respondent is directed to pay costs and expenses in accordance with 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.