

SUPREME COURT OF WISCONSIN

In the Matter of the Amendment of
Supreme Court Rules: SCR 20:8.5 --
Jurisdiction in Disciplinary
Proceedings

ORDER
No. 96-01

The court held a public hearing March 27, 1996 on the petition of the State Bar of Wisconsin filed October 5, 1995 seeking the amendment of the rule, SCR 20:8.5, regarding disciplinary jurisdiction over attorneys admitted to practice in Wisconsin to make provision for the application of the rules of professional conduct in cases where more than one jurisdiction have disciplinary authority over the lawyer. The court has considered the presentations at that public hearing and the material filed with the court in the matter.

IT IS ORDERED that, effective the date of this order, Supreme Court Rule 20:8.5 is repealed and recreated to read:

SCR 20:8.5 Disciplinary authority; choice of law

(a) Disciplinary Authority. A lawyer admitted to the bar of this state is subject to the disciplinary authority of this state regardless of where the lawyer's conduct occurs. A lawyer allowed by a court of this state to appear and participate in a proceeding in that court is subject to the disciplinary authority of this state for conduct that occurs in connection with that proceeding.

For the same conduct, a lawyer may be subject to the disciplinary authority of both this state and another jurisdiction where the

lawyer is admitted to the bar or allowed to appear in a court proceeding.

(b) Choice of Law. In the exercise of the disciplinary authority of this state, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a proceeding in a court before which a lawyer has been authorized to appear, either by admission to the bar in the jurisdiction or by the court specifically for purposes of that proceeding, the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise.

(2) for any other conduct,

(i) if the lawyer is admitted to the bar of only this state, the rules to be applied shall be the rules of this state.

(ii) if the lawyer is admitted to the bars of this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices, except that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is admitted to the bar, the rules of that jurisdiction shall be applied to that conduct.

COMMENT

Disciplinary Authority

Paragraph (a) restates longstanding law.

Choice of Law

[1] A lawyer may be potentially subject to more than one set of rules of professional conduct which imposes different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to

practice before a particular court in a jurisdiction with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. In the past, decisions have not developed clear or consistent guidance as to which rules apply in such circumstances.

[2] Paragraph (b) seeks to resolve such potential conflicts.

Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, and (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions.

[3] Paragraph (b) provides that as to a lawyer's conduct relating to a proceeding in a court before which the lawyer is authorized to appear (either by bar admission in the jurisdiction or by the court pro hac vice), the lawyer shall be subject only to the rules of professional conduct of the jurisdiction in which the court sits. As to all other conduct, paragraph (b) provides that a lawyer admitted to the bar of only this jurisdiction shall be subject to the rules of professional conduct of this jurisdiction, and that a lawyer admitted to the bars of multiple jurisdictions shall be subject only to the rules of the jurisdiction where he or she (as an individual, not his or her firm) principally practices, but with one exception: if particular conduct clearly has its predominant effect in another admitting jurisdiction, then only the rules of that jurisdiction shall apply. The intention is for the latter exception to be a narrow one. It would be appropriately applied, for example, to a situation in which a lawyer admitted to the bar in, and principally practicing in, State A, but also admitted to the bar in State B, handled an acquisition by a company whose headquarters and operations were in State B of another, similar such company. The exception would not appropriately be applied, on the other hand, if the lawyer handled an acquisition by a company whose headquarters and operations were in State A of a company whose headquarters and main operations were in State A, but which also had some operations in State B.

[4] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[5] The choice of law provision is not intended to apply to transnational practice. Choice of law in this context should be the subject of agreements between jurisdictions or of appropriate international law.

IT IS FURTHER ORDERED that the Comment submitted with the petition is not adopted but shall be printed for information purposes.

IT IS FURTHER ORDERED that notice of this amendment of the Supreme Court Rules shall be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 26th day of June, 1996.

BY THE COURT:

Marilyn L. Graves, Clerk