STATE OF MINNESOTA

IN SUPREME COURT

A18-1574

Original Jurisdiction

Per curiam
Took no part, Anderson, J.

In re Petition for Disciplinary Action against Wendy Alison Nora, a Minnesota Attorney, Registration No. 0165906.

Filed: May 22, 2019
Office of Appellate Courts

Susan M. Humiston, Director, Nicole S. Frank, Assistant Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.

Wendy Alison Nora, Minneapolis, Minnesota, pro se.

S Y L L A B U S

1. The attorney-discipline proceedings conducted in Wisconsin were fundamentally fair and consistent with due process.

2. An indefinite suspension with no right to petition for reinstatement for 1 year is not unjust or substantially different from the discipline warranted in Minnesota for knowingly making a false statement of material fact to a tribunal, and for filing three frivolous lawsuits to harass or maliciously injure another.

Suspended.

Considered and decided without oral argument.

O P I N I O N

PER CURIAM.

This case involves the question of whether we should impose reciprocal discipline on respondent Wendy Alison Nora. The Director of the Office of Lawyers Professional Responsibility (Director) petitioned to impose reciprocal discipline in Minnesota after Nora was suspended from the practice of law in Wisconsin for 1 year, *In re Nora* (*Nora Wis.*), 909 N.W.2d 155 (Wis. 2018), *cert. denied*, ___ U.S. ___, 139 S. Ct. 609 (2018). We conclude that Wisconsin's disciplinary proceedings were fundamentally fair and that the discipline imposed by the Wisconsin Supreme Court was neither unjust nor substantially different from the discipline that would have been imposed if the proceeding had been filed in Minnesota. We therefore indefinitely suspend Nora from the practice of law in Minnesota with no right to petition for reinstatement for 1 year.

FACTS

Nora was admitted to practice law in Wisconsin in 1975 and was licensed to practice in Minnesota in 1985. *Nora Wis.*, 909 N.W.2d at 157. Nora has previously been disciplined four times in Minnesota for professional misconduct: three private admonitions, and one public discipline. In 1988, she was admonished for failing to deposit funds into a trust account in violation of Minn. R. Prof. Conduct 1.15(a); she was admonished twice in 1990, once for practicing law while suspended in violation of Minn. R. Prof. Conduct 5.5(a), and once for incompetence and representing a client despite a conflict of interest in violation of Minn. R. Prof. Conduct 1.1 and 1.7.

In 1990, we suspended Nora indefinitely, with no right to petition for reinstatement for 30 days, for failing to adequately investigate, making misrepresentations (although the referee concluded that she lacked a dishonest or selfish motive), bringing frivolous claims, including litigation that was brought as a delay tactic, and transferring assets in an attempt to impede collection, in violation of Minn. R. Prof. Conduct 1.1, 3.1, 8.4(c), and 8.4(d). *In re Nora*, 450 N.W.2d 328, 328–30 (Minn. 1990). We reinstated Nora in 2007 and placed her on supervised probation for 2 years. *In re Nora*, 725 N.W.2d 745, 746 (Minn. 2007) (order).

The Wisconsin disciplinary proceedings at issue involve Nora's professional misconduct in defending against the foreclosure of her Wisconsin residential property, after she stopped paying the mortgage that she had secured from Aegis Mortgage Corporation (Aegis).[1] *See Nora v. Residential Funding Co., LLC*, 543 F. App'x 601 (7th Cir. 2013); *Nora Wis.*, 909 N.W.2d at 158. The law firm of Gray and Associates, S.C. filed the foreclosure action on behalf of its client, Residential Funding Corporation (RFC), a related entity of GMAC Mortgage Group LLC. Nora vigorously opposed the foreclosure, arguing that RFC did not have standing to seek foreclosure because the assignment of her mortgage to RFC was allegedly fraudulent and designed to avoid the effect of Aegis' pending bankruptcy. *Nora*, 543 F. App'x at 601.

In July 2009, D.P.—an attorney at the law firm of Bass & Moglowsky, S.C.—filed a motion for summary judgment on the issue of the foreclosure of the mortgage. In August

[1] Unless otherwise indicated, the facts set forth below are taken from the Wisconsin Supreme Court's opinion in *Nora Wis.*, 909 N.W.2d at 158–62.

2009, Nora and RFC discussed a possible "Foreclosure Repayment Agreement" (the Agreement) that RFC had offered to Nora. On August 23, 2009, Nora executed a copy of the Agreement but also modified a number of material terms.

On August 25, 2009, D.P. informed Nora, via a 4:20 p.m. email, that RFC had rejected her counteroffer and that "no settlement offer existed." The next morning, Nora faxed a letter and a copy of the Agreement to Judge J.C., who was presiding over the foreclosure action. The letter said that as a result of the Agreement, the proceedings in the foreclosure action " 'are stayed.' " Her letter implied that, even if the Agreement was not in effect, the proceedings must be stayed because an agreement was imminent.

On September 21, 2009, Judge J.C. denied Nora's request for oral argument on RFC's summary judgment motion, but the judge extended her time to file a response to the motion until October 1, 2009. Nora did not file a response. Instead, 3 days before her time to respond expired, she filed a personal bankruptcy petition, which stayed the foreclosure proceedings.

About 3 months later, when the bankruptcy stay was lifted, Nora's time to respond to the summary judgment motion again began to run. She did not file a response. D.P. notified both Judge J.C. and Nora in writing that Nora's time to file a response had expired and stated that Nora's failure to respond to the summary judgment motion meant that the court should treat the motion as unopposed. Shortly thereafter, Nora filed several motions and what she labeled as a "verified response" to RFC's summary judgment motion.

On February 9, 2010, Judge J.C. granted RFC's summary judgment motion, allowing RFC's foreclosure on Nora's residential property. Judge J.C. also struck Nora's

"verified response" as untimely and lacking arguments and supporting affidavits; Judge J.C. characterized the response as a " 'mixture of argument, motions, and allegations of fact.' "

Two weeks later, Nora filed a request in the Wisconsin Circuit Court seeking accommodations, including by re-litigating the summary judgment motion, based on an alleged disability. She also requested that the court appoint a guardian ad litem for her. On March 29, 2010, Judge J.C. denied Nora's requests to reconsider his decision granting summary judgment to RFC and for the appointment of a guardian ad litem. Nora sought recusal of Judge J.C. and reconsideration of her guardian ad litem request. Judge J.C. denied her motions for recusal and reconsideration.

On November 15, 2010—2 weeks before the scheduled sheriff's sale of her Wisconsin residential property—Nora sued Judge J.C. personally in the United States District Court for the Western District of Wisconsin, alleging violations of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101–213 (2012). Nora requested several forms of relief, including the removal of Judge J.C. from the foreclosure action and vacation of his summary judgment order. Within 1 week of suing him, Nora filed a motion to disqualify Judge J.C. from the foreclosure action because he had become an adverse party to Nora in a lawsuit. In March 2011, Nora dismissed the federal action against Judge J.C.

On November 29, 2010—the day before the sheriff's sale of her Wisconsin residential property—Nora filed a complaint in the United States District Court for the Western District of Wisconsin against opposing counsel in her foreclosure action, alleging,

in part, that opposing counsel had violated the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–68 (2012), by creating a fraudulent assignment of her mortgage and note to RFC, and for bringing the foreclosure action while knowing of the fraudulent assignment. *See Nora v. Residential Funding Co., LLC*, No. 10-CV-748-WMC, 2012 WL 12995759 (W.D. Wis. Sept. 30, 2012). The proceedings continued for nearly 2 years. The federal district court eventually dismissed Nora's claim as barred by the *Rooker-Feldman* doctrine.[2] Nora appealed, and the Seventh Circuit Court of Appeals affirmed. *Nora*, 543 F. App'x at 601.

Several months after the federal district court dismissed Nora's RICO complaint as barred by the *Rooker-Feldman* doctrine, Nora filed an adversary proceeding against the same defendants in the United States Bankruptcy Court for the Southern District of New York. Nora's allegations were nearly identical to those that she asserted in the prior action. Nora dismissed the adversary proceeding as part of the settlement agreement with the defendants.

In March 2013, the Wisconsin Office of Lawyer Regulation (OLR) filed a disciplinary complaint against Nora, which was amended in December 2013 to include a claim related to the bankruptcy court adversarial proceeding. Counts 1, 3, and 4 of OLR's amended complaint alleged that Nora's claims in the ADA, RICO, and bankruptcy matters

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[2] The *Rooker-Feldman* doctrine prohibits federal district courts from exercising subject-matter jurisdiction over claims seeking relief that would, in essence, vacate a state court judgment, because only the United States Supreme Court may review such judgments. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291–92 (2005); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923).

violated Wis. Sup. Ct. R. 20:3.1(a).[3] Count 2 of the amended complaint alleged that Nora's facsimile informing the court that a settlement was imminent and that the proceedings in her foreclosure action should be stayed violated Wis. Sup. Ct. R. 20:3.3(a)(1).[4]

OLR moved for summary judgment on Count 2. After hearing oral argument spanning 2 days in November 2014 and receiving briefing from the parties, the referee granted summary judgment in favor of OLR because Nora had admitted, either in her answer to OLR's amended complaint or during oral argument on OLR's summary judgment motion, all of the allegations underlying Count 2.

On the remaining counts, the referee held a 4-day evidentiary hearing in April 2016 and received pre- and post-hearing briefing from the parties. In January 2017, the referee made factual findings and recommendations. She found that Nora lacked a good-faith basis for pursuing her ADA action against Judge J.C. and her RICO action and bankruptcy adversary proceeding against opposing counsel. Regarding the ADA action, the referee found that Nora had not requested an accommodation before Judge J.C. ruled on the summary judgment motion, that she had no need for accommodation when she filed the

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[3] This rule prohibits a lawyer from "knowingly advanc[ing] a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law" or from "fil[ing] a suit [or] assert[ing] a position . . . when the lawyer knows . . . that such an action would serve merely to harass or maliciously injury another." Wis. Sup. Ct. R. 20:3.1(a)(1), (3). It is similar to Minn. R. Prof. Conduct 3.1.

[4] This rule prohibits a lawyer from "mak[ing] a false statement of fact or law to a tribunal or fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Wis. Sup. Ct. R. 20:3.3(a)(1). It is identical to Minn. R. Prof. Conduct 3.3(a)(1).

ADA action, and that she filed the ADA action in an attempt to obstruct her foreclosure case. Concerning both the RICO suit and the bankruptcy adversary proceeding, the referee found that, based on Nora's 40 years as an attorney and her comments during the summary-judgment hearing before the district court, Nora understood the *Rooker-Feldman* doctrine before filing both of those actions. The referee also found that Nora had pursued all three actions when she knew they would serve merely to harass. The referee concluded that OLR had proven each count of misconduct and recommended that Nora be suspended from the practice of law for 1 year.

Nora appealed. The Wisconsin Supreme Court concluded that the referee's factual findings were not clearly erroneous and that those findings supported the legal conclusion that Nora had committed misconduct. The court concluded that Nora should be suspended for 1 year. *Id.* Nora sought reconsideration and moved to amend the Wisconsin Supreme Court's order imposing discipline. The Wisconsin Supreme Court denied reconsideration but modified its decision by deleting a parenthetical from its discussion of our prior suspension of Nora in 1990. *See Wis. Office of Lawyer Regulation v. Nora*, No. 2013AP653-D, Order at 2 (Wis. filed June 12, 2018). Nora petitioned the United States Supreme Court for a writ of certiorari, which was denied. *Nora v. Wis. Office of Lawyer Regulation*, ___ U.S. ___, 139 S. Ct. 609 (2018), *reh'g denied*, ___ U.S. ___, 139 S. Ct. 1243 (2019).

The Director filed a petition for disciplinary action against Nora, seeking reciprocal discipline in Minnesota. After Nora filed a response, we ordered the parties to file

memoranda addressing whether reciprocal discipline is warranted and the reasons for their views. We granted Nora's motion to file a reply brief.

Nora argues that reciprocal discipline should not be imposed. She contends that we should not give the Wisconsin findings preclusive effect because those proceedings were not fair and violated her right to due process. She asks us to refer this matter to a referee to hold "a limited evidentiary hearing as an opportunity to show" that she did not violate any of the Wisconsin Rules of Professional Conduct. The Director argues that we should give preclusive effect to the Wisconsin findings and that the imposition of reciprocal discipline is appropriate.

ANALYSIS

When a lawyer licensed to practice law in Minnesota is disciplined in another jurisdiction, we may, without further proceedings, "impose the identical discipline unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota." Rule 12(d), Rules on Lawyers Professional Responsibility (RLPR). Unless we determine otherwise, "a final adjudication in another jurisdiction that a lawyer had committed certain misconduct shall establish conclusively the misconduct for purposes of disciplinary proceedings in Minnesota." *Id.*

I.

We must first consider whether Wisconsin's disciplinary procedures were fair. Wisconsin's disciplinary procedures were fair to Nora "if they 'were consistent with [the principles of] fundamental fairness and due process.' " *In re Fahrenholtz*, 896 N.W.2d

845, 847 (Minn. 2017) (quoting *In re Schmidt*, 586 N.W.2d 774, 775 (Minn. 1998)). We "review the underlying record to see if the attorney received notice of the proceedings and the allegations against him, and had the opportunity to respond to those allegations and offer evidence of mitigating circumstances." *In re Overboe*, 867 N.W.2d 482, 486 (Minn. 2015). "We have consistently held that when the attorney is given notice of the hearing and an opportunity to respond to the allegations, the proceedings are fair." *Id.*

Nora first argues that the Wisconsin proceedings were not fair because she was denied notice of the charge of misconduct regarding making a false statement of fact to a tribunal. As support, she relies on *In re Ruffalo*, 390 U.S. 544 (1968). Nora's reliance on *Ruffalo* is misplaced.

In *Ruffalo*, the United States Court of Appeals for the Sixth Circuit disbarred Ruffalo after he was disbarred by the Ohio Supreme Court. *In re Ruffalo*, 370 F.2d 447, 454 (6th Cir. 1966). The Sixth Circuit based its decision on a charge of misconduct in the Ohio proceedings that was added on the final day of the discipline hearing, after Ruffalo and his employee had testified. *See id.* at 453–54. The Supreme Court reversed the Sixth Circuit's reciprocal discipline, holding that the Ohio proceedings violated due process because Ruffalo was not given "fair notice as to the reach" of the charges against him before the hearing began. *Ruffalo*, 390 U.S. at 552. Instead, the hearing "bec[a]me a trap when, after [it] [was] underway, the charges [were] amended on the basis of testimony of the accused," who could be "given no opportunity to expunge the earlier statements and start afresh." *Id.* at 551.

In the Wisconsin disciplinary proceedings, OLR amended its complaint to reflect Nora's pursuit of a second frivolous claim against opposing counsel, this time in federal bankruptcy court—not because of Nora's statements in the disciplinary action. In addition, more than 10 months elapsed between the date that OLR filed its amended complaint and the date of the hearing on OLR's motion for summary judgment on the charge for making a false statement of fact to a tribunal. As a result, Nora was afforded extensive notice of the misconduct allegations against her.[5]

Next, Nora argues that she was denied due process because she was not given a full opportunity to be heard. Specifically, Nora argues that she was denied due process because she was not given the opportunity to extend the final day of the 4-day evidentiary hearing on Counts 1, 3, and 4 beyond 5:00 p.m. On the first day of the hearing, Nora moved for a continuance so that the hearing could be conducted in excess of the allotted 4-day period (which had been scheduled months prior). Nora provided several reasons for this motion, including, among other things, her intent to mount a new defense of regulatory capture—disclosed for the first time that morning. The referee denied Nora's request as untimely and, on the fourth day of the hearing, reiterated that Nora had been given adequate notice of the time limitations for the hearing. Before the hearing ended on the fourth day, the referee entered into the record 50 additional exhibits that Nora sought to introduce.

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[5] Nora suggests that in its decision, "[t]he Wisconsin Supreme Court amended the charge" regarding her false statement of fact to a tribunal. We have reviewed both the amended complaint and the Wisconsin Supreme Court opinion. Nora's claim that the Wisconsin Supreme Court allegedly amended this charge is not supported by the record.

Nora provides no authority supporting her contention that due process entitles her to an opportunity to be heard at a hearing for an undefined and unlimited period of time. We conclude that Nora was given the opportunity to be heard and the opportunity to present evidence of good character and mitigation and to mount a vigorous defense,[6] as evidenced by the 2,900-plus pages of documents Nora filed with us, representing a small portion of the record in the Wisconsin proceedings. Disciplinary proceedings spanning a 5-year period of time that included an evidentiary hearing lasting 4 days, oral argument on OLR's summary judgment motion spanning 2 days, and briefing and oral argument before the Wisconsin Supreme Court provided Nora an ample opportunity to be heard.

Nora also contends that the Wisconsin proceedings were unfair for other reasons. First, she asserts, she was punished for exercising her First Amendment petition rights. We rejected this argument in *In re Graham*, 453 N.W.2d 313 (Minn. 1990). In *Graham*, an attorney filed a complaint of judicial misconduct against a federal magistrate judge, moved for the magistrate's recusal, and stated under oath and in a sworn affidavit that he had knowledge of a conspiracy between the magistrate judge, the district court judge, a legal officer, and a lawyer to fix the outcome of a federal case in which Graham was counsel of

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[6] Nora's defense included, among other things: one answer; one amended answer; several motions to dismiss; two motions to disqualify the referee; one "proposed amended complaint" styled as a motion; two motions for an interlocutory appeal; one motion for sanctions; an attempt to subpoena the testimony of D.P.; one notice of stay after Nora filed for bankruptcy; allegations that OLR committed fraud on the court; several other miscellaneous motions; submission of numerous binders of exhibits; several motions for an extension of time to file briefing; one motion for a mistrial; one objection to the denial of her motion for a mistrial; one "corrected objection" to the denial of her motion for a mistrial; and one "clarification" of her objection to the denial of her motion for a mistrial.

record. *See id.* at 315. A referee determined that Graham's allegations were false and frivolous, lacked any reasonable basis, and were made in reckless disregard of their truth or falsity. *See id.* at 319. Graham argued that he could not be disciplined "because the statements were petitions for redress of grievances," and what Graham said in them were "absolutely privileged under the [F]irst [A]mendment," under which "he enjoy[ed] absolute immunity" from discipline. *Id.* at 319. We held that attorneys, although generally protected from discipline for their exercise of First Amendment rights, may still be subject to discipline "[w]hen [the] attorney abuses that right." *Id.* at 321; *see also In re Williams*, 414 N.W.2d 394, 397 (Minn. 1987). This is such a case.

Nora's remaining arguments concern the merits of the misconduct claims against her, none of which persuaded the referee or the Wisconsin Supreme Court.[7] We decline to entertain Nora's attempt to re-litigate the Wisconsin disciplinary proceedings. Instead, we hold that the Wisconsin proceedings were fair because Nora was given notice of the proceedings and the allegations against her and had the opportunity to respond to those allegations and offer evidence of mitigation. Accordingly, the Wisconsin Supreme Court's findings and conclusions of misconduct "establish conclusively" Nora's "misconduct for purposes of [this] disciplinary proceeding[]." Rule 12(d), RLPR.

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[7] Nora argues that the elements of res judicata or collateral estoppel must be satisfied before we may consider reciprocal discipline under Rule 12(d), RLPR. This argument is meritless. Rule 12(d), RLPR, rather than the common law doctrines of collateral estoppel and res judicata, is the governing standard for when we will give another jurisdiction's determination that an attorney committed misconduct conclusive effect.

II.

Having concluded that the proceedings were fair, we next turn to whether the discipline imposed in Wisconsin is unjust or substantially different from the discipline warranted in Minnesota. *Id.* We have imposed indefinite suspensions with no right to petition for 1 year, or more, in cases of similar misconduct involving harassing and frivolous litigation and dishonest statements. *See, e.g.*, *In re Selmer*, 866 N.W.2d 893, 900–01 (Minn. 2015) (imposing a 1-year suspension for misconduct involving a pattern of frivolous and harassing litigation, abuse of the discovery process, and failure to acknowledge wrongdoing); *In re Butler*, 868 N.W.2d 243, 247–52 (Minn. 2015) (imposing a 2-year suspension for a pattern of pursuing frivolous litigation on behalf of homeowners, fraudulently joining defendants, refiling cases that had been previously dismissed, and failing to pay sanctions); *In re Ulanowski*, 800 N.W.2d 785, 788–800 (Minn. 2011) (imposing a 1-year suspension for misconduct including filing frivolous claims, making misrepresentations to a court, and harassing opposing counsel). Given the similarity of Nora's misconduct here and her misconduct that led to her prior suspension, her disciplinary history, and the gravity of the conduct at issue, the 1-year suspension imposed in Wisconsin is neither unjust nor substantially different than the discipline warranted in Minnesota.

Accordingly, we order that:

1. Respondent Wendy Alison Nora is indefinitely suspended from the practice of law, effective 14 days from the date of this opinion, with no right to petition for reinstatement for 1 year from the effective date of the suspension.

2. Respondent shall comply with the requirements of Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals), and shall pay $900 in costs, plus disbursements, pursuant to Rule 24, RLPR.

3. If respondent seeks reinstatement, she must comply with the requirements of Rule 18(a)–(d), RLPR. Reinstatement is conditioned on successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility and satisfaction of continuing legal education requirements. *See* Rule 18(e)–(f), RLPR.

Suspended.

ANDERSON, J., took no part in the consideration or decision of this case.