

The Supreme Court of the State of Louisiana

IN RE: CYNTHIA ANN LAIN

No. 2021-B-00602

IN RE: Disciplinary Counsel - Applicant Other; Notice of Discipline in Another
Jurisdiction Pursuant to Rule XIX, Section 21 and Motion to Initiate Reciprocal
Discipline Proceedings;

October 01, 2021

Reciprocal discipline imposed. See per curiam.

JTG

JLW

JDH

SJC

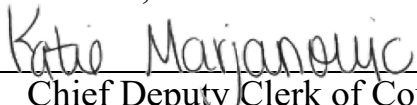
WJC

JBM

PDG

Supreme Court of Louisiana

October 01, 2021



Chief Deputy Clerk of Court
For the Court

10/01/21

SUPREME COURT OF LOUISIANA

NO. 2021-B-0602

IN RE: CYNTHIA ANN LAIN

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Pursuant to Supreme Court Rule XIX, § 21, the Office of Disciplinary Counsel (“ODC”) has filed a petition seeking the imposition of reciprocal discipline against respondent, Cynthia Ann Lain,¹ an attorney licensed to practice law in Louisiana and Georgia, based upon discipline imposed by the Supreme Court of Georgia.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In 2019, the State Bar of Georgia (“State Bar”) filed formal complaints against respondent in five disciplinary matters. Respondent failed to respond adequately to the complaints, failed to comply with an associated discovery order, and failed to supplement her responses to discovery requests. Respondent then failed to comply with subsequent motions to compel, and the State Bar filed a motion for sanctions. Respondent also failed to appear for a deposition, leading the State Bar to file a second motion for sanctions. In April 2020, an order was entered granting the first motion for sanctions, striking respondent’s answer to each formal complaint, and providing that all facts alleged in the formal complaints be deemed admitted. A summary of the facts giving rise to the complaints is set forth, as follows:

¹ Respondent has been ineligible to practice law in Louisiana since September 9, 2015 for failing to pay bar dues and the disciplinary assessment and failing to file a trust account disclosure statement. She is also ineligible for failing to fulfill mandatory continuing legal education requirements.

In 2016, respondent was retained to represent a client in a child support and custody case. The client initially appeared as a pro se defendant. Respondent filed a motion to dismiss and an objection to the plaintiff's stipulation that the case was ready for trial. The plaintiff filed a motion for contempt after respondent's client failed to pay child support. A hearing on the motions had to be rescheduled twice when respondent failed to appear without providing any prior notice to the court.

Following the hearing, the court denied respondent's motions, finding the filings were frivolous and without merit,² and ordered respondent and her client to pay attorney fees. The court also entered an order on plaintiff's petition for contempt, finding the client was in contempt for failure to pay child support. The client complained to the court that respondent never discussed with her the merits of the case or the implications of the filed pleadings.

In 2017, another motion for contempt was filed, and the court issued a rule nisi for respondent and the client to appear to show cause as to why they should not be held in contempt for nonpayment of the court-ordered fees and child support. Respondent failed to notify the client of the hearing, and neither she nor the client appeared for the hearing. The court then issued another rule nisi, but once again respondent failed to appear for the hearing, and the court found her in contempt. Respondent has not paid the outstanding attorney fees.

² In the motion to dismiss, respondent had requested that the court dismiss the entire case for the sole reason that the case originated in the wrong county, despite its proper transfer, and the court found that respondent could not articulate any law that would allow for such a drastic decision. In objection to plaintiff's stipulation, respondent argued that discovery was incomplete; however, when the court inquired as to when discovery was requested, respondent admitted that she never requested discovery.

In 2016, respondent was retained to represent a client charged with driving under the influence in Henry County. On the day of the arraignment hearing, respondent was not present and there was no record that an entry of appearance was filed in the case, although the client informed Judge James Chafin that respondent represented her on the charges. Respondent then sent an email to Judge Chafin's staff attorney, advising that she could not attend the hearing due to "pink eye." Judge Chafin continued the hearing to January 2017. The day before the rescheduled hearing, respondent filed a not guilty plea, a waiver of formal arraignment, and a request to waive personal appearance at arraignment, excusing both respondent and her client from appearing at the hearing.

Although the clerk notified respondent and her client of the dates for the pretrial hearing and jury trial, respondent did not attend the pretrial hearing and did not file a conflict letter. At the instruction of the court, the client contacted respondent by telephone and learned that she was at least an hour away from the courthouse. The hearing was rescheduled, and the court issued a rule nisi for the same day to address respondent's failure to appear. Respondent appeared at the rescheduled hearing with her client, who entered a guilty plea. After sentencing, respondent appeared for the rule nisi hearing and claimed she never received notice of the first hearing. The court found her in contempt and ordered her to pay a \$100 fine. Respondent failed to pay by the deadline and provided no reason for the nonpayment. Judge Chafin issued a new rule nisi for respondent to appear in court on May 3, 2017 and show cause why she should not be held in contempt for failing to pay the fine. The day prior to the hearing, respondent filed a notice of conflict, claiming she could not appear because she started a jury trial in Fulton County. Judge Chafin's administrative assistant contacted the court in Fulton County and learned that the jury trial respondent cited in conflict was resolved on May 2.

Thereafter, respondent failed to appear for the rule nisi hearing, and the court entered a contempt order and issued a bench warrant for her arrest. Respondent filed a notice of appeal and a motion for supersedeas, causing an automatic stay of the contempt order. Days later, during an appearance before another judge in Henry County, respondent was arrested. Respondent filed an emergency motion seeking writ of supersedeas from the Georgia Court of Appeals. The writ was granted and respondent was released from the bench warrant.

Thereafter, Judge Chafin entered an order dismissing respondent's appeal for failure to request and properly file a transcript. Respondent then filed a notice of appeal from the order dismissing her appeal. Judge Chafin issued a rule nisi for respondent to appear for a show cause hearing. The day after that hearing, the court issued an order, holding that respondent was to send a transcript request to the court reporter for the hearings she wanted included in her second appeal. After respondent filed the request, the court reporter sent her preparation costs for those transcripts. Respondent filed a petition to proceed in forma pauperis and requested a hearing. She then failed to appear for the hearing on the petition. Instead, respondent sent an email to the court requesting a continuance. The court issued a bench warrant for her arrest and issued a new rule nisi for a hearing, where respondent was to show cause as to why she failed to appear for the hearing on the petition and why she requested a continuance. Respondent failed to appear for the show cause hearing, and the court issued another bench warrant.

Respondent then filed a motion for supersedeas, requesting the court stay the arrest orders, and a notice of appeal from the last rule nisi issued against her. That day, respondent also filed a suggestion of bankruptcy and requested a stay for the case pending in state court. The Georgia Court of Appeals granted respondent's motion, and the judge entered an order denying her petition to proceed in forma pauperis due to her failure to appear to prosecute her petition. Because she did not

pay appeal costs within thirty days, Judge Chafin then entered an order dismissing her second appeal for lack of prosecution.

S21Y0655

In 2017, respondent was retained to represent a client on criminal charges filed in Henry County. A pretrial hearing was held on May 2, 2017 before Judge Jason Harper, but respondent failed to appear for the hearing. After the hearing began, respondent sent an email to Judge Harper, claiming she could not be present for the hearing because she was “going to the hospital.” The court rescheduled the hearing for May 8. It was later discovered that she was not going to the hospital. Instead, respondent was in the clerk’s office of the same courthouse, filing documents concerning an outstanding arrest warrant for herself.

During the hearing, respondent failed to provide any proof that she had received medical treatment. Judge Harper issued a rule nisi for June 20, to have respondent show cause as to why she should not be held in contempt for failing to appear for the hearing or file a conflict letter and for failing to provide documentation of the reason for her absence on May 2. Respondent was personally served with the rule nisi on May 8, but she failed to appear for the hearing, and Judge Harper issued a bench warrant for her arrest.

In response to the arrest warrant, respondent filed a notice of appeal, a motion for supersedeas, asserting that she had been adjudged in contempt by oral order of the court, and a motion to dismiss the bench warrant. Respondent failed to appear for the hearing on the motions. Judge Harper subsequently denied her motions, finding that the motions contained false information, including that respondent had been adjudged in contempt by oral order in the matter, and noting that adjudication of contempt is a prerequisite for obtaining a supersedeas.

On June 23, 2017, respondent's client attended her rescheduled pretrial hearing. An attorney unknown to the client attended the hearing on behalf of respondent, who was not present. Judge Harper told the attorney that respondent was expected to be present for the jury trial set to begin July 12. Respondent did not appear for trial, and the court had to reschedule the trial for July 27. Between July 12 and July 27, respondent refused receipt of any mail from the court, including notices and pleadings. On the day of the rescheduled trial, the client notified the court that she had no contact with respondent since the last court appearance, and the court subsequently granted the client's request to appoint a new attorney. The client also requested that respondent fully refund her attorney fees.

S21Y0657

During her representation of a client in a criminal matter in Muscogee County, respondent failed to appear for a scheduled hearing on January 11, 2016. Thereafter, Judge Bemon McBride scheduled a hearing to have respondent show cause as to why she should not be held in contempt for her failure to appear. Citing medical reasons and the need to retain counsel, respondent filed a motion for continuance of the hearing. Judge McBride granted her request but respondent failed to appear for the rescheduled hearing and failed to provide notice of her release from the medical concerns for which she sought the continuance. Judge McBride also learned that respondent had appeared for other proceedings in Muscogee County following the date of her continuance request. Judge McBride entered an order finding respondent in contempt and directing her to attend the Georgia Solo and Small Firm Institute at the State Bar headquarters. Respondent was further ordered to pay \$500 to the Georgia Legal Services Foundation and to self-report her contempt adjudication to the Bar's Office of General Counsel. She failed to meet any of these requirements.

During her representation of another client facing murder charges in Muscogee County, respondent failed to appear for the jury trial calendar on August 1, 2016. That day, she sent an email to Judge Ronal Mullins advising that she was the victim of an auto accident and was unable to appear in court. Judge Mullins asked respondent to provide a copy of the accident report within ten days, but she failed to do as requested. Respondent was then late to trial on four occasions. After her client was found guilty, respondent failed to appear for the sentencing hearing in April 2017. Judge Mullins rescheduled the hearing for May 2017. Respondent was not present for the May hearing, but a court deputy located her in the courthouse and notified Judge Mullins, who rescheduled the hearing for later that day. Respondent appeared for that hearing.

Judge Mullins sent a citation to respondent requesting her to show cause as to why she should not be held in contempt for her failure to appear for the trial and sentencing hearing. The citation was sent to respondent by both certified mail and email. The only response received from respondent was an email sent to Judge Mullins' administrative assistant, stating: "Good afternoon, please be advised that this is not proper service and I am not waiving such service." Respondent failed to appear at the hearing. Judge Mullins entered an order finding respondent in contempt and directed her to pay \$2,000 to the clerk of court within thirty days, to produce a copy of the accident report previously requested, and to self-report her adjudication of contempt to the Bar's Office of General Counsel within fifteen days. Respondent failed to comply with the order.

S21Y0658

Respondent was retained to represent a client in a custody matter in Clayton County. The client paid respondent a total of \$3,450. Respondent told the client that she would send the client a questionnaire to assist in preparing the case, which

the client did not receive until five months later. After the client completed the questionnaire, respondent told the client that she would file the custody action the following week. After months of failing to respond to the client's inquiries, respondent informed the client that more information was needed. The client then terminated the relationship and demanded her file and a refund. Respondent did not return the file or refund the fee. Respondent failed to file the custody action and failed to provide any proof that she completed any work on behalf of the client.

On April 19, 2021, the Supreme Court of Georgia disbarred respondent for violating the following provisions of the Georgia Rules of Professional Conduct: Rules 1.2(a) (scope of the representation), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.5(a) (charging an unreasonable fee), 1.16(d) (obligations upon termination of the representation), 3.1 (meritorious claims and contentions), 3.2 (failure to expedite litigation consistent with the interests of the client), 3.3(a) (candor toward the tribunal), 3.5(d) (engaging in conduct intended to disrupt a tribunal), and 8.4(a) (violation of the Rules of Professional Conduct). In its decision the Supreme Court of Georgia stated, in pertinent part:

Because [respondent] has engaged in a pattern of serious misconduct that includes contempt of court and contempt for the disciplinary process, we agree that disbarment is the appropriate sanction.

After receiving notice of the Georgia order of discipline, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. Respondent filed an opposition with this court in which she asserted that reciprocal discipline should not be imposed against her. Among her assertions, respondent argued that there were extenuating circumstances which prevented her from attending the various hearings. Respondent also indicated that her relationships with several judges had become strained.

DISCUSSION

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline ... unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

- (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
- (4) The misconduct established warrants substantially different discipline in this state; ...

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In the instant case, respondent has made no showing of infirmities in the Georgia proceeding, nor do we discern any from our review of the record. Furthermore, we feel there is no reason to deviate from the sanction imposed in Georgia as only under **extraordinary circumstances** should there be a significant variance from the sanction imposed by the other jurisdiction. *In re: Aulston*, 05-1546 (La. 1/13/06), 918 So. 2d 461. *See also In re Zdravkovich*, 831 A. 2d 964, 968-69 (D.C. 2003) (“there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority”).

Under these circumstances, it is appropriate to defer to the Georgia judgment imposing discipline upon respondent. Accordingly, we will impose reciprocal discipline in the form of disbarment.

DECREE

Considering the Petition to Initiate Reciprocal Discipline Proceedings filed by the Office of Disciplinary Counsel and the record filed herein, it is ordered that respondent, Cynthia Ann Lain, Louisiana Bar Roll number 29303, be and she hereby is disbarred. Her name shall be stricken from the roll of attorneys, and her license to practice law in the State of Louisiana shall be revoked.