

The Supreme Court of the State of Louisiana

IN RE: JONATHAN B. ANDRY

No. 2023-B-00374

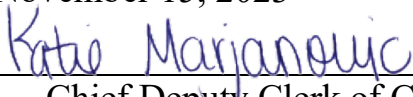
IN RE: Office of Disciplinary Counsel - Applicant Other; Notice of Discipline in
Another Jurisdiction Pursuant to Rule XIX, Section 21 and Motion to Initiate
Reciprocal Discipline Proceedings;

November 15, 2023

Reciprocal discipline imposed. See per curiam.

JBM
JLW
JDH
SJC
JTG
WJC
PDG

Supreme Court of Louisiana
November 15, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

NO. 2023-B-0374

IN RE: JONATHAN B. ANDRY

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, Jonathan B. Andry, an attorney licensed to practice law in Louisiana, based upon discipline imposed by the United States District Court for the Eastern District of Louisiana.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In the months following the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, hundreds of individual and class actions were filed in state and federal courts on behalf of the thousands of victims. Many of those claims were consolidated in the Eastern District of Louisiana Deepwater Horizon multi-district litigation (“MDL”). In 2012, BP reached a settlement with the MDL plaintiffs, which established the Court-Supervised Settlement Program (“CSSP”) to evaluate and award the payment of economic damages to individuals and businesses affected by the oil spill. Respondent was among the attorneys who represented claimants in the CSSP.

In 2013, respondent was accused of funneling \$40,000 to a CSSP staff attorney through improper referral payments. The MDL district court appointed Louis Freeh as special master to investigate the alleged misconduct. Respondent made false statements during this investigation. The special master’s report

recommended that respondent be prevented from representing CSSP claimants. United States District Judge Carl Barbier, the district court judge overseeing both the MDL and CSSP, ordered respondent to show cause why he should not adopt the recommendation. Following an evidentiary hearing and an opportunity to respond in writing, Judge Barbier determined that respondent violated the Rules of Professional Conduct and disqualified him from participating further in the CSSP or collecting fees.

Respondent then appealed to the United States Fifth Circuit Court of Appeals, arguing that the district court misapplied the Rules of Professional Conduct and that its sanctions were excessive. The court of appeals disagreed, holding that the district court “did not abuse its discretion in finding that [respondent] violated the Louisiana Rules of Professional Conduct or in fashioning an appropriate sanction.” *In re Deepwater Horizon*, 824 F.3d 571, 586 (5th Cir. 2016) (per curiam).

At Judge Barbier’s direction, the special master filed a disciplinary complaint against respondent with the *en banc* court of the Eastern District of Louisiana. Following a hearing, the *en banc* court found that respondent clearly violated duties owed to the legal system, the court, and the profession through his violation of Rules 1.5(e) (division of fees between lawyers who are not in the same firm), 8.4(a) (violation of the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice) of the Rules of Professional Conduct. The *en banc* court suspended respondent from practicing law in the Eastern District of Louisiana for one year (three concurrent one-year suspensions) for violating Rules 1.5(e), 8.4(a), and 8.4(d); for respondent’s violation of Rule 8.4(c), the court ordered a public reprimand.

Respondent again appealed to the United States Fifth Circuit Court of Appeals, arguing that the *en banc* court misapplied the Rules of Professional

Conduct and abused its discretion by imposing an excessive sanction.¹ The court of appeals agreed with respondent that the *en banc* court erred in finding he violated Rules 1.5(e) and 8.4(a); however, the court of appeals found respondent's conduct did violate Rule 8.4(d):

Rule 8.4(d), more than Rule 1.5(e), gets to the heart of Andry's misconduct. The core of the wrongdoing was not the way fees were split between attorneys, but the fact that money was sent to an attorney involved in the claims administration process by an attorney representing claimants. Thus, the *en banc* court did not err in finding that Andry violated Rule 8.4(d).

In re Andry, 59 F.4th 203 (5th Cir. 2023) (on rehearing).

With regard to sanction, the court of appeals reversed the *en banc* court's order suspending respondent from the practice of law for one year each for violations of Rules 1.5(e) and 8.4(a). The court of appeals remanded the matter to the *en banc* court for further proceedings, stating that "[o]n remand, the court is free to impose on Andry whatever sanction it sees fit for the 8.4(d) violation, including but not limited to its previous one-year suspension."

On remand, the *en banc* court suspended respondent for one year for his violation of Rule 8.4(d). The effective date of the suspension was April 20, 2022.

After receiving notice of the federal court order of discipline, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21.² Copies of the orders issued by the *en banc* court were attached to the petition, as well as the opinions of the Fifth Circuit. On March 14, 2023, we rendered an order giving respondent and the ODC thirty days to

¹ Respondent did not challenge the *en banc* court's application of Rule 8.4(c), nor the public reprimand imposed for that violation.

² Previously, Supreme Court Rule XIX, § 21(A) was predicated upon the imposition of discipline "by another state disciplinary authority." Effective May 15, 2019, the rule was amended to include discipline imposed "by another state **or federal** disciplinary authority..." [Emphasis added.]

demonstrate why the imposition of identical discipline would be unwarranted. Both parties timely filed a response to the order.

In his initial response, respondent argued that the imposition of reciprocal discipline was premature because he was appealing the Fifth Circuit's decision in his case to the United States Supreme Court. We then held the matter to await the decision of the United States Supreme Court. On October 2, 2023, the United States Supreme Court denied respondent's petition for writ of certiorari. Accordingly, the matter is now ripe for the imposition of reciprocal discipline.

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 determining the appropriate measure of reciprocal discipline, we are not required to impose the same sanction as that imposed by the jurisdiction in which the misconduct occurred. Nevertheless, 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”).

In the instant case, the imposition of reciprocal discipline against respondent based upon the federal court’s judgment (a one-year suspension, which has become final upon the denial of certiorari by the United States Supreme Court) is clearly appropriate. Respondent has presented no evidence that imposition of this sanction in Louisiana would result in a grave injustice for purposes of Supreme Court Rule XIX, § 21, and there is no suggestion of such upon the face of the record before us. Moreover, there is little doubt that respondent’s conduct would warrant discipline in Louisiana, given that it involves improper referral payments to another attorney. Under these circumstances, we find it is appropriate to defer to the federal court judgment imposing discipline upon respondent.

Accordingly, we will impose reciprocal discipline in the form of a one-year suspension from the practice of law. Nothing in our order should be read as precluding the reinstatement of respondent in the United States District Court for the Eastern District of Louisiana if permitted under the rules of that court.

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, Jonathan B. Andry, Louisiana Bar Roll number 20081, be and he hereby
is suspended from the practice of law for a period of one year.