

SUPREME COURT OF LOUISIANA

NO. 2019-B-1891

IN RE: DAVID AUGUSTUS CAPASSO

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, David Augustus Capasso, an attorney licensed to practice law in Louisiana, based upon discipline imposed by the Grievance Committee of the North Carolina State Bar.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In July 2018, respondent applied for admission *pro hac vice* in the United States District Court for the Western District of North Carolina. In the motion for admission, respondent certified that he had “never been the subject of any formal suspension or disbarment proceedings ... and had never received public discipline by any court or lawyer regulatory organization.” However, in 2014, this court had accepted a petition for consent discipline suspending respondent from the practice of law for eighteen months, fully deferred, subject to a two-year period of supervised probation with conditions. *In re: Capasso*, 14-1186 (La. 6/20/14), 140 So. 3d 1162.

On May 14, 2019, the Grievance Committee of the North Carolina State Bar censured respondent for violating Rules 3.3(a) (candor toward the tribunal), 4.1 (truthfulness in statements to others), 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.

After receiving notice of the North Carolina order of discipline, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. A copy of the decision issued by the Grievance Committee of the North Carolina State Bar was attached to the motion. On December 4, 2019, we rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline in this state would be unwarranted. Respondent failed to file any response in this court.

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 North Carolina 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 North Carolina 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”).

Here, there is little doubt that respondent’s conduct would warrant discipline in Louisiana. Under these circumstances, we agree that reciprocal discipline is warranted pursuant to Supreme Court Rule XIX, § 21. Because our rules do not provide for a public censure in bar disciplinary cases, we will impose a public reprimand, which is the closest equivalent available under our rules.

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, David Augustus Capasso, Louisiana Bar Roll number 24990, be publicly reprimanded.