

**BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO**

IN THE MATTER OF

MICHAEL E. CAIN, ESQ.

Disciplinary No. 2020-11-4471

**An Attorney Licensed to
Practice Law before the Courts
of the State of New Mexico**

FORMAL REPRIMAND

You are being issued this Formal Reprimand pursuant to a *Conditional Agreement Admitting the Allegations and Consent to Discipline*, which was approved by a Disciplinary Board Hearing Committee and a Disciplinary Board Panel.

This matter arises from a complaint from a State District Court Judge based on a child custody/visitation hearing on July 13, 2020. At the start of the hearing, the respondent (“SR”) requested a continuance so that her recently-retained lawyer could appear. You had been retained by SR but had not entered an appearance; SR gave you notice of the hearing. The Judge denied the motion for continuance and suggested that SR call you for your telephonic appearance.

Once you appeared via telephone, you immediately asked for a continuance because you had just been retained and hadn’t had time to prepare, and because of,

as you put it, “the Court’s ongoing conflict with me.” The Judge denied the request for a continuance.

In a loud voice, you argued with and interrupted the Judge for at least ten minutes, stating repeatedly that she had a conflict with you and that she should recuse. At one point, you stated: “You can’t find that you’re going to be fair, your Honor. That’s ridiculous.”

The Judge repeatedly denied any bias or grounds for recusal, but you continued to argue with her. Your continuous argument prompted opposing counsel to interrupt to ask you to give attention to the merits of the case.

Towards the end of the hearing, the Judge stated: “I do find that I can be and am fair and impartial.” You laughed out loud, but then, after the Judge said: “Mr. Cain. Mr. Cain,” you apologized.

Your conduct violated the following Rules of Professional Conduct: 16-305(D), by engaging in conduct intended to disrupt a tribunal, and 16-804(D), by engaging in conduct prejudicial to the administration of justice.

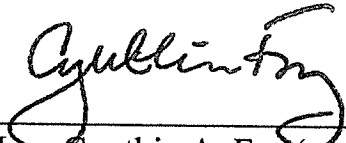
You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. The formal reprimand will be filed with the Supreme Court in accordance with 17-206(D), and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you.

In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico Bar Bulletin.

Dated July 16, 2021

The Disciplinary Board of the New Mexico
Supreme Court

By

A handwritten signature in black ink, appearing to read "Cynthia A. Fry". The signature is written in a cursive style with a large initial "C".

Hon. Cynthia A. Fry (ret'd)
Board Chair



The Disciplinary Board
AN AGENCY OF THE SUPREME COURT OF THE
STATE OF NEW MEXICO
**BEFORE THE DISCIPLINARY BOARD OF
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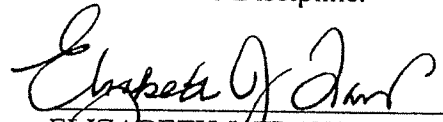
An Attorney Licensed to Practice
Before the Courts of the State of
New Mexico

**APPROVAL OF PROPOSED CONDITIONAL AGREEMENT AND CONSENT TO
DISCIPLINE AND ORDER IMPOSING DISCIPLINE**

This matter is before the Board following disciplinary proceedings conducted pursuant to the Rules Governing Discipline, Rules 17-101 to 17-316 NMRA, in which attorney Michael E. Cain entered a conditional agreement for discipline by consent in accordance with Rule 17-211(A) NMRA (the proposed "Consent Agreement"). By entering the Consent Agreement Mr. Cain admitted the stipulated facts presented in the Statement of Charges were violations of the Rules of Professional Conduct, Rules 16-305(D) and 16-804(D) NMRA. The proposed Consent Agreement was submitted to the Hearing Committee for consideration. Following a proceeding conducted in accordance with Rule 17-211(B) on March 3, 2021, the Hearing Committee entered its recommendation accepting the Consent Agreement, including discipline of Mr. Cain by formal reprimand and the imposition of costs. The Hearing Committee's recommendation was subsequently forwarded to the Board to be approved or rejected.

Pursuant to Rule 17-211(B)(1)(b), the undersigned, having been duly appointed by the Board Chair, Hon. Cynthia A. Fry, hereby APPROVE the disposition of the matter provided in the tendered Consent Agreement, as accepted by the Hearing Committee, and further direct the

Board to impose the discipline provided for in [Section (F)]¹ Items 1 and 2(a), (b) found on page 4 of the Conditional Agreement Admitting the Allegations and Consent to Discipline.


ELIZABETH J. TRAVIS, ESQ.
Board Panel Chair

Dated: 3.22.2021

¹The designation for Section F seems to have been unintentionally omitted from the document via a typographical error. The Board notes there is a section "E Supporting Authority" in the text before the section of the agreement labeled "Recommended and Agreed Discipline" and a "G." in the text following subparagraph #2(b).

**THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF NEW MEXICO**

In the Matter of:

MICHAEL E. CAIN, ESQ.,

Disciplinary No. 2020-11-4471

An Attorney Licensed to
Practice Law Before the Courts
of the State of New Mexico.

**FINDINGS, CONCLUSIONS & RECOMMENDATIONS
OF HEARING COMMITTEE**

THIS MATTER came before the Hearing Committee appointed by the Disciplinary Board at a hearing held March 3, 2021 on a virtual platform. Disciplinary counsel appeared through Jane Gagne, and Respondent appeared personally. The unanimous Committee makes the following findings:

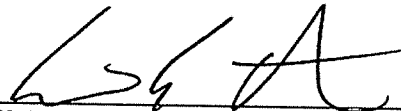
1. Respondent entered into a Conditional Agreement Admitting the Allegations and Consent to Discipline ("Consent Agreement").
2. Respondent understands the charges against him and has expressed remorse.
3. Respondent understands and voluntarily agrees to the proposed disposition of the matter.
4. Respondent voluntarily waives his right to a hearing before the Hearing Committee, Disciplinary Board and Supreme Court.
5. Respondent had the opportunity to and did confer with counsel of his choosing before entering into the Consent Agreement.
6. The proposed discipline of a formal reprimand is fair and reasonable given Respondent's lack of prior disciplinary history.

7. Respondent's request that these proceedings be sealed is not well-taken.

Additionally, the Committee makes the following conclusions:

1. The Committee recommends the Disciplinary Board accept the Consent Agreement and issue a formal reprimand to Respondent.

2. It is not appropriate for the proceedings to be sealed given Respondent's agreement to a formal reprimand and the absence of any confidential or private information in these proceedings.



ANDREW J. CLOUTIER

Chair of the Hearing Committee, on behalf
Of the Hearing Committee

Date: March 4, 2021

**THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO**

In the Matter of

MICHAEL E. CAIN, ESQ.

11-4471
Disciplinary No. 2020-10_____

An Attorney Licensed to
Practice Law Before the Courts
of the State of New Mexico

**CONDITIONAL AGREEMENT ADMITTING
THE ALLEGATIONS AND CONSENT TO DISCIPLINE**

Respondent Michael E. Cain, Esq., pursuant to Rule 17-211(A), NMRA, hereby declares his admission of the allegations made against him in the Specification of Charges, as set forth below, and agrees as follows:

A. FACTS. Respondent admits as follows:

1. This matter arises from a complaint from State District Court Judge Lisa C. Schultz based on a child custody/visitation hearing on July 13, 2020.
2. At the start of the hearing, the respondent ("SR") requested a continuance so that her recently-retained lawyer could appear.
3. Respondent had been retained by SR but Respondent had not entered an appearance; SR gave Respondent notice of the hearing.
4. Judge Schultz denied the motion for continuance and suggested that she call Respondent for his telephonic appearance.

5. Once Respondent appeared via telephone, he immediately asked for a continuance because he had just been retained and hadn't had time to prepare, and because of, as he put it, "the Court's ongoing conflict with me."
6. Judge Schulz denied the request for a continuance.
7. In a loud voice, Respondent argued with and interrupted the Judge for at least ten minutes, stating repeatedly that she had a conflict with him and that she should recuse.
8. At one point, Respondent stated: "You can't find that you're going to be fair, your Honor. That's ridiculous."
9. Judge Schulz repeatedly denied any bias or grounds for recusal, but Respondent continued to argue with her.
10. Respondent's continuous argument prompted opposing counsel to interrupt to ask Respondent to give attention to the merits of the case.
11. Towards the end of the hearing, the Judge stated: "I do find that I can be and am fair and impartial." Respondent laughed out loud, but then, after the Judge said: "Mr. Cain. Mr. Cain," he apologized.

B. CONCLUSIONS OF LAW

Respondent admits that he violated the following New Mexico Rules of Professional Conduct:

1. Rule 16-305(D), by engaging in conduct intended to disrupt a tribunal; and
2. Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice.

C. AGGRAVATING FACTORS

1. Respondent has substantial experience in the practice of law. *ABA Standards for Imposing Lawyer Sanctions*, § 9.22(i).

D. MITIGATING FACTORS

1. Respondent has cooperated with disciplinary counsel. *Id.* § 9.32(e).
2. Respondent has demonstrated remorse. *Id.* § 9.32 (l).

E. SUPPORTING AUTHORITY

1. Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. *Id.* § 6.22.

2. Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. *Id.* § 7.2.

3. Suspension is generally appropriate for numerous, separate incidences of incivility, including towards a judge. *See In re Ortiz*, 2013-NMSC-027, ¶ 17 (“While Respondent’s misconduct, standing alone, would warrant a suspension. . . .”¹)

4. Respondent’s single—albeit sustained—episode of incivility therefore justifies a lower sanction.

RECOMMENDED AND AGREED DISCIPLINE

This conditional agreement admitting the allegations is tendered with Respondent’s understanding and agreement that the following discipline shall be imposed against him:


1. Upon approval by the Disciplinary Board, Respondent shall receive a Formal Reprimand pursuant to Rule 17-206(A)(5) NMRA;
2. Respondent shall comply with the following terms and conditions:
 - a. Respondent shall observe and comply with the Rules of Professional conduct and the Rules Governing Discipline; and
 - b. Respondent shall pay the costs of this proceeding on the date this agreement is executed in the amount stated in the Cost Statement submitted to the Disciplinary Board.

G. Respondent further states that:

¹ The Court in *Ortiz* rescinded its suspension of the respondent and put her on probation after she produced medical evidence of an untreated psychological condition.

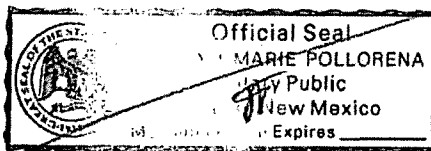
1. He understands the allegations against him;
2. He understands the proposed disposition of the proceedings;
3. He understands that if this agreement is accepted, he is waiving the right to a hearing before a hearing committee, the Disciplinary Board and/or the New Mexico Supreme Court, but that if this agreement is not accepted, the admissions contained herein may not be used against him in any subsequent proceeding;
4. He agrees that this agreement admitting the allegations and accepting the terms set forth in Section F of this Agreement is voluntary and not the result of force, threats, or promises (other than those noted herein); and
5. He has been given the opportunity to consult with an attorney.

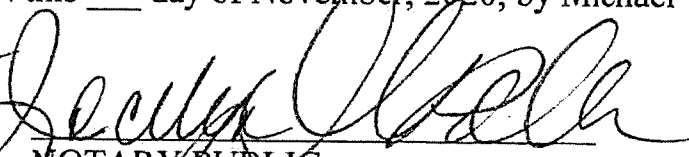
Respectfully Submitted,


 Michael E. Cain

STATE OF NEW MEXICO)
) ss.
 COUNTY OF Dona Ana)

SUBSCRIBED AND SWORN this ___ day of November, 2020, by Michael E. Cain.

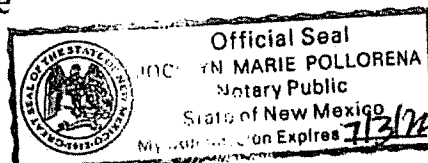



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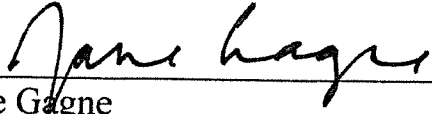
Jocelyn Marie Pollorena
 Print Name

My commission expires:

July 3, 2022



APPROVED:

A handwritten signature in cursive script, appearing to read "Jane Gagne", written over a horizontal line.

Jane Gagne

Assistant Disciplinary Counsel

**BEFORE THE DISCIPLINARY BOARD OF
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In the Matter of

MICHAEL E. CAIN, ESQ.

Disciplinary No. 2020-11-4471

An Attorney Licensed to
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of the State of New Mexico

SPECIFICATION OF CHARGES

1. Rule 17-105(B)(3)(d) NMRA of the Rules Governing Discipline empowers counsel for the Disciplinary Board to file a specification of charges against an attorney with the Disciplinary Board.

2. Respondent Michael E. Cain, Esq. is an attorney currently licensed, since May 2, 2001, to practice law before the courts of the State of New Mexico.

3. The factual allegations set forth in this Specification of Charges state acts of professional misconduct in violation Rules 16-101, 16-103, 16-305 and 16-804 of the Rules of Professional Conduct.

4. Pursuant to Rule 17-309(A) NMRA of the Rules Governing Discipline, cause exists to conduct a hearing on the following charges so that the Disciplinary Board and the Supreme Court can determine whether further action is appropriate.

5. This matter arises from a complaint from State District Court Judge Lisa C. Schultz based on a child custody/visitation hearing on July 13, 2020.

6. At the start of the hearing, the respondent (“SR”) requested a continuance so that her recently-retained lawyer could appear.

7. Respondent had been retained by SR but Respondent had not entered an appearance; SR gave Respondent notice of the hearing.

8. Judge Schultz denied the motion for continuance and suggested that she call Respondent for his telephonic appearance.

9. Once Respondent appeared via telephone, he immediately asked for a continuance because he had just been retained and hadn’t had time to prepare, and because of, as he put it, “the Court’s ongoing conflict with me.”

10. Judge Schulz denied the request for a continuance.

11. In a loud voice, Respondent proceeded for at least ten minutes to argue with and interrupt the Judge, stating repeatedly that she had a conflict with him and that she should recuse.

12. At one point, Respondent stated: “You can’t find that you’re going to be fair, your Honor. That’s ridiculous.”

13. Judge Schulz repeatedly denied any bias or grounds for recusal, but Respondent continued to argue with her.

14. Respondent's continuous argument prompted opposing counsel to interrupt to ask Respondent to give attention to the merits of the case.

15. Towards the end of the hearing, the Judge stated: "I do find that I can be and am fair and impartial." Respondent laughed out loud, but then, after the Judge said: "Mr. Cain. Mr. Cain," he apologized.

16. Wherefore, by reason of the foregoing, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. Rule 16-101, by failing to competently represent a client;
- b. Rule 16-103, by failing to diligently represent a client;
- c. Rule 16-305(D), by engaging in conduct intended to disrupt a tribunal; and
- d. Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice.

FACTORS IN AGGRAVATION

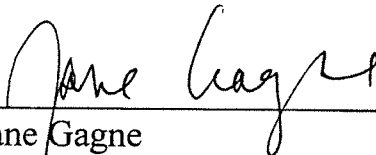
17. Respondent has substantial experience in the practice of law. *ABA Standards for Imposing Lawyer Sanctions*, § 9.22(i).

18. Disciplinary counsel intends to call Respondent only, as the recording of the hearing speaks for itself.

19. It is anticipated that this matter will be prosecuted by assistant disciplinary counsel Jane Gagne.

Wherefore, by reasons of the foregoing, it is respectfully requested pursuant to Rule 17-309(C) NMRA that a hearing committee be designated to hear evidence and make findings of fact, conclusions of law, and recommendations to the Disciplinary Board and, if any of the charges are sustained, that Respondent be disciplined and assessed the costs of this proceeding.

Respectfully Submitted,



Jane Gagne
Assistant Disciplinary Counsel
2440 Louisiana, Blvd. NE, Suite 280
Albuquerque, NM 87110
(505) 842-5781

Dated: December 17, 2020