

**BEFORE THE BOARD OF DISCIPLINARY APPEALS  
APPOINTED BY  
THE SUPREME COURT OF TEXAS**

**IN THE MATTER OF  
JOSEPH WM. BAILEY  
STATE BAR CARD NO. 01529200**

§  
§  
§

CAUSE NO. 52881

**PETITION FOR RECIPROCAL DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Joseph Wm. Bailey, (hereinafter called "Respondent"), showing as follows:

1. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.

2. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

3. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 7460 S Lakeshore Dr., Shreveport, Louisiana 71119.

4. On or about April 12, 2013, an Order/Per Curium (Exhibit 1) was entered in the Supreme Court of the State of Louisiana in a matter styled: *In Re: Joseph W. Bailey*, No. 2012-B-2536, that states in pertinent part as follows:

...Accordingly, we conclude that the disciplinary board's recommendation is appropriate, and we will order that respondent be disbarred...

In the Order/Per Curium, the Court found that Respondent:

. . . violated Rule 1.5 by charging the trust unreasonable fees on several occasions . . . violated Rule 1.7 because, while he was the attorney for the trust and Mr. Morris, he had his wife appointed trustee of Mr. Morris' trust. While, Mrs. Bailey was trustee, she worked in respondent's law office. Respondent never reviewed the bills Mrs. Bailey submitted to the trust for payment of her services as trustee, and she charged three to four times the amount charged by the Trust Company of Louisiana. Respondent billed the trust monthly for his services . . . it is clear that respondent's personal interests materially limited his representation of Mr. Morris. . . . [R] was not able to credibly explain why more than \$4000 in trust funds was used to pay his personal credit card bill . . . respondent appears to have retained all of the funds paid to him for legal services that he is only partially able to prove he provided. For these reasons . . . respondent violated Rule 1.15. . . Respondent did not review his wife's management of the trust, nor did he attempt to stop her mismanagement of the funds. Furthermore, respondent failed to advise Mrs. Bailey of her duty to file an annual accounting of the trust. As a result, there is no documentation accurately reflecting the disbursements made from the trust. Thus . . . respondent violated Rule 5.3. Finally . . . respondent violated Rule 8.4(c) because his overall conduct was dishonest, resulting in the depletion of a large trust fund belonging to an essentially disabled young man.

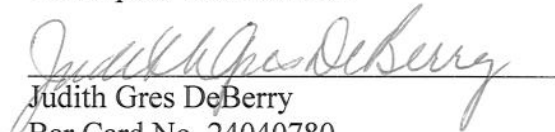
A certified copy of the Order/Per Curium is attached hereto as Petitioner's Exhibit 1 and made a part hereof for all intents and purposes as if the same were copied verbatim herein.

5. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of Louisiana and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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**SUPREME COURT OF TEXAS  
BOARD OF DISCIPLINARY APPEALS  
INTERNAL PROCEDURAL RULES**

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**SUPREME COURT OF TEXAS  
BOARD OF DISCIPLINARY APPEALS  
INTERNAL PROCEDURAL RULES**

**SECTION 1: GENERAL PROVISIONS**

**Rule 1.01 Definitions**

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chairperson.
- (c) “Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.10 by the Chief Disciplinary Counsel (“CDC”) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “Clerk” is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “Executive Director” is the executive director of BODA.
- (f) “Panel” is any three-member grouping of BODA.
- (g) “Party” is a complainant, respondent, or the CDC.

**Rule 1.02 General Powers**

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

**Rule 1.03 Additional Rules in Disciplinary Matters**

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF EVIDENCE (“TRE”) apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

**Rule 1.04 Appointment of Panels**

- (a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

#### **Rule 1.05 Record Retention**

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

#### **Rule 1.06 Trial Briefs**

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

#### **Rule 1.07 Service**

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is reasonably calculated under all the circumstances to apprise the respondent of the proceeding and to give him or her reasonable time to appear and answer. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

#### **Rule 1.08 Publication**

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

#### **Rule 1.09 Photocopying Costs**

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

#### **Rule 1.10 Abstracts**

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

### **Rule 1.11 Hearing Setting and Notice**

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

### **Rule 1.12 Time to Answer**

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

### **Rule 1.13 Facsimile and Electronic Filing**

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

#### **Rule 1.14 Hearing Exhibits**

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

#### **Rule 1.15 BODA Work Product and Drafts**

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

#### **Rule 1.16 BODA Opinions**

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.



(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this Rule and may be issued without a written opinion.

## **SECTION 2: ETHICAL CONSIDERATIONS**

### **Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases**

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

### **Rule 2.02 Confidentiality**

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

### **Rule 2.03 Disqualification and Recusal of BODA Members**

(a) BODA members are subject to disqualification and recusal respectively as provided in TRCP 18b.

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

## **Rule 2.04 Communications with BODA**

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

## **SECTION 3: CLASSIFICATION APPEALS**

### **Rule 3.01 Notice of Appeal**

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

### **Rule 3.02 Complaint on Appeal**

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

## **SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS**

### **Rule 4.01 Signing, Filing, and Service**

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

## Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

## Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and reporter's record to be included in the record on appeal by written stipulation filed with the custodian of records of the evidentiary panel.

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

- (1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.
- (2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.
- (3) The clerk's record should be in the following form:
  - (i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

- (ii) arranged in ascending chronological order by document by date of filing or occurrence;
- (iii) tabbed with heavy index tabs to show the beginning of each document;
- (iv) consecutively numbered in the bottom right-hand corner of the pages;
- (v) bound together so that the record will lie flat when opened; and
- (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

#### **Rule 4.04 Time to File Record**

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

(b) **If No Record Filed.**

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
  - (i) the appellant failed to request a reporter's record; or
  - (ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
  - (b) the appellant is not entitled to proceed without payment of costs.

(c) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the CDC or the official court reporter.

#### **Rule 4.05 Copies of the Record**

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

#### **Rule 4.06 Requisites of Briefs**

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

#### **Rule 4.07 Oral Argument**

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

### **Rule 4.08 Motions Generally**

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. BODA may determine a motion before a response is filed.

### **Rule 4.09 Motions for Extension of Time**

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

### **Rule 4.10 Decision and Judgment**

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,

- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

#### **Rule 4.11 Involuntary Dismissal**

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

### **SECTION 5: PETITIONS TO REVOKE PROBATION**

#### **Rule 5.01 Initiation and Service**

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

#### **Rule 5.02 Hearing**

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.



## **SECTION 6: COMPULSORY DISCIPLINE MATTERS**

### **Rule 6.01 Initiation of Proceeding**

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

### **Rule 6.02 Notice of Decision**

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

## **SECTION 7: RECIPROCAL DISCIPLINE MATTERS**

### **Rule 7.01 Initiation of Proceeding**

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

### **Rule 7.02 Order to Show Cause**

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

### **Rule 7.03 Attorney's Response**

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

## **SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS**

### **Rule 8.01 Appointment of District Disability Committee**

(a) If the evidentiary panel of the grievance committee finds pursuant to TRDP 2.17P(2) or the CDC believes pursuant to TRDP 2.14C that a respondent is suffering from a disability, the rules in this section shall apply to the District Disability Committee *de novo* proceeding held pursuant to TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee shall be filed with the BODA clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA chair may appoint a substitute member.

### **Rule 8.02 Hearing Order**

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

### **Rule 8.03 Provisions for Physical or Mental Examinations**

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

### **Rule 8.04 Ability to Compel Attendance**

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

### **Rule 8.05 Respondent's Right to Counsel**

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

### **Rule 8.06 Limited Discovery**

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

### **Rule 8.07 Hearing**

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

### **Rule 8.08 Notice of Decision**

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

### **Rule 8.09 Confidentiality**

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

## **SECTION 9: DISABILITY REINSTATEMENTS**

### **Rule 9.01 Petition for Reinstatement**

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

### **Rule 9.02 Discovery**

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

### **Rule 9.03 Physical or Mental Examinations**

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

### **Rule 9.04 Judgment**

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

## **SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT**

### **Rule 10.01 Docketing by the Clerk**

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

### **Rule 10.02 Appellate Rules to Apply**

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.



# Supreme Court

STATE OF LOUISIANA  
New Orleans

CHIEF JUSTICE	BERNARD J. JOHNSON	Seventh District
JUSTICES		
GREGORY	RYAN	First District
JEFFREY	STORY	Second District
JEANNETTE	TERIOT KNOLL	Third District
MARC	MARK	Fourth District
JEFFERSON	HUGHES III	Fifth District
JOHN	BRUNER	Sixth District

JOHN TARLTON OLIVIER  
CLERK OF COURT

400 Royal St., Suite 4200  
NEW ORLEANS, LA 70130-8102

TELEPHONE (504) 310-2300  
HOME PAGE <http://www.lasc.org>

April 12, 2013

In Re: Joseph W. Bailey  
No: 2012-B-2536

Dear Counsel:

Attached you will find a copy of the Per curiam rendered in the above referenced case.

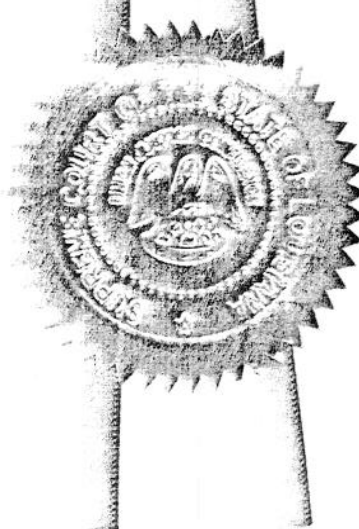
The judgment in this case will become final at the expiration of fourteen (14) days unless an application for rehearing is filed within the delay provided and in conformity with the provisions of Article 5 of the Supreme Court, as revised and amended.

Please refer to La. C.C.P. art. 5059 and La. C.Cr.P. art. 13 for computation of time.

With kindest regards, I remain,

John Tarlton Olivier  
Clerk of Court

Carmen B. Young  
Deputy Clerk of Court



SUPREME COURT OF LOUISIANA  
A TRUE COPY  
  
Edwin C. Gonzales, Jr.  
Deputy Clerk of Court

The Supreme Court of the State of Louisiana

IN RE: JOSEPH W. BAILEY

NO. 2012-B-2536

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IN RE: Disciplinary Counsel; - Other; Applying For Findings and  
Recommendations (Formal Charges) Office of Disciplinary Board, No.  
11-DB-084;  
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April 12, 2013

Disbarment ordered. See per curiam.

GGG

BJJ

JPV

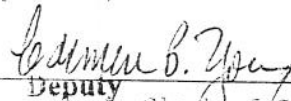
JTK

JLW

MRC

JDH

Supreme Court of Louisiana  
April 12, 2013



Deputy

Clerk of Court  
For the Court



SUPREME COURT OF LOUISIANA

NO. 12-B-2536

IN RE: JOSEPH W. BAILEY

APR 12 2013

ATTORNEY DISCIPLINARY PROCEEDINGS

666

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Joseph W. Bailey, an attorney licensed to practice law in Louisiana and Texas. In 2010, we imposed a fully deferred six-year suspension upon respondent based on discipline imposed by the State Bar of Texas for his failure to safeguard client funds in a matter unrelated to the instant matter. *In re: Bailey*, 10-0426 (La. 5/7/10), 41 So. 3d 436 (hereinafter referred to as “*Bailey I*”).

**UNDERLYING FACTS**

By way of background, in 1991, Royce Morris suffered severe head trauma in a gas pipeline explosion, resulting in permanent disabilities, including seizures, post-traumatic stress disorder, impulse control issues, and anger issues. A class action lawsuit against the pipeline company resulted in a settlement of more than \$2,000,000 for Mr. Morris in December 1999.

Soon thereafter, Mr. Morris hired respondent to provide him with estate and tax planning services, and they signed a retainer agreement to that effect on December 28, 1999. Respondent assisted Mr. Morris in setting up an irrevocable trust to receive and manage the settlement funds.<sup>1</sup> On December 30, 1999, Mr.

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<sup>1</sup> Mr. Morris was not interdicted, but he was not employable because of his injuries. Therefore, the attorney who represented him in the class action lawsuit believed putting the settlement funds (continued...)

Morris signed a trust agreement creating the Royce Morris Irrevocable Trust (“the trust”) and naming the Trust Company of Louisiana, through Patrick Nelson, as the trustee. The trust agreement also named respondent as the attorney for the trust, to be compensated pursuant to the December 28, 1999 retainer agreement.<sup>2</sup>

Pursuant to the retainer agreement, respondent received a \$10,000 retainer fee to be billed at the rate of \$150 per hour. By the end of February 2000, respondent had billed Mr. Morris a total of \$9,255, and requested an additional \$5,000 retainer from the trustee. In June 2000, respondent informed the trustee that he had also begun to represent Mr. Morris in criminal matters.

On August 25, 2000, the Trust Company of Louisiana resigned as the trustee due to hostility between Mr. Nelson and Mr. Morris.<sup>3</sup> Respondent’s wife, Judith Bailey, who worked in respondent’s law office performing administrative and paralegal duties, was appointed as the successor trustee.

During this same time period, Mr. Morris’ mother initiated judicial commitment proceedings against him based on his drug problems. Respondent was not involved in representing Mr. Morris in these proceedings, but he knew of the proceedings when he requested that the judge appoint Mrs. Bailey as the successor trustee.

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into a trust would be the best way to preserve them to ensure that Mr. Morris had a source of income for the remainder of his life.

<sup>2</sup> The trust agreement specifically names respondent as Mr. Morris’ legal representative. However, during his testimony at the formal hearing of this matter, respondent indicated this section of the trust agreement was meant to designate him as the attorney for the trust.

<sup>3</sup> During his testimony at the formal hearing of this matter, Mr. Nelson described Mr. Morris as having “very low functionality, although, he was smart enough to be very manipulative.” Mr. Nelson also indicated that Mr. Morris had anger issues and “couldn’t take anybody telling him what to do.” He further stated that Mr. Morris made it clear within thirty days of the creation of the trust that his goal was to break the trust because he wanted access to all of his money. In fact, Mr. Morris informed him that respondent’s legal services were intended “to help him bust the trust.” At one point, Mr. Morris told Mr. Nelson that he was going to “run his truck through the front of our building and take us all out.” Finally, Mr. Nelson stated that Mr. Morris had issues with drug addiction.

After Mrs. Bailey became trustee, respondent defended Mr. Morris against numerous criminal charges. On January 13, 2003, respondent resigned as attorney for the trust.<sup>4</sup> Nevertheless, Mrs. Bailey continued to make payments from the trust to respondent for work not performed. Additionally, Mrs. Bailey also breached her trustee duties as follows:

1. She allowed Mr. Morris' vehicle insurance to lapse numerous times for non-payment of premiums, thus incurring late fees and other penalties;
2. She failed to pay property taxes on property owned by the trust;
3. She failed to maintain insurance on immovable property owned by the trust;
4. She failed to file tax returns on behalf of the trust as required by law, incurring interest, penalties, and a tax levy;
5. She failed to pay bills timely, incurring numerous late charges and/or penalties;
6. She failed to provide annual and quarterly accountings as required by law and the trust agreement;
7. She failed to open mail containing important insurance information for the trust;
8. She paid huge amounts of money out of the trust for bar tabs and cash loans for Mr. Morris;
9. She made excessive distributions of income and principal to Mr. Morris despite knowing of Mr. Morris' illegal substance (crystal methamphetamine and cocaine) abuse problems; and

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<sup>4</sup> Respondent resigned after Mr. Morris' ex-wife filed a disciplinary complaint against him in April 2002, alleging a conflict of interest. The record does not indicate what became of this complaint, but after resigning as the attorney for the trust, respondent continued to represent Mr. Morris in criminal matters.

10. She failed to take into account the long term interest of Mr. Morris in connection with the administration, management of assets, distribution of assets, and termination of the trust.

In March 2006, Mrs. Bailey formally withdrew as trustee and informed Mr. Morris that the trust funds had been depleted. When Mrs. Bailey failed to respond to Mr. Morris' requests for an accounting, he obtained new counsel and filed a petition for an accounting on January 24, 2007. Mrs. Bailey did not render the accounting until April 16, 2007.

On July 31, 2007, Mr. Morris, through his new attorney, filed a petition for damages against respondent and Mrs. Bailey. The lawsuit alleged that Mrs. Bailey breached her fiduciary duties to Mr. Morris and breached the trust agreement. The lawsuit also alleged legal malpractice and overbilling by respondent.

On February 12, 2009, after a two-day trial, the judge found that Mrs. Bailey violated multiple sections of the trust agreement and the trust code, stating:

The evidence is undisputed that between August 25, 2000 and March 2006 the Trust was drained to the point of becoming insolvent. It is important to note that during this entire time Mr. and Mrs. Bailey worked in the same law office... [T]he Court believes that in addition to serving as Trustee in this matter she had a number of other administrative and paralegal duties, in the Bailey law office, including billing for her husband. She therefore knew well of Royce Morris' drug arrests and convictions, serious alcohol abuse, and other legal matters handled by Mr. Bailey.

Regarding Mr. Morris' mental state, the judge indicated that,

[a]lthough not interdicted, Royce has been disabled and judgment-impaired since the 1991 accident; he has seizures; he suffers from post traumatic stress disorder and has what has been described as an uncontrollable temper. He is not employable and is permanently disabled. Moreover, it is clear from the evidence and his in-court testimony that he is permanently judgment impaired and unable to make reasoned decisions about his finances or general welfare. The testimony and evidence reveals that the Baileys have taken different positions at different times regarding the competence

level of Royce Morris. On the one hand, Joseph Bailey seemed to suggest in court testimony that there should not be a trust because (1) Royce was never interdicted; (2) Royce was not otherwise judicially declared incompetent; and (3) there was no court order in the class action matter requiring a trust. Yet, on the other hand, he assisted in the preparation of the 12/30/99 Trust Agreement and his wife, Judith, signed as a witness. Further, in a June 19, 2000 letter to John Madison [attorney for the Trust Company of Louisiana], Mr. Bailey wrote of Morris' "diminished capacity" and in his October 21, 2001 Motion For Appointment of Sanity Commission [filed in one of Mr. Morris' criminal cases], Joe Bailey wrote that Morris was "unable to assist in his defense" and that a psychiatrist should be appointed "to determine mental capacity."

Additionally, the judge stated that, for all of her acts of negligence and misconduct, Mrs. Bailey paid herself a sizable fee, three to four times the amount charged by the Trust Company of Louisiana, without any written authorization from Mr. Morris. Given the circumstances, the judge concluded that, "the huge problem with all of this is that there are no checks and balances on either Mr. or Mrs. Bailey, who are married to each other and work in tandem in the Bailey law office."

With respect to the allegations of legal malpractice and overbilling against respondent, the judge found the following:

- 1) While serving as legal representative for the trust, respondent recommended that Judith Bailey, his wife and an agent of his law firm, be appointed as trustee. Respondent created the climate for self-dealing and multiple conflicts without any checks and balances. Moreover, because there was no CPA involved in the preparation of state and federal income tax returns and because no accounting was ever rendered, there was no way for Mr. Morris to have knowledge of any financial issues;

- 2) Respondent failed to disclose to Mr. Morris any information regarding the fees to be charged to the trust for Mrs. Bailey's services as trustee;
- 3) Respondent represented to Mr. Morris that he was no longer representing the trust. Yet he continued to represent and bill the trust, including for conversations with his wife about trust matters, mailing items, etc.;
- 4) Payments were made to respondent's personal credit card account out of the trust account. While some were legitimate reimbursements, some were not. In fact, respondent and Mrs. Bailey only produced documentation showing proof of reimbursement on two payments on the personal credit card; and
- 5) The trust appears to have been charged for services not performed by respondent.

On May 11, 2009, the judge rendered judgment against respondent and Mrs. Bailey, in solido, in the total amount of \$226,545. The judge also rendered an additional judgment against respondent in the amount of \$16,131.55.

Respondent and Mrs. Bailey did not appeal the judgment. Instead, respondent and Mrs. Bailey jointly filed for bankruptcy protection and sought to discharge Mr. Morris' judgment against them. However, by judgment dated June 23, 2010, the bankruptcy judge ruled that Mr. Morris' judgment was non-dischargeable on the grounds that the claim resulted from "defalcation while acting in a fiduciary capacity' under 11 U.S.C. § 523(a)(4)."

#### **DISCIPLINARY PROCEEDINGS**

In September 2011, the ODC filed formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.5 (fee arrangements), 1.7 (conflict of

interest), 1.15 (safekeeping property of clients or third persons), 5.3 (failure to properly supervise a non-lawyer assistant),<sup>5</sup> and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent answered the formal charges, denying any misconduct. This matter then proceeding to a formal hearing on the merits, conducted by the hearing committee in March 2012.

#### *Hearing Committee Report*

After considering the testimony and evidence presented at the hearing, the hearing committee made the following factual findings:

Mr. Morris, severely injured in an accident, had a trust set up due to his inability to manage his settlement proceeds. His pride and injuries caused him to engage in a destructive course, and he hired respondent to break the trust. Respondent had his wife appointed trustee. Thereafter, respondent represented the conflicting interests of the trust and Mr. Morris. He also intermingled his own finances with those of Mr. Morris, so that, over the course of six years, the trust was entirely depleted. Mr. Morris attempted to obtain an accounting and to recover from respondent and his wife for excessive billing, malpractice, and damages. He obtained a favorable judgment against them but, nevertheless, died destitute.

The committee determined that most of the witnesses, except respondent, were credible. The committee did not make a specific credibility determination regarding Mrs. Bailey.

With respect to respondent, the committee determined he does not seem to grasp that the trust is a separate legal entity from Mr. Morris. Respondent refused

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<sup>5</sup> The formal charges allege a violation of Rule 5.5 (engaging in the unauthorized practice of law) but describe the rule violation as "failure to supervise a non-lawyer employee." Given the factual allegations of the formal charges and the ODC's description of the violation in the formal charges, we believe this was a typographical error, and that the ODC intended to charge respondent with a violation of Rule 5.3.

to acknowledge even the potential for a conflict. Furthermore, while he was having Mrs. Bailey appointed as the trustee, he did not disclose to the judge that Mr. Morris was in the process of being judicially committed. Mrs. Bailey worked at respondent's office during all pertinent times, and his attempt to parse words by claiming that she was not a paid employee seemed very disingenuous to the committee. Respondent maintained that the lack of documentation, including the failure to file annual accountings, was due to Mr. Morris' wish that he did not want to leave a paper trail. Respondent also showed no remorse and, at one point, blamed this matter on Mr. Morris' mother. Respondent's testimony made it clear that, if Mr. Morris were ever denied a disbursement, the Baileys might lose control over the trust.

With respect to Mrs. Bailey, the committee determined that she wrote checks to or for Mr. Morris almost daily. She also disbursed the trust funds to Mr. Morris and various creditors, including respondent, pursuant to what she claimed were Mr. Morris' wishes.

Based on these findings, the committee then determined that respondent violated the Rules of Professional Conduct as follows: He violated Rule 1.5 by charging excessive fees for estate and tax planning when he admitted doing little work on either. He charged excessive fees for criminal defense when the matters were essentially resolved through guilty pleas, and he overcharged for the judicial commitment matter. The documentary evidence also reflects that respondent charged for depositing checks, transporting vehicles, and for services not performed. Respondent also violated Rules 1.7 and 1.15, which were facilitated by his violation of Rule 5.3. The committee specifically found that respondent's representation and Mrs. Bailey's work as trustee were a joint effort by both, as Mrs. Bailey was at all times acting as agent, employee, wife, and co-conspirator with respondent. Finally the committee found that respondent violated Rule 8.4(c),



resulting in the overall depletion of \$2,000,000 in five years. The committee further noted that, because there were no checks and balances, the trust became an ATM machine from which respondent, Mrs. Bailey, and Mr. Morris made withdrawals on a whim. Nevertheless, the committee did not find a violation of Rule 1.3 because respondent's failures to require Mrs. Bailey to file annual accountings and income tax returns were not a result of lack of diligence but the result of the conflict of interest and failure to supervise Mrs. Bailey.

The committee then determined that the baseline sanction for respondent's misconduct is disbarment. In aggravation, the committee found the following: a prior disciplinary record, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, substantial experience in the practice of law (admitted 1988), and indifference to making restitution. In mitigation, the committee found full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings and imposition of other penalties or sanctions. The committee also determined that respondent's pattern of failing to supervise Mrs. Bailey caused extensive harm.

Under these circumstances, and in light of the aggravating factors, the committee recommended that respondent be disbarred.

Respondent objected to the hearing committee's report and recommendation, arguing that Mr. Morris was determined to have his money and concocted one scheme after another to deplete the trust.

#### *Disciplinary Board Recommendation*

After review, the disciplinary board determined that the hearing committee's factual findings do not appear to be manifestly erroneous as they are supported by

the testimony and documentary evidence. The board also determined that the committee correctly applied the Rules of Professional Conduct.

Specifically, the board found that respondent violated Rule 1.5 by charging the trust unreasonable fees on several occasions. For example, he billed the trust \$9,255 from January 5, 2000 to February 9, 2000 without producing documentation to show what services he provided. Although he testified that he spent this time on Mr. Morris' criminal matters, he was not able to identify any criminal charges filed prior to May 2000. The record also reflects that respondent billed the trust more than \$11,000 for legal services after he withdrew as attorney for the trust on January 13, 2003, but his billing statements only account for 3.1 hours of work after his resignation. The record also does not corroborate or confirm respondent's suggestion that this money was repayment for legitimate expenditures on Mr. Morris' behalf. Additionally, respondent overcharged the trust for 10 hours of work for attending Mr. Morris' judicial commitment hearing on December 11, 2000 when all he did was wait outside in the hall.

The board further found that respondent violated Rule 1.7 because, while he was the attorney for the trust and Mr. Morris, he had his wife appointed trustee of Mr. Morris' trust. While Mrs. Bailey was trustee, she worked in respondent's law office. Respondent never reviewed the bills Mrs. Bailey submitted to the trust for payment of her services as trustee, and she charged three to four times the amount charged by the Trust Company of Louisiana. Respondent billed the trust monthly for his services, and his wife, as trustee, was entrusted with reviewing those bills to ensure they were reasonable, fair, and in the best interest of Mr. Morris. Based upon the evidence in the record and respondent's testimony, it is clear that respondent's personal interests materially limited his representation of Mr. Morris.

With respect to Rule 1.15, the board found that respondent was not able to credibly explain why more than \$4,000 in trust funds was used to pay his personal

credit card bill. Respondent's documentary evidence fails to corroborate his story that the charges on his credit card were for Mr. Morris' sole benefit. Additionally, respondent appears to have retained all of the funds paid to him for legal services that he is only partially able to prove he provided. For these reasons, the board determined that respondent violated Rule 1.15.

The board further found that respondent did not appropriately supervise Mrs. Bailey's work as trustee. Mrs. Bailey charged the trust three or four times the amount charged by the Trust Company of Louisiana for her trustee services, and respondent never reviewed the bills she submitted for her services. Respondent should have been aware that Mrs. Bailey's job as trustee was to preserve the trust in an effort to provide an income stream for the rest of Mr. Morris' life. Instead, Mrs. Bailey knowingly allowed Mr. Morris to raid the principal of the trust until it was defunct. Respondent did not review his wife's management of the trust, nor did he attempt to stop her mismanagement of the funds. Furthermore, respondent failed to advise Mrs. Bailey of her duty to file an annual accounting of the trust. As a result, there is no documentation accurately reflecting the disbursements made from the trust. Thus, the board determined that respondent violated Rule 5.3.

Finally, the board additionally found that respondent violated Rule 8.4(c) because his overall conduct was dishonest, resulting in the depletion of a large trust fund belonging to an essentially disabled young man. Nevertheless, the board agreed with the committee that respondent did not violate Rule 1.3 because nothing in the record indicates he was not diligent or prompt in his representation of Mr. Morris.

The board then determined that respondent knowingly and intentionally violated duties owed to Mr. Morris. Respondent's conduct caused substantial injury as Mr. Morris died destitute upon depleting his entire trust fund under the supervision of respondent and his wife. The board agreed with the committee that

the baseline sanction is disbarment. Other than the aggravating factor of a pattern of misconduct, the board also agreed with the aggravating and mitigating factors found by the committee.

Turning to the issue of an appropriate sanction, the board determined that the heartland of respondent's misconduct was his failure to understand and avoid the conflict of interest inherent in his representation of Mr. Morris and the trust while his wife (and employee) was trustee. Respondent essentially set up a triangular relationship between his wife, Mr. Morris, and himself, disallowing external checks and balances and failing to report to taxing authorities, accountants, Mr. Morris, or Mr. Morris' mother. Without an accountant involved in preparing state and federal tax returns and because no accounting was rendered until after the trust was depleted, there was no way for Mr. Morris to understand the financial consequences of his actions.

Under these circumstances, and after considering case law addressing similar misconduct, the board recommended that respondent be disbarred.

Neither respondent nor the ODC filed a timely objection in this court to the disciplinary board's recommendation. However, after the expiration of the time for filing objections under Supreme Court Rule XIX, § 11(G)(1), respondent sought to file a "late" objection. On January 25, 2013, the court issued an order rejecting respondent's objection as untimely and, therefore, procedurally improper but permitting the filing of briefs, without oral argument. Respondent and the ODC both filed briefs in response to the court's order.

## DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has

been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57.

In this matter, the record supports a finding that respondent charged excessive fees to Mr. Morris' trust, engaged in a conflict of interest, failed to properly supervise his wife in her duties as both his non-lawyer assistant and the trustee of the trust, converted client funds to his own use by allowing trust funds to be used to pay his personal credit card bills, and engaged in conduct involving dishonesty. Additionally, when faced with the sizeable money judgment Mr. Morris obtained against him, respondent and his wife filed for bankruptcy protection. However, the bankruptcy court determined that the judgment was non-dischargeable because respondent and Mrs. Bailey misappropriated Mr. Morris' trust funds. Based on these facts, respondent has violated the Rules of Professional Conduct as found by the hearing committee and the disciplinary board.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent knowingly and intentionally violated duties owed to Mr. Morris, causing significant actual harm, as Mr. Morris was left destitute. The baseline sanction for this type of misconduct is disbarment. The record supports the aggravating and mitigating factors found by the committee.

Considering the weight of the aggravating circumstances present, there is no justification for any downward deviation from the applicable baseline sanction. Accordingly, we conclude the disciplinary board's recommendation is appropriate, and we will order that respondent be disbarred.

**DECREE**

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record and the briefs filed by the parties, it is ordered that Joseph W. Bailey, Louisiana Bar Roll number 18773, be and he hereby is disbarred. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

The Supreme Court of the State of Louisiana

IN RE: JOSEPH W. BAILEY

NO. 2012-B-2536

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IN RE: Bailey, Joseph W. ; - Plaintiff; Applying for Rehearing of this Court's order dated April  
12, 2013; Office of Disciplinary Board No. 11-DB-084  
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May 31, 2013

Rehearing denied.

MRC

BJJ

JPV

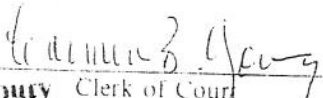
JTK

JLW

GGG

JDH

Supreme Court of Louisiana

  
Deputy Clerk of Court  
For the Court