



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

**IN THE MATTER OF
WESLEY LINDON CLARKE,
STATE BAR CARD NO. 24014254**

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CAUSE NO. 65865

JUDGMENT OF DISBARMENT

On the 29th day of July, 2022, the above-styled and numbered reciprocal discipline action was called for hearing before the Board of Disciplinary Appeals. Petitioner, the Commission for Lawyer Discipline, appeared by attorney and announced ready. Respondent, Wesley Lindon Clarke, appeared by and through his attorney of record and announced ready. All questions of fact and all matters of law were submitted to the Board of Disciplinary Appeals for determination. Having considered the pleadings on file, having received evidence, and having heard the argument of counsel, the Board of Disciplinary Appeals is of the opinion that Petitioner is entitled to entry of the following findings, conclusions, and orders:

Findings of Fact. The Board of Disciplinary Appeals finds that:

- (1) Respondent, Wesley Lindon Clarke, State Bar Card Number 24014254, is licensed and authorized to practice law in the State of Texas by the Supreme Court of Texas but is claiming a Minimum Continuing Legal Education (MCLE) Non-practicing Exemption.
- (2) On or about August 27, 2019, a Report and Recommendation of the Board on Professional Responsibility was entered by the District of Columbia Court of Appeals Board on Professional Responsibility in the matter styled *In the Matter of: Wesley L. Clarke, Respondent, A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 474594)*, Board Docket No. 19-BD-057, Disciplinary Docket Nos. 2016-

D231, 2017-D288, 2018-D021, & 2018-D178, which states in pertinent part:

The Board, acting through its Chair, and pursuant to D.C. Bar R. XI, § 12(b) and Board Rule 16.2, has reviewed Respondent's affidavit declaring his consent to disbarment and recommends that the Court enter an order disbarring Respondent on consent pursuant to D.C. Bar R. XI, § 12(b), effective on October 25, 2019. See Order, *In re Allen*, D.C. App. No. 12-BG-1148 (Aug. 23, 2012) (disbarring the respondent on consent, effective approximately six weeks after the Court's order).

- (3) On or about September 12, 2019, the District of Columbia Court of Appeals issued an Order in Cause No. 19-BG-779, styled *In re Wesley L. Clarke, Respondent, Bar Registration Number 474594*, which states in pertinent part:

On consideration of the affidavit of Wesley L. Clarke, wherein he consents to disbarment from the bar of the District of Columbia pursuant to D.C. Bar Rule XI, § 12, which affidavit has been filed with the Clerk of this court, and the Report and Recommendation of the Board on Professional Responsibility, it is

ORDERED that the said Wesley L. Clarke is hereby disbarred by consent effective October 25, 2019.

- (4) On or about August 5, 2020, a Notice of Motion and an Affirmation in Support of Motion for Reciprocal Discipline were filed in the Supreme Court of the State of New York Appellate Division: First Judicial Department in the matter styled *In the Matter of Wesley L. Clarke, (admitted as Wesley Lindon Clarke), an attorney and counselor-at-law: Attorney Grievance Committee for the First Judicial Department, Petitioner, v. Wesley L. Clarke, (OCA Atty. Reg. No. 2525350), Respondent*.
- (5) Attached as Exhibit B to the Affirmation in Support of Motion for Reciprocal Discipline, referenced in paragraph (4) above, was the Affidavit Required by D.C. Bar Rule XI, § 12(a), executed by Respondent, in which he stated:
3. I am aware that Disciplinary Counsel is currently investigating multiple matters involving my conduct. . . .
 4. I am aware that the allegations of misconduct in 2016-D231 include: that I misappropriated estate funds in violation of Rules 1.15(a); made false representations to the probate court and the Office of the Auditor Master about fees I collected in violation of Rule 8.4(c) and 8.4(d).

5. I am aware that the allegations of misconduct in 2017-D288 include: that I misappropriated disputed funds in violation of Rules 1.15(a) and (d).
 6. I am aware that the allegations of misconduct in 2018-D021 include: that I submitted false billings to both my client and to the Office of the Auditor Master in violation of Rule 8.4(c) and 8.4(d).
 7. I am aware that the allegations of misconduct in 2018-D178 include misappropriation of estate funds in violation of Rule 1.15(a).
 8. Based upon inaccuracies in billing I generated for my clients, I acknowledge that Disciplinary Counsel has sufficient evidence to prove that I engaged in reckless misappropriation in three matters
 9. Although I do not believe that I intentionally misled the client or the Court, I acknowledge that Disciplinary Counsel has sufficient evidence to prove that I engaged in reckless dishonesty in all four matters
 10. I acknowledge serious shortcomings in my representation in each of these cases, including the issuance of bills which, upon further review, contained significant inaccuracies. While I never intended to misrepresent any material fact or to misappropriate funds belonging to anyone, I recognize that Disciplinary Counsel has sufficient evidence to prove that I engaged in reckless misappropriation and reckless dishonesty.
 11. I acknowledge that the material facts upon which the allegations of misconduct are predicated are true.
 12. I submit this consent because I know that if disciplinary proceedings based on the alleged misconduct were brought, I could not successfully defend against them.
- (6) On or about November 19, 2020, an Order and Per Curiam Opinion were entered in the Supreme Court of the State of New York Appellate Division, First Judicial Department in Case No. 2020-03331, styled *In the Matter of Wesley L. Clarke (Admitted as Wesley Lindon Clarke) an attorney and counsel-at-law: Attorney Grievance Committee for the First Judicial Department, Petitioner, v. Wesley L. Clarke, (OCA Atty. Reg. No. 2525350), Respondent*, wherein the Court disbarred Respondent, finding that “disbarment is commensurate with the discipline imposed in D.C. and is in accord with our precedent.”
- (7) Respondent, Wesley Lindon Clarke, is the same person as Wesley L. Clarke, who is the subject of the Orders described above.
- (8) The D.C. Rules of Professional Conduct at issue provide as follows:
- 1.15(a). A lawyer shall hold property of clients or third persons that is in the lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds of clients or third persons that are in the lawyer’s possession (trust funds) shall be kept in one or more trust

accounts maintained in accordance with paragraph (b). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

1.15(d). When in the course of representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Any funds in dispute shall be deposited in a separate account meeting the requirements of paragraph (a) and (b).

8.4(c). It is professional misconduct for a lawyer to: . . . Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

8.4(d). It is professional misconduct for a lawyer to: . . . Engage in conduct that seriously interferes with the administration of justice.

- (9) On September 23, 2021, Respondent was personally served by a private process server with the Petition for Reciprocal Discipline, which included a copy of the Board's Internal Procedural Rules, notice of the hearing, and the Board's order that he show cause within thirty days why reciprocal discipline would be unwarranted. *See* TEX. R. DISCIPLINARY P. R. 9.02.
- (10) Respondent filed his answer on April 11, 2022, more than five months after the deadline to file an answer and raise defenses. *See* TEX. R. DISCIPLINARY P. R. 9.02, .03.
- (11) In the Motion for Consent to Testify, to Present Witnesses, and for Witness Testimony Via Video Link, filed by Respondent on June 28, 2022, Respondent's counsel admitted that Respondent had not filed a timely answer.
- (12) By Order dated July 1, 2022, the Board Chair exercised discretion pursuant to BODA Internal Procedural Rule 7.03 to allow Respondent to testify on his own behalf at the hearing but denied Respondent's request to allow other witnesses to present testimony.
- (13) At the July 29, 2022 hearing, Respondent offered no justification or explanation for his failure to timely file an answer to the Order to Show Cause in this matter, but apologized for his failure to do so.

Conclusions of Law. Based upon the foregoing findings of fact, the Board of Disciplinary Appeals makes the following conclusions of law:

- (1) This Board has jurisdiction to hear and determine this matter. TEX. RULES DISCIPLINARY P. R. 7.08(H).
- (2) Respondent's answer to the Order to Show Cause on Petition for Reciprocal Discipline was due on October 25, 2021. TEX. RULES DISCIPLINARY P. R. 9.02.
- (3) Despite being duly served, Respondent failed to file a timely answer and did not timely raise defenses to the imposition of reciprocal discipline. TEX. RULES DISCIPLINARY P. R. 9.03.
- (4) Because Respondent failed to answer timely, Rule 9.03 requires that the Board enter a judgment imposing reciprocal discipline. TEX. RULES DISCIPLINARY P. R. 9.03, 17.05.
- (5) Pursuant to BODA Internal Procedural Rule 7.03, the Chair exercised discretion to receive testimony and evidence from Respondent despite his failure to file a timely answer.
- (6) Even if Respondent had timely raised defenses, Respondent's testimony and evidence failed to establish any defense under Rule 9.04 by clear and convincing evidence.
- (7) Reciprocal discipline identical, to the extent practicable, to that imposed by the District of Columbia Court of Appeals Board on Professional Responsibility, is warranted in this case. TEX. RULES DISCIPLINARY P. R. 9.03.
- (8) The discipline identical, to the extent practicable, to that imposed by the District of Columbia Court of Appeals is disbarment. *Cf.* TEX. RULES DISCIPLINARY P. R. 10.05.

It is, therefore, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent, Wesley Lindon Clarke, State Bar No. 24014254, be and hereby is **DISBARRED** from the practice of law in the State of Texas, and his license to practice law in this state be and hereby is revoked.

It is further **ORDERED, ADJUDGED, and DECREED** that Respondent, Wesley Lindon Clarke, is prohibited from practicing law in Texas, holding himself out as an attorney at law,

performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any administrative body or holding himself out to others or using his name, in any manner, in conjunction with the words “attorney,” “counselor,” or “lawyer.”

It is further **ORDERED** that Respondent, Wesley Lindon Clarke, shall immediately notify each of his current clients, if any, in writing of this disbarment. In addition to such notification, Respondent is **ORDERED** to return any files, papers, unearned monies, and other property, if any, which belongs to clients and former clients and is in Respondent’s possession or control, to the respective clients or former clients or to another attorney at the client’s or former client’s request, within thirty (30) days of the date of this judgment.

It is further **ORDERED** that Respondent, Wesley Lindon Clarke, shall file with the State Bar of Texas, Chief Disciplinary Counsel’s Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Board, an affidavit stating that all current clients have been notified of Respondent’s disbarment and that all files, papers, monies, and other property belonging to all clients and former clients have been returned as ordered herein. If Respondent should be unable to return any files, papers, monies, or other property of any client or former client, Respondent’s affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of his inability to return to said client any files, papers, monies, or other property.

It is further **ORDERED** that Respondent, Wesley Lindon Clarke, shall, on or before thirty (30) days from the signing of this judgment by the Board, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court or tribunal in which Respondent has any matter pending, if any, of the terms of this judgment,

the style and cause number of the pending matter(s), and the name, address, and telephone number of the client(s) Respondent is representing.

It is further **ORDERED** that Respondent, Wesley Lindon Clarke, shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Board, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice has received written notice of the terms of this judgment.

It is further **ORDERED** that Respondent, Wesley Lindon Clarke, immediately surrender his Texas law license and permanent State Bar Card to the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further **ORDERED** that a certified copy of the Petition for Compulsory Discipline on file herein, along with a copy of this Judgment, be sent to the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

It is further **ORDERED** that this Judgment of Disbarment shall be made a matter of public record and be published in the Texas Bar Journal.

Signed this 31st day of August 2022.



CHAIR PRESIDING

Board Vice Chair Michael Gross and Board members Jason Boatright, Guy Choate, and Rudy Metayer dissent.

Board member Courtney Schmitz did not participate in this decision.