



F I L E D

Jan 21 2025

THE BOARD of DISCIPLINARY APPEALS  
Appointed by the Supreme Court of Texas

**CAUSE NO. 69455**

**IN THE MATTER OF** § **BEFORE THE BOARD OF**  
**DERRICK DUANE CORNEJO** §  
**(State Bar Card No.** § **DISCIPLINARY APPEALS,**  
**24048049)** §  
§ **APPOINTED BY THE SUPREME**  
§  
§ **COURT OF TEXAS**

**RESPONDENT'S PRE-HEARING MEMORANDUM OF LAW**

Respondent, Derrick Duane Cornejo, files this his Respondent's Pre-Hearing Memorandum of Law in the above styled cause and would state the following in response to Petitioner's (CDC's) request for Reciprocal Discipline, pursuant to Part IX, *Texas Rules of Disciplinary Procedure* (Rules 9.01-9.04) and would show unto the Board of Disciplinary Appeals as follows:

**BACKGROUND FACTS**

1. From April 18, 2023, to April 20, 2023 the Colorado hearing board on discipline heard Case Number 21PDJ085 and held the hearing under C.R.C.P. 242.30 in the matter of *The People of the State of Colorado v. Derrick Duane Cornejo* #29438. On June 13, 2023 the Hearing Board issued an Opinion Imposing Sanctions under C.R.C.P. 242.31 *disbarring* Derrick Duane Cornejo (Respondent) from the practice of law, effective August 1, 2023. Several different counts were added during the proceeding.
2. Respondent appealed the Hearing Board Order to the Colorado Supreme Court, which affirmed and issued a Mandate on February 7, 2024.
3. On November 5, 2024, Petitioner, Commission for Lawyer Discipline, filed for Reciprocal Discipline in the State of Texas, through the CDC, which has now been reset

for a hearing on January 31, 2025. Petitioner's counsel agreed to an extension for Respondent to file an Answer to December 27, 2024. Respondent filed an Answer, through counsel, on that date, December 27, 2024.

### **ARGUMENT & AUTHORITIES**

Respondent relies upon the Defenses set out in Rule 9.04A, Rule 9.04 C. and Rule 9.04D., Texas Rules of Disciplinary Procedure, that is that the procedure used in Colorado lacked due process, the imposition by the Board of Disciplinary Appeals of discipline identical, to the extent practical, with that imposed by the other jurisdiction (Colorado) would result in a grave injustice and the misconduct established in the other jurisdiction (Colorado) warrants substantially different discipline in this state.

**I.9.04A- That the procedure followed by the other jurisdiction on the disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.**

In this reciprocal disciplinary case, the Office of the Attorney Regulation in Colorado filed a two claim Complaint in Case No. 21PDJ085 on November 24, 2021. A later one claim complaint, in case No. 22PDJ026 was filed on June 8, 2022. These cases were consolidated. Then on September 20, 2022, a six claim Complaint was filed under Case No. 22PDJ057. On October 5, 2022, the Court consolidated case No. 22PDJ057 with the other two consolidated cases and in late November 2022 issued a scheduling order. Later, claim one of case No. 22PDJ057 was dismissed (RPC 1.12(a)), as well as the second claim in case No. 21PDJ085. Before all of these cases were consolidated and heard by a Hearing Board in Colorado, Respondent was not given fair notice that disbarment was

being sought. While disciplinary proceedings are considered quasi-criminal in Colorado for due process purposes, Respondent lawyers do not have a right to trial by jury in Colorado, unlike Texas, or a full panoply of rights afforded to the accused in a criminal case *People v. Smith* 937 P.2d 724, 727 (Colo. 1997); *People v. Robnett* 859 P.2d 872, 875 (Colo. 1993). The case of *In re Ruffalo* 390 U.S. 544, 549 (1968) is applicable here. In that case the United States Supreme Court held that when the charges for which the Petitioner stand disbarred were not in the original charges made against him, there is a deprivation of due process on same and the opportunity for fair notice and to be heard, a lack of procedural due process. The Supreme Court further held that these disbarment proceedings were quasi-criminal in nature, as they are in Colorado for due process and the charge must be known *before* the proceedings commence. If not, they become a trap, when after the proceedings are underway, the charges are amended.

Here, this is undisputed. There was a new six claim Complaint filed on September 30, 2022 and it was consolidated with the other two consolidated cases, in which a summary judgment was sought and a continuance granted. The new six claim Complaint contained in Claim No. 3, an alleged violation of Colorado Rule 1.15(a), the gravamen of the Board's sanction for disbarment, which was not alleged in the earlier Complaints.

**II.904C- That the imposition by the Board of Disciplinary Appeals of discipline identical, to the extent practical, with that imposed by the other jurisdiction (Colorado) would result in a grave injustice.**

- (a) First, the Colorado system involves a central hearing board, which hears and rules upon Complaints and makes recommendations to the Supreme Court of Colorado.

This is the same system that is found in Ohio in the *Ruffalo* case. In this case, the complaints were amended, dropped, added and consolidated several times. These types of proceedings in Ohio and in Colorado have been declared to be quasi-criminal for due process purposes by the Supreme Court of the United States. *In re Ruffalo*, 390 U.S. 554 (1968). By contrast, in the Texas system, the disciplinary proceedings are considered civil in nature TRDP 3.08A; *State Bar of Texas v. Evans* 774 S.W.2d 656, 657 (Tex. 1989). The Texas Constitution §10, however, guarantees all litigants the right to trial by jury in all civil cases. Following that instruction, in Part III, Rules 3.01 to 3.15, Respondent is entitled to a trial in the district court of the State of Texas, with a jury if he so chooses, on all allegations of misconduct alleged by the Commission for Lawyer Discipline, unless this is a case of compulsory discipline, involving a serious or intentional crime. Respondent's plea of guilty to neglect of an at risk person and the subsequent expungement of any record of conviction in Colorado was a misdemeanor, not a serious or intentional crime in Texas. Compulsory discipline applies in Texas when an attorney has been convicted of or received deferred adjudication for an "intentional crime" as that term is defined in the rules; in all other instances of alleged attorney misconduct, discipline is determined in the *standard grievance process In re Lock*, 54 S.W.3d 305 (Tex. 2021). Accordingly, Respondent is entitled to a jury trial in the Texas system on all of the allegations, including that he plead guilty to the neglect of an at risk person and therefore, because of the differences in the Colorado System and the

Texas System, the imposition of identical discipline in Texas would not only result in a grave injustice, but deprive Respondent of a court trial by a jury in Texas.

(b) Second, Colorado has adopted the American Bar Associations (ABA) *Model Rules of Professional Conduct* and codified them. However, the *Texas Disciplinary Rules of Professional Conduct* depart in many important instances from the ABA Model Rules. Some of the Texas Rules track more closely the provisions of the prior Texas Code of Professional Responsibility. Other provisions are simply unique to Texas *Restatement §1, cmt.d* (the form of the Texas Code is marked differently from the ABA models, but shows significant borrowing from those models). One example is the case of *The State Bar v. Gailey* 889 S.W.2d 519, 521 (Tex. App.-Houston [14<sup>th</sup> Dist.] 1994), which is relevant to the Colorado finding of conversion from Respondent's trust account, and holds that the Texas predecessor rule to Rule 1.14, *Tex. Dis. R. Prof. C.* is not a strict liability rule and does not constitute a violation of the disciplinary rules, where the monthly bank statements of client trust funds reflects a balance below that which should have been held in trust. Another example is the case of *In re Berleth*, 2020 WL522710 @\* 24)(S.D.Tex. 2020), prohibiting any conduct that involves dishonesty, fraud, deceit or misrepresentation because there was no evidence that the attorney intended to deceive. The terms "dishonestly", deceit, and misrepresentation have similar and overlapping dictionary definitions, demonstrating lack of honesty and integrity. Violation of Rule 8.04(a)(3) requires proof of fraudulent intent or an intent to deceive. Additionally, unlike Colorado, neglect within the meaning of the Texas rules

requires “inattentiveness” involving a conscious disregard for the responsibilities owed to a client or clients. See Rule 1.01(c), *Tex. Dis. R. Prof. C.* Further, in section IV Sanctions of the Opinion from Colorado, the Board in Colorado applied the American Bar Association Standards for Imposing Lawyer Sanctions (“ABA” Standards) and Colorado Supreme Court case law. Three variables yield a *presumptive* sanction of disbarment in Colorado. However, under the Texas Rule, Part XV, Guidelines for Imposing Sanctions, there is no such *presumption*. By imposing the identical discipline of disbarment in Texas upon Respondent would mean this Board of Disciplinary Appeal is adopting the *ABA Model Rules of Professional Conduct* and not the Texas Rules, which would be improper, contrary to Texas law and constitute a grave injustice. Finally, the Board in Colorado found forgery and conversion. These offenses are not cited by the *Texas Disciplinary Rules of Professional Conduct* and would have to fall under Rule 8.03(a)(4) of the *Texas Disciplinary Rules* involving *dishonesty*. However, as noted, in Texas, this is an intent offense. In Texas, the attorney-client relationship is one of principal and agent, and the acts of one ordinarily bind the other. *Portnow v. Berg*, 593 S.W2d 843, 845 (Tex. Civ. App.-Houston [1<sup>st</sup> Dist.] 1980). Respondent’s signing of his client’s check with permission was not forgery or conversion in Texas.

**III.9.04D- The misconduct established in the other jurisdiction (Colorado) warrants substantially different discipline in this state**

For all of the above reasons set forth in Number 3 above, the misconduct in the Colorado jurisdiction warrants substantially different discipline in this state. As

indicated the sanction in this state should be based upon a jury finding of violation of disciplinary rules 1.01(b)(1) or (2); 1.14(a)-(c) and/or 8.04(a)(3) or (4). The jury or courts are fact finders in this state, when requested by Respondents, unlike the Colorado system. The effect of an attorney's charging lien, as in Colorado, would impact any Rule 1.14 allege violation here in Texas and, as pointed out, in Texas the 8.04(a)(3) alleged violations have been held to contain the element of knowledge and intent to deceive. Further, in a disciplinary proceeding in Texas, in the Guidelines for Imposing Sanctions, there is no *presumption* of disbarment, but the sanction for failure to maintain personal property, including misappropriation, should be made knowingly See: Rule 15.02 and 15.04(B)(1), *Tex. R. Disc. Proc.* In Texas, Suspension or public or private reprimand may also be appropriate when the Respondent knows he is dealing improperly with client property and causes injury or potential injury to a client or is negligent in dealing with client properly See: Rule 15.04B (2-4), *Tex. R. Dis. Proc.* This is not a "presumption" under the ABA standard used in Colorado. A judge in Texas may well find no more than neglect, given to charging lien or even no violation, given the *Gailey* case above, even with the enhancing facts, set out in Rule 15.02, *Tex. R. Dis. P.* Again, Respondent has not been convicted of any serious or intentional crime involving "theft" in either jurisdiction. The misdemeanor judgment of neglect has been vacated and dismissed with prejudice.

## **Prayer**

For the above reasons, the Board of Disciplinary Appeal should not impose Reciprocal Discipline in this case and should refer the matter of the Chief Disciplinary Counsel to bring a disciplinary complaint under the grievance system in Texas to afford Respondent his full constitutional rights of trial by jury in a Texas Court.

Respectfully submitted,

/s/ Wayne H. Paris

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of Respondent's Pre-Hearing Memorandum of Law has been served upon all interested counsel of record on this 20th day of January 2025 by electronic transmission.

s/ Wayne H. Paris

Wayne H. Paris