



BEFORE THE BOARD OF DISCIPLINARY APPEALS
Appointed By
THE SUPREME COURT OF TEXAS

IN THE MATTER OF §
CARL B. DUKE, JR. § **CAUSE NO. 65570**
STATE BAR CARD NO. 24059184 §

JUDGMENT DENYING RECIPROCAL DISCIPLINE

On the 29th day of October, 2021, the above-styled and numbered disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner, the Commission for Lawyer Discipline, appeared by attorney and announced ready. Respondent, Carl B. Duke, Jr., appeared *pro se* and announced ready. All matters of fact and all issues 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 makes the following findings, conclusions, and orders:

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

- (1) Respondent, Carl B. Duke, Jr., State Bar Card Number 24059184, is licensed to practice law in the State of Texas by the Supreme Court of Texas.
- (2) Respondent is not currently eligible to practice law in Texas because he has claimed an MCLE exemption.
- (3) On or about February 17, 2021, a Revised Joint Petition for Consent Discipline Pursuant to Rule XIX § 20, which includes a Revised Joint Memorandum in Support of Petition for Discipline on Consent Pursuant to Rule XIX, §20 and Stipulations of Fact in Support of Joint Petition for Discipline on Consent, was filed in the Supreme Court of Louisiana in a matter styled: *In Re: Confidential Party, Docket No. 2020-B-1272*.
- (4) The documents referenced in paragraph (3), above, reflect that the disciplinary proceeding arose out of two separate, alcohol-related events:

- (1) a 2018 altercation between Respondent and his wife, resulting in Respondent being charged with domestic abuse battery, and (2) a 2019 incident that resulted in Respondent being charged with driving while intoxicated, speeding, resisting an officer, flight from an officer, and aggravated criminal damage to property.
- (5) In Section VI of the Revised Joint Petition for Discipline on Consent Pursuant to Rule XIX, §20 stated: “Respondent wishes to conditionally admit that he has violated the provisions of [Louisiana Rules of Professional Conduct] 8.4(b) and 8.04(a) by his commission of criminal acts.”
- (6) The referenced Louisiana Rules of Professional Conduct provide:
- 8.4(b). It is professional misconduct for a lawyer to Commit a criminal act especially one that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; and
- 8.4(a). It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.
- (7) The Revised Joint Memorandum in Support of Petition for Discipline on Consent states that the domestic battery charge against Respondent was dismissed, and the other criminal charges qualified for an enhanced felony diversion program, in which Respondent was enrolled and fully compliant.
- (8) On or about February 17, 2021, an Order/Per Curiam Opinion was entered by the Supreme Court of the State of Louisiana in a matter styled: *In Re: Carl Binus Duke, Jr., No. 2020-B-1272*, accepting the petition for consent discipline and suspending Respondent from the practice of law for a period of two years, with all but one year and one day deferred. That suspension was ordered to be retroactive to July 31, 2019, the date of Respondent’s interim suspension.
- (9) Respondent, Carl B. Duke, Jr., is the same person as Carl Binus Duke, Jr., who is the subject of the Order/Per Curiam Opinion issued by the Supreme Court of the State of Louisiana; and
- (10) The Order/Per Curiam entered by the Supreme Court of the State of Louisiana is final.
- (11) Respondent testified that he completed the pretrial intervention program on August 9, 2021, and he presented evidence that all charges that had been

brought against him giving rise to the underlying discipline in Louisiana, referenced in paragraph (4) above, have been dismissed.

- (12) Nothing in the documents referenced in paragraph (3), above, or in the Supreme Court of the State of Louisiana's Order/Per Curiam Opinion, referenced in paragraph (8), above, reflects a finding or agreement that Respondent's conduct reflected adversely on his fitness to practice law.
- (13) There is no evidence that the conduct for which Respondent was disciplined in any way relates to his practice of law.
- (14) The Commission cited no instances of attorney discipline being imposed in Texas for conduct similar to that alleged against Respondent.
- (15) The Commission referenced a case in which this Board denied reciprocal discipline based on assault family violence. *See In re Cardenas*, BODA Case No. 48983 (Apr. 25, 2012).
- (16) In that case, the Board held that Louisiana Rule of Professional Conduct 8.4(b) and Texas Disciplinary Rule of Professional Conduct 8.04(a)(2) are substantially different. The Board explained:

[The Louisiana] rule allows for discipline of any crime, whether or not the underlying conduct related to the practice of law and making no distinction between misdemeanor and felony.

[The Texas rule] limits criminal acts which result in misconduct to "a serious crime or . . . any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

Id.

- (17) The Board also held that a misdemeanor conviction for domestic abuse battery, "however reprehensible that conduct, does not necessarily render the attorney unfit to practice law." *Id.* (citing *In re Lock*, 54 S.W.3d 305, 309 (Tex. 2001)).

Conclusions of Law. Based upon the foregoing findings of facts, 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 has proven by clear and convincing evidence one or more of the defenses listed in Texas Rule of Disciplinary Procedure 9.04.
- (3) No reciprocal discipline is warranted in this case. *See* TEX. RULES DISCIPLINARY P. R. 9.04 (“If the Board of Disciplinary Appeals determines that one or more of the foregoing defenses have been established, it shall enter such orders as it deems necessary and appropriate.”).

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that the Petition for Reciprocal Discipline is **DENIED**.

Signed this 2nd day of November 2021.

A handwritten signature in blue ink, appearing to read 'Kevin H.', is written above a horizontal line.

CHAIR PRESIDING