

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

IN THE MATTER OF	§	
CARL HENRY FRANKLIN,	§	CAUSE NO. 69470
STATE BAR CARD NO. 07373850	§	

AGREED JUDGMENT OF PROBATED SUSPENSION

On this day the above-styled and numbered reciprocal disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner and Respondent appeared in person as indicated by their respective signatures below and announced that they agree to the findings of fact, conclusions of law, and orders set forth below solely for the purposes of this proceeding which has not been fully adjudicated. Respondent waives any and all defenses that could be asserted under Rule 9.04 of the Texas Rules of Disciplinary Procedure. The Board of Disciplinary Appeals, having reviewed the file and in consideration of the agreement of the parties, 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, Carl Henry Franklin, Bar Card No. 07373850, is an attorney licensed and authorized to practice law in the State of Texas by the Supreme Court of Texas.
- (2) On September 1, 2023, the Joint Stipulations of Fact contained in the Joint Motion for Consent Discipline Pursuant to Rule XIX, Section 20, filed in a matter styled, Supreme Court of Louisiana, *In Re: Confidential Party*, Docket No. 23 B 1209 (OSC File No. 40750); which states in pertinent part as follows:

I.

Respondent in [sic] a 63-year-old attorney who was admitted to practice law on April 12, 1986. He has no prior discipline.

II.

On November 1, 2022 check #3796 drawn on Respondent's trust account for \$2122.45 and made payable to Willis Knighton Health was returned unpaid due to the fact that Respondent's trust account balance was \$1205.37 and was insufficient to pay the check. The check was paid on the following day after Respondent made an unrelated deposit to his trust account.

III.

After the overdraft was reported by Respondent's bank to the ODC, investigation revealed that the deficiency in Respondent's trust account was caused by his practice of leaving his undisbursed attorney's fees and cost reimbursements in his trust account, and then using these funds, along with unrelated client balances, to pay clerk of court costs.

IV.

ODC completed a 6-month audit of Respondent's trust account and found that Respondent has (1) failed to maintain adequate trust account reconciliations; (2) commingled his fees and reimbursements with client funds; (3) converted client funds, although ODC found no evidence of theft from any client; and (4) failing to promptly remit client funds in three matters. These acts and omissions amount to violations of RPC 1.15 (a), (b), (d) and (f), and occurred because of Respondent's practice of leaving his fees and reimbursements in his trust account and making client and cost disbursements as they come due without properly reconciling these items to the appropriate client accounts. In sum, ODC found twenty-six (26) items with discrepancies, amounting to a total shortage/conversion of \$4065.79 at the end of the audit period.

V.

ODC took Respondent's sworn statement on June 23, 2023, wherein Respondent admitted to poor accounting practices which resulted in the above-referenced violations. At ODC's suggestion, Respondent hired an accountant on June 30, 2023, Lonnie Harpy, CPA, to perform monthly trust

account reconciliations, and he completed the LADB trust accounting course on July 3, 2023.

VI.

Respondent admits that his acts and omissions as described herein violate RPC 1.15 (a), (b), (d) and (f). His conduct was knowing and risked potential injury to his clients whose accounts contained discrepancies. The only aggravating factor is Respondent's substantial experience in legal practice. Mitigating factors include absence of prior discipline, absence of a dishonest or selfish motive, timely good faith effort to rectify consequences of misconduct, a cooperative attitude toward disciplinary proceedings, character and reputation, and remorse. ABA Standard 4.12 states that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Herein, Respondent, with substantial experience as an attorney, should have known that he was improperly handling client property which predictably resulted in commingling and conversion.

VII.

In an effort to bring about a final, appropriate resolution to this disciplinary matter, Respondent and the Office of Disciplinary Counsel submit the accompanying Joint Motion for Consent Discipline seeking imposition of specified discipline, in the form of a six-month suspension, fully deferred, followed by a one-year period of supervised probation with trust account reconciliations to be submitted to ODC quarterly in a form and manner approved by ODC. In addition, Respondent agrees to be responsible for all costs and expenses associated with these disciplinary proceedings, pursuant to La. Supreme Court Rule XJX, § 10.1. As noted above, Respondent has completed the LADB trust accounting course and has hired a CPA to perform trust account reconciliations.

VIII.

Respondent's consent is freely and voluntarily rendered and he acknowledges that he has been subjected to no coercion or duress in the making of this agreement. Respondent further acknowledges that he is fully aware of

the implications of submitting this Joint Motion for Consent Discipline.

IX.

Respondent is consenting to this agreement because he believes that if formal charges were prosecuted against him in this matter, he could not successfully defend against them.

- (3) On or about October 17, 2023, an Order Per Curium was entered by the Supreme Court of Louisiana in a matter styled Supreme Court of Louisiana, No. 2023-B-01209, *In Re: Carl Henry Franklin*, Attorney Disciplinary Proceeding, which states in pertinent part:

The Office of Disciplinary Counsel (“ODC”) commenced an investigation into allegations that respondent mishandled his client trust account. Respondent and the ODC then submitted a joint petition for consent discipline in which respondent admitted that his conduct violated Rules 1.15(a), 1.15(b), 1.15(d) and 1.15(f) of the Rules of Professional Conduct. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that Carl Henry Franklin, Louisiana Bar Roll number 14974, be suspended from the practice of law for a period of six months. This suspension shall be deferred in its entirety, subject to respondent’s successful completion of a one-year period of supervised probation governed by the conditions set forth in the Petition for Consent Discipline. The probationary period shall commence from the date respondent, the probation monitor, and the ODC execute a formal probation plan. Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate.

- (4) Respondent, Carl Henry Franklin, is the same person as the Carl Henry Franklin, who is the subject of the Supreme Court Order entered in the Supreme Court of Louisiana; and
- (5) The Order entered in the Supreme Court of Louisiana is final.

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) Reciprocal discipline identical, to the extent practicable, to that imposed by the Supreme Court of Louisiana is warranted in this case.
- (3) Respondent should be suspended from the practice of law for a period of six (6) months, fully deferred, subject to Respondent's successful completion of a one-year period of probated suspension.
- (4) This Board retains jurisdiction during the full term of probation imposed by this judgment to hear a motion to revoke probation. TEX. RULES DISCIPLINARY P.R. 2.22.

It is, accordingly, **ORDERED**, **ADJUDGED**, and **DECREED** that Respondent, Carl Henry Franklin, State Bar Card No. 07373850, is hereby suspended from the practice of law for a period of six (6) months, fully deferred, subject to Respondent's successful completion of a one-year period of probated suspension beginning July 12, 2024, and extending through July 11, 2025, under the following terms and conditions:

- (1) Respondent shall not violate any of the provisions of the Texas Disciplinary Rules of Professional Conduct or any provision of the State Bar Rules.
- (2) Respondent shall not be found guilty of, or plead no contest to, any felony involving moral turpitude or any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property.
- (3) Respondent must notify both the Office of the Chief Disciplinary Counsel and the Membership Department of the State Bar of Texas of any change in Respondent's address within thirty (30) days of the change of address.
- (4) Respondent shall not violate any of the terms or conditions of probation of the Order Per Curium entered by the Supreme Court of Louisiana on October 17, 2023, styled Supreme Court of Louisiana, No. 2023-B-01209, *In Re: Carl Henry Franklin*.

Probation Revocation

Upon determination that Respondent has violated any term or condition of this judgment, or if Respondent is adjudged by a tribunal in Louisiana to have violated the terms of the disciplinary order entered in Louisiana, the Chief Disciplinary Counsel may, in addition to all other remedies available, file a motion to revoke probation pursuant to Texas Rule of Disciplinary Procedure 2.22 with this Board and serve a copy of the motion on Respondent pursuant to Texas Rule of Civil Procedure 21a.

Should a motion to revoke probation be filed, this Board will conduct an evidentiary hearing to determine by a preponderance of the evidence whether Respondent has violated any term or condition or requirement of any applicable disciplinary judgment. If this Board finds grounds for revocation, it will enter an order revoking probation and placing Respondent on active suspension from the date of such revocation order without credit for any term of probation served prior to revocation.

It is further **ORDERED** that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure.

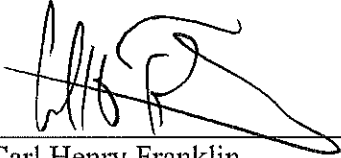
It is further **ORDERED** that this Judgment of Probated Suspension shall be made a matter of public record and be published in the *Texas Bar Journal*.

Signed this 12th day of July _____ 2024.



CHAIR PRESIDING

APPROVED AS TO FORM AND CONTENT:



Carl Henry Franklin
State Bar Card No. 07373850
Respondent



Richard A. Huntpalmer
Assistant Disciplinary Counsel
State Bar Card No. 24097857
Attorney for Petitioner