



F I L E D

Feb. 16, 2022

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

IN THE MATTER OF §
DARRELL KEITH HICKMAN, § **CAUSE NO. 65860**
STATE BAR CARD NO. 09572980 §

FIRST AMENDED PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, Darrell Keith Hickman (hereinafter called “Respondent”), showing as follows:

1. 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.

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this First Amended for Reciprocal Discipline at Darrell Keith Hickman, 620 Murray Street, Alexandria, Louisiana 71301.

3. On or about August 3, 2018, Formal Charges (Exhibit 1 at p. 12) were filed with the Louisiana Attorney Disciplinary Board in Docket Number 18-DB-054 styled, *In re: Darrell K. Hickman* (Bar Roll No. 22797).

4. On or about February 8, 2019, a Report of Hearing Committee #7 (Exhibit 1 at p. 18) was filed with the Louisiana Attorney Disciplinary Board in Docket Number 18-DB-054

styled, *In re: Darrell K. Hickman*, Docket No. 18-DB-054, which states in pertinent part:

. . . the committee determined that, in the Mose matter, respondent violated the Rules of Professional Conduct as charged [1.3, 1.4, 8.4(a) and 8.4(c)], noting respondent admitted to violating Rules 1.4 and 8.4(c) during the hearing. In the Edgerly matter, the committee determined that respondent violated Rules 1.3, 1.4, and 8.4(a), noting respondent admitted to violating Rules 1.3 and 1.4 during the hearing. With respect to Rule 8.4(c) as it relates to the Edgerly matter, the committee determined there is insufficient evidence to find a violation of same.

5. On or about February 18, 2020, a Recommendation to the Louisiana Supreme Court (Exhibit 1 at p. 32) was filed with the Louisiana Attorney Disciplinary Board in Number 18-DB-054 styled, *In re: Darrell K. Hickman*, which states in pertinent part:

. . . the Board adopts the committee's factual findings and conclusions regarding rule violations. The Board recommends that Respondent be suspended for one year and one day, with all but three months deferred. Additionally, the Board recommends that the active period of suspension be followed by a one-year probation period.

6. On or about June 3, 2020, an Attorney Disciplinary Proceeding opinion (Exhibit 1 at p. 2) was entered by the Supreme Court of the State of Louisiana in a case styled: *In Re: Darrell K. Hickman Attorney Disciplinary Proceeding*, in Case No. 2020-B-0292, the Supreme Court adopted the board's recommendation and stated in pertinent part:

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Darrell K. Hickman, Louisiana Bar Roll number 22797, be and he hereby is suspended from the practice of law for a period of one year and one day, with all but three months deferred, followed by one year of probation subject to the condition that any misconduct during this period may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. 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.

7. A copy of the Attorney Disciplinary Proceeding opinion is attached hereto as Petitioner's Exhibit 1 and made a part hereof for all intents and purposes as if the same was copied

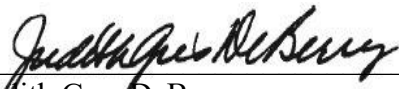
verbatim herein. Petitioner expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

8. 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 Louisiana Attorney Disciplinary Board and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Judith Gres DeBerry
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4167
Email: jdeberry@texasbar.com




Judith Gres DeBerry
Bar Card No. 24040780

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this First Amended Petition for Reciprocal Discipline and the Order to Show Cause on Darrell Keith Hickman by personal service.

Darrell Keith Hickman
620 Murray Street
Alexandria, Louisiana 71301



Judith Grés DeBerry

The Supreme Court of the State of Louisiana

RE: DARRELL K. HICKMAN

No.2020-B-00292

Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Charges);

June 2020

Sentence imposed. See per curiam.

WJC

BJJ

JLW

JDH

SJC

JTG

JHB



Supreme Court of Louisiana
June 03, 2020

Clerk of Court
For the Court

EXHIBIT

1

SUPREME COURT OF LOUISIANA
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

Edwin C. Gonzalez, Jr.
Deputy Clerk of Court

0001

SUPREME COURT OF LOUISIANA

NO. 2020-B-0292

JUN 03 2020

IN RE: DARRELL K. HICKMAN

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

WJC

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Darrell K. Hickman, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

The Mose Matter

In May 2011, Evelyn Mose hired respondent to represent her in a wrongful termination matter. Throughout the representation, respondent failed to communicate with Ms. Mose, including failing to respond to Ms. Mose's attempts to contact him or meet with him. For example, Ms. Mose unnecessarily traveled to Alexandria for her deposition, which had been canceled, because respondent failed to inform her of the cancellation.

Eventually, Ms. Mose requested her file and, on February 18, 2014, went to respondent's office to retrieve same. Respondent was not present when she arrived, but another attorney in the office made the file available for her review. Upon reviewing the file, Ms. Mose learned that respondent had failed to timely submit discovery responses to opposing counsel and had ignored opposing counsel's requests to schedule Ms. Mose's deposition. From her review of the file, Ms. Mose further discovered that opposing counsel had filed a motion for summary judgment, which respondent failed to oppose, and her case was dismissed with prejudice on

August 19, 2013. Respondent never informed her of the dismissal. Furthermore, Ms. Mose believed that respondent would also file an EEOC claim on her behalf, but she learned he never did so.

In April 2014, Ms. Mose filed a disciplinary complaint against respondent. In response to the complaint, respondent admitted to failing to communicate with Ms. Mose. He also admitted he did not oppose the motion for summary judgment, explaining that his research indicated opposing counsel's arguments in favor of summary judgment were correct; thus, opposing the motion "would have been an exercise in futility."

The Edgerly Matter

In October 2011, Allen Edgerly, Jr. hired respondent to handle his divorce and community property partition. Mr. Edgerly paid respondent a total of \$1,300, and respondent informed him that his divorce would be completed within three months. During the representation, respondent advised Mr. Edgerly of numerous court dates, all of which were postponed. Mr. Edgerly believed respondent lied about obtaining the court dates.

Three years after hiring respondent, Mr. Edgerly went to the clerk of court's office to retrieve a copy of his judgment of divorce, but he discovered there was no judgment. In January 2015, he checked the court record again, but there was still no judgment. In April 2015, the judgment of divorce was finally signed.

In October 2014, Mr. Edgerly filed a disciplinary complaint against respondent. In response, respondent indicated that Mr. Edgerly and his wife stipulated to the divorce in May 2012, and opposing counsel agreed to draft the judgment of divorce. Respondent also claimed there was no community property to divide. Thereafter, respondent checked the court record and verified that opposing

counsel had never filed the judgment of divorce. Accordingly, respondent filed it himself, and the judge signed it in April 2015.

DISCIPLINARY PROCEEDINGS

In August 2018, 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), 1.4 (failure to communicate with a client), 8.4(a) (violation of the Rules of Professional Conduct), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent filed an answer to the formal charges, in which he denied all misconduct in both matters other than failing to communicate with Ms. Mose. He specifically denied agreeing to file an EEOC claim on Ms. Mose's behalf. He also specifically denied informing Mr. Edgerly of multiple court dates, claiming he only told Mr. Edgerly of one court date that took place in May 2012. In light of respondent's answer, the matter proceeded to a formal hearing on the merits.

Hearing Committee Report

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

1. In the Mose matter, respondent and Ms. Mose did not have a written representation agreement. Respondent filed a wrongful termination lawsuit on Ms. Mose's behalf. However, a dispute exists as to whether respondent was supposed to file an EEOC claim on Ms. Mose's behalf or whether she would handle the filing herself. The wrongful termination lawsuit was dismissed via summary judgment because respondent sued the wrong party

and the claim prescribed. Respondent then failed to notify Ms. Mose of the dismissal.

2. In the Edgerly matter, respondent and Mr. Edgerly did not have a written representation agreement. Respondent filed a petition for divorce on Mr. Edgerly's behalf. However, a dispute exists as to whether the representation included the partition of community property. A dispute also exists as to who was supposed to prepare the judgment of divorce. Respondent claimed opposing counsel was supposed to draft the judgment, while Mr. Edgerly believed the task was respondent's obligation. Nothing in the court record indicates that opposing counsel was charged with drafting the judgment, and respondent ultimately prepared and filed same.
3. Respondent has implemented certain office procedures to improve office efficiency and client communications. Specifically, he has hired a secretary and implemented case software to track client matters.

Based on these facts, the committee determined that, in the Mose matter, respondent violated the Rules of Professional Conduct as charged, noting respondent admitted to violating Rules 1.4 and 8.4(c) during the hearing. In the Edgerly matter, the committee determined that respondent violated Rules 1.3, 1.4, and 8.4(a), noting respondent admitted to violating Rules 1.3 and 1.4 during the hearing. With respect to Rule 8.4(c) as it relates to the Edgerly matter, the committee determined there is insufficient evidence to find a violation of same.

The committee then determined respondent violated duties owed to his clients, the legal system, and the legal profession. His conduct was negligent, knowing, intentional, and dishonest, and it caused both actual and potential harm. Relying on the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is a period of suspension followed by probation.

In aggravation, the committee found a prior disciplinary record,¹ a pattern of misconduct, vulnerability of the victim, and substantial experience in the practice of law (admitted 1994). In mitigation, the committee found full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, a delay in the disciplinary proceedings, and remoteness of prior offenses. In additional mitigation, the committee noted respondent has taken steps to improve his office administration and his communication with clients.

After further considering this court's prior jurisprudence addressing similar misconduct, the committee recommended respondent be suspended from the practice of law for one year and one day, with six months deferred, followed by one year of supervised probation with the conditions that he complete the Louisiana State Bar Association's Ethics School and complete a training session on time management and law office practice to improve efficiency and client communications.

Both respondent and the ODC filed an objection to the committee's recommendation.

Disciplinary Board Recommendation

After review, the disciplinary board determined the hearing committee's factual findings are not manifestly erroneous and adopted same. The board also determined that the committee's conclusions regarding rule violations are supported by clear and convincing evidence.

¹ In 2014, respondent and the ODC submitted to this court a joint petition for consent discipline, in which respondent stipulated to misleading a client about the status of her legal matter. We accepted the petition for consent discipline and imposed the parties' proposed sanction of a fully deferred one-year suspension from the practice of law. *In re: Hickman*, 14-0817 (La. 5/16/14), 140 So. 3d 711.

The board then determined respondent negligently and knowingly, but not intentionally, violated duties owed to his clients. His conduct caused actual harm to Ms. Mose and potential harm to Mr. Edgerly. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined the baseline sanction is suspension.

In aggravation, the board found a prior disciplinary record, a pattern of misconduct, multiple offenses, vulnerability of the victim, and substantial experience in the practice of law. In mitigation, the board found full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, a delay in the disciplinary proceedings, and remoteness of prior offenses. In additional mitigation, the board noted that a significant percentage of respondent's practice involves criminal defense and that respondent has a contract with the public defender's office to provide criminal defense work for the indigent.

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be suspended from the practice of law for one year and one day, with all but three months deferred, followed by one year of probation with the condition that any misconduct during the probationary period be grounds for making the deferred portion of the suspension executory and/or imposing additional discipline, as appropriate.

Neither respondent nor the ODC filed an objection to the disciplinary board's recommendation.

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. While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

In this matter, the record supports a finding that respondent neglected two legal matters, failed to communicate with two clients, and misrepresented the status of a case to one client. This misconduct amounts to a violation of the Rules of Professional Conduct as found by the hearing committee and adopted by 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 negligently and knowingly violated duties owed to his clients, causing actual and potential harm. The baseline sanction for this type of misconduct is suspension. Aggravating factors include a prior disciplinary record, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. Mitigating factors include full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, as well as a delay in the disciplinary proceedings.

Case law suggests that the board's recommended sanction is appropriate. In *In re: Bruno*, 17-1012 (La. 10/9/17), 227 So. 3d 274, an attorney with a prior disciplinary record neglected a legal matter, causing the client's claim to prescribe, and failed to communicate with the client; for this misconduct, we imposed a ninety-day suspension, with all but thirty days deferred. In *In re: Christenberry*, 13-2461 (La. 1/27/14), 132 So. 3d 388, an attorney neglected two legal matters, failed to communicate with a client, failed to timely refund unearned fees to a client, and failed to cooperate with the ODC in an investigation; for this misconduct, we imposed a one year and one day suspension, with all but three months deferred, followed by two years of supervised probation. Finally, in *In re: Schmidt*, 13-2023 (La. 12/10/13), 130 So. 3d 908, an attorney neglected legal matters, failed to communicate with clients, failed to promptly return unearned fees and client files, and failed to cooperate with the ODC in an investigation; for this misconduct, we imposed a one year and one day suspension, with all but sixty days deferred, followed by two years of supervised probation with conditions.

Based on the above jurisprudence, and considering the record, we will adopt the board's recommendation and suspend respondent from the practice of law for one year and one day, with all but three months deferred, followed by one year of probation with the condition that any misconduct during this period may be grounds for making the deferred portion of the suspension executory or imposing additional discipline, as appropriate.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Darrell K. Hickman, Louisiana Bar Roll number 22797, be and he hereby is suspended from the practice of law for a period of one year and one day, with all but three months

deferred, followed by one year of probation subject to the condition that any misconduct during this period may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate. 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.

DUPLICATE

Duplicate
Original

20-B-292

SUPREME COURT OF THE STATE OF LOUISIANA

FINDINGS AND RECOMMENDATIONS
OF THE
LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DARRELL K. HICKMAN
(FORMAL CHARGES)

DELIVERED BY HAND
SUPREME COURT
OF LOUISIANA

2020 FEB 18 AM 12:54

CLERK
OF COURT

CERTIFICATION

I certify that the record contained herein
is a complete copy of the Louisiana
Attorney Disciplinary Board vs.
DARRELL K. HICKMAN
DOCKET NO.:18-DB-054
This **18th** day of **February, 2020.**

Amy D. Panepinto

Amy D. Panepinto

Records Clerk

Louisiana Attorney Disciplinary Board

INPUT BY:

0011

LOUISIANA ATTORNEY
DISCIPLINARY BOARD

2018 AUG -6 AM 10:51

LA. Attorney Disciplinary Board

E-Filed:

Date:

8/3/2018

Docket Clerk Init:

for

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DARRELL K. HICKMAN
(Bar Roll No. 22797)

DOCKET NUMBER:

18-DB-054

FORMAL CHARGES

NOW INTO THESE PROCEEDINGS comes the OFFICE OF DISCIPLINARY COUNSEL, through undersigned Deputy Disciplinary Counsel, who alleges that Respondent, DARRELL K. HICKMAN, is a Louisiana licensed attorney who is guilty of misconduct as set forth below and requires the imposition of discipline on the following basis, to-wit:

COUNT I (ODC File No. 0031612):

In May of 2011, Respondent was hired to represent the Complainant in an Employment Discrimination and Wrongful Termination matter. Throughout the representation, Respondent failed to communicate pertinent information about the status of the case. Respondent failed to answer and return telephone calls and/or text messages. Further, Respondent provided no response to Complainant's two office visits.

On February 18, 2014, the Complainant contacted Respondent's office and requested that a copy of her file be made available. Upon arrival at the office, Respondent was not present; however, another attorney in the office retrieved the Complainant's file for review. After reviewing the file, Complainant discovered that Respondent had failed to submit discovery to opposing counsel in a timely manner. She further discovered that Respondent had ignored the opposing party's request to schedule a deposition.

During the representation, Complainant traveled from Kinder, LA to Alexandra, LA, for a deposition. Upon arrival, she was informed that the deposition had been cancelled. Respondent failed to notify Complainant of the cancellation.

Further during the representation, the opposing party filed a *Motion for Summary Judgment*. Respondent failed to file an opposition to the MSJ and the case was dismissed with prejudice. After the case was dismissed, Respondent failed to communicate the same to the Complainant. Complainant was not made aware of the dismissal until 6 months later, while reviewing her file.

Further during the representation, Respondent advised Complainant that it would not be necessary for her to file an EEOC claim because he would, "take care of it." Complainant discovered that Respondent never filed the EEOC claim on her behalf.

The Respondent has violated rules 1.3, 1.4, 8.4(a) and 8.4(c) of the Rules of Professional Conduct.

COUNT II (ODC File No. 0032392):

On or around October 3, 2011, Respondent was hired to handle a divorce and the partition of community property. Complainant paid the Respondent \$1,200.00 for the divorce and \$100.00 for copies. Complainant was told that it would only take 3 months to complete the divorce. Three years later, the Complainant went to the 9th J.D.C. Clerk of Court to retrieve a copy of his Judgment of Divorce. Upon arrival to the Clerk of Court, there was no Judgement of Divorce.

During the representation, Respondent gave the Complainant many court dates, only to have them continuously postponed. Complainant contends that Respondent was not truthful about obtaining any of the court dates. Complainant checked the court records again in January

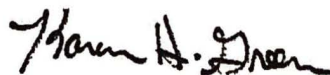
of 2015 and observed that he still was not divorced. Subsequent to Complainant filing a complaint with the ODC, a Judgment of Divorce was signed on April 27, 2015.

The Respondent has violated rules 1.3, 1.4, 8.4(a) and 8.4(c) of the Rules of Professional Conduct.

WHEREFORE, the Office of Disciplinary Counsel prays that the Respondent be served with a copy of these Formal Charges and cited to answer same within the delays allowed by Rule XIX; and that, after the lapse of all appropriate delays and due proceedings, there be a finding that Respondent has violated the Rules of Professional Conduct and the Rules of the Louisiana Supreme Court, imposing reasonable discipline as may be indicated in the premises.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



BY: _____

KAREN HAYES GREEN, #31750
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Boulevard
Suite 607
Baton Rouge, LA 70816
Telephone: (225) 293-3900

Please serve Respondent:
720 Murray St.
Alexandria, LA 71301

P.O. Box 48
Alexandria, LA 71309

ORIGINAL

LOUISIANA ATTORNEY DISCIPLINARY BOARD

LOUISIANA ATTORNEY
DISCIPLINARY BOARD

2018 SEP -6 AM 8:12

IN RE: DARRELL K. HICKMAN
(Bar Roll No. 22797)

DOCKET NUMBER: 18-DB-054

ANSWER TO FORMAL CHARGES

NOW INTO THESE PROCEEDINGS comes DARRELL K. HICKMAN, through undersigned counsel, who answers the formal charges as follows:

COUNT I (O.C. File No. 0031612):

Darrell K. Hickman denies each and every allegation unless specifically admitted. In further answering, Mr. Hickman was retained by Ms. Moses to file a lawsuit against the mayor of the Town of Kinder for wrongful discharge and to obtain unemployment benefits. Ms. More had been a faithful employee of the Town of Kinder for several years. She was the only African American employee in the clerk's office. Additionally, she was the only employee with a college degree in that office. Approximately one month before she was terminated, Ms. More was given a review that netted her a raise in pay. Shortly afterward, she went on vacation. Upon her return, she was notified by the mayor that she was been terminated for failure to perform her job properly.

Ms. More filed for unemployment benefits and initially was denied. Mr. Hickman filed for formal hearing which was granted and scheduled. Mr. Hickman, due to a scheduling conflict, could not appear, but had another attorney appear in his place. Ms. More prevailed and received her unemployment benefits. Mr. Hickman advanced all fees and cost. Ms. More paid nothing.

Mr. Hickman filed suit on Ms. More's behalf in the 33rd Judicial District Court against the Mayor individually and in his official capacity as mayor of the Town of Kinder. The defense

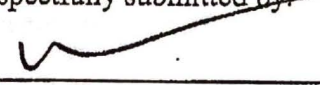
then removed the matter to federal court, assuming that we had alleged federal claims in the state court. We spent several months in federal court, before the matter was remanded to the 33rd JD. After the case was remanded, the defense attorney forwarded discovery request to this office, which was answered by this office, after obtaining the necessary information from Ms. More. Thereafter, the defense scheduled her deposition. On the day Ms. More was to be deposed, the defense attorney called to cancel the deposition and stated that he had discovered a way to dispose of the matter completely. Mr. Hickman contacted Ms. More by telephone and informed her that the deposition had been cancelled by opposing counsel. Ms. More was already en route to the office of Mr. Hickman and insisted on coming to the office. Upon her arrival she was again notified of the cancellation of the deposition and would be advised of further actions by opposing counsel or himself. Shortly thereafter, Mr. Hickman received a Motion for Summary Judgment in which the defense asserted that the mayor was the improper party to be sued. The defense asserted that in cases against a municipality created by the Langham Act, the only proper defendant was the municipality itself and not any of its officers. Research by this office revealed that the defense attorney was correct in his assertion and that the matter would be dismissed with prejudice. No response was filed by Mr. Hickman because it would have been an exercise in futility. Mr. Hickman admits that he failed to keep Ms. More informed about the status of her case. Mr. Hickman vehemently denies ever advising Ms. More on the filing of an EEC complaint. Mr. Hickman has never filed an EEC complaint and his usual policy and practice is to have the client file the EEC compliant themselves.

COUNT II(O.C. File No. 0032392):

Darrell K. Hickman denies each and every allegation unless specifically admitted. In further answering, Mr. Eagerly was a client without a permanent address and a mobile number

which frequently was out of service. Mr. Eagerly paid Mr. Hickman \$ 900.00 to obtain a divorce and \$ 300.00 for filing fees. There was never a discussion as to the length of time it would take to complete the divorce. Mr. Hickman did explain to Mr. Eagerly that once the divorce was filed it would be set for hearing. Mr. Hickman filed a Petition for Divorce and a hearing was had in May of 2012 regarding Mr. Eagerly's divorce. This was only hearing scheduled and the only hearing had concerning this Divorce. Mr. Hickman never communicated any other dates to Mr. Eagerly. During that hearing, the judge granted the divorce. Opposing counsel was charged with preparing and submitting the Judgement of Divorce. Once Mr. Eagerly brought to the attention of Mr. Hickman there was no written Judgment of Divorce on file, a written Judgment of Divorce was drafted and signed on April 20, 2015 by Judge Koch.

Regarding the alleged community property settlement. Mr. and Mrs. Eagerly did not own any community property. The only significant property owned by either of them was the house, that Mr. Eagerly donated to his wife in 2000. That would not involve a community property settlement but a nullity of a donation.

Respectfully submitted by: 

Clifton J. Spears, Jr.
Bar Roll #: 22159
720 Murray Street
Alexandria, LA 71301-8023
Telephone: (318) 704-6126
Facsimile: (318) 704-6127
Email: spearslaw@suddenlinkmail.com
Attorney for Darrell K. Hickman

ORIGINAL

Louisiana Attorney Disciplinary Board	
FILED by: <i>Donna P. Burgess</i>	
Docket#	Filed-On
18-DB-054	2/8/2019

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DARRELL K. HICKMAN

DOCKET NO. 18-DB-054

REPORT OF HEARING COMMITTEE # 7

INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of two counts filed by the Office of Disciplinary Counsel ("ODC") against Darrell K. Hickman ("Respondent"), Louisiana Bar Roll Number 22797.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.3, 1.4, 8.4(a), and 8.4(c).²

PROCEDURAL HISTORY

The formal charges were filed on August 3, 2018. Respondent filed an answer to the charges on September 6, 2018, through his counsel Clifton J. Spears, Jr. The hearing of this matter was held on December 19, 2018 in Alexandria, Louisiana. Deputy Disciplinary Counsel Karen Hayes Green appeared on behalf of ODC. Respondent appeared with counsel, Clifton J. Spears, Jr.

For the following reasons, as to Counts I, the Committee finds that Respondent, Darrell K. Hickman, violated Rules of Professional Conduct 1.3, 1.4, 8.4(a) and 8.4(c), and as to Count II, violated Rules of Professional Conduct 1.3 and 1.4. Specific to Count I, Respondent failed to act with reasonable diligence and promptness in representing Complainant (Rule 1.3) in discovery matters, failed to keep Complainant reasonably informed and consult with Complainant as to matter objectives (Rule 1.4(a)), acted dishonestly in his representations to Complainant as to the

¹ Respondent was admitted to the practice of law in Louisiana on April 11, 1994. Respondent is currently eligible to practice law.

² See attached Exhibit A for the text of these Rules.

status of Complainant's employment law claim (Rule 8.4(c)), and by default violated Rule 8.4(a) by his admitted violation of Rule 8.4(c). Specific to Count II, Respondent failed to act with reasonable diligence and promptness in securing Complainant's Judgment of Divorce (Rule 1.3), and failed to keep Complainant reasonably informed and consult with Complainant as to matter objectives, especially as to the community property issue component of the divorce proceeding (Rule 1.4(a)).

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I (ODC File No. 0031612: "Mose"):

In May of 2011, Respondent was hired to represent the Complainant in an Employment Discrimination and Wrongful Termination matter. Throughout the representation, Respondent failed to communicate pertinent information about the status of the case. Respondent failed to answer and return telephone calls and/or text messages. Further, Respondent provided no response to Complainant's two office visits.

On February 18, 2014, the Complainant contacted Respondent's office and requested that a copy of her file be made available. Upon arrival at the office, Respondent was not present; however, another attorney in the office retrieved the Complainant's file for review. After reviewing the file, Complainant discovered that Respondent had failed to submit discovery to opposing counsel in a timely manner. She further discovered that Respondent had ignored the opposing party's request to schedule a deposition.

During the representation, Complainant traveled from Kinder, LA to Alexandria, LA, for a deposition. Upon arrival, she was informed that the deposition had been cancelled. Respondent failed to notify Complainant of the cancellation.

Further during the representation, the opposing party filed a Motion for Summary Judgment. Respondent failed to file an opposition to the MSJ and the case was dismissed with prejudice. After the case was dismissed, Respondent failed to communicate the same to the Complainant. Complainant was not made aware of the dismissal until 6 months later, while reviewing her file.

Further during the representation, Respondent advised Complainant that it would not be necessary for her to file an EEOC claim because he would, "take care of it." Complainant discovered that Respondent never filed the EEOC claim on her behalf.

The Respondent has violated rules 1.3, 1.4, 8.4(a) and 8.4(c) of the Rules of Professional Conduct.

COUNT II (ODC File No. 0032392: "Edgerly"):

On or around October 3, 2011, Respondent was hired to handle a divorce and the partition of community property. Complainant paid the Respondent \$1,200.00 for the divorce and \$100.00 for copies. Complainant was told that it would only take 3 months to complete the divorce. Three years later, the Complainant went to the 9th J.D.C. Clerk of Court to retrieve a copy of his Judgment of Divorce. Upon arrival to the Clerk of Court, there was no Judgement of Divorce.

During the representation, Respondent gave the Complainant many court dates, only to have them continuously postponed. Complainant contends that Respondent was not truthful about obtaining any of the court dates. Complainant checked the court records again in January of 2015 and observed that he still was not divorced. Subsequent to Complainant filing a complaint with the ODC, a Judgment of Divorce was signed on April 27, 2015.

The Respondent has violated rules 1.3, 1.4, 8.4(a) and 8.4(c) of the Rules of Professional Conduct.

EVIDENCE

At the hearing of this matter on December 19, 2018, the following Exhibits were introduced by stipulation and without objection, and are part of the record of the proceeding:

Count I ("Mose"):

- ODC-1: Complaint filed by Evelyn Denise Mose received by ODC on April 2, 2014
- ODC-2: Respondent's Initial Response received by ODC on June 16, 2014
- ODC-3: Complainant's July 2, 2014 Supplemental Reply
- ODC-4: Respondent's October 8, 2014 Supplemental Response
- ODC-5: Certified Copy of Court Record for Evelyn Denise Mose v. Estes LeDoux, et al.

Count II ("Edgerly"):

- ODC-6: Complaint filed by Allen Roy Edgerly, Jr. received by ODC on October 10, 2014
- ODC-7: Respondent's Initial Response received by ODC on December 29, 2014
- ODC-8: Complainant's February 11, 2015 Supplemental Reply
- ODC-9: Respondent's April 23, 2015 Supplemental Response
- ODC-10: Certified Copy of Court Record for Allen Roy Edgerly, Jr. v. Sharon D. Edgerly
- ODC-11: Complainant's May 6, 2015 Supplemental Reply

The following individuals testified at the December 19, 2018 hearing, and their testimony is memorialized in the transcript of the hearing proceeding:

Respondent, Darrell Keith Hickman
Evelyn Denise Mose
Allen Roy Edgerly, Jr.

FINDINGS OF FACT

Respondent was admitted to practice law in Louisiana in 1994 (Transcript, p. 18), and has been a practicing attorney for 27 years (Transcript, p. 20). Approximately 70 -80 percent of his practice is devoted to criminal defense work (Transcript, pp. 17-18). Very little of his practice is devoted to family law matters (Transcript, pp. 17-18). During the course of his legal career, Respondent has handled four or five wrongful termination cases (Transcript, pp. 19-20). The matter involving Ms. Mose was a wrongful termination case (Transcript, p. 21). There is a dispute as to whether Respondent was to file a discrimination claim on behalf of Ms. Mose with the EEOC (Transcript, p. 21; Transcript, p. 82). The civil lawsuit for wrongful termination involving Ms. Mose was dismissed via summary judgment because Respondent sued the wrong party and the claim prescribed (Transcript, pp. 46-47). Respondent failed to notify Ms. Mose that her claim had been dismissed with prejudice (Transcript, pp. 24-25). There was no written representation agreement between Respondent and Ms. Mose (Transcript, p. 84). Respondent maintained no malpractice insurance (Transcript, p. 26). Respondent admits to violations of Rules 1.4 and 8.4(C) as to Count I (Transcript, p. 10).

As to Count II, Respondent filed a Petition of Divorce for Mr. Edgerly (Transcript, pp. 26-27). There is a dispute as to whether the representation included partition of community property (Transcript, p. 27; Transcript, pp. 98-99). The Petition of Divorce contained a provision for judicial partition of community property (Transcript, p. 27). Property was acquired during

the community between Mr. Edgerly and his ex-wife (Transcript, pp. 104-105, 113-118). There is a dispute as to who was tasked with preparing the Judgment of Divorce. Respondent claimed that opposing counsel was to draft the Judgment of Divorce (Transcript, p. 28). Mr. Edgerly believed that it was Respondent's obligation (Transcript, p. 108). There is nothing in the certified court record of the divorce proceeding indicating that opposing counsel was charged with drafting the Judgment of Divorce granted in May 2012 (Exhibit ODC-10). Respondent ultimately prepared and filed the Judgment of Divorce in 2015 (Transcript, pp. 29-30). There was no written representation agreement between Respondent and Mr. Edgerly (Transcript, p. 98). Respondent admits to violations of Rules 1.3 and 1.4 as to Count II (Transcript, p. 10).

Respondent has implemented certain office procedures to improve office efficiency and client communications, including hiring a secretary and implementing case software to track client matters (Transcript, p. 40).

RULES VIOLATED

As to Count I, Respondent admits to violations of Rules 1.4 and 8.4(c). In addition to these admitted violations, the Committee finds that Respondent also violated Rule 1.3 by his dilatory behavior in discovery matters. In addition, his failure to timely ascertain the correct party to sue in Complainant's employment law case resulted in dismissal of the matter with prejudice by prescription. Whether the Town of Kinder was a Lawrason Act municipality or a home rule charter municipality is immaterial for purposes of Louisiana discrimination law. Pursuant to Louisiana R.S. 23:302, the proper defendant in a discrimination action is the plaintiff's employer, which was the Town of Kinder, not Kinder's Mayor. This fact was easily discoverable early in the litigation by the exercise of reasonable diligence. The Committee also finds that by the admitted violation of Rules 1.4 and 8.4(c), Respondent, by default, also violated

Rule 8.4(a), irrespective of the Committee's determination that Respondent also violated Rule 1.3.

As to Count II, Respondent admits to violations of Rule 1.3 and 1.4. The Committee finds that there is insufficient evidence to find that Respondent violated Rule 8.4(c). While respondent was clearly dilatory in obtaining Complainant's Judgment of Divorce, failed to clearly ascertain Complainant's objectives, and failed to keep Complainant reasonably informed of the progress of his matter, there are factual discrepancies as to whether such behavior rose to the level of fraud, deceit, or dishonesty. However, the Committee finds that by the admitted violation of Rules 1.3 and 1.4, Respondent, by default, also violated Rule 8.4(a).

SANCTION

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

- (1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the lawyer acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to the clients, the legal system, and the profession. He acted negligently, knowingly, intentionally, and dishonestly as noted above in the Formal Charges, Findings of Fact, and Rules Violations. Respondent's misconduct caused both actual and potential harm by:

- 1) Failing to handle Ms. Mose's employment law matter with appropriate diligence and promptness, failing to keep her reasonably informed of the status of her matter, and failing to promptly comply with reasonable requests for information, resulting in the ultimate dismissal of Complainant's matter with prejudice. Respondent also behaved dishonestly by failing to inform

Ms. Mose that her matter had been dismissed, and the reasons for the dismissal. Once that bell was rung, it could not be un-rung, resulting in actual and significant harm to Ms. Mose.

2) Failing to handle Mr. Edgerly's divorce matter with appropriate diligence and promptness, failing to keep him reasonably informed of the status of his matter, and failing to reasonably consult with Complainant as to matter objectives. Respondent admitted that he was marginally proficient in family law matters, and relied on "boilerplate" language in pleadings. There was clearly a disconnect between Respondent and Complainant as to the property settlement part of the divorce proceeding. That, and the three year delay in securing the actual Judgment of Divorce caused potential harm to Complainant, although the evidence is insufficient for a determination of actual harm to Mr. Edgerly.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension followed by probation is the baseline sanction for Respondent's misconduct. The following ABA Standards are applicable and were considered by the Committee, all of which suggest suspension followed by probation as the appropriate sanction:

4.4 Lack of Diligence

Standard 4.42: Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect with respect to client matters and causes injury or potential injury to a client.

4.5 Competence

Standard 4.52: Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.6 Lack of Candor

Standard 4.62: Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

7.0 Violations of Other Duties as a Professional

Standard 7.2: Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

8.0 Prior Discipline Orders

Rule 8.2: Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that causes injury or potential injury to a client, the public, the legal system, or the profession.

Aggravating factors which are applicable in assessing the baseline sanction include Respondent's previous violations of the Rules of Professional Conduct, a pattern of misconduct, vulnerability of the victims, and substantial experience in the practice of law. Mitigating factors which are applicable in assessing the baseline sanction include full disclosure to the ODC and a cooperative attitude toward the proceedings, a delay in the disciplinary proceedings, remoteness of prior offenses, and steps taken by Respondent to improve office administration and communication with clients. The acts complained of occurred in 2011 and were reported to ODC in 2014, yet formal charges were not filed until 2018. In 2014, Respondent was suspended from the practice of law for one year fully deferred for failing to properly communicate with a client and misleading the client about the status of a legal matter, in violation of Rules 1.4 and 8.4(c).³

Based on the Committee's finding of Respondent's misconduct and multiple Rules violations, and considering the aggravating and mitigating factors, the Committee recommends that Respondent be suspended from the practice of law for one year and one day, with six months deferred, and one year of supervised probation. The Committee also recommends that as a condition of reinstatement, that Respondent successfully complete: (1) an ethics school program

³ *In Re Darrell K. Hickman*, 14-0817 (La. 05/16/2014), 140 So.3d 711.

sponsored by the Louisiana State Bar Association, and (2) a training session on time management and law office practice to improve efficiency and client communications. The Committee reviewed multiple disciplinary cases in arriving at its recommendation, which are summarized in the Exhibit B attached hereto.

CONCLUSION

The Committee recommends that Respondent be suspended from the practice of law for one year and one day, with six months deferred, and one year of supervised probation. The Committee also recommends that as a condition of reinstatement, that Respondent successfully complete: (1) an ethics school program sponsored by the Louisiana State Bar Association, and (2) a training session on time management and law office practice to improve efficiency and client communications.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Terrence D. McCay to sign on their behalf.

Lake Charles, Louisiana, this 7th day of February, 2019.

Louisiana Attorney Disciplinary Board
Hearing Committee # 7

Terrence D. McCay, Committee Chair
Zebulon M. Winstead, Lawyer Member
Richard A. Hinton, Public Member

BY: Terrence D. McCay
Terrence D. McCay, Committee Chair
For the Committee

EXHIBIT A

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4. Communication

(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) 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;

(b) ...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; ...

EXHIBIT B

In re Gregory Patrick Nichols, 2011-1538 (La. 10/14/11), 72 So.3d 830.

The respondent neglected two legal matters and failed to communicate with the clients. In the first matter, the respondent represented a husband in a divorce. The respondent failed to file a pre-hearing brief on exceptions filed by the wife and failed to appear at the hearing. The exceptions were granted and the petition for divorce was dismissed. The respondent was also sanctioned for his failure to appear and file a brief. In the second matter, the respondent was hired to represent the plaintiff in a civil matter. After neglecting the matter for several years, the respondent failed to notify his client that the matter had been dismissed on the grounds of abandonment. In both matters, the respondent admitted his violations.

Aggravating: a pattern of misconduct, multiple offenses, vulnerability of the victim, and substantial experience in the practice of law.

Mitigating: absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and remorse

Sanction: 6 month suspension, fully deferred, 6 months unsupervised probation

In re Louis G. Scott, 2009- 1886 (La. 2/5/10), 31 So.3d 978.

The respondent neglected one legal matter and failed to communicate with the client. In another matter, the respondent failed to adequately communicate with the client.

Aggravating: prior disciplinary offenses (diversion), pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law

Mitigating: cooperative attitude toward the disciplinary proceeding

Sanction: 6 month suspension, all deferred; 1 year unsupervised probation

In re Hilliard C. Fazande; 2003-2210 (La. 1/21/2004); 864 So.2d 174.

The respondent neglected of two client matters and failed to communicate with those clients, resulting in the dismissal of one matter and the prescription of the other.

Aggravating: prior disciplinary record for similar misconduct, substantial experience in the practice of law (admitted 1971), pattern of misconduct, and multiple offenses.

Mitigating: Cooperative attitude toward the proceedings and absence of dishonest or selfish motive.

Sanction: six months, (three months deferred). One year of unsupervised probation.

In re Patricia A. Givens Dean; 2003-2478 (La. 1/21/2004); 864 So.2d 152.

Incompetence, neglect of client matters resulting in the abandonment of one client's claim, and failure to communicate.

Aggravating: Pattern of misconduct and the vulnerability of the victims.

Mitigating: Absence of a prior disciplinary record, absence of a dishonest or selfish motive and full and free disclosure to the disciplinary board.

Sanction: One year suspension, fully deferred, one year probation

In re Francis C. Broussard, 2009-1814 (La. 1/8/10), 26 So.3d 13.

The respondent neglected two legal matters, failed to communicate with one client, and failed to turned over the client files upon termination. The respondent stipulated to the factual allegations and rule violations.

Aggravating: prior disciplinary offenses, multiple offenses, a pattern of misconduct, and substantial experience in the practice of law

Mitigating: absence of a dishonest or selfish motive, a cooperative attitude toward the disciplinary proceeding, remorse, and delay in the disciplinary proceeding

Sanction: 1 year, 1 day suspension, all but 30 days deferred, 1 year supervised probation

THE LOUISIANA ATTORNEY DISCIPLINARY BOARD

2800 Veterans Memorial Blvd. Suite 310
Metairie, Louisiana 70002

COST STATEMENT ORIGINAL

Name: Darrell Keith Hickman
720 Murray St

Statement Date: 02/08/19

Alexandria, LA 71301-

Case / Complaint	Date	Description	Charge
0031612	09/16/14	Investigation Investigative costs of serving subpoena to respondent in Alexandria LA 9/15/14	\$111.01
18-DB-054	08/03/18	Formal Charges Filed	\$10.00
18-DB-054	10/26/18	Formal Charges Other - (See Memo) Conference call 10/02/18 V#:18064 VEN:Premier Global Services Ck#:2744 CkD:11/13/2018	\$2.35
0031612	11/16/18	Investigation Staff investigator travel expense to serve subpoena to complainant 902 N. 14th Street Kinder LA 11/16/18	\$30.76
0031612	11/16/18	Investigation Staff investigator travel expense to serve subpoena to complainant 700 Veterans Dr Suite 605 Alexandria LA 11/16/18	\$30.76
0031612	11/16/18	Investigation Staff investigator travel expense to serve subpoena to respondent 720 Murray Street Alexandria LA 11/16/18	\$30.76
0032392	11/16/18	Investigation Staff investigator travel expense to serve subpoena to complainant 902 N. 14th Street Kinder LA 11/16/18	\$30.76
0032392	11/16/18	Investigation Staff investigator travel expense to serve subpoena to complainant 700 Veterans Dr Suite 605 Alexandria LA 11/16/18	\$30.76
0032392	11/16/18	Investigation Staff investigator travel expense to serve subpoena to respondent 720 Murray Street Alexandria LA 11/16/18	\$30.78
18-DB-054	12/20/18	Other - (See Memo) Staff attorney expense to travel to Alexandria, LA for hearing 12/19/18 V#:18313 VEN:Karen H. Green Ck#:2895 CkD:1/9/2019	\$151.24
18-DB-054	12/26/18	Other - (See Memo) Conference call 12/07/18 V#:18350 VEN:Premier Global Services Ck#:2907 CkD:1/9/2019	\$2.20
18-DB-054	01/04/19	Witness Fee Witness fee for Evelyn Mose 12/19/18 V#:18375 VEN:Evelyn Mose Ck#:2904 CkD:1/9/2019 DOC#:D.	\$55.00
18-DB-054	02/08/19	Publication Cost Estimated publication cost - The Town Talk	\$165.80
18-DB-054	02/08/19	Suspension + Probation Pending final judgment Pursuant to Rule XIX, Section 10.1(C)	\$1,500.00

Thank You.

Balance:

\$2,182.18

CERTIFICATE OF MAILING

IN RE: DARRELL K. HICKMAN
DOCKET NO. 18-DB-054

I, Donna L. Roberts, the undersigned Administrator for the Louisiana Attorney Disciplinary Board, certify that a copy of the foregoing Hearing Committee Report and Initial Cost Statement has been mailed to the Respondent or his/her Attorney of Record, by E-mail and United States Mail and E-Filed to the Office of Disciplinary Counsel, this 8th day of February, 2019 at the following address:

Mr. Clifton J. Spears, Jr.
Attorney at Law
720 Murray Street
Alexandria, LA 71301

Ms. Karen Green
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Blvd.
Suite 607
Baton Rouge, LA 70816



Donna L. Roberts
Board Administrator

ORIGINAL

Louisiana Attorney Disciplinary Board	
FILED by: <i>Synthia Davis</i>	Filed-On
Docket#	
18-DB-054	2/18/2020

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: DARRELL K. HICKMAN

NUMBER: 18-DB-054

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

.....

INTRODUCTION

This is an attorney discipline matter based upon the filing of formal charges by the Office of Disciplinary Counsel ("ODC") against Darrell K. Hickman ("Respondent"), Louisiana Bar Roll Number 22797.¹ ODC alleges that Respondent violated the following Rules of Professional Conduct in each of two counts included in the formal charges: 1.3(failure to act with reasonable diligence and promptness in representing his client); 1.4(failure in communication); 8.4(a)(violating or attempting to violate the Rules of Professional Conduct); and 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).²

In his pre-hearing filing and at the outset of the hearing, Respondent admitted to violations of Rules 1.4(a) and 8.4(c) in connection with Count I (Mose) and to violations of Rules 1.3 and 1.4 in connection with Count II (Edgerly). T.9-12; *see also* T.53-60. The hearing proceeded on all other charged rule violations and mitigation. The hearing committee ("committee") assigned to the matter concluded the ODC proved that Respondent violated Rules 1.3, 1.4, 8.4(a), and 8.4(c) as charged in Count I and Rules 1.3, 1.4, and 8.4(a) as charged in Count II. However, the committee found that the ODC failed to prove the violation of Rule 8.4(c) asserted in Count II. The committee recommended Respondent be suspended for one year and one day, with six months

¹ Respondent was admitted to the Louisiana Bar on April 11, 1994, and to the Texas Bar on November 1, 1991. His primary registration address is 720 Murray St., Alexandria, LA 71301. Respondent is currently eligible to practice law in Louisiana. According to the State Bar of Texas website, Respondent is currently ineligible to practice law in Texas for failure to comply with administrative requirements. Respondent testified that he has "a license in Texas, but I have not activated it for the last four or five years." T.18.

² *See* attached Appendix for full text of the Rules.

deferred, and one year of supervised probation. The committee further recommended that as a condition of reinstatement, Respondent be required to complete an ethics school program sponsored by the Louisiana State Bar Association and a training session on time management and law office practice to improve efficiency and client communications.

For the following reasons, the Board adopts the committee's factual findings and conclusions regarding rule violations. The Board recommends that Respondent be suspended for one year and one day, with all but three months deferred, subject to a one-year probation period. Additionally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

PROCEDURAL HISTORY

The formal charges were filed on August 3, 2018. The charges state, in pertinent part:

COUNT I – (ODC File No. 0031612):

In May of 2011, Respondent was hired to represent the Complainant in an Employment Discrimination and Wrongful Termination matter. Throughout the representation, Respondent failed to communicate pertinent information about the status of the case. Respondent failed to answer and return telephone calls and/or text messages. Further, Respondent provided no response to Complainant's two office visits.

On February 18, 2014, the Complainant contacted Respondent's office and requested that a copy of her file be made available. Upon arrival at the office, Respondent was not present; however, another attorney in the office retrieved the Complainant's file for review. After reviewing the file, Complainant discovered that Respondent had failed to submit discovery to opposing counsel in a timely manner. She further discovered that Respondent had ignored the opposing party's request to schedule a deposition.

During the representation, Complainant traveled from Kinder, LA to [Alexandria], LA, for a deposition. Upon arrival, she was informed that the deposition had been cancelled. Respondent failed to notify Complainant of the cancellation.

Further during the representation, the opposing party filed a *Motion for Summary Judgment*. Respondent failed to file an opposition to the MSJ and the case was dismissed with prejudice. After the case was dismissed, Respondent failed to communicate the same to the Complainant. Complainant was not made aware of the dismissal until 6 months later, while reviewing her file.

Further during the representation, Respondent advised Complainant that it would not be necessary for her to file an EEOC claim because he would, "take care of it." Complainant discovered that Respondent never filed the EEOC claim on her behalf.

The Respondent has violated rules 1.3, 1.4, 8.4(a) and 8.4(c) of the Rules of Professional Conduct.

COUNT II (ODC File No. 0032392):

On or around October 3, 2011, Respondent was hired to handle a divorce and the partition of community property. Complainant paid the Respondent \$1,200.00 for the divorce and \$100.00 for copies. Complainant was told that it would only take 3 months to complete the divorce. Three years later, the Complainant went to the 9th J.D.C. Clerk of Court to retrieve a copy of his Judgment of Divorce. Upon arrival to the Clerk of Court, there was no Judgment of Divorce.

During the representation, Respondent gave the Complainant many court dates, only to have them continuously postponed. Complainant contends that Respondent was not truthful about obtaining any of the court dates. Complainant checked the court records again in January of 2015 and observed that he still was not divorced. Subsequent to Complainant filing a complaint with the ODC, a Judgment of Divorce was signed on April 27, 2015.

The Respondent has violated rules 1.3, 1.4, 8.4(a) and 8.4(c) of the Rules of Professional Conduct.

Respondent answered the formal charges on September 6, 2018. As to Count I (Mose), Respondent averred that he was retained by Ms. Mose after she was terminated by the Town of Kinder. Her initial application for unemployment benefits, which she had filed, was denied. Respondent filed for a formal hearing, which was granted, and ultimately prevailed in the claim for benefits.³ Ms. Mose was not charged a fee or for costs for the unemployment proceeding. Respondent further averred that he also filed suit in state court against the Mayor of Kinder, individually and in his capacity as mayor, for the wrongful termination of Ms. Mose. The case was removed to federal court and then remanded. He stated he responded to discovery on behalf of Ms. Mose and that the defense attorney cancelled Ms. Mose's deposition after she was already en route to the deposition. Shortly thereafter, Respondent received the defendant's motion for

³ Due to a scheduling conflict, Respondent could not appear for the hearing, but had another attorney appear in his place.

summary judgment asserting that the municipality, and not the mayor, was the proper party defendant. Upon researching the issue further, Respondent determined the defense position was correct and did not oppose the motion, which was granted, and the case was dismissed. Respondent admitted that he failed to keep Ms. Mose informed about the status of her case but denied that he ever advised Ms. Mose on the filing of an EEOC complaint.

As to Count II (Edgerly), Respondent averred that Mr. Edgerly was a client without a permanent address and sporadic mobile phone service. Mr. Edgerly paid Respondent \$900.00 to obtain a divorce and \$300.00 for filing fees. Respondent stated he explained to Mr. Edgerly that there would be a hearing, but did not discuss how long it would take to complete the divorce. There was one hearing in 2012 at which the divorce was granted. Respondent further stated that opposing counsel was charged with preparing and submitting the judgment. After Mr. Edgerly brought to Respondent's attention that there was no written judgment of divorce on file, a written judgment was drafted and submitted and signed by the judge on April 20, 2015. Respondent further maintained that Mr. Edgerly did not own any community property.

The hearing in this matter was held on December 19, 2018, before Hearing Committee No. 7.⁴ Deputy Disciplinary Counsel Karen Hayes Green appeared on behalf of the ODC. Respondent appeared with counsel, Clifton J. Spears, Jr. As previously indicated, in his pre-hearing filing and at the outset of the hearing, Respondent admitted to violations of Rules 1.4(a) and 8.4(c) in connection with Count I and to violations of Rules 1.3 and 1.4 in connection with Count II. T.9-12; *see also* T.53-60. The committee heard testimony from the following: Respondent, Evelyn Denise Mose (client/complainant in Count I), and Allen Roy Edgerly, Jr. (client/complainant in

⁴ Hearing Committee No. 7 was comprised of Terrence D. McCay (Committee Chair), Zebulon M. Winstead (Lawyer Member), and Richard A. Hinton (Public Member).

Count II). ODC's Exhibits ODC 1 through ODC 11 were all admitted into evidence without objection.

The hearing committee filed its report on February 8, 2019. ODC filed a notice of objection to the findings, conclusions, and recommendations of the committee on February 11, 2019, asserting that the sanction recommended by the committee is too lenient. Respondent filed a notice of objection on February 19, 2019, asserting the recommended sanction is excessive.

On May 2, 2019, Respondent filed his brief to the Board in support of his position that the recommended sanction is excessive, asserting that the appropriate sanction would be a one-year suspension, with all but three months deferred, subject to a one-year period of supervised probation and the requirement that Respondent attend an ethics program. ODC filed its brief to the Board on May 3, 2019, arguing that the sanction recommendation is too lenient and that a one-year actual suspension, followed by a one-year, supervised probation period is warranted. Neither party raised an issue regarding the committee's conclusions regarding rule violations.

Oral argument of this matter was held on May 23, 2019, before Board Panel "A."⁵ Deputy Disciplinary Counsel Karen Hayes Green appeared on behalf of ODC. Respondent appeared with counsel, Clifton J. Spears, Jr.

HEARING COMMITTEE REPORT

In its report filed on February 8, 2019, the committee made the following findings and conclusions:

* * *

For the following reasons, as to Counts [sic] I, the Committee finds that Respondent, Darrel K. Hickman, violated Rules of Professional Conduct 1.3, 1.4, 8.4(a) and 8.4(c), and as to Count II, violated Rules of Professional Conduct 1.3 and 1.4. Specific to Count I, Respondent failed to act with reasonable diligence and promptness in representing Complainant (Rule 1.3) in discovery matters, failed

⁵ Board Panel "A" was composed of Dominick Scandurro, Jr. (Chair), Carrie L. Jones (Lawyer Member), and Sheila E. O'Leary (Public Member).

to keep Complainant reasonably informed and consult with Complainant as to matter objectives (Rule 1.4(a)), acted dishonestly in his representations to Complainant as to the status of Complainant's employment law claim (Rule 8.4(c)), and by default violated Rule 8.4(a) by his admitted violation of Rule 8.4(c). Specific to Count II, Respondent failed to act with reasonable diligence and promptness in securing Complainant's Judgment of Divorce (Rule 1.3), and failed to keep Complainant reasonably informed and consult with Complainant as to matter objectives, especially as to the community property issue component of the divorce proceeding (Rule 1.4(a)).

* * *

FINDINGS OF FACT

Respondent was admitted to practice law in Louisiana in 1994 (Transcript, p. 18), and has been a practicing attorney for 27 years (Transcript, p. 20). Approximately 70-80 percent of his practice is devoted to criminal defense work (Transcript, pp. 17-18). Very little of his practice is devoted to family law matters (Transcript, pp. 17-18). During the course of his legal career, Respondent has handled four or five wrongful termination cases (Transcript, pp. 19-20). The matter involving Ms. Mose was a wrongful termination case (Transcript, p. 21). There is a dispute as to whether Respondent was to file a discrimination claim on behalf of Ms. Mose with the EEOC (Transcript, p. 21; Transcript, p. 82). The civil lawsuit for wrongful termination involving Ms. Mose was dismissed via summary judgment because Respondent sued the wrong party and the claim prescribed (Transcript, pp. 46-47). Respondent failed to notify Ms. Mose that her claim had been dismissed with prejudice (Transcript, pp. 24-25). There was no written representation agreement between Respondent and Ms. Mose (Transcript, p. 84). Respondent maintained no malpractice insurance (Transcript, p. 26). Respondent admits to violations of Rules 1.4 and 8.4(C) [sic] as to Count I (Transcript, p. 10).

As to Count II, Respondent filed a Petition of Divorce for Mr. Edgerly (Transcript, pp. 26-27). There is a dispute as to whether the representation included partition of community property (Transcript, p. 27; Transcript, pp. 98-99). The Petition of Divorce contained a provision for judicial partition of community property (Transcript, p. 27). Property was acquired during the community between Mr. Edgerly and his ex-wife (Transcript, pp. 104-105, 113-118). There is a dispute as to who was tasked with preparing the Judgment of Divorce. Respondent claimed that opposing counsel was to draft the Judgment of Divorce (Transcript, p. 28). Mr. Edgerly believed that it was Respondent's obligation (Transcript, p. 108). There is nothing in the certified court record of the divorce proceeding indicating that opposing counsel was charged with drafting the Judgment of Divorce granted in May 2012 (Exhibit ODC-10). Respondent ultimately prepared and filed the Judgment of Divorce in 2015 (Transcript, pp. 29-30). There was no written representation agreement between Respondent and Mr. Edgerly (Transcript, p. 98). Respondent admits to violations of Rules 1.3 and 1.4 as to Count II (Transcript, p. 10).

Respondent has implemented certain office procedures to improve office efficiency and client communications, including hiring a secretary and implementing case software to track client matters (Transcript, p. 40).

RULES VIOLATED

As to Count I, Respondent admits to violations of Rules 1.4 and 8.4(c). In addition to these admitted violations, the Committee finds that Respondent also violated Rule 1.3 by his dilatory behavior in discovery matters. In addition, his failure to timely ascertain the correct party to sue in Complainant's employment law case resulted in dismissal of the matter with prejudice by prescription. Whether the Town of Kinder was a Lawrason Act municipality or a home rule charter municipality is immaterial for purposes of Louisiana discrimination law. Pursuant to Louisiana R.S. 23:302, the proper defendant in a discrimination action is the plaintiff's employer, which was the Town of Kinder, not Kinder's Mayor. This fact was easily discoverable early in the litigation by the exercise of reasonable diligence. The Committee also finds that by the admitted violation of Rules 1.4 and 8.4(c), Respondent, by default, also violated Rule 8.4(a), irrespective of the Committee's determination that Respondent also violated Rule 1.3.

As to Count II, Respondent admits to violations of Rule 1.3 and 1.4. The Committee finds that there is insufficient evidence to find that Respondent violated Rule 8.4(c). While respondent was clearly dilatory in obtaining Complainant's Judgment of Divorce, failed to clearly ascertain Complainant's objectives, and failed to keep Complainant reasonably informed of the progress of his matter, there are factual discrepancies as to whether such behavior rose to the level of fraud, deceit, or dishonesty. However, the Committee finds that by the admitted violation of Rules 1.3 and 1.4, Respondent, by default, also violated Rule 8.4(a).

Committee Report, pp. 1-2, 4-6.

The committee further provided the following analysis in support of the recommended sanction:

Here, Respondent violated duties owed to the clients, the legal system, and the profession. He acted negligently, knowingly, intentionally, and dishonestly as noted above in the Formal Charges, Findings of Fact, and Rules Violations. Respondent's misconduct caused both actual and potential harm by:

- 1) Failing to handle Ms. Mose's employment law matter with appropriate diligence and promptness, failing to keep her reasonably informed of the status of her matter, and failing to promptly comply with reasonable requests for information, resulting in the ultimate dismissal of Complainant's matter with prejudice. Respondent also behaved dishonestly by failing to inform Ms. Mose that her matter had been dismissed, and the reasons for the dismissal. Once that bell was rung, it could not be un-rung, resulting in actual and significant harm to Ms. Mose.
- 2) Failing to handle Mr. Edgerly's divorce matter with appropriate diligence and promptness, failing to keep him reasonably informed of the status of his matter, and failing to reasonably consult with Complainant as to matter objectives.

Respondent admitted that he was marginally proficient in family law matters, and relied on "boilerplate" language in pleadings. There was clearly a disconnect between Respondent and Complainant as to the property settlement part of the divorce proceeding. That, and the three year delay in securing the actual Judgment of Divorce caused potential harm to Complainant, although the evidence is insufficient for a determination of actual harm to Mr. Edgerly.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension followed by probation is the baseline sanction for Respondent's misconduct. The following ABA Standards are applicable and were considered by the Committee, all of which suggest suspension followed by probation as the appropriate sanction:

4.4 Lack of Diligence

Standard 4.42: Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect with respect to client matters and causes injury or potential injury to a client.

4.5 Competence

Standard 4.52: Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.6 Lack of Candor

Standard 4.62: Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

7.0 Violations of Other Duties as a Professional

Standard 7.2: Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

8.0 Prior Discipline Orders

Rule 8.2: Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that causes injury or potential injury to a client, the public, the legal system, or the profession.

Aggravating factors which are applicable in assessing the baseline sanction include Respondent's previous violations of the Rules of Professional Conduct, a pattern of misconduct, vulnerability of the victims, and substantial experience in the practice of law. Mitigating factors which are applicable in assessing the baseline sanction include full disclosure to the ODC and a cooperative attitude toward the proceedings, a delay in the disciplinary proceedings, remoteness of prior offenses, and steps taken by Respondent to improve office administration and communication with clients. The acts complained of occurred in 2011 and were reported to ODC in 2014, yet formal charges were not filed until 2018. In 2014, Respondent was suspended from the practice of law for one year fully deferred for failing to properly communicate with a client and misleading the client about the status of a legal matter, in violation of Rules 1.4 and 8.4(c).

[FN3 *In Re Darrell K. Hickman*, 14-0817 (La. 05/16/2014), 140 So.3d 711]

Based on the Committee's finding of Respondent's misconduct and multiple Rules violations, and considering the aggravating and mitigating factors, the Committee recommends that Respondent be suspended from the practice of law for one year and one day, with six months deferred, and one year of supervised probation. The Committee also recommends that as a condition of reinstatement, that Respondent successfully complete: (1) an ethics school program sponsored by the Louisiana State Bar Association, and (2) a training session on time management and law office practice to improve efficiency and client communications. The Committee reviewed multiple disciplinary cases in arriving at its recommendation, which are summarized in the Exhibit B attached hereto.⁶

CONCLUSION

The Committee recommends that Respondent be suspended from the practice of law for one year and one day, with six months deferred, and one year of supervised probation. The Committee also recommends that as a condition of reinstatement, that Respondent successfully complete: (1) an ethics school program sponsored by the Louisiana State Bar Association, and (2) a training session on time management and law office practice to improve efficiency and client communications.

Committee Report, pp. 6-9.

ANALYSIS OF THE RECORD BEFORE THE BOARD

I. Standard of Review

The powers and duties of the Disciplinary Board are defined in §2 of Louisiana Supreme Court Rule XIX. Rule XIX, §2(G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges ... and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's

⁶ The decisions referenced by the committee included *In re Nichols*, 2011-1538 (La. 10/14/11), 72 So.3d 830; *In re Scott*, 2009-1886 (La. 2/5/10), 31 So.3d 978; *In re Fazande*, 2003-2210 (La. 1/21/2004), 864 So.2d 174; *In re Dean*, 2003-2478 (La. 1/21/2004), 864 So.2d 152; and *In re Broussard*, 2009-1814 (La. 1/8/10), 26 So.3d 131. Committee Report, Exhibit B, pp. 11-12.

application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/92).

A. The Manifest Error Inquiry

The factual findings of the committee do not appear to be manifestly erroneous, are supported by the record, and are adopted by the Board.

B. De Novo Review

The committee correctly applied the Rules of Professional Conduct and the committee's legal conclusions regarding rule violations are supported by clear and convincing evidence. Respondent admitted, and the evidence supports, violations of Rules 1.4 and 8.4(c) as to Count I and violations of Rules 1.3 and 1.4 as to Count II. The parties are free to enter into stipulations as to rule violations and effect must be given to them unless they are withdrawn. *In re Torry*, 2010-0837 (La. 10/19/10), 48 So.3d 1038. Further, for the reasons outlined in the committee's report, the evidence supports the conclusions that Respondent also violated Rule 1.3 as to Count I. Additionally, the committee's determination that there is insufficient evidence to find that Respondent violated Rule 8.4(c) as to Count II appears appropriate and the Board concurs in this conclusion. Finally, the violation of Rules 1.3, 1.4, and 8.4(c) establish the derivative violation of Rule 8.4(a) which provides that it is professional misconduct to violate or attempt to violate the Rules of Professional Conduct.

II. The Appropriate Sanction

A. Rule XIX, §10(C) Factors

Louisiana Supreme Court Rule XIX, §10(C) states that when imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

The committee found that Respondent violated duties owed to the clients, the legal system, and the profession. However, the Board finds that Respondent actually violated only the duty owed to his clients. Further, the Board finds that Respondent acted both negligently and knowingly, but not intentionally. His misconduct caused actual harm to Ms. Mose. Respondent's lack of diligence and communication resulted in the loss of her right to pursue her wrongful termination claim and deprived her of even the ability to seek an opinion from another attorney with respect to the existence of a viable opposition to the defendant's motion for summary judgment.⁷ In Mr. Edgerly's case, Respondent's failure to ensure that the judgment of divorce was timely signed and filed created the potential for damage to Mr. Edgerly. However, the evidence presented was insufficient to determine whether Mr. Edgerly sustained any actual damage due to the three-year delay between the hearing where the judge ruled and the actual signing of the judgment of divorce.

The following aggravating factors are supported by the evidence: prior disciplinary offense; pattern of misconduct; multiple offenses; vulnerability of victim; and substantial experience in the practice of law. The mitigating factors present are full and free disclosure to disciplinary board or cooperative attitude toward the proceedings; delay in disciplinary proceedings; and remoteness of prior offense. In mitigation, the Board also recognizes that a significant percentage of Respondent's practice involves criminal defense and Respondent has a contract with the Public Defender's Office to provide criminal defense work for the indigent. T.16-17, 37-38. See e.g., *In re Butler*, 2018-1472 (La. 1/30/19), 264 So.3d 414, 423 ("Additionally,

⁷ The record does not contain sufficient evidence to ascertain the likelihood of whether or not Ms. Mose possessed a valid wrongful termination claim assuming the proper party defendant had been sued.

while not technically a mitigating factor, we observe that respondent has worked as an indigent defender for fourteen years and a significant percentage of her practice involves criminal defense.”); *In re Morris*, 2014-1067 (La. 10/15/14), 149 So.3d 229, 236-237, 241 (“Respondent has also devoted a substantial portion of her practice to representations that serve the public interest, in the areas of criminal defense and other under-served areas of the community;” “she devoted a substantial portion of her practice to representations in the public interest in under-served areas of the community”).

With respect to the prior disciplinary offense and delay in these disciplinary proceedings, in 2014, Respondent consented to discipline in the form of a one-year suspension, fully deferred, for violations of Rules 1.4(a), 8.4(a), and 8.4(c). The consent discipline proceeding arose out of Respondent’s agreement, in 2007, to represent a client in filing a lawsuit for wrongful termination. Respondent failed to file the lawsuit and misled the client about the status of her case until she terminated his services and retrieved her file in 2010. The client filed a disciplinary complaint in 2010. The petition for consent discipline was filed in April of 2014 and the Court issued the order imposing discipline in May 2014. *In re Hickman*, 2014-0817 (La. 5/16/14), 140 So.3d 711. (“*Hickman I*”)

The misconduct giving rise to the present proceeding occurred after the similar misconduct which resulted in the discipline imposed in *Hickman I*, but before the petition for consent discipline was filed in *Hickman I*.⁸ Ms. Mose’s complaint was filed in April of 2014, a few weeks prior to the filing of the petition for consent discipline in *Hickman I*, and Mr. Edgerly’s complaint was

⁸ In *LSBA v. Chatelain*, 573 So.2d 470 (La. 1991), the Court determined that it is generally inappropriate to impose additional discipline upon an attorney for misconduct that occurred before or concurrently with the violations which resulted in a prior disciplinary sanction. Rather, the overall discipline to be imposed should be determined as if both proceedings were before the Court simultaneously. It is noted that because the misconduct at issue here occurred after the misconduct at issue in *Hickman I*, *Chatelain* is not applicable.

filed in October of 2014, a few months after the petition in *Hickman I*. See Exs. ODC 1 and ODC 6. The formal charges in this matter were not filed until four years later in August 2018. During the interim, Respondent took steps to improve office administration and communication with clients, including hiring a secretary, which he did not have prior to that time, and implementing the use of case management software. T.40.

B. The ABA Standards and Case Law

The following ABA *Standards for Imposing Lawyer Sanctions* provide guidance in determining the appropriate sanction to be imposed given the circumstances presented in this matter:

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

The above standards and the jurisprudence support a baseline sanction of suspension for Respondent's misconduct here.

The respondent in *In re Nichols*, 2011-1538 (La. 10/14/11), 72 So.3d 830, was suspended for six months, fully deferred, subject to a six-month period of unsupervised probation and additional ethical education conditions for neglecting client matters and failing to adequately communicate with the clients in two different client matters in violation of Rules 1.3 and 1.4. He was found to have acted negligently and violated duties owed to his clients, causing them both harm. In one of the cases, he allowed a client's personal injury lawsuit to abandon although the

hearing committee believed the client's claim likely would not have resulted in a substantial judgment in the client's favor. Aggravating factors present were a pattern of misconduct, multiple offenses, vulnerability of the victim, and substantial experience in the practice of law. Mitigating factors included absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings, and remorse.

In *In re Scott*, 2009-1886 (La. 2/5/10), 31 So.3d 978, the respondent was suspended for six months, fully deferred, subject to the condition that any additional misconduct by the respondent within one year from the finality of the judgment may be grounds for making the deferred suspension executory, or imposing additional discipline, as appropriate, for failing to communicate with and neglecting a legal matter of one client and failing to properly communicate with another client. The respondent knowingly violated duties owed to his clients. The court stated that the baseline sanction for the misconduct was suspension. Aggravating factors included a prior disciplinary offense (allowed to participate in a diversion program after client complained that he neglected a legal matter and failed to return a client file), a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct ("particularly disturbing" was his placing blame on the client for his failures), and substantial experience in the practice of law. The only mitigating factor present was his cooperative attitude toward the disciplinary proceedings.

In *In re Broussard*, 2009-1814 (La. 1/8/10), 26 So.3d 131, the respondent was found to have failed to communicate with and neglected the legal matter of one client (resulting in the dismissal without prejudice of the matter) and failed to release the files upon request of two clients. The respondent had essentially stipulated to the allegations of the formal charges and the

respondent and the ODC stipulated to a proposed sanction of a six-month suspension, fully deferred. The Court found that the respondent's conduct was knowing in part and negligent in part and that the baseline sanction was a period of suspension. Aggravating factors present were prior disciplinary offenses, multiple offenses, a pattern of misconduct, and substantial experience in the practice of law. Mitigating factors were the absence of a dishonest or selfish motive, a cooperative attitude toward the disciplinary proceeding, remorse, and a delay in the disciplinary proceeding. Regarding the aggravating factor of prior disciplinary offenses, the respondent had been sanctioned on two prior occasions. In 1998, the respondent had been admonished for engaging in improper financial transactions with his client. In 2002, the respondent consented to discipline in the form of a fully deferred six-month suspension, subject to a one-year period of supervised probation with conditions, for conduct constituting a conflict of interest and for failing to disburse settlement proceeds to a client for more than one year, during which time the balance of his trust account dropped below the amount held on the client's behalf. *Id.* at 134. The Court suspended the respondent for one year and one day, with all but thirty days deferred, subject to a one-year period of supervised probation with additional conditions. The court explained that it was "necessary to impose an actual period of suspension in order to impress upon respondent the importance of his duties and responsibilities to his clients." *Id.* at 137.

A one-year and one-day suspension was imposed by the Court in *In re Robertson*, 2017-1169 (La. 11/28/17), 230 So.3d 193, one of the cases cited by ODC in support of its argument that Respondent should be placed on active suspension for one year. While *Robertson* and the present matter share some similar facts, unlike in the instant matter, in *Robertson*, the respondent did not answer or otherwise respond to the formal charges, which were deemed admitted. The respondent in *Robertson* provided incompetent representation to a client, neglected her legal matter causing a

portion of the client's case to be dismissed, and failed to communicate with the client. The respondent's conduct was both negligent and knowing and caused actual harm. Aggravating factors included a prior disciplinary record and substantial experience in the practice of law. The only mitigating factor present was absence of a dishonest or selfish motive. The respondent's prior disciplinary record included a one-year suspension, fully deferred, subject to a one-year probation period with conditions, for neglecting his client's legal matter, causing the case to be dismissed, failing to communicate with his client, failing to return the client's file, failing to respond to opposing counsel's requests, and failing to comply with federal court orders. *Id.* at 193-94.

The respondent in *In re Montgomery*, 2018-0637 (La. 8/31/18), 251 So.3d 401, another deemed admitted matter, was also suspended for one year and one day. The *Montgomery* case arose out of complaints filed by two clients, both of whom had retained and paid the respondent to represent them in divorce matters. The Court found that the respondent failed to comply with bar obligations, neglected legal matters, failed to communicate with clients, failed to account for fees, and failed to cooperate with the ODC in its investigations. The respondent knowingly violated duties owed to his clients, the legal system, and the legal profession, causing actual harm. The respondent had failed to take any action or respond to his client in one matter. In the other matter, his misconduct included among other things, waiving his client's right to support against the client's interest, failing to file a detailed descriptive list of assets, failing to communicate with the client, failing to appear at the divorce hearing, and failing to notify the client that a final divorce judgment had been granted. Aggravating factors included multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, substantial experience in the practice of law, and indifference to making restitution. The only mitigating factor was absence of a prior disciplinary record.

As can be seen from the above review, the sanctions imposed for misconduct similar to that committed by respondent can vary substantially depending on the circumstances involved. Considering the jurisprudence, in particular, the *Broussard* case, and all the facts and circumstances presented here, the Board concludes that a sanction of a one-year and one-day suspension, with all but three months deferred, is appropriate in this matter. As in *Broussard*, Respondent was sanctioned previously for misconduct similar to that presented here. In this instance, however, the misconduct at issue occurred before the imposition of the prior sanction. Significantly, during the period of time that elapsed between the prior proceedings and the filing of the formal charges in this proceeding, Respondent took constructive steps to improve his office administration and communication with clients, including hiring a secretary and implementing the use of case management software. Moreover, the harsher sanctions imposed in *Robertson* and *Montgomery* cases are not warranted inasmuch as Respondent has fully cooperated in the disciplinary process. The Board finds that the recommended sanction of a one-year and one-day suspension, with all but three months deferred, comports with the Court's instruction that "the purpose of lawyer disciplinary proceedings is not primarily to punish the lawyer, but rather to maintain appropriate standards of professional conduct to safeguard the public, to preserve the integrity of the legal profession, and to deter other lawyers from engaging in violations of the standards of the profession." *In re Torry, supra* at 1042 (citing *Louisiana State Bar Ass'n v. Guidry*, 571 So.2d 161 (La.1990)).

CONCLUSION

For the foregoing reasons, the Board adopts the committee's factual findings and conclusions regarding rule violations. The Board recommends that Respondent be suspended for one year and one day, with all but three months deferred. Additionally, the Board recommends

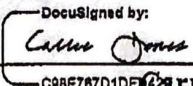
that the active period of suspension be followed by a one-year probation period during which any misconduct will be grounds for making the deferred period of suspension executory and/or imposing additional discipline, as appropriate. Finally, the Board recommends that Respondent be assessed with the costs and expenses of this matter.

RECOMMENDATION

The Board recommends that Darrell K. Hickman be suspended from the practice of law for one year and one day, with all but three months deferred, and that upon the completion of the active portion of the suspension, Respondent be placed on probation for one year and any misconduct during the probationary period be grounds for making the deferred period of suspension executory and/or imposing additional discipline, as appropriate. The Board further recommends that Respondent be assessed with the costs and expenses of these proceedings in accordance with Louisiana Supreme Court Rule XIX, §10.1(A).

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Linda G. Bizzarro
Laura B. Hennen
Sheila E. O'Leary
Dominick Scandurro, Jr.
Danna E. Schwab
Evans C. Spiceland, Jr.
Melissa L. Theriot
Charles H. Williamson, Jr.

By  DocuSigned by:
C98E787D1DFC Carrie L. Jones
FOR THE ADJUDICATIVE COMMITTEE

APPENDIX

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) 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;

...

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

...

CERTIFICATE OF MAILING

In re: **Darrell Keith Hickman**
Docket No(s). **18-DB-054**

I hereby certify that a copy of the Recommendation of the Louisiana Attorney Disciplinary Board has this day been mailed to the Respondent(s) and/or the Counsel for the Respondent(s) by United States Mail and E-Filed to the Office of Disciplinary Counsel this **18th** day of **February, 2020** at the following address:

Mr. Clifton J. Spears, Jr.
Counsel for Respondent
720 Murray Street
Alexandria, LA 71301

Ms. Karen Green
Deputy Disciplinary Counsel
4000 S. Sherwood Forest Blvd.
Suite 607
Baton Rouge, LA 70816



DONNA L. ROBERTS
BOARD ADMINISTRATOR

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

I. GENERAL PROVISIONS.....	1
Rule 1.01. Definitions.....	1
Rule 1.02. General Powers	1
Rule 1.03. Additional Rules in Disciplinary Matters	1
Rule 1.04. Appointment of Panels	1
Rule 1.05. Filing of Pleadings, Motions, and Other Papers.....	1
Rule 1.06. Service of Petition	2
Rule 1.07. Hearing Setting and Notice	2
Rule 1.08. Time to Answer	2
Rule 1.09. Pretrial Procedure	2
Rule 1.10. Decisions	3
Rule 1.11. Board of Disciplinary Appeals Opinions.....	3
Rule 1.12. BODA Work Product and Drafts	3
Rule 1.13. Record Retention.....	3
Rule 1.14. Costs of Reproduction of Records.....	3
Rule 1.15. Publication of These Rules.....	3
II. ETHICAL CONSIDERATIONS.....	3
Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases.....	3
Rule 2.02. Confidentiality.....	4
Rule 2.03. Disqualification and Recusal of BODA Members	4
III. CLASSIFICATION APPEALS	4
Rule 3.01. Notice of Right to Appeal	4
Rule 3.02. Record on Appeal.....	4
IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS.....	4
Rule 4.01. Perfecting Appeal.....	4
Rule 4.02. Record on Appeal.....	5
Rule 4.03. Time to File Record.....	6
Rule 4.04. Copies of the Record	6
Rule 4.05. Requisites of Briefs	6
Rule 4.06. Oral Argument.....	7
Rule 4.07. Decision and Judgment	7
Rule 4.08. Appointment of Statewide Grievance Committee.....	8
Rule 4.09. Involuntary Dismissal.....	8
V. PETITIONS TO REVOKE PROBATION.....	8
Rule 5.01. Initiation and Service.....	8
Rule 5.02. Hearing.....	8

VI. COMPULSORY DISCIPLINE.....	8
Rule 6.01. Initiation of Proceeding	8
Rule 6.02. Interlocutory Suspension	8
VII. RECIPROCAL DISCIPLINE	9
Rule 7.01. Initiation of Proceeding	9
Rule 7.02. Order to Show Cause.....	9
Rule 7.03. Attorney’s Response.....	9
VIII. DISTRICT DISABILITY COMMITTEE HEARINGS	9
Rule 8.01. Appointment of District Disability Committee	9
Rule 8.02. Petition and Answer	9
Rule 8.03. Discovery	9
Rule 8.04. Ability to Compel Attendance.....	10
Rule 8.05. Respondent’s Right to Counsel	10
Rule 8.06. Hearing.....	10
Rule 8.07. Notice of Decision.....	10
Rule 8.08. Confidentiality.....	10
IX. DISABILITY REINSTATEMENTS	10
Rule 9.01. Petition for Reinstatement	10
Rule 9.02. Discovery	10
Rule 9.03. Physical or Mental Examinations	10
Rule 9.04. Judgment	10
X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS	11
Rule 10.01. Appeals to the Supreme Court.....	11

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. 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 chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04. Appointment of Panels

- (a) BODA may consider any matter or motion by panel,

except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05. Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

- (1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

- (2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

- (4) Exceptions.

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

- (ii) The following documents must not be filed electronically:

- a) documents that are filed under seal or subject to a pending motion to seal; and
- b) documents to which access is otherwise restricted by court order.

- (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

- (5) Format. An electronically filed document must:

- (i) be in text-searchable portable document format (PDF);
- (ii) be directly converted to PDF rather than scanned, if possible; and
- (iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
- (2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06. Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and 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. To establish service by certified mail, the return receipt must contain the Respondent’s signature.

Rule 1.07. Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC’s filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the

request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08. Time to Answer

The Respondent may file an answer at any time, 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 1.09. Pretrial Procedure

(a) Motions.

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must 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. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

- (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (ii) if an appeal has been perfected, the date when the appeal was perfected;
- (iii) the original deadline for filing the item in question;
- (iv) the length of time requested for the extension;
- (v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

- (1) marked;
- (2) indexed with the title or description of the item offered as an exhibit; and
- (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10. Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

- (1) as required by the TRDP; and
- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11. Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must 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 BODA 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.

Rule 1.12. BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is 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, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13. Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14. Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15. Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

II. ETHICAL CONSIDERATIONS

Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on 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) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

Rule 2.03. Disqualification and Recusal of BODA Members

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

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and

all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02. Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

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

(c) Responsibility for Filing Record.

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

- a) a notice of appeal has been filed;
- b) a party has requested that all or part of the reporter's record be prepared; and
- c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

- (i) gather the documents designated by the parties'

written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) Preparation of the Reporter's Record.

(1) The appellant, at or before the time prescribed for

perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6¹) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

¹ So in original.

Rule 4.03. Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless

a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or 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 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of 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 a 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) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) Extension of Time to File the Reporter's Record.

When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

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

Rule 4.04. Copies of the Record

The record may 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 a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05. Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

(c) Contents. Briefs must 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 indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
- (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
- (5) a statement, without argument, of the basis of BODA's jurisdiction;
- (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
- (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
- (8) the argument and authorities;
- (9) conclusion and prayer for relief;
- (10) a certificate of service; and
- (11) an appendix of record excerpts pertinent to the issues presented for review.

(d) Length of Briefs; Contents Included and Excluded.

In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) Amendment or Supplementation. BODA has discretion to grant leave to amend or supplement briefs.

(f) Failure of the Appellant 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;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06. Oral Argument

(a) Request. A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) Right to Oral Argument. A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

- (1) the appeal is frivolous;
- (2) the dispositive issue or issues have been authoritatively decided;
- (3) the facts and legal arguments are adequately presented in the briefs and record; or
- (4) the decisional process would not be significantly aided by oral argument.

(c) Time Allowed. Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07. Decision and Judgment

(a) Decision. BODA may do any of the following:

- (1) affirm in whole or in part the decision of the evidentiary panel;
- (2) modify the panel's findings and affirm the findings as modified;
- (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
- (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:
 - (i) the panel that entered the findings; or
 - (ii) 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) Mandate. In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08. Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09. 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.

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02. Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02. Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

- (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
- (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must 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 certified copy of the order or judgment rendered against the Respondent.

Rule 7.02. Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice 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.

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

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

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

Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03. Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04. Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC 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 petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06. Hearing

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 must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07. Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08. Confidentiality

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

IX. 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. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include 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 must 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 make all or any part of the record of the proceeding confidential.

Rule 9.02. Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03. Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must 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 must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

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

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her 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 other orders necessary to protect the public and the petitioner's potential clients.

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.