

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

**IN THE MATTER OF  
DARRELL KEITH HICKMAN  
STATE BAR CARD NO. 09572980**

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§  
§

**CAUSE NO. 55412**

**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. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.
2. 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.
3. 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 Petition for Reciprocal Discipline at 6412 Mil Mar Boulevard, Alexandria, Louisiana 71302.

4. On or about May 16, 2014, an Order/Per Curiam (Exhibit 1) was entered in the Supreme Court of the State of Louisiana in a matter styled: *In Re: Darrell K. Hickman*, No. 2014-B-0817, that states in pertinent part as follows:

. . . it is ordered that the Petition for Consent Discipline be accepted and that Darrell K. Hickman, Louisiana Bar Roll number 22797, be suspended from the practice of law for a period of one year. It is further ordered that this suspension shall be deferred in its entirety. . .

5. In the Joint Petition for Consent Discipline, the Respondent acknowledged that he violated Rule 1.4(a) (failed to properly communicate with a client regarding the true status of her case); Rule 8.4(c) (engaged in conduct involving dishonesty, deceit or misrepresentation); and Rule 8.4(a) (violated or attempted to violate the Rules of Professional Conduct).

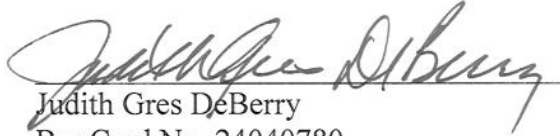
6. A certified copy of the Order/Per Curiam is attached hereto as Petitioner's Exhibit 1 and made a part hereof for all intents and purposes as if the same were copied verbatim herein.

7. 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 Supreme Court of Louisiana and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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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 Petition for Reciprocal Discipline and the Order to Show Cause on Darrell Keith Hickman by personal service.

Darrell Keith Hickman  
6412 Mil Mar Boulevard  
Alexandria, Louisiana 71302

  
Judith Gres DeBerry

**SUPREME COURT OF TEXAS  
BOARD OF DISCIPLINARY APPEALS  
INTERNAL PROCEDURAL RULES**

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**SUPREME COURT OF TEXAS  
BOARD OF DISCIPLINARY APPEALS  
INTERNAL PROCEDURAL RULES**

**SECTION 1: 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 chairperson.
- (c) "Classification" is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE ("TRDP") 2.10 by the Chief Disciplinary Counsel ("CDC") whether a grievance constitutes a "complaint" or an "inquiry."
- (d) "Clerk" is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) "Executive Director" is the executive director of BODA.
- (f) "Panel" is any three-member grouping of BODA.
- (g) "Party" is a complainant, respondent, or the CDC.

**Rule 1.02 General Powers**

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

**Rule 1.03 Additional Rules in Disciplinary Matters**

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE ("TRCP"), TEXAS RULES OF APPELLATE PROCEDURE ("TRAP"), and TEXAS RULES OF EVIDENCE ("TRE") apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

**Rule 1.04 Appointment of Panels**

- (a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

#### **Rule 1.05 Record Retention**

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

#### **Rule 1.06 Trial Briefs**

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

#### **Rule 1.07 Service**

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is 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. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

#### **Rule 1.08 Publication**

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

#### **Rule 1.09 Photocopying Costs**

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

#### **Rule 1.10 Abstracts**

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

### **Rule 1.11 Hearing Setting and Notice**

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

### **Rule 1.12 Time to Answer**

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits 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 1.13 Facsimile and Electronic Filing**

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.



(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

#### **Rule 1.14 Hearing Exhibits**

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

#### **Rule 1.15 BODA Work Product and Drafts**

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, 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, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

#### **Rule 1.16 BODA Opinions**

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

## **SECTION 2: ETHICAL CONSIDERATIONS**

### **Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases**

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding 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) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

### **Rule 2.03 Disqualification and Recusal of BODA Members**

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

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

## **Rule 2.04 Communications with BODA**

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

## **SECTION 3: CLASSIFICATION APPEALS**

### **Rule 3.01 Notice of Appeal**

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

### **Rule 3.02 Complaint on Appeal**

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

### **Rule 3.03 Notice of Disposition**

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

## **SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS**

### **Rule 4.01 Signing, Filing, and Service**

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

## **Rule 4.02 Computation of Time**

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

## **Rule 4.03 Record on Appeal**

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

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

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

- (1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.
- (2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.
- (3) The clerk's record should be in the following form:
  - (i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

- (ii) arranged in ascending chronological order by document by date of filing or occurrence;
- (iii) tabbed with heavy index tabs to show the beginning of each document;
- (iv) consecutively numbered in the bottom right-hand corner of the pages;
- (v) bound together so that the record will lie flat when opened; and
- (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

#### **Rule 4.04 Time to File Record**

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to 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 thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and 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 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)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
  - (b) the appellant is not entitled to proceed without payment of costs.

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

#### **Rule 4.05 Copies of the Record**

The record shall 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 written request to the clerk and paying copying charges.

#### **Rule 4.06 Requisites of Briefs**

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall 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 with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure 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; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

#### **Rule 4.07 Oral Argument**

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.



### **Rule 4.08 Motions Generally**

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall 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. BODA may determine a motion before a response is filed.

### **Rule 4.09 Motions for Extension of Time**

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

### **Rule 4.10 Decision and Judgment**

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,

- (2) 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) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

#### **Rule 4.11 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.

### **SECTION 5: PETITIONS TO REVOKE PROBATION**

#### **Rule 5.01 Initiation and Service**

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

#### **Rule 5.02 Hearing**

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

## **SECTION 6: COMPULSORY DISCIPLINE MATTERS**

### **Rule 6.01 Initiation of Proceeding**

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

### **Rule 6.02 Notice of Decision**

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

## **SECTION 7: RECIPROCAL DISCIPLINE MATTERS**

### **Rule 7.01 Initiation of Proceeding**

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall 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 copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

### **Rule 7.02 Order to Show Cause**

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

### **Rule 7.03 Attorney's Response**

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer 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 for reciprocal discipline.

## **SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS**

### **Rule 8.01 Appointment of District Disability Committee**

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

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

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

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

### **Rule 8.02 Hearing Order**

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

### **Rule 8.03 Provisions for Physical or Mental Examinations**

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

### **Rule 8.04 Ability to Compel Attendance**

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued 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 notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

### **Rule 8.06 Limited Discovery**

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

### **Rule 8.07 Hearing**

(a) 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 shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

### **Rule 8.08 Notice of Decision**

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

### **Rule 8.09 Confidentiality**

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

## **SECTION 9: 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. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.



(b) The petition shall set forth 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 shall 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 seal all or any part of the record of the proceeding.

### **Rule 9.02 Discovery**

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

### **Rule 9.03 Physical or Mental Examinations**

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall 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 shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

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

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his 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 such other orders as protecting the public and the petitioner's potential clients may require.

## **SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT**

### **Rule 10.01 Docketing by the Clerk**

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

### **Rule 10.02 Appellate Rules to Apply**

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.



# Supreme Court

STATE OF LOUISIANA  
New Orleans

JUSTICE  
ARNETTE J. JOHNSON Seventh District  
G. G. GUIDRY First District  
FREY P. VICTORY Second District  
ARNETTE THERIOT KNOLL Third District  
JUS R. CLARK Fourth District  
PERSON D. HUGHES III Fifth District  
L. WEIMER Sixth District

JOHN TARLTON OLIVIER  
CLERK OF COURT  
400 Royal St., Suite 4200  
NEW ORLEANS, LA 70130-8102  
TELEPHONE (504) 310-2300  
HOME PAGE <http://www.lasc.org>

May 16, 2014

Charles Bennett Plattsmier, Esq.  
Chief Disciplinary Counsel  
100 S. Sherwood Forest Blvd.  
Suite 607  
Baton Rouge, LA 70816

In Re: Darrell K. Hickman  
No. 2014-B-817

Dear Counsel:

Enclosed please find an order issued by this court in the above referenced matter, which is self-explanatory.

With kindest regards, I remain,

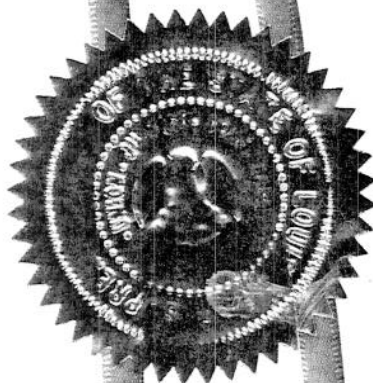
Very truly yours,

John Tarlton Olivier  
Clerk of Court

*Robin A. Burras*

By: Robin A. Burras  
Deputy Clerk of Court

cc: Edwin C. Gonzalez, Jr., Esq.  
Damon Brown Manning, Esq.  
Clifton Spears, Jr., Esq.  
Darrell K. Hickman, Esq.  
Donna Roberts, Board Administrator



SUPREME COURT OF LOUISIANA  
TRUE COPY OF DOCUMENTS  
NAME APPEARS IN OUR RECORD

*Edwin C. Gonzalez, Jr.*  
Edwin C. Gonzalez, Jr.  
Deputy Clerk of Court

Exhibit

1

# The Supreme Court of the State of Louisiana

IN RE: DARRELL K. HICKMAN

NO. 2014-B-0817

-----  
IN RE: Disciplinary Counsel; Hickman, Darrell K.; - Other(s);  
Applying For Joint Petition for Consent Discipline  
-----

May 16, 2014

Joint petition for consent discipline accepted. See per curiam.

JLW

BJJ

JPV

JTK

GGG

MRC

JDH

Supreme Court of Louisiana  
May 16, 2014



Deputy Clerk of Court  
For the Court

SUPREME COURT OF LOUISIANA

NO. 14-B-0817

IN RE: DARRELL K. HICKMAN

MAY 16 2014

ATTORNEY DISCIPLINARY PROCEEDINGS

*JW* PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent misled his client concerning the status of her legal matter. Prior to the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that Darrell K. Hickman, Louisiana Bar Roll number 22797, be suspended from the practice of law for a period of one year. It is further ordered that this suspension shall be deferred in its entirety.

IT IS FURTHER ORDERED that 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.

SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DUPLICATE

DOCKET NO. 14 B 0817

CONFIDENTIAL

JOINT PETITION FOR CONSENT DISCIPLINE  
PURSUANT TO RULE XIX, SECTION 20

NOW INTO THESE PROCEEDINGS comes the OFFICE OF DISCIPLINARY COUNSEL, through undersigned Deputy Disciplinary Counsel, and Respondent DARRELL K. HICKMAN (Bar Roll No. 22797), personally and through his counsel of record, Clifton J. Spears, Jr., who jointly petition the Louisiana Supreme Court for consent discipline in the above-captioned proceeding on the following basis, to wit:

I.

Respondent was born November 5, 1960, and admitted to practice law in the State of Louisiana on April 11, 1994. Respondent is currently eligible to practice law.

II.

Formal Charges have not been filed and Respondent has expressed a desire to resolve this matter by consent discipline.

III.

All relevant facts pertaining to this matter are set forth in the Joint Stipulation of Facts accompanying this petition, and more fully reflected in the exhibits submitted herewith. However, for ease of consideration, a brief summary of facts follows.

COUNT I – (Jocelin LeFear Matter) – On November 21, 2007, Jocelin LeFear was terminated from her position as a sitter with Evergreen Presbyterian Ministries, Inc.

In December of 2007, Ms. LeFear consulted with Respondent about the situation. Respondent advised Ms. LeFear that she had legal recourse and he agreed to represent her in filing suit against Evergreen Presbyterian Ministries.<sup>1</sup>

<sup>1</sup> Respondent now takes the position that because Louisiana is an at-will employment state, Ms. LeFear had no legal recourse against her former employer. However, it is noted that the lawsuit drafted by Respondent alleged racial discrimination as its basis.

5



Although Respondent prepared a Petition for Damages regarding *Jocelyn LeFear versus Evergreen Presbyterian Ministries, Inc.*, to be filed in the 9<sup>th</sup> Judicial District Court, Rapides Parish, he never filed the petition.

Respondent failed to advise Ms. LeFear of the fact he did not file her lawsuit. Furthermore, throughout 2009 and 2010, Respondent repeatedly misled his client about the status of her case.

Ms. LeFear terminated Respondent's services in 2010 and retrieved her file. After reviewing the file, Ms. LeFear contacted the Clerk of Court's Office and learned that Respondent had not filed suit on her behalf. Ms. LeFear then filed a disciplinary complaint against Respondent in September of 2010.

When responding to this complaint, Respondent stated that Evergreen Presbyterian Ministries was within their rights to terminate Ms. LeFear's employment, thus, she had no legitimate claim against them. Respondent then admitted that,

"Nevertheless, I was not truthful with Ms. Lafear regarding the status of her claim against her former employer. I regret not fully informing her of her lack of a claim and misleading her on this subject. I have no excuse for my behavior..."<sup>2</sup>

#### IV.

In exchange for the stated discipline being imposed, Respondent admits that he violated the following Rules of Professional Conduct: Rule 1.4(a) (failed to properly communicate with a client regarding the true status of her case); Rule 8.4(c) (engaged in conduct involving dishonesty, deceit or misrepresentation); and Rule 8.4(a) (violated or attempted to violate the Rules of Professional Conduct).

#### V.

Respondent has consented to the imposition of discipline freely and voluntarily. He has not been the subject of coercion or duress and he is fully aware of the implications of submitting to consent discipline. Respondent is represented by counsel of his choosing in these proceedings.

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<sup>2</sup> See final parag., p.1 of Respondent's November 1, 2010 response.

VI.

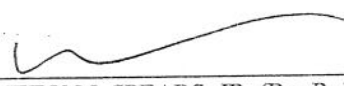
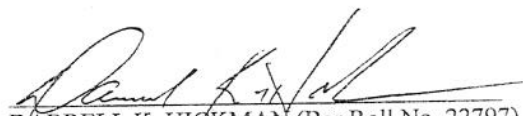
Respondent has consented to the imposition of discipline because he knows that if formal charges were prosecuted he could not successfully defend against them.

VII.


Pursuant to Rule XIX, Section 20, Respondent and the Office of Disciplinary Counsel jointly propose the following sanction as appropriate discipline for the admitted misconduct in this matter: **one year suspension, fully deferred, and Respondent assessed all costs and expenses associated with this matter.**

WHEREFORE, Respondent Darrell K. Hickman and the Office of Disciplinary Counsel hereby jointly pray that the Louisiana Supreme Court favorably consider and approve this Joint Petition for Consent Discipline and impose a one year suspension, fully deferred, and assess Respondent with all costs and expenses associated with this matter.

Respectfully Submitted,

  
CLIFTON J. SPEARS, JR. (Bar Roll No. 22159)  
620 Murray St.  
Alexandria, LA 71301  
Telephone: (318) 442-6240  
RESPONDENT'S COUNSEL  
DARRELL K. HICKMAN (Bar Roll No. 22797)  
620 Murray St.  
Alexandria, LA 71301  
Telephone: (318) 448-6353  
RESPONDENT

OFFICE OF DISCIPLINARY COUNSEL

  
DAMON S. MANNING (Bar Roll No. 28134)  
Deputy Disciplinary Counsel  
4000 S. Sherwood Forest Blvd., Ste. 607  
Baton Rouge, LA 70816  
Telephone: (225) 293-3900

SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DOCKET NO. \_\_\_\_\_

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JOINT STIPULATION OF FACTS

---

NOW INTO THESE PROCEEDINGS comes the OFFICE OF DISCIPLINARY COUNSEL, through undersigned Deputy Disciplinary Counsel, and Respondent DARRELL K. HICKMAN (Bar Roll No. 22797), personally and through his counsel of record, Clifton J. Spears, Jr., who jointly stipulate to the following facts:

I.

Respondent was born November 5, 1960, and admitted to practice law in the State of Louisiana on April 11, 1994. Respondent is currently eligible to practice law.

II.

COUNT I – (Jocelin LeFear Matter) – This complaint was filed against Respondent in September of 2010 by his former client, Jocelin LeFear. The matter was assigned Investigative File No. 0027084 and is summarized as follows.

On November 21, 2007, Jocelin LeFear was terminated from her position as a sitter with Evergreen Presbyterian Ministries, Inc. for what was characterized as “Non-Injurious Neglect” when she left her “assigned 24-hour consumer unsupervised.”

In December of 2007, Ms. LeFear consulted with Respondent about the situation. Respondent advised Ms. LeFear that she had legal recourse and he agreed to represent her in filing suit against Evergreen Presbyterian Ministries.<sup>1</sup>

In or around February of 2008, Ms. LeFear went to Respondent’s office to check the status of her case. Respondent informed her that he was reviewing her documents and working on her case; and further informed her that he had one year to file suit.

---

<sup>1</sup> Respondent now takes the position that because Louisiana is an at-will employment state, Ms. LeFear had no legal recourse against her former employer. However, it is noted that the lawsuit drafted by Respondent alleged racial discrimination as its basis.

When the prescription deadline approached, Ms. LeFear went to Respondent's office again to check the status of her case. At that time, Respondent assured her he would file the lawsuit. Although Respondent prepared a Petition for Damages regarding *Jocelyn LeFear versus Evergreen Presbyterian Ministries, Inc.*, to be filed in the 9<sup>th</sup> Judicial District Court, Rapides Parish, he never filed the petition.

Respondent failed to advise Ms. LeFear of the fact he did not file her lawsuit. Furthermore, throughout 2009 and 2010, Respondent repeatedly misled his client about the status of her case. At one point, Respondent told Ms. LeFear he was waiting on a response from the defendant. On another occasion, he told her he was preparing to move forward with depositions. In 2010, Respondent told Ms. LeFear he would contact her with a court date. When she did not hear back from Respondent, Ms. LeFear went to his office and requested documentation of her court date. Respondent was unable to meet with her that day. Ms. LeFear subsequently terminated Respondent's services and retrieved her file from his office.

When Ms. LeFear reviewed her file, it contained an unsigned, unfiled copy of a Petition for Damages. She contacted the Clerk of Court's Office and learned that Respondent had not filed suit on her behalf. Ms. LeFear then filed a disciplinary complaint against Respondent in September of 2010.

When responding to this complaint, Respondent stated that Evergreen Presbyterian Ministries was within their rights to terminate Ms. LeFear's employment, thus, she had no legitimate claim against them. Respondent then admitted that,

"Nevertheless, I was not truthful with Ms. Lafear regarding the status of her claim against her former employer. I regret not fully informing her of her lack of a claim and misleading her on this subject. I have no excuse for my behavior..."<sup>2</sup>

### III.

In exchange for the stated discipline being imposed, Respondent stipulates to the aforementioned factual allegations, and further admits that he violated the following Rules of Professional Conduct: Rule 1.4(a) (failed to properly communicate with a client regarding the true status of her case); Rule 8.4(c) (engaged in conduct involving

<sup>2</sup> See final parag., p.1 of Respondent's November 1, 2010 response.

dishonesty, deceit or misrepresentation); and Rule 8.4(a) (violated or attempted to violate the Rules of Professional Conduct).

#### IV.

In an effort to bring about a final, appropriate resolution to these disciplinary proceedings, Respondent, in agreement with the Office of Disciplinary Counsel, submits the accompanying Joint Petition for Consent Discipline seeking imposition of the following sanction: **one year suspension, fully deferred, and Respondent assessed all costs and expenses associated with this matter.**

#### V.

Respondent is represented by counsel of his choosing in these proceedings.

#### VI.

The consent given by Respondent has been freely and voluntarily given, without coercion or duress. Respondent is fully aware of the implications of submitting to consent discipline.

#### VII.

The parties stipulate to the presence of the following aggravating and mitigating factors as set forth in ABA Standards 9.22 and 9.32 respectively:

##### AGGRAVATING FACTOR:

1. Prior Diversion – in 2006, Respondent was allowed to participate in the LSBA Diversion Program for minor misconduct in an unrelated matter. He successfully completed all Diversion Contract obligations and the matter was closed in 2007.
2. Substantial experience in the practice of law – Respondent was admitted to practice law in the State of Louisiana on April 11, 1994.

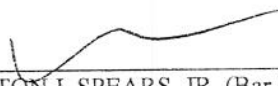
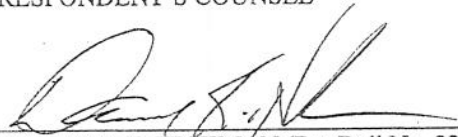
##### MITIGATING FACTORS:

1. Full and free disclosure and cooperative attitude toward proceedings; and
2. Remorse.

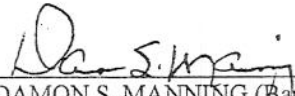
#### VIII.

The signatories to this Joint Stipulation of Facts have fully and completely read each of the above numbered paragraphs in detail and stipulate that they are fully accurate and truthful in all respects.

Respectfully Submitted,

  
CLIFTON J. SPEARS, JR. (Bar Roll No. 22159)  
620 Murray St.  
Alexandria, LA 71301  
Telephone: (318) 442-6240  
RESPONDENT'S COUNSEL  
DARRELL K. HICKMAN (Bar Roll No. 22797)  
620 Murray St.  
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RESPONDENT

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SUPREME COURT OF LOUISIANA

IN RE: CONFIDENTIAL PARTY

DOCKET NO. \_\_\_\_\_

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JOINT MEMORANDUM IN SUPPORT OF CONSENT DISCIPLINE

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MAY IT PLEASE THE COURT, this Joint Memorandum in Support of Consent Discipline is filed into these proceedings by the OFFICE OF DISCIPLINARY COUNSEL, through undersigned Deputy Disciplinary Counsel, and Respondent DARRELL K. HICKMAN (Bar Roll No. 22797), personally and through his counsel of record, Clifton J. Spears, Jr., who jointly represent to this Honorable Court as follows:

I.

Formal Charges have not been filed and Respondent has expressed a desire to resolve this matter by consent discipline. Respondent and the Office of Disciplinary Counsel have tendered the attached Joint Petition for Consent Discipline and Joint Stipulation of Facts, pursuant to Rule XIX Section 20, of the Supreme Court Rules.

II.

The parties' stipulations are fully contained within the Joint Stipulation of Facts accompanying this memorandum and are more fully reflected in the various exhibits submitted herewith. However, for ease of consideration, a brief summary of relevant facts and rule violations is contained below.

III.

COUNT I – (Jocelin LeFear Matter) – On November 21, 2007, Jocelin LeFear was terminated from her position as a sitter with Evergreen Presbyterian Ministries, Inc.

In December of 2007, Ms. LeFear consulted with Respondent about the situation. Respondent advised Ms. LeFear that she had legal recourse and he agreed to represent her in filing suit against Evergreen Presbyterian Ministries.<sup>1</sup>

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<sup>1</sup> Respondent now takes the position that because Louisiana is an at-will employment state, Ms. LeFear had no legal recourse against her former employer. However, it is noted that the lawsuit drafted by Respondent alleged racial discrimination as its basis.

Although Respondent prepared a Petition for Damages regarding *Jocelyn LeFear versus Evergreen Presbyterian Ministries, Inc.*, to be filed in the 9<sup>th</sup> Judicial District Court, Rapides Parish, he never filed the petition.

Respondent failed to advise Ms. LeFear of the fact he did not file her lawsuit. Furthermore, throughout 2009 and 2010, Respondent repeatedly misled his client about the status of her case.

Ms. LeFear terminated Respondent's services in 2010 and retrieved her file. After reviewing the file, Ms. LeFear contacted the Clerk of Court's Office and learned that Respondent had not filed suit on her behalf. Ms. LeFear then filed a disciplinary complaint against Respondent in September of 2010.

When responding to this complaint, Respondent stated that Evergreen Presbyterian Ministries was within their rights to terminate Ms. LeFear's employment, thus, she had no legitimate claim against them. Respondent then admitted that,

"Nevertheless, I was not truthful with Ms. Lafear regarding the status of her claim against her former employer. I regret not fully informing her of her lack of a claim and misleading her on this subject. I have no excuse for my behavior..."<sup>2</sup>

In exchange for the stated discipline being imposed, Respondent admits that he violated the following Rules of Professional Conduct: Rule 1.4(a) (failed to properly communicate with a client regarding the true status of her case); Rule 8.4(c) (engaged in conduct involving dishonesty, deceit or misrepresentation); and Rule 8.4(a) (violated or attempted to violate the Rules of Professional Conduct).

#### IV.

**Duties Violated** – Respondent violated a duty owed to his client by misleading her regarding the true status of her case.

#### V.

**Mental Element** – The ABA *Standards for Imposing Lawyer Sanctions* defines "negligence" as "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." The ABA defines "knowledge" as

<sup>2</sup> See final parag., p.1 of Respondent's November 1, 2010 response.

“the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.”

Respondent knowingly misled his client regarding the true status of her case; however, because he concluded Ms. LeFear was legally terminated as an at-will employee, it does not appear that his actions were based on any conscious objective or purpose to accomplish a particular result.

#### VI.

Harm – Respondent’s conduct caused potential harm. He misled his client and deprived her of his true analysis of the case.

#### VII.

Baseline Sanction – ABA Standard 4.42 states that, “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...”

ABA Standard 4.62 states that, “Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.”

#### VIII.

Aggravating and Mitigating Factors – Pursuant to Standards 9.22 and 9.32 of the ABA *Standards for Imposing Lawyer Sanctions*, the following aggravating and mitigating factors are present:

##### AGGRAVATING FACTOR:

1. Prior Diversion – in 2006, Respondent was allowed to participate in the LSBA Diversion Program for minor misconduct in an unrelated matter. He successfully completed all Diversion Contract obligations and the matter was closed in 2007.
2. Substantial experience in the practice of law – Respondent was admitted to practice law in the State of Louisiana on April 11, 1994.

##### MITIGATING FACTORS:

1. Full and free disclosure and cooperative attitude toward proceedings; and
2. Remorse.

## IX.

Case Law – This Honorable Court has provided guidance in addressing similar misconduct. Please consider the following.

In the matter of *In re: Walker*, 00-1671 (La. 09/22/2000), 766 So.2d 536, the Court suspended a lawyer for one year, fully deferred, and assessed him with all costs and expenses associated with the proceedings, based on the following misconduct.

In 1990, Emily Clement met with Mr. Walker regarding a potential medical malpractice action arising from treatment she received for injuries sustained in an automobile accident. Mr. Walker agreed to represent Ms. Clement; however, he failed to open a file and failed to perform any work on the case. Nonetheless, over the course of the next seven years, Mr. Walker had several telephone conversations and a face-to-face meeting with Ms. Clement during which time he led her to believe he was representing her and moving forward with the malpractice case. In December of 1997, Mr. Walker advised his client of his inaction and misrepresentation, and he also reported his misconduct to ODC.

Several mitigating factors were present in *Walker*, including lack of actual harm to the client,<sup>3</sup> full and free disclosure to the ODC, and remorse.

The underlying facts and mitigating factors found in *Walker* are very similar to our case. Because Louisiana is an at-will employment state, Jocelin LeFear likely had no legal recourse against her employer for terminating her employment. If true, Ms. LeFear experienced no actual pecuniary harm as a result of Respondent's failure to file suit or the fact he misled her over a period of time regarding the status of her case. Like Mr. Walker, our Respondent has also demonstrated full and free disclosure to the ODC and has expressed remorse for his actions.

In the matter of *In re: Woods*, 10-0091 (La. 06/04/2010), 35 So.3d 1076, the Court suspended a lawyer for 18 months, with six months deferred, subject to a two-year period

<sup>3</sup> Ms. Clement's medical malpractice claim likely prescribed before she hired Mr. Walker. Furthermore, she settled her personal injury claim with the tortfeasor for \$300,000.00; an amount which Mr. Walker claimed more than compensated her for her damages.

of unsupervised probation with conditions, and assessed him with all costs and expenses associated with the proceedings, based on the following misconduct.

In March of 2004, Paulette Harrison hired Mr. Woods to handle a personal injury case arising from a fall she suffered while a patient at Ochsner Hospital's rehabilitation facility. Thereafter, Mr. Woods did not conduct an investigation of Ms. Harrison's claims or review her medical records to identify, locate and interview witnesses named or described by Ms. Harrison.

In January of 2005, Mr. Woods filed suit against Ochsner on Ms. Harrison's behalf. Ochsner filed an exception of prematurity because the claim had not first been presented to the medical review panel. Mr. Woods did not attend the hearing on the exception and failed to follow up to determine what occurred at the hearing. In June of 2005, the suit was dismissed based on its premature filing.

At this point, communication between Mr. Woods and Ms. Harrison broke down, despite Ms. Harrison's numerous attempts to contact him. The few times she did speak to Mr. Woods, he gave her misleading information about the work he was doing on her case. Mr. Woods did not inform his client that her case was dismissed because he did not learn of the dismissal until March of 2008, after Ms. Harrison filed a complaint against him. Furthermore, although Mr. Woods was not familiar with medical malpractice claims, he did not consult another attorney or refer Ms. Harrison to more experienced counsel.

Mr. Woods' misconduct was aggravated by prior discipline and a dishonest or selfish motive. The Court found that Mr. Woods caused actual harm to Ms. Harrison.

The underlying facts, rule violations and harm found in *Woods* appears significantly more egregious than in our case.

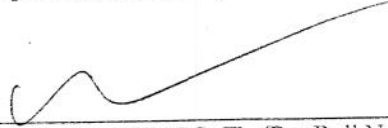
Comparing the cases, our Respondent's misconduct is more like that found in *Walker* than in *Woods*.

## X.

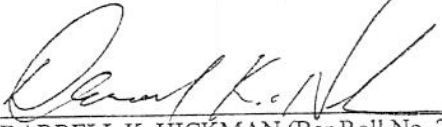
Conclusion – Based on the facts of this case, considered in light of this Honorable Court's jurisprudence, especially *Walker supra*, and the ABA Standards, the parties to

this Joint Petition for Consent Discipline respectfully recommend the following sanction as an appropriate resolution: one year suspension, fully deferred, and Respondent assessed with all costs and expenses associated with this matter.

Respectfully Submitted,

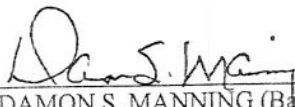


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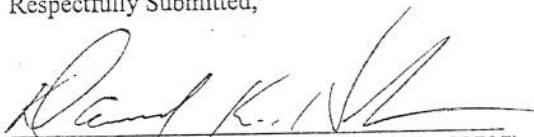
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WAIVER OF OPPORTUNITY TO WITHDRAW

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NOW INTO THESE DISCIPLINARY PROCEEDINGS comes the Respondent, DARRELL K. HICKMAN (Bar Roll No. 22797), who has submitted a Petition for Consent Discipline in the above numbered and entitled case. As a specific material consideration for the agreement, consent and concurrence by the Office of Disciplinary Counsel, the Respondent specifically and irrevocably waives any opportunity to withdraw his consent prior to the final disposition of these consent proceedings.

Respectfully Submitted,



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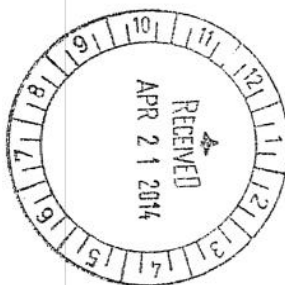
EXHIBIT LIST

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- ODC - 1 Complaint filed by Jocelin LeFear.
- ODC - 2 Respondent's November 1, 2010 response to the LeFear complaint.
- ODC - 3 Copy of Jocelin LeFear's file [beginning with typed summary of events dated November 21, 2007], including but not limited to the following:
- A. December 10, 2007 letter from Evergreen Presbyterian Ministries, Inc. to Joceline LeFear terminating her employment effective November 21, 2007.
  - B. Unsigned, unfiled Petition for Damages in the matter of *Jocelyn LeFear versus Evergreen Presbyterian Ministries, Inc.*

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