

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

IN THE MATTER OF	§	
BENJAMIN RICHARD HORTON	§	CAUSE NO. 59814
STATE BAR CARD NO. 24053273	§	

AGREED JUDGMENT OF SUSPENSION

On the this day the above-styled and numbered reciprocal disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner appeared by attorney and Respondent appeared in person as indicated by their respective signatures below and announced that they agree to the findings of fact, conclusions of law and orders set forth below solely for the purposes of this proceeding which has not been fully adjudicated. The Board of Disciplinary Appeals, having reviewed the file and in consideration of the agreement of the parties, is of the opinion that Petitioner is entitled to entry of the following findings and orders:

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

- (1) Respondent, Benjamin Richard Horton, whose Bar Card No. is 24053273, is an attorney licensed and authorized by the Supreme Court of Texas to practice law in the State of Texas.
- (2) On or about August 28, 2014, a Complaint was filed in the Third Judicial District Court in and for Salt Lake County, State of Utah, in a matter styled, *In the Matter of the Discipline of: Benjamin R. Horton, #11452, Respondent.*
- (3) On or about September 7, 2016, an Affidavit of Consent was filed in the Third Judicial District Court in and for Salt Lake County, State of Utah, in a matter styled, *In the Matter of the Discipline of: Benjamin R. Horton, #11452, Respondent*, Civil No. 140905954. Judge Paige Patterson.
- (4) On or about September 13, 2016, a Discipline by Consent and Settlement Agreement was filed in the Third Judicial District Court in and for Salt Lake County, State of Utah, in a matter styled, *In the Matter of the Discipline of:*

Benjamin R. Horton, #11452, Respondent, Civil No. 140905954, Judge Paige Patterson.

- (5) On or about September 15, 2016, an Order of Discipline: Suspension was filed in the Third Judicial District Court in and for Salt Lake County, State of Utah, in a matter styled, *In the Matter of the Discipline of: Benjamin R. Horton, #11452, Respondent, Civil No. 140905954, Judge Paige Patterson*, that states in pertinent part as follows:

...IT IS HEREBY ORDERED that Mr. Horton's license to practice law be suspended for a period of three years, effective 30 days from the date the order is signed...

- (6) In the Discipline by Consent and Settlement Agreement Respondent admitted that, in connection with three complaints filed against him, he violated:

Rule 1.3 (Diligence) of the Rules of Professional Conduct states: A lawyer shall act with reasonable diligence and promptness in representing a client.

•• (Chvilicek Matter) By failing to respond to inquiries from Wells Fargo on behalf of Mr. Chvilicek, Mr. Horton failed to act with reasonable diligence in violation of Rule 1.3 (Diligence).

Rule 1.4(a) (Communication) of the Rules of Professional Conduct states: (a) A lawyer shall: (a)(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; (a)(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (a)(3) keep the client reasonably informed about the status of the matter; (a)(4) promptly comply with reasonable requests for information; and (a)(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.

•• (Chvilicek Matter) By failing to respond to requests for information from his clients, failing to keep his clients informed and failing to promptly comply with requests from his clients, Mr. Horton violated Rule 1.4(a) (Communication).

•• (Trager Matter) By failing to respond to requests for information from his clients, failing to keep his clients informed and failing to promptly comply with requests from his clients, Mr. Horton violated Rule 1.4(a) (Communication).

Rule 1.5(a) (Fees) of the Rules of Professional Conduct states: A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following 1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation and ability of the lawyer or lawyers performing the services; 8) whether the fee is fixed or contingent.

- (Chvilicek Matter) By failing to provide any meaningful legal services to the Chviliceks in exchange for fees paid, Mr. Horton charged and collected an unreasonable fee, in violation of Rule 1.5(a) (Fees).

- (Dodd Matter) By failing to provide any meaningful legal services to Ms. Dodd in exchange for fees paid, Mr. Horton charged and collected an unreasonable fee and violated Rule 1.5(a) (Fees).

- (Trager Matter) By failing to provide any meaningful legal services to Mr. Trager in exchange for fees paid, Mr. Horton charged and collected an unreasonable fee and violated Rule 1.5(a) (Fees).

Rule 1.8(h)(1) (Conflict of Interest: Current Clients: Specific Rules) of the Rules of Professional Conduct states: A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement.

- (Dodd Matter) By not taking adequate steps to ensure Ms. Dodd obtained independent representation in connection with the engagement agreement she entered into with Mr. Horton and by failing to advise Ms. Dodd that she should in fact seek independent legal review of the liability waiver included in his engagement agreement, Mr. Horton violated Rule 1.8(h)(1) (Conflict of Interest: Current Clients: Specific Rules).

Rule 5.3(a) (Responsibilities Regarding Nonlawyer Assistants) of the Rules of Professional Conduct states: With respect to a nonlawyer employed or retained by or associated with a lawyer: (a) a partner and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

•• (Chvilicek Matter) By failing to implement adequate measures to supervise nonlawyer employees and agents to ensure the actions and conduct of these nonlawyers is compatible with Mr. Horton's professional obligations, Mr. Horton violated Rule 5.3(a) (Responsibilities Regarding Nonlawyer Assistants).

•• (Dodd Matter) By failing to implement adequate measures to supervise nonlawyer employees and agents to ensure the actions and conduct of these nonlawyers is compatible with Hortons' professional obligations, Mr. Horton violated Rule 5.3(a) (Responsibilities Regarding Nonlawyer Assistants).

•• (Trager Matter) By failing to implement adequate measures to supervise nonlawyer employees and agents to ensure the actions and conduct of these nonlawyers is compatible with Mr. Horton's professional obligations, Mr. Horton violated Rule 5.3(a) (Responsibilities Regarding Nonlawyer Assistants).

Rule 5.4 (Professional Independence of a Lawyer) of the Rules of Professional Conduct states: (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that: (a)(1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons; (a)(2)(i) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and (a)(2)(ii) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and (a)(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

•• (Chvilicek Matter) By operating Preferred Law by and through other nonlawyer companies and by sharing fees and accounts with his other companies, Mr. Horton violated Rule 5.4 (Professional Independence of a Lawyer).

•• (Dodd Matter) By operating Preferred Law by and through other nonlawyer companies and by sharing fees and accounts with his other companies, Mr. Horton violated Rule 5.4 (Professional Independence of a Lawyer).

•• (Trager Matter) By operating Preferred Law by and through other nonlawyer companies and by sharing fees and accounts with his other

companies, Mr. Horton violated Rule 5.4 (Professional Independence of a Lawyer).

Rule 7.1 (Communications Concerning a Lawyer's Services) of the Rules of Professional Conduct states: A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

- (Dodd Matter) By guaranteeing results, Mr. Horton misled Ms. Dodd and violated Rule 7.1 (Communications Regarding a Lawyer's Services).

- (Trager Matter) By guaranteeing results, Mr. Horton misled Mr. Trager and violated Rule 7.1 (Communications Regarding a Lawyer's Services).

Rule 8.1(b) (Bar Admission and Disciplinary Matters) of the Rules of Professional Conduct states: An applicant for admission to the Bar, or a lawyer in connection with a Bar admission application or in connection with a disciplinary matter, shall not: (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority...

- (Chvilicek Matter) By failing to respond to the OPC's NOIC, Mr. Horton Violated Rule 8.1(b) (Bar Admission and Disciplinary Matters).

- (Dodd Matter) By failing to respond to the OPC's NOIC, Mr. Horton Violated Rule 8.1(b) (Bar Admission and Disciplinary Matters).

Rule 8.4(c) of the Rules of Professional Conduct states: It is professional misconduct for a conduct involving dishonesty, misrepresentation lawyer to engage in fraud, deceit or misrepresentation.

- (Dodd Matter) By taking money and doing little or no legal work, by allowing other companies and nonlawyers to provide legal services and by making misrepresentations to clients, Mr. Horton engaged in conduct that was dishonest or deceitful and violated Rule 8.4(c).

- (Trager Matter) By taking money and doing little or no legal work, by allowing other companies and nonlawyers to provide legal services and by making misrepresentations to clients, Mr. Horton engaged in conduct that was dishonest or deceitful and violated Rule 8.4(c).

- (7) Respondent, Benjamin Richard Horton, is the same person as the Benjamin R. Horton, who is the subject of the Order of Discipline entered in the Third Judicial District Court in and for Salt Lake County, State of Utah; and
- (8) The Order entered in the Third Judicial District Court in and for Salt Lake County, State of Utah is final.

Conclusions of Law. Based upon the foregoing findings of facts the Board of Disciplinary Appeals makes the following conclusions of law:

- (1) This Board has jurisdiction to hear and determine this matter. Rule 7.08(H), Texas Rules of Disciplinary Procedure;
- (2) Reciprocal discipline identical to that imposed in the Third Judicial District Court in and for Salt Lake County, State of Utah is warranted in this case.

It is, accordingly, ORDERED, ADJUDGED, AND DECREED that Respondent, Benjamin Richard Horton, State Bar Card No. 24053273, is hereby SUSPENDED from the practice of law in Texas for a period of three (3) years beginning January 1, 2020, and ending December 31, 2022.

It is further ORDERED, ADJUDGED and DECREED that Respondent, Benjamin Richard Horton, during said suspension is prohibited from practicing law in Texas, and accordingly with respect to practicing law in Texas, holding himself out as a Texas attorney at law, performing any legal service for others in Texas, accepting any fee directly or indirectly for Texas legal services ... or holding himself out to other using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer" in Texas."

It is further ORDERED that Respondent, Benjamin Richard Horton, within thirty (30) days of the date of this judgment, shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court, if any, in which Respondent, Benjamin Richard Horton, has any legal matter pending, if any, of his suspension, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court.

It is further ORDERED Respondent shall file with the State Bar of Texas, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the date of this judgment, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing in Court.

It is further ORDERED that Respondent, Benjamin Richard Horton, within thirty (30) days of the date of this judgment, shall notify each of his current clients and opposing counsel, if any, in writing, of his suspension. In addition to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in his possession but which belong to current or former clients, if any, to those respective clients or former clients within thirty (30) days of the date of this judgment if requested.

It is further ORDERED Respondent shall file with the State Bar of Texas, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the date of this judgment, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property requested by any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of his inability to return to said client any file, paper, money or other property.

It is further ORDERED that Respondent, Benjamin Richard Horton, within thirty (30) days

of the date of this judgment, surrender his Texas law license and permanent State Bar Card to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further ORDERED that a certified copy of the Fourth Amended Petition for Reciprocal Discipline on file herein, along with a copy of this Judgment, be sent to the Office of the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

IT IS FURTHER ORDERED that this Judgment of Suspension shall be made a matter of public record and be published in the Texas Bar Journal.

Signed this 12th day of December 2019.



Chair Presiding
BOARD OF DISCIPLINARY APPEALS

AGREED:



Benjamin Richard Horton
Bar No. 24053273
Respondent



Amanda M. Kates
Bar No. 24075987
Attorney for Petitioner