BEFORE THE BOARD OF DISIPLINARY APPEALS
APPOINTED BY THE
SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
ALFONSO KENNARD, JR.	§	**CAUSE NO. 65861**
STATE BAR CARD 24036888	§	

RESPONDENT ALFONSO KENNARD'S REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

TO THE BOARD OF DISCIPLINARY APPEALS:

I. NO RULE WAS ACTUALLY VIOLATED

Respondent, Alfonso Kennard, Jr. ("Kennard") has shown this Court by clear and convincing evidence that Petitioner's claims suffer from, at bare minimum, an infirmity of proof. Kennard never violated any disciplinary rule and judicial notice must be taken of the fact that the Minnesota Statute allowed Kennard to represent his sole shareholder business in Minnesota regardless of whether he is a lawyer in Texas or not.

A. Kennard went to Minnesota as a small business owner defending the company he started. He just happens to be a Texas lawyer. A Texas lawyer who owns 100 percent of a *business*—Kennard Law P.C.

This Board now has knowledge of this Minnesota statute and cannot repeat the irreparable harm against Kennard. In other words, **two wrongs don't make a right**. And to automatically rubberstamp reciprocal discipline against Respondent Kennard, knowing it is erroneous, would do just that. Minnesota ignored or missed their own statute which unquestionably allow for the actions Kennard took. Texas must not make the same mistake. Kennard did not need to be a Minnesota licensed attorney to represent himself/Kennard Law P.C.

B. To have credibility, one must concede the truth.

The truth is that Minnesota statute allows Kennard (and anyone else) who wants to, to represent their sole shareholder business in court as an exception to practicing law without a license. The truth is that this Court should not discipline Respondent Kennard reciprocally.

On occasion, a matter with a truly valid exception is presented to this Board where the clear and only option is not to reciprocally discipline. **This is the occasion**. Looking at the actual facts, and not what Petitioner *thinks* the facts should be, this is not one of those rubberstamp occasions.

Instead of doubling down, the duty of candor requires all Parties to present this Minnesota statute to this honorable Board and request that this Board grant the relief sought under the available defenses—defenses that exist for a reason—defenses that exist here.

II. *SOLE ISSUE: IF KENNARD WAS ALLOWED TO APPEAR IN MINNESOTA IN ANY CAPACITY, ANY REMAINING ARGUMENTS BY PETITIONER ARE MOOT*

A. The Minnesota Statute allowed Kennard, a sole shareholder of a business entity, to represent his firm.

Petitioner contends, "On or about September 25, 2020, a Petition for Disciplinary Act was entered in the State of Minnesota Supreme Court finding that Alfonso Kennard, Jr., a Texas attorney, ***practiced law by representing himself in a lawsuit brought in Minnesota without admittance to practice in Minnesota***." Petitioner's Response to Defendant's Motion to Dismiss, page 2 (emphasis added). The sole complaint for this Board is just that—to ascertain if Kennard was allowed to represent himself, not as a lawyer, but as a business owner.

B. Kennard Did Not "Practice Law in Minnesota"

Did Respondent Kennard practice law without a license in Minnesota? No. He did not. Petitioner further states that ***Kennard inserted himself into the legal process in Minnesota***. See Id. (emphasis added). That is correct—however, **ONLY** as the sole shareholder owner of a business (the business happens to be a law firm; he is a businessperson too and wears many hats)—not as a practicing "attorney." In fact, he always referred to himself as *pro se*. It doesn't matter that he is a Texas attorney or if he owns a bicycle shop or smoothie factory. The statute does not differentiate. Petitioner would have you ignore this statute. However, it exists and it existed then, too.

III. LEGAL ARGUMENT

A. Respondent Kennard is not trying to "relitigate the underlying matter" as Petitioner contends; he is simply utilizing the defenses that exist and apply here.

The Texas Rules of Disciplinary Procedure provide Respondent Kennard with four (4) available defenses under Rule 9.04. By availing himself of any of these four (4) defenses Respondent is not "relitigating" this matter, he is simply availing himself with tools provided by this very Board and the very statutes in question. These defenses exist for a reason. These matters are important, and as such, these defenses serve as a check and balance. Petitioner would have this honorable Board outright ignore them. However, they exist. And they absolutely apply here. Why even have them if the Board is supposed to ignore them each and every time as Petitioner would have this Board do? These defenses are:

A. That the procedure followed in the other jurisdiction on the disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

B. That there was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board of Disciplinary Appeals, consistent with its duty, should not accept as final the conclusion on the evidence reached in the other jurisdiction.

C. That the imposition by the Board of Disciplinary Appeals of discipline identical, to the extent practicable, with that imposed by the other jurisdiction would result in grave injustice.

D. That the misconduct established in the other jurisdiction warrants substantially different discipline in this state.

E. That the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute Professional Misconduct in this state.

Texas Rules of Disciplinary Procedure 9.04. **RECIPROCAL DISCIPLINE.**

BODA should not, and *consistent with its duty,* cannot accept the "final" conclusion in the other jurisdiction. The purpose of this Board is to ascertain whether they got it right or not, or if discipline should be imposed in Texas based on the facts presented.

B. The infirmity of proof is simple—the other jurisdiction ignored, missed, or was otherwise not aware of its own statute.

It seems crazy, but that is exactly what happened. They never considered it. They should have. To ignore it now would lead to **a grave injustice** described in 9.04. And representing your own company **does not constitute Professional Misconduct** in Texas. As such, this instance warrants no discipline in this state.

Alfonso Kennard, Jr., is and has been the sole shareholder of Kennard Law since its inception in 2011. That means, he could always represent Kennard Law in Minnesota, and even in Texas for that matter. There would have been no violation here, either.

Petitioner contends, without any support, that Rule 9.04 does not offer a defense that the original disciplining jurisdiction got the law incorrect. See Petitioner's Response to Respondent's Motion to Dismiss, page 6. Again, this is asking the Board to improperly and misguidedly ignore

the defenses that exist. To the contrary, Rule 9.04 mandates that BODA has a duty to not accept the other jurisdiction's decision as final. There exists no proof that Kennard was not allowed to appear in the capacity he appeared in Minnesota—as a business owner, not a lawyer.

Respondent has offered clear and convincing proof that under the appropriate Minnesota Statute Mr. Kennard, as the sole shareholder of his professional corporation, was allowed to represent his corporation in court in Minnesota. Unlike Ms. Teater, who did actually solicit and took on clients without being admitted, Kennard did not. Not once. Not ever. To determine otherwise would be a travesty of justice irreparably harming Mr. Kennard's ability to practice law and provide for his family and firm. [1]

C. The procedure in the other jurisdiction so lacking in notice or opportunity to be heard as to constitute a deprivation of due process as Kennard timely requested a rehearing as set out, above.

Petitioner responded to Respondent's Motion to Dismiss with a litany of dates, implying that Kennard somehow failed to respond, however, the dates cited by Petitioner *only pertain to notice of the underlying administrative communications with the Minnesota Bar*.

Kennard did actually respond to the Minnesota Bar. He emailed them and told them on several occasions: "I am only representing myself. I am the sole owner of Kennard Law P.C." It was that simple. There was not much else for him to say. Apparently, that was not enough for them and yet they did not even realize that was acceptable per the statute.

The Minnesota Bar cannot discipline there—they must go to the Minnesota Supreme Court. That is what they did (instead of realizing their own statutes do not prohibit Kennard or anyone else from representing their small business as a sole owner). And, it is the *Minnesota Court system*

[1] It is extremely important to note that Kennard never applied, advertised or attempted to practice law in Minnesota or represent anyone other than his own single shareholder corporation and always appeared *pro se*.

that did not provide or otherwise allow for electronic notice of filings.

Petitioner is confusing the ***Minnesota Bar*** with the ***Minnesota Supreme Court***. It is the Minnesota Supreme Court that issued an Order, not the Minnesota Bar. Those communications are not pertinent here. Petitioner's response completely failed to address the lack of notice and Due Process *from the Minnesota Supreme Court* to Respondent Kennard during Covid-19 regarding its filing and ultimately "final" conclusion.

Kennard has averred that he did not receive notice and that the Minnesota filing system had already shut him off from the PACER electronic system. Kennard filed a timely motion for rehearing via snail mail which was rejected upon receipt. Kennard submitted a timely response based on the date a certified letter was finally received, yet the Minnesota court outright refused to hear it or even file it in their system. **This is not due process**. This is yet another valid defense that applies under Rule 9.04.

D. The Texas State Bar website says what it says, and lawyers rely on it.

The Texas bar website is designed to serve as an online resource for Texas attorneys. That is what makes it unique from other sites. The information on the Texas bar website relating to this topic interprets the statute cited by BODA counsel. It is a site for lawyers by lawyers. At minimum, a suit seeking to end a career, cannot proceed forward where there is a "discrepancy" that is not the fault of respondent. BODA is part of the Bar. The Bar essentially has told attorneys of its interpretation of Rule 9.04—good, bad, worse, or indifferent. The Texas bar website is also unique in the sense that it can be cited to as persuasive authority.

The Texas Bar, undisputedly, tells its lawyers at www.texasbar.com that unauthorized law practice in another state ***can only be pursued*** by BODA ***if the respondent was actually licensed in that other state as well***. Ms. Teater was actually licensed in at least one of the other states;

Kennard was not. Perhaps they should fix the website, if necessary, moving forward, should BODA believe it to be wrong in its present form. Nonetheless, no rule or law was ever violated to begin with by Kennard representing his own business.

E. Respondent Kennard self-reported the erroneous Minnesota discipline to both The Texas Board of Legal Specialization and the State Bar of Texas.

A grave injustice would be committed this Court reciprocally disciplined a 20-year attorney for something that the other jurisdiction should never have done in the first place and that was not a violation of any rule or statute. No discipline is warranted here. The activity would not be a violation in Texas, either. Both the State Bar of Texas and the Texas Board of Legal Specialization opted to not discipline Mr. Kennard. A multitude of applicable defenses exist, but in the end, only one of the several need to exist. Yet, they each apply here. BODA must do the same as the Texas Bar and the Texas Board of Legal Specialization—find that no violation occurred and reject a further travesty from happening.

IV. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Respondent, Alfonso Kennard prays this Board finds that any and all discipline against him as noticed pursuant to 9.02 Texas Rules of Disciplinary Procedure is found unwarranted and this matter be dismissed in its entirety.

Respectfully Submitted,

/s/ Ellen Sprovach
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ATTORNEY IN CHARGE
FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been forwarded via e-mail on this 27th day of April 2022.

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/s/ Ellen Sprovach
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