



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

IN THE MATTER OF §
NEJLA KASSANDRA KEYFLI LANE, § **CAUSE NO. 67623**
STATE BAR CARD NO. 24095557 §

JUDGMENT OF PARTIALLY PROBATED SUSPENSION

On the 27th day of October, 2023, the above-styled and numbered reciprocal disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner appeared by attorney and announced ready. Respondent, Nejla Cassandra Keyfli Lane, appeared and announced ready. All questions of fact and all issues of law were submitted to the Board of Disciplinary Appeals for determination. Having considered the pleadings on file, having received evidence, and having heard the argument of counsel, the Board of Disciplinary Appeals is of the opinion that Petitioner is entitled to entry of the following findings, conclusions, and orders:

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

- (1) Respondent, Nejla Cassandra Keyfli Lane, Bar Card No. is 24095557, is an attorney licensed and authorized by the Supreme Court of Texas to practice law in the State of Texas.
- (2) This reciprocal discipline proceeding did not originate with a “Grievance” as that term is defined in the Texas Rules of Discipline Procedure and used in those Rules and in the State Bar Act, TEX. GOV’T CODE § 81.001 *et seq.*
- (3) On or about August 28, 2019, the Administrator of the Illinois Attorney Registration and Disciplinary Commission filed a complaint against Respondent, alleging that she engaged in conduct that violated Illinois Rules of Professional Conduct 3.5(d), 8.2(a), and 8.4(d).
- (4) Following a hearing at which Respondent appeared *pro se*, the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission

issued a Report and Recommendation on or about November 4, 2021, stating in pertinent part:

The Administrator proved by clear and convincing evidence that Respondent sent three emails to Magistrate Judge Finnegan's email account containing statements about Magistrate Judge Finnegan's integrity that were false or made with reckless disregard as to their truth or falsity. By sending the inappropriate emails, particularly after being instructed not to do so, Respondent engaged in conduct that disrupted the tribunal and prejudiced the administration of justice.

- (5) The Hearing Board found that Respondent violated Illinois Rules of Professional Conduct 8.2(a), 3.5(d), and 8.4(d). Based on the nature of the misconduct, and having considered factors in aggravation and mitigation, the Hearing Board recommended that Respondent be suspended for nine months, with the suspension stayed after six months by six months of probation subject to certain conditions.
- (6) Respondent appealed, challenging the Hearing Board's findings of misconduct and sanction recommendation.
- (7) On or about July 12, 2022, the Review Board of the Illinois Attorney Registration and Disciplinary Commission issued a Report and Recommendation, which states in pertinent part:

We conclude that the Hearing Board's findings are not against the manifest weight of the evidence. . . .

Respondent has failed to show that the Hearing Board's findings that she violated Rule 8.2(a) are against the manifest weight of the evidence. . . .

[W]e affirm the Hearing Board's finding that Respondent violated Rule 3.5(d). . . .

We see no basis in the record for reversing the Hearing Board's conclusion that Respondent violated Rule 8.4(d). . . .

We therefore adopt the sanction recommended by the Hearing Board. We find this recommended sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and sufficient to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession. . . .

For the foregoing reasons, we recommend that Respondent be suspended from the practice of law for nine months, with the suspension stayed after six months by a six-month period of probation, subject to the conditions recommended by the Hearing Board.

- (8) In short, the Review Board affirmed the Hearing Board's findings as to Respondent's violation of Illinois Rules of Professional Conduct 8.2(a), 3.5(d), and 8.4(d), and agreed with the Hearing Board's recommended sanction.
- (9) Respondent filed in the Supreme Court of Illinois a petition for leave to file exceptions to the Review Board's Report and Recommendation.
- (10) Under Illinois Supreme Court Rule 753, reports of the Review Board shall be reviewed only upon leave granted by the Supreme Court of Illinois, or on the Court's own motion, and "[w]hether a petition for leave to file exceptions will be granted is a matter of sound judicial discretion." ILL. S. CT. R. 753(e)(1), (2).
- (11) On or about January 17, 2023, the Supreme Court of Illinois issued an Order and Mandate, which states in pertinent part:

Petition by respondent for leave to file exceptions to the report and recommendation of the Review Board. Denied. Respondent Nejla K. Lane is suspended from the practice of law for nine months, with the suspension stayed after six (6) months by a six (6) month period of probation . . . as recommended by the Review Board

- (12) In Illinois disciplinary proceedings, the Supreme Court of Illinois has sole authority to impose disciplinary sanctions against lawyers for misconduct, except that a Hearing Board or Review Board may order a reprimand. ILL. S. CT. R. 753(c)(3), (d)(3); 770. "Conduct of attorneys which violates the [Illinois] Rules of Professional Conduct . . . shall be grounds for discipline by the [Illinois Supreme] Court." *Id.* ILL. S. CT. R. 770.
- (13) When the Supreme Court denied Respondent's request for leave to file exceptions to the Review Board's Report and Recommendation and thereafter ordered the recommended discipline based on the Report and Recommendation, the Court made final the findings that Respondent committed professional misconduct by violating Illinois Rules of Professional Conduct 3.5(d), 8.2(a), and 8.4(d). *See* ILL. S. CT. R. 753(c)(3), (d)(3); 770. The Court, in its discretion, declined to reconsider the Review Board's findings, and the Court could order an attorney suspended only if the attorney's conduct violated the Illinois Rules of Professional Misconduct. Thus, the Order and Mandate issued by the

Supreme Court of Illinois is final as to both professional misconduct and sanction.

- (14) Respondent, Nejla Kassandra Keyfli Lane, is the same person as the Nejla K. Lane, who is the subject of the Order and Mandate issued by the Supreme Court of Illinois, the Report and Recommendation issued by the Review Board, and the Report and Recommendation issued by the Hearing Board.
- (15) Respondent filed a timely answer to the First Amended Order to Show Cause and to the First Amended Petition for Reciprocal Discipline, in which she raised defenses under Texas Rule of Disciplinary Procedure 9.04(A), (B), and (C).
- (16) Respondent did not plead a limitations defense or assert that Texas Rule of Disciplinary Procedure 17.06 bars reciprocal discipline in this case.

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

- (1) This Board has jurisdiction to hear and determine this matter. TEX. R. DISCIPLINARY P. R. 7.08(H); 9.01–.04.
- (2) Respondent did not plead or otherwise assert a limitations defense, and limitations was not put at issue in the hearing before the Board. Therefore, to the extent this case might have involved a limitations issue, such defense has been waived. “The mandatory nature of the language in [Rule 17.06’s limitations provision] does not prevent the waiver of a statute of limitations due to the failure to plead it as an affirmative defense.” *Beard v. Comm’n for Lawyer Discipline*, 279 S.W.3d 895, 899-900 (Tex. App.—Dallas 2009, pet. denied); see TEX. R. CIV. P. 94 (“In pleading to a preceding pleading, a party shall set forth affirmatively . . . statute of limitations . . . and any other matter constituting an avoidance or affirmative defense.”); BODA INTERNAL PROCEDURAL RULE 1.03 (“Except as varied by these rules and to the extent applicable, the TRCP . . . apply to all disciplinary matters before BODA . . .”).
- (3) Even if limitations had been properly raised, Texas Rule of Disciplinary Procedure 17.06 would not bar the Board from ordering reciprocal discipline. Rule 17.06 provides that “[n]o attorney may be disciplined for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging the Professional Misconduct is received by the Chief Disciplinary Counsel.” TEX. R. DISCIPLINARY P. R. 17.06(A). However, reciprocal discipline proceedings, like the instant proceeding, are not initiated by the receipt of a “Grievance.” Instead, “[u]pon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction,” the Chief Disciplinary Counsel

(CDC) initiates a reciprocal discipline proceeding by filing a certified copy of the order or judgment of discipline from the other jurisdiction, along with a petition for reciprocal discipline. TEX. R. DISCIPLINARY P. R. 9.01. The documents admitted during the hearing as the Commission's Exhibit 1, which include a certified copy of the Supreme Court of Illinois's disciplinary order, and supporting reports and pleadings, do not constitute a "Grievance" within the meaning of Rules 1.06(R) and 17.06(A), because they do not allege a violation of the Texas Disciplinary Rules of Professional Conduct. Moreover, reading the rules as a whole, if such documents were a "Grievance," they would be subject to the classification, investigation, just cause determination, lawyer election, and evidentiary hearing procedures contained in Rules 2.10, 2.12, 2.14-15, and 2.17, as well as Texas Government Code sections 81.073-.075, which apply to a proceeding initiated by a "Grievance." Such an interpretation of the rules would make it impossible to give effect to both the mandatory "Grievance" provisions of Part II of the Rules and Part IX of the Rules, which establishes the mechanism for reciprocal discipline. *See In re Caballero*, 272 S.W.3d 595, 599-600 (Tex. 2008) (applying statutory construction principles to the Texas Rules of Disciplinary Procedure to "give effect to all [provisions'] words and, if possible, [] not treat any [rule] language as mere surplusage" and to "not give one provision a meaning out of harmony or inconsistent with other provisions" (internal citations omitted)).

- (4) In addition or in the alternative, reciprocal discipline is based on "Professional Misconduct" as defined in Texas Rule of Disciplinary Procedure 1.06(CC)(2), which does not occur until the lawyer is disciplined in another jurisdiction for misconduct that occurred there. TEX. R. DISCIPLINARY P. R. 1.06(CC)(2) (defining "Professional Misconduct" as misconduct occurring in another jurisdiction that "results in the disciplining of the attorney in that other jurisdiction"). Respondent, therefore, did not commit "Professional Misconduct" in Texas under Rule 1.06(CC)(2) until she was disciplined for her conduct in Illinois on January 17, 2023. Thus, the limitations provision in Rule 17.06 would not bar reciprocal discipline in this case even if the petition for reciprocal discipline or documents admitted as the Commission's Exhibit 1 were considered a "Grievance."
- (5) The Supreme Court of Texas recently affirmed a Board judgment suspending a lawyer as reciprocal discipline in a case in which the Board held that reciprocal discipline was not time-barred under Rule 17.06. *See In re Bruno*, BODA Case No. 65864, aff'd, 21-0964 (Tex. Sept. 2, 2022); *see also In re Graham*, BODA Case No. 54877, aff'd, 14-0923 (Tex. May 1, 2015).
- (6) Respondent's prior discipline for the underlying conduct provides no basis for the Board to refrain from imposing reciprocal discipline, as reciprocal discipline can only be based on another jurisdiction's adjudication of professional misconduct and discipline. TEX. R. DISCIPLINARY P. R. 9.01-.04.
- (7) Respondent failed to establish a defense under Texas Rule of Disciplinary Procedure 9.04(A), (B), and (C) by clear and convincing evidence, and

Respondent waived defenses under Rule 9.04(D) and (E) by failing to raise them in her answer.

- (8) The Supreme Court of Illinois's final adjudication in the disciplinary proceeding against Respondent is conclusive.
- (9) Reciprocal discipline identical, to the extent practicable, to that imposed by the Supreme Court of Illinois must be imposed in this case. TEX. R. DISCIPLINARY P. R. 9.03-.04.
- (10) Respondent should be suspended from the practice of law for a period of nine (9) months, consisting of six (6) months active suspension followed by three (3) months of probation.
- (11) This Board retains jurisdiction during the full term of probation imposed by this judgment to hear a motion to revoke probation. TEX. RULES DISCIPLINARY P. R. 2.22.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** that Respondent Nejla Cassandra Keyfli Lane, State Bar Card No. 24095557, is hereby **SUSPENDED** from the practice of law for a period of nine (9) months. Respondent shall be actively suspended from the practice of law for a period of six (6) months beginning November 16, 2023, and extending through May 15, 2024. The three (3) month period of probated suspension shall begin on May 16, 2024, and shall extend through August 15, 2024, under the following terms and conditions.

Terms of Active Suspension

It is further **ORDERED** that during the term of active suspension ordered herein, or that may be imposed upon Respondent by the Board of Disciplinary Appeals as a result of a probation revocation proceeding, Respondent Nejla Cassandra Keyfli Lane shall be prohibited from practicing law in Texas, holding herself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any state or federal court in Texas or before any Texas administrative body, or holding herself out to others or using her name, in any manner, in

conjunction with the words “attorney at law,” “attorney,” “counselor at law,” “Esquire,” “Esq.,” or “lawyer.”

It is further **ORDERED** that Respondent Nejla Kassandra Keyfli Lane shall, within thirty (30) days of the signing of this judgment, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court or tribunal 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 that court or tribunal. Respondent is **ORDERED** to mail copies of all such notifications to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further **ORDERED** that Respondent Nejla Kassandra Keyfli Lane shall, within thirty (30) days of the signing of this judgment, file with the State Bar of Texas, Chief Disciplinary Counsel’s Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), an affidavit stating that Respondent has notified in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court or tribunal 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 that court or tribunal.

It is further **ORDERED** that Respondent Nejla Kassandra Keyfli Lane shall, within thirty (30) days of the signing of this judgment, notify each of Respondent’s current clients and opposing counsel, if any, in writing, of the terms of this judgment. In addition to such notification, Respondent Nejla Kassandra Keyfli Lane is **ORDERED** to return any files, papers, unearned monies, and other property, if any, which belongs to clients and former clients and is in

Respondent's possession or control, to the respective clients or former clients or to another attorney at the client's or former client's request, within thirty (30) days of the date of this judgment, if requested.

It is further **ORDERED** that Respondent Nejla Cassandra Keyfli Lane shall, within thirty (30) days of the signing of this judgment, file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), an affidavit stating that 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 her inability to return to said client any file, paper, money, or other property.

It is further **ORDERED** that Respondent Nejla Cassandra Keyfli Lane shall, within thirty (30) days of the signing of this judgment, surrender her 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.

Terms of Probation

It is further **ORDERED** that during all periods of suspension, Respondent Nejla Cassandra Keyfli Lane shall be under the following terms and conditions:

1. Respondent shall not violate any term of this judgment or the disciplinary judgment issued by the Supreme Court of Illinois on January 17, 2023.
2. Respondent shall not engage in professional misconduct as defined by Rule 1.06(CC) of the Texas Rules of Disciplinary Procedure.

3. Respondent shall not violate any state or federal criminal statutes.
4. Respondent shall keep the State Bar of Texas membership department notified of current mailing, residence, and business addresses and telephone numbers.
5. Respondent shall comply with Minimum Continuing Legal Education requirements.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements.
7. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.

Probation Revocation

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

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

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

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

Signed this 16th day of November 2023.



CHAIR PRESIDING

Board member Bill Ogden did not participate in this decision.

Board member W.C. Kirkendall dissents without opinion. Board member Jason Boatright filed a dissenting opinion.

Board member Jason Boatright, dissenting:

I respectfully dissent from the Board's Judgment and write separately to explain why.

I. The statute of limitations prohibited us from disciplining Lane

In 2017, Lane sent three inappropriate emails to a federal magistrate judge in the Northern District of Illinois. In 2018, the Northern District suspended her for the emails. In 2023, the Illinois Supreme Court suspended her for them again. And now we have suspended her a third time.

We should not have done that. The Rules of Disciplinary Procedure prohibit us from imposing discipline for conduct that occurred more than four years earlier. We are far past the deadline here. We should have denied the request for reciprocal discipline and dismissed the case.

a. In attorney discipline cases, the statute of limitations restricts our power

Rule of Disciplinary Procedure 17.06(a) provides that no "attorney may be disciplined for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging the Professional Misconduct" was received by the CDC. A Grievance is a "written

statement, from whatever source, apparently intended to allege Professional Misconduct” received by the CDC. Tex. Rules Disciplinary P. R. 1.06(R), *reprinted in* Tex. Gov’t Code Ann., tit. 2, subtit. G, app. A-1. In Lane’s case, the CDC received a complaint from Illinois. It is a written statement alleging conduct that constitutes Professional Misconduct in Texas, so it is a Grievance. *Id.*

The copy of the Grievance that the CDC submitted to us was certified by the Illinois Supreme Court clerk’s office on February 14, 2023, which was over five years after Lane sent the emails. Because the CDC received the Grievance more than four years after the Professional Misconduct at issue, Rule 17.06 prohibits us from disciplining Lane.

b. Lane did not have to plead limitations as a defense

Conclusion of Law 2 notes that Lane did not plead limitations as an affirmative defense. However, she did not have to. Chapter 16 of the Civil Practice & Remedies Code requires a party in a civil suit to bring a claim within a certain period of time, and Rule of Civil Procedure 94 requires the opposing party to plead limitations as a defense to that claim. But in attorney discipline cases, limitations does not require a party to begin a disciplinary proceeding within a period of time; it prohibits a tribunal from imposing discipline after a period of time. Tex. Rules Disciplinary P. R. 17.06(a). Unlike civil cases, where limitations imposes complementary obligations on the parties as adversaries, limitations in attorney disciplinary cases does not impose any obligation on the parties, it obliges us not to impose discipline after limitations expires.

Lane does not have the power, through her failure to plead a limitations defense, to authorize us to do what Rule 17.06(a) expressly forbids. Consequently, we do not have authority to impose discipline in this case, regardless of whether Lane pleaded limitations as a defense.

The Judgment relies on three authorities for concluding otherwise. First, it cites *Beard v. Commission for Lawyer Discipline*, 279 S.W.3d 895 (Tex. App.—Dallas 2009, pet. denied), which held that limitations must be pleaded as an affirmative defense in attorney discipline cases, or it is waived. But *Beard* was not a reciprocal discipline case. *Id.* at 899. Reciprocal discipline has its own rule regarding affirmative defenses, Rule of Disciplinary Procedure 9.04. That rule lists five affirmative defenses that are available to respondents in reciprocal discipline cases. A respondent has to plead and prove at least one of them to avoid the imposition of discipline. Limitations is not on the list. Tex. Rules Disciplinary P. R. 9.04. *Beard* did not address Rule 9.04 or the fact Rule 17.06 is a restriction on our power, not a pleading requirement.

The second authority the Judgment cites for the idea that limitations must be pleaded as an affirmative defense is Rule of Civil Procedure 94. That rule requires parties in civil cases to plead limitations, but this is a reciprocal discipline case, not a civil case, so Rule of Civil Procedure 94 does not apply here; Rule of Disciplinary Procedure 9.04 does.

The third authority the Judgment cites is BODA Internal Procedural Rule 1.03, which provides that the Rules of Civil Procedure apply to disciplinary matters except as varied by our rules or to the extent practicable. Rule of Disciplinary Procedure 9.04 lists the defenses available to respondents in reciprocal discipline, so Rule of Civil Procedure 94 does not apply here.

The exclusion of limitations from the list of available defenses in Rule 9.04 is consistent with the fact that limitations in attorney discipline cases is a restriction on our power rather than a pleading requirement for the parties: a party cannot remove a prohibition on our use of power by failing to plead limitations, just as it cannot enforce a restriction against us by pleading limitations.

In reciprocal discipline cases, the statute of limitations is not a pleading requirement and limitations is not an available affirmative defense. Therefore, the Judgment was wrong to conclude that limitations must be pleaded or it is waived.

c. The Grievance did not go through classification, but it did not have to

In Conclusion of Law 3, the Judgment suggests that the “Grievance” mentioned in Rule 17.06 is not the sort of “information” that starts a reciprocal discipline case in Rule 9.01. After all, the CDC is required to examine each Grievance to determine whether it should be classified as an Inquiry, Complaint, or Discretionary Referral, and there is no room for that process in reciprocal discipline cases. Tex. Rules Disciplinary P. R. 2.10, 9.01. So it is natural to assume, as the Judgment does in Conclusion of Law 3, that the “information” the CDC receives in a reciprocal discipline case is not a “Grievance” that starts the statute of limitations.

However, Rule 17.06 lists exceptions to the general rule that a tribunal cannot discipline someone after four years. One of the exceptions is compulsory discipline. *Id.* R. 17.06(B). A compulsory discipline case does not begin when the CDC receives a Grievance. *Id.* R. 8.01. Nor is there any room in compulsory discipline for the grievance classification process. *Cf. id.* R. 2.10.

If it were true that the statute of limitations does not apply to a case unless there is a Grievance that goes through the classification process, limitations could not apply to compulsory discipline cases. But because the statute of limitations expressly states that compulsory discipline is an exception, limitations would have applied to compulsory discipline cases absent the exception. This means that the statute of limitations applies to disciplinary actions in which proceedings are not commenced with a Grievance that goes through the classification process.

Reciprocal discipline cases are not on the list of exceptions to the statute of limitations in Rule 17.06, so the statute of limitations applies to reciprocal discipline.

The Judgment interprets Rule 17.06 without giving effect to exceptions like compulsory discipline. It cannot do that; it has to give effect to every provision in the Rules of Disciplinary Procedure. *In re Caballero*, 272 S.W.3d 595, 599-600 (Tex. 2008). Because the Judgment does not give effect to the exceptions in Rule 17.06—or to the rule’s prohibition on our power to impose discipline after four years—the Judgment’s interpretation of Rule 17.06 is wrong.

d. Professional Misconduct occurred in 2017, not 2023

Professional Misconduct is defined as “conduct that occurs in another jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction.” Tex. Rules Disciplinary P. R. 1.06(CC)(2). Conclusion of Law 4 in the Judgment says this language means that Lane did not commit Professional Misconduct until January 17, 2023, when she was disciplined in Illinois. But Rule 1.06 defines Professional Misconduct in terms of the *conduct* that results in discipline, not the discipline itself.

Lane sent the emails at issue in April and June of 2017. That conduct resulted in discipline. Thus, under Rule 1.06, the Professional Misconduct occurred in 2017.

e. Our conclusions of law are not Supreme Court precedents

Conclusion of Law 5 discusses our *Bruno* decision from 2021. In that case, we made a conclusion of law in which we noted that we had previously denied Bruno’s motion to dismiss. *In re Bruno*, BODA Case No. 65864, aff’d, 21-0964 (Tex. Sep. 2, 2022). In his motion to dismiss, Bruno had argued that the statute of limitations in Rule 17.06 barred discipline in his case.

Bruno appealed our judgment—not the denial of his motion to dismiss, which had already happened and which our judgment merely noted, but the entirety of our decision. In the Supreme Court, Bruno raised seven issues, including one about limitations. The conduct at issue in his case

had occurred more than seven years earlier, so he argued that BODA's decision to impose discipline violated the "spirit and language" of Rule 17.06. The Court affirmed our decision.

Conclusion of Law 5 says we "held" in *Bruno* that reciprocal discipline was not time-barred under Rule 17.06. That is not quite what we did in *Bruno*—we merely noted that we had previously announced our decision to deny Bruno's motion to dismiss under Rule 17.06—but leave that to the side. Notice we are implying that our conclusion of law about limitations in *Bruno* has binding precedential value because the Supreme Court affirmed our decision in that case.

I fully accept that the Supreme Court's decision to affirm our judgment in a particular case commands us to resolve analogous cases the same way. But I do not think the Court's decision to affirm is meant to give precedential authority to the conclusions of law we make in support of the judgment, particularly in a case like *Bruno* with multiple independent grounds for our decision.

To be clear, I am not saying the Supreme Court *could* not give our conclusions of law binding effect as legal precedents; rather, I suspect the Court *does* not do that.

When the Supreme Court affirms one of our decisions, I think it is resolving a particular case, not adopting each of our conclusions of law as a rule of decision with binding force in future cases. Otherwise, our conclusions of law would constitute a new body of law—bodalaw—that would not only bind us, but district and appellate courts too. That is not what our conclusions of law do. They are just fragments of legal reasoning that explain our judgment in a case.

We can correct our prior errors and we should have done so here. The rules did not require Lane to plead limitations as an affirmative defense; they prohibited us from imposing discipline after four years. We should have obeyed the rules and dismissed this case.

II. Disciplining Lane was a grave injustice

In her response to the petition for reciprocal discipline, Lane pleaded that identical discipline would be a grave injustice. No Texas judicial decision has defined the term “grave injustice,” but it seems to refer to a decision that would be particularly inequitable given the facts and law in a particular case. *See, e.g., Caldwell v. Barnes*, 975 S.W.2d 535, 539 (Tex. 1998).

When the government takes away someone’s ability to earn a living, as we have done here, it can destroy a person’s life. That is a grave matter. And now Lane has been suspended three times for sending three emails six years ago a thousand miles away from here. That is particularly inequitable. *See id.* The worst part of it is the triple jeopardy, but the fact that it happened so long ago and so far away from here is bad too. And yes, Lane deserved to be punished for her emails, but she had already been punished for them—twice. And now we have punished her again.

Because destroying someone’s livelihood is a grave matter, and because doing so a third time for just one thing is unjust, our decision to suspend Lane was a grave injustice.

Under Rule 9.04, we have to enter orders that we deem necessary and appropriate in reciprocal discipline cases. Even if discipline were not barred by limitations, an order denying the CDC’s request for reciprocal discipline would have been necessary and appropriate to prevent a grave injustice in Lane’s case.