STATE BAR OF TEXAS

FILED
Jun. 04, 2021
THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

Office of the Chief Disciplinary Counsel

June 4, 2021

65568

Ms. Jenny Hodgkins
Board of Disciplinary Appeals
Supreme Court of Texas
P. O. Box 12426
Austin, Texas 78711

Via e-filing to filing@txboda.org

Re: *In the Matter of Patrick Michael Megaro, State Bar Card No. 24091024;* Before the Board of Disciplinary Appeals, Appointed by the Supreme Court of Texas

Dear Ms. Hodgkins:

Attached please find the Petition for Reciprocal Discipline of Respondent, Patrick Michael Megaro. Please file the original Petition with the Board and return a copy to me.

Pursuant to Rule 9.02 of the Texas Rules of Disciplinary Procedure, request is hereby made that the Board issue a show cause 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 upon Respondent in this State would be unwarranted.

Thank you for your assistance in this matter. Please do not hesitate to call if you have any questions.

Sincerely,

Amanda M. Kates
Assistant Disciplinary Counsel
State Bar of Texas

AMK/tbg

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

IN THE MATTER OF	§	
PATRICK MICHAEL MEGARO,	§	**CAUSE NO.** 65568
STATE BAR CARD NO. 24091024	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Patrick Michael Megaro, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Patrick Michael Megaro, 1300 N. Semoran Blvd., Ste. 195, Orlando, FL 32807.

3. On or about October 11, 2019, an Amended Complaint (Exhibit 1) was entered in the State of North Carolina Wake County, in a matter styled, *The North Carolina State Bar, Plaintiff v. Patrick Michael Megaro, Attorney, Defendant,* Before the Disciplinary Hearing Commission of the North Carolina State Bar, 18 DHC 41.

4. On or about April 27, 2021, an Order of Discipline (Exhibit 2) was entered by State of North Carolina Wake County, in a matter styled *The North Carolina State Bar, Plaintiff v.*

Patrick Michael Megaro, Attorney, Defendant, Before the Disciplinary Hearing Commission of the North Carolina State Bar, 18 DHC 41, that states in pertinent part as follows:

1) Plaintiff, the North Carolina State Bar ("State Bar" or "Plaintiff"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2) Defendant, Patrick Michael Megaro ("Megaro"), was admitted to the North Carolina State Bar in 2013 and is, and was at all times referenced to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of No1th Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3) During all of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Orlando, Florida,

4) In 1983, H. McCollum ("McCollum") and L. Brown ("Brown") were wrongfully convicted of the rape and murder of Sabrina Buie, an 11-year-old girl, and sentenced to death.

5) On direct appeal, McCollum and Brown were granted new trials by the North Carolina Supreme Court. *State* v *McCollum1* 321 N.C 557, 364 S.E.2d 112 (1988). McCollum was retried in Cumberland County in 1991 and again convicted of the first-degree rape and first-degree murder of Buie. The court arrested judgment on the rape charge and McCollum was sentenced to death on the murder charge. In the penalty phase of McCollum' s retrial, the jury found as mitigating circumstances that he was mentally retarded, that the offense was committed while he was under the influence of mental or emotional disturbance, that he is easily influenced by others, and he has difficulty thinking clearly under stress.

6) At Brown's 1992 retrial in Bladen County, he was convicted of first-degree rape. Brown was sentenced to life in prison. In the court’s judgment, it recommended Brown receive psychological treatment in prison. Brown's appeal was denied but the opinion noted the evidence of Brown's subaverage intelligence with an IQ in the 49 to 65 range and limitations of his ability to read and write.

7) On April 3, 1995, McCollum filed a motion for appropriate relief ("MAR") in Robeson County. McCollum was represented in the MAR by Kenneth Rose ("Rose"), an attorney with the Center for Death Penalty Litigation ("CDPL"), and lawyers from the law firm Wilmer Hale.

8) The MAR alleged, among other claims, that McCollum's incriminating statement was unreliable due to his intellectual disabilities. His intellectual disabilities were established by the following mental health professionals:

a. Psychologist Dr. Faye Sultan, Ph. D., concluding, *inter alia,* that McCollum was mentally retarded with intellectual functioning falling in the range of an eight to ten-year-old, had poor reading comprehension, and was highly suggestible and subject to the influence of others, particularly authority figures;

b. Neuropsychologist Dr. Helen Rogers, Ph, D., concluding; *inter alia,* that McCollum was mentally retarded with neuropsychological testing showing he scored in the "impaired" or "seriously impaired" range, his ability to understand verbal communication was severely impaired, he had cognitive impairment beyond that expected for his level of mental retardation, and he was strongly suggestible and generally not capable of understanding and weighing the consequences of his choices;

c. Psychologist Dr. Richard Rumer, Ph, D., concluding, *inter alia,* that McCollum was mentally retarded with severely limited cognitive functioning, was susceptible to the influence of others, and demonstrated weakness in his ability to plan and cany out complex activities; and

d. Dr. George Baroff; Ph.D., Professor of Psychology at the University of North Carolina, concluding, *inter alia,* that McCollum suffered mental retardation - placing him at the bottom 3 percent of the general population - and a neuropsychological impairment, and that he had a reading level of third grade and a listening comprehension level at first grade.

9) In January 2002, Rose represented McCollum in filing an amended MAR seeking relief under N.C. Gen. Stat. §l5A-2005 based on his subaverage intellectual functioning and significant limitations in adaptive functioning. In support of his amended MAR, McCollum submitted a 2002 affidavit of Dr. Helen Rogers. In her affidavit, Dr. Rogers noted that in her 1995 testing McCollum had a full-scale IQ of 68 and significant subaverage intellectual functioning that placed him in the lowest 2-3 percent of the population in overall intellectual functioning. On verbal processing tests administered by Dr. Rogers, McCollum scored in the lowest one-half of one percent of the population. On the Wide Range Achievement Test-Revised, McCollum scored in the lowest .6 percent of the population on the reading and arithmetic portions of the test. Dr. Rogers concluded that her 1995 testing demonstrated McCollum suffered substantial deficits in two or more areas of adaptive functioning including functional academics and communication skills.

10) A 2002 affidavit of Dr. Richard Rumer was submitted in support of McCollum's amended MAR. Dr. Rumer found McCollum had a history of subaverage scores on intellectual testing with full-scale scores of 56, 61 and 69, and adaptive functioning deficits.

11) On August 26, 2014, Rose and Vernetta Alston ("Alston"), both with CDPL, filed a MAR claiming McCollum was innocent based in part on DNA testing on a cigarette butt found at the scene of Buie's murder. The DNA on the cigarette butt was consistent with the DNA of Rosco Artis, an inmate then serving a life sentence for the murder of a woman in the same area as Buie, a month after Buie's murder. Through separate counsel, Brown filed a similar MAR.

12) On September 2, 2014, the superior court granted MARs of McCollum and Brown and vacated their convictions and judgments. Robeson County District Attorney Luther Johnson Britt, III, did not oppose the court granting the MARs. McCollum and Brown were released from prison after serving 31 years for crimes they did not commit.

13) After McCollum and Brown's release from prison, Rose, Alston and attorneys with Wilmer Hale agreed to file pardon petitions with Governor Pat McCrory and seek the statutorily mandated amount of $750,000.00 from the Industrial Commission on a *pro bono* basis for McCollum and Brown.

14) In September 2014, attorneys Mike Lewis, Mark Rabil and Michigan lawyer Tom Howlett ("Howlett"), agreed to represent McCollum and Brown in civil litigation arising from the alleged misconduct of law enforcement officers and their agencies involved in the investigation and prosecution of McCollum and Brown on a contingency fee basis.

15) Rose had known McCollum for over twenty years, had many times visited McCollum on death row, had talked extensively with McCollum about his unwavering claim of innocence, knew the degree of McCollum's mental and emotional suffering while on death row, knew of McCollum's long-standing history of intellectual disabilities, and was personally concerned for McCollum' s welfare after his release due to, among other issues, McCollum's vulnerability and suggestibility.

16) On September 11, 2014, Rose and Alston filed petitions for pardons of innocence on behalf of McCollum and Brown with Governor Pat McCrory.

17) On September 15, 2014, Governor McCrory's Clemency Administrator sent a letter to Rose and Alston notifying them: "All necessary documents have been received and this request is now being processed. You will be notified when a decision has been made on this request."

18) On September 23, 2014, Robeson County District Attorney-Luther Johnson Britt, III, sent Governor McCrory a letter urging him to grant McCollum and Brown pardons of innocence. The support of the elected District Attorney of the district where the offenses occurred significantly strengthened McCollum and Brown's petitions for pardons of innocence.

19) With the CDPL taking the lead, McCollum and Brown began receiving charitable donations and financial assistance from various sources once they were released from prison, and their situation caught the attention of the media.

20) In January 2015, Kim Weekes ("Weekes") and Deborah Pointer ("Pointer"), who are not lawyers and referred to themselves as "consultant advisors," contacted Geraldine Brown Ransom ("Geraldine"), Brown's sister, and claimed they could help McCollum and Brown.

21) Weekes and Pointer entered into an agreement with Geraldine, who was not a guardian for either McCollum or Brown at that point, to serve McCollum and Brown as "activist/advocate consultants" and to assist with "the pardon process."

22) On February 2, 2015, Weekes and Pointer sent a letter to Rose notifying Rose that Weekes and Pointer were authorized to represent McCollum and Brown "in all and any of the Civil/Litigation of the Pardon/Fundraising of NC matters."

23) In late February 2015, Weekes and Pointer contacted Defendant about representing McCollum and Brown.

24) Following contact by Weekes and Pointer, Defendant read news accounts of McCollum and Brown's cases, reviewed transcripts of their MAR hearings that he found online, and did preliminary research on their cases.

25) Minimal research on the cases of McCollum and Brown would have disclosed their significant intellectual disabilities.

26) Moreover, review of the MAR transcript would have revealed that McCollum and Brown had low IQs and were unable to understand the confessions they were coerced into signing; Sharon Stellato, a staff member of The North Carolina Actual Innocence Commission, testified in extensive detail at the September 2, 2014 MAR hearing about the intellectual disabilities of McCollum and Brown. Consistent with the background of McCollum and Brown, Stellato noted that both had been diagnosed as mentally retarded. Testing in 1983 showed Brown's full-scale IQ was 54. Testing of McCollum at age 15 showed his full-scale IQ was 56 and his reading comprehension at the second-grade level.

27) On February 28, 2015, before Defendant was scheduled to meet with McCollum and Brown, Pointer warned Defendant: "Please make sure you do not discuss monetary amounts in front of the brothers as per their sister. [McCollum] believes he understands monetary things which he does not. He has a local girlfriend now and is promising her all kinds of things. Geraldine will give her brothers a monthly stipend. In fact [Weekes] and I are recommending a monthly stipend to the family after we have them moved, settled, etc. from cash advance. Let's talk before you meet tmw."

28) On or about March 1, 2015, with knowledge that McCollum and Brown had been consistently diagnosed as mentally retarded with adaptive skills deficits and were

unable to understand their confessions, Defendant entered into a representation agreement with them and Geraldine, who though not a guardian for either McCollum or Brown, represented to Megaro that she had power of attorney to act for McCollum and Brown to handle McCollum and Brown's civil claims against Robeson County, Red Springs Police Department, and the State of North Carolina.

29) At the time Defendant had McCollum and Brown execute the retainer agreement, he knew petitions for pardons had already been filed on their behalf.

30) Geraldine signed the representation agreement as attorney-in-fact, but no power of attorney was introduced as an exhibit at Defendant's hearing

31) Defendant's representation agreement with McCollum and Brown noted, *inter alia,* that Defendant would collect a contingency fee of between 27-33% of any monetary recovery or award in connection with McCollum and Brown's claims against Robeson County, the Red Springs Police Department, and the State of North Carolina.

32) Defendant's representation agreement with McCollum and Brown also noted that McCollum and Brown were "conveying an irrevocable interest in the net proceeds arising" from any recovery to Defendant.

33) Defendant's representation agreement with McCollum and Brown provided that if McCollum and Brown elected "to terminate th[e] agreement, it would not terminate [Defendant's] contingency interest in the outcome of' the case and that "under no circumstances [would Defendant's firm be] required to relinquish any part of the contingency fee provided [t]herein in order to" accommodate new counsel.

34) The language in the representation agreement created an impermissible nonrefundable fee.

35) On March 2, 2015, Defendant began working with Multi Funding, Inc., ("MFI") to arrange and obtain immediate funding through loans for McCollum and Brown. On that date, Defendant told representatives of MFI: "This case reads almost like the script to The Green Mile. Leon and Henry moved to Red Springs, NC from NJ with their mother and sister. Both have IQs in the 50s/60s."

36) Defendant knew at the time he entered into representation agreements with McCollum and Brown that both had scored in the 50s and 60s on IQ tests.

37) McCollum and Brown were easily manipulated and were particularly susceptible to manipulation and financial coercion, given their intellectual disabilities, decades in prison, and relative poverty.

38) On March 2, 2015, Defendant gave $1,000.00 cash to McCollum and Brown.

39) On March 4, 2015, Defendant facilitated McCollum and Brown each getting loans from MFI for $100,000.00 at 19% interest, compounded every 6 months.

40) Defendant read and signed at least two pages of the loan documents for the March 2015 loans, including pages wherein he agreed to pay MFI before paying his clients: "I hereby consent and agree to fully execute this document to pay Multi Funding Inc. all funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

41) Defendant signed a document entitled "Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc.," claiming that he had explained the terms of the loan agreements to McCollum and Brown.

42) But for Defendant's signing of the Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc., neither McCollum nor Brown would have received the March 4, 2015 loans of $100,000.00 at 19% interest, compounded every 6 months.

43) In March of 2015, Defendant ensured that Weekes and Pointer were paid $10,000.00 from the initial loan proceeds to McCollum and Brown.

44) On March 16, 2015, Defendant sent letters to Rose and Howlett, warning them to never contact McCollum and Brown again as it would violate the "rules of ethics" and would be "actionable as tortious interference of contract."

45) In March 2015, Defendant sent an associate, Charles Gallman, from New York to North Carolina to assess the situation because he was concerned that other lawyers were trying to "poach" the McCollum and Brown cases from him.

46) On June 4, 2015, following a public relations and social media effort directed by Defendant, Governor Pat McCrory granted pardons of innocence to McCollum and Brown.

47) On July 10, 2015, Defendant filed a joint petition in the Industrial Commission seeking compensation for McCollum and Brown pursuant to N.C. Gen. Stat. §148-84. In the second paragraph of the petition, Defendant represented to the Industrial Commission: "At all times hereinafter mentioned, both men had and still have limited mental abilities. Mr. McCollum's Intelligence Quotient (IQ) has been scored at 56, while Leon Brown's IQ has been scored at 54.
Both of these IQ scores are within the intellectually disabled range, classified by some as mild retardation."

48) Defendant performed minimal work on behalf of McCollum and Brown in the Industrial Commission proceeding.

49) The attachments to the petitions for compensation Defendant filed with the Industrial Commission were almost exclusively the work product and documents provided by Rose and Alston.

50) In August of 2015, Defendant filed a lawsuit in the United States District Court for the Eastern District of North Carolina on behalf of McCollum and Brown against various parties alleged to be responsible for their wrongful conviction and incarceration *(McCollum v. Town of Red Springs,* Docket# 5:15-CV-451-BO, Eastern District of North Carolina, Western Division) ("Civil Suit").

51) In August 2015, Brown, who suffers from bi-polar disorder and schizophrenia, had a breakdown, and was hospitalized. He eventually ended up in a group home some months later.

52) As a result of Brown's breakdown, on August 17, 2015, Defendant filed a petition in Cumberland County to have Brown declared incompetent. In the petition, Defendant highlighted his own experience and training on how to recognize clients with mental health issues and noted that Brown's medical records from the Department of Correction shows a clear progression of mental illness, starting in 1984 and continuing in severity until his release.

53) As described in Defendant's August 2015 petition, Brown lacks the basic life skills necessary to take care of himself. Upon his release from prison, Brown abruptly stopped taking medication prescribed for his serious mental illness. He was involuntarily committed and had other admissions to mental health facilities resulting from his inability to make rational decisions about his medical care. Brown experienced episodes of bizarre behavior that included refusing to eat or drink, and he had to rely on his family and others for all his basic needs since his release from prison.

54) Defendant recognized the adaptive functioning deficiencies of his clients in Brown's incompetency petition stating: "Both brothers need help with budgeting their monthly allowance because they are unable to understand the concept of paying utility bills and making purchases. One thing is clear: neither Leon Brown nor Henry McCollum have a concept of budgeting or spending limits, nor do they have any experience of budgeting money, let alone large sums of money."

55) After a hearing on Brown's competency petition, Defendant proposed Geraldine for appointment as Brown's guardian by the Clerk of Superior Court in Cumberland County.

56) Geraldine had no expertise or knowledge of how to serve as a guardian and was in need of money, making her a poor choice for a guardian.

57) On September 2, 2015, the Industrial Commission conducted a brief hearing on McCollum and Brown's petition for statutory compensation. The transcript of the hearing before the Industrial Commission is seven pages long.

58) Pursuant to N.C. Gen. Stat. §148-84, McCollum and Brown were entitled to the maximum compensation authorized by N.C. Gen. Stat. §148-84: $750,000 each.

59) The State did not oppose compensation for McCollum and Brown in their N.C. Gen. Stat. §148-84 proceeding.

60) Although Defendant represented McCollum and Brown at the September 2, 2015 Industrial Commission hearing, McCollum and Brown had been exonerated mostly through the work of Rose, Alston and The North Carolina Actual Innocence Commission, and the petition for pardons of innocence had been filed before Defendant's involvement.

61) Given the pardons of innocence, McCollum and Brown's entitlement to the Industrial Commission award was clear and there was no dispute as to the amount they would recover.

62) A contingent fee for representation in the Industrial Commission was not justified because there was no risk that McCollum and Brown would not recover the maximum allowed by statute. The only fee to which Defendant was entitled was reasonable compensation for the minimal services rendered in connection to the Industrial Commission proceeding.

63) In October 2015, the Industrial Commission distributed $750,000.00 to McCollum and $750,000.00 to Brown in the form of a check delivered to Defendant for $1.5 million.

64) Defendant took as his fee one-third of the award from both McCollum and Brown, totaling $500,000.00.

65) McCollum and Brown were left with $500,000,00 each.

66) Defendant used nearly $110,000.00 each of McCollum and Brown's Industrial Commission award, totaling $220,000.00, to repay the loans he facilitated their obtaining, even though there was a significant issue as to whether the loans were enforceable because of McCollum and Brown's incapacity to enter into the loan contracts.

67) Defendant charged a combined total of $21,173.88 in costs and expenses to McCollum and Brown for the Industrial Commission process. These charges included costs related to the pardon process and related to Brown's incompetency proceeding.

68) Defendant used $25,972.14 of the Industrial Commission award to repay money he and his firm advanced to McCollum and Brown prior to their Industrial Commission award, including, *inter alia,* the following:

a. A cash payment of $250.00 to McCollum on March 2, 2015;

b. A second cash payment of $250.00 to McCollum on March 2, 2015;

c. A cash payment of $250.00 to Brown on March 2, 2015;

d. A second cash payment of $250.00 to Brown on March 2, 2015;

e. A Western Union payment of$22l.50 to McCollum on June 15, 2015;

f. A Western Union payment of $221.50 to Brown on June 15, 2015;

g. A cash payment of $500.00 to McCollum on September 2, 2015;

h. A Money Order payment of $500.00 to McCollum on September 2, 2015;

i. A second Money Order payment of $500.00 to McCollum on September 2, 2015; and

j. A Western Union payment of $758.00 to McCollum on September 14, 2015.

69) Some of these advances were for living expenses and not for the costs of the litigation.

70) On October 21, 2015, Defendant disbursed $358,363.28 to McCollum as the proceeds from his Industrial Commission proceeding. Had McCollum let Rose, Alston and Howlett handle the Industrial Commission proceeding, McCollum would have received $750,000.

71) By May 11, 2016, seven months after Defendant disbursed $358,363.28 from the Industrial Commission proceeds to McCollum (who Defendant told the Clerk of Cumberland County had no concept of budgeting or spending limits), McCollum had spent all of the funds. As a result, Defendant helped McCollum get a second loan from MFI for $50,000.00 at 18% interest, compounded every 6 months.

72) Defendant signed another Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to MFI claiming that he had explained the terms of the $50,000.00 loan agreement to McCollum.

73) Defendant signed at least two pages of the loan document for the May 2016 loan, including a page wherein he agreed to pay MFI before paying his client: "I hereby consent and agree to fully execute this document to pay Multi Funding Inc. all funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

74) Defendant hired Dr. Thomas Harbin, a neuropsychologist, to do an assessment of McCollum's psychological and behavioral functioning to assist in McCollum's civil

cases. On July 28, 2016, Dr. Harbin submitted a report of his evaluation finding, in part, that McCollum:

a. suffers from post-traumatic stress disorder;

b. suffers from intellectual disabilities;

c. is anxious, hypervigilant, paranoid, and unable to make many everyday decisions; and

d. has a profile suggesting that he will be overly dependent upon others for decision-making, will be overly influenced by others, lacks self-confidence and assertiveness, and will be easily influenced and manipulated by others.

75) On October 27, 2016, Defendant facilitated McCollum getting a third loan from MFI for $15,000.00 at 18% interest, compounded every 6 months.

76) Defendant again signed the Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to MFI claiming that he had explained the terms of the $15,000.00 loan agreement to McCollum.

77) Defendant read and signed at least two pages of the loan document for the October 2016 loan, including a page wherein he agreed to pay MFI before paying his client: "I hereby consent and agree to fully execute this document to pay MFI Funding Inc. all funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

78) The loan contracts provided that if McCollum were to retain new counsel and failed to cause the new counsel to execute a lien on any recovery in favor of the lender, McCollum would be subject to a lawsuit from the lender for damages, costs, and attorney fees.

79) But for Defendant's signing of the loan documents, McCollum would not have received the May 11, 2016 loan for $50,000.00 at 18% interest, compounded every 6 months nor the October 27, 2016 loan for $15,000.00 at 18% interest, compounded every 6 months.

80) In February of 2016, Geraldine was removed as guardian for mismanaging Brown's funds.

81) Months after Geraldine was removed as guardian and had informed Defendant of her removal, Defendant helped Geraldine get a $25,000.00 loan from MFI against any future recovery made by Brown, with the loan proceeds sent to Geraldine purportedly for Brown's rent.

82) As a result of Geraldine receiving a $25,000.00 loan from MFI against any future recovery made by Brown, MFI perfected a lien for that amount against any future recovery made by Brown.

83) At the time Defendant helped Geraldine get a loan against any future recovery made by Brown, Geraldine was no longer Brown's guardian; thus, any rent payments to Geraldine at this time were not for Brown's benefit.

84) In December 2016, there was a mediation in McCollum and Brown's cases against the Town of Red Springs.

85) At the mediation, Defendant presented a power point detailing the intellectual disabilities of McCollum and Brown. The presentation focused on the subaverage intellectual functioning (IQ scores) and significant limitations in adaptive functioning of McCollum and Brown.

86) On February 1, 2017, Derrick Hamilton ("Hamilton"), a friend of and occasional videographer for Defendant, wired Defendant $30,000.00, which was deposited into Defendant's trust account.

87) Twenty thousand dollars of the $30,000.00 wire transfer was for McCollum's benefit.

88) Ten thousand dollars of the $30,000.00 wire transfer was intended by Defendant and Hamilton to be a loan for Defendant's benefit.

89) Defendant did not disburse the $10,000.00 belonging to him from the trust account in a manner that identified the funds as Defendant's loan proceeds.

90) By not promptly disbursing from his trust account the $10,000.00 of the $30,000.00 wire transfer intended by Defendant and Hamilton to be a loan for Defendant's benefit, Defendant commingled funds belonging to Defendant with entrusted client funds.

91) In settlement discussions with the Town of Red Springs, the competence of McCollum to agree to a settlement was raised by counsel representing the Town of Red Springs.

92) In anticipation of submitting a settlement proposal for court approval, Defendant engaged Dr. Harbin to evaluate McCollum's competency to enter into a settlement agreement with the Town of Red Springs.

93) Dr. Harbin conducted a second evaluation of McCollum and on or about March 8, 2017 produced a report finding, despite contrary findings in his July 28, 2016 report, that McCollum was able to manage his own financial and legal affairs, and to make or communicate important decisions concerning his person and finances.

94) In April 2017, Defendant submitted to the United States District Court for the Eastern District of North Carolina a proposed settlement of McCollum and Brown's civil suit against the Town of Red Springs for $500,000.00 each.

95) Defendant asked the Court to approve the settlement and his 33% fee, claiming that his clients were competent to enter into the representation agreement and the settlement agreement and that the settlement was appropriate because McCollum had agreed to it and Brown's new guardian had as well. J. Duane Gillian, an attorney who was the guardian of the estate for Brown, had approved the proposed settlement.

96) The proposed settlement provided that the liens securing the MFI loans that Defendant helped McCollum and Brown obtain would be paid out of the settlement proceeds.

97) Defendant represented to the Court in his proposed settlement pleading that his costs for the litigation were roughly $70,000.00.

98) In his pleading to the Court, Defendant claimed that he had done the following work for McCollum and Brown in the civil suit and that the following actions, among others, led to the roughly $70,000.00 in costs and justified his requested $330,000.00 fee: "counsel represented both Plaintiffs in their successful petitions to the Governor of North Carolina for Pardons of Innocence, which included several meetings with Governor Pat McCrory and/or his staff, submission of documents and information to the Governor's Office, and several meetings with Plaintiffs; (ii) counsel represented both Plaintiffs in their successful petitions for statutory compensation for wrongful imprisonment pursuant to North Carolina General Statutes § 148-82 et seq. in the North Carolina Industrial Commission, which included preparation of the petition, appearance in the Commission, and presentation of evidence at the hearing; (iii) counsel petitioned the Cumberland County Superior Court for a guardian for Leon Brown and appeared in that court at a hearing and presented evidence[.]"

99) Defendant had already compensated himself for these services with funds from McCollum and Brown's Industrial Commission awards.

100) Defendant's statement to the Court that he needed to be compensated for services for which he had already been paid by the award from the Industrial Commission was a material misrepresentation.

101) The proposed settlement agreement would have left McCollum with $178,035.58 while Defendant would have received $403,493.96.

102) On May 5, 2017, United States District Court Judge Terrance Boyle held a hearing related to approval of the proposed settlement between McCollum and Brown and the Town of Red Springs.

103) As threshold matters, Judge Boyle, citing U.S. Supreme Court documentation a dissenting opinion in a U.S. Supreme Court decision denying a writ of certiorari that McCollum was mentally retarded, had an IQ between 60 and 69, had a mental age of 9-years-old, and reads at a second-grade level, raised concerns about the competency of McCollum and Brown to enter into the settlement agreement and about Defendant's conflict of interest by entering into representation agreements with clients who were incompetent.

104) At the May 5, 2017 hearing, Judge Boyle rejected Dr. Harbin's March 8, 2017 evaluation as unpersuasive, and Defendant agreed that the court had the power to appoint McCollum a guardian ad litem ("GAL").

105) On or about May 10, 2017, Judge Boyle appointed Raleigh attorney Raymond Tarlton ("Tarlton") as GAL for McCollum.

106) On July 26, 2017, Tarlton filed a motion asking the Court to determine whether the representation agreement between McCollum and Defendant was valid based on McCollum's incapacity to enter into a representation agreement with Defendant.

107) On August 10, 2017, a hearing was held by Judge Boyle on the competency of McCollum to make decisions and enter into legally binding obligations.

108) Specifically at issue at this August 10, 2017 hearing was whether or not Defendant's representation agreement with McCollum was invalid due to McCollum's low IQ and intellectual disabilities.

109) Defendant presented evidence at the hearing to support his contention that McCollum was competent to accept the settlement agreement with the Town of Red Springs. Dr. Harbin testified and emphasized that his evaluation of McCollum was on the narrow issue of McCollum's competence to accept or reject the settlement offer and he acknowledged concern about McCollum's history of "blowing money."

110) Defendant argued to the Court that McCollum was competent despite (a) previously arguing that McCollum did not have the mental capacity to confess to the crimes back in 1983; (b) McCollum's notable lack of mental capacity being an important part of McCollum's case against Robeson County, the Red Springs Police Department, and the State of North Carolina; and (c) McCollum having claims of incompetency that could invalidate the contracts he signed with Pointer, Weekes, and MFI.

111) After the August 10, 2017 hearing, Judge Boyle asked the parties to submit recommendations of mental health experts to conduct a competency evaluation of McCollum.

112) On August 12, 2017, Defendant notified Dr. Harbin that Tarlton had nominated Dr. George Corvin, a forensic psychiatrist, to conduct an evaluation of McCollum.

113) On August 14, 2017, Dr. Harbin sent an email to Defendant stating: "Patrick, I don't mean to tell you your business and you may have already thought of this, but I would recommend that you have some rehearsal with [McCollum] and make sure he knows where his bank accounts are, how much is in them, how to write a check, what his income and bills are, etc." In response, Defendant wrote: "Point well taken, thank you."

114) On August 15, 2017, Defendant filed a motion to discharge Tarlton as GAL and to require no further evaluation of McCollum's competency.

115) On August 16, 2017, Judge Boyle entered an order directing Dr. Corvin to evaluate whether McCollum had the practical ability to manage his own affairs.

116) On September 15, 2017, Dr. Corvin submitted a comprehensive report of his evaluation to the court. Dr. Corvin found, among other things, that McCollum "clearly suffers from psychological and intellectual limitations impairing his ability to manage his own affairs and make/communicate important decisions regarding his life without the assistance of others."

117) On October 23, 2017, Judge Boyle entered an order finding that McCollum was not competent to manage his own affairs and that Defendant's representation agreement with McCollum was invalid due to McCollum's incompetency.

118) In his order Judge Boyle found: "Counsel [Defendant] was plainly on notice that his potential clients had intellectual disabilities and that their abilities to proceed without a guardian were at issue. Nonetheless, counsel [Defendant] entered into a representation agreement and has, to the Court's knowledge, never sought to have the agreement ratified by any duly appointed guardian for either plaintiff. Accordingly, the Court finds that, based on McCollum's incompetence, the representation agreement between counsel [Defendant] and McCollum is invalid."

119) On December 14, 2017, the Court approved the settlement with the Town of Red Springs, but not Defendant's fee. The Court permitted Defendant to stay on temporarily as counsel of record and held open the issue of fees for a later determination.

120) On April 13, 2018, Defendant was terminated as counsel for McCollum by McCollum's GAL.

121) On April 24, 2018, Defendant's law partner filed a motion challenging the GAL's authority to terminate Defendant.

122) On May 18, 2018, the Court ordered Defendant removed from the case "for good cause shown."

123) On January 29, 2021, Dr. Corvin conducted an evaluation of McCollum to determine whether, at the time they were executed, McCollum was competent to

enter into an agreement for legal representation with Defendant and, separately, whether McCollum was competent to enter into the loan agreements with MFI. In his evaluation, Dr. Corvin found:

a. McCollum has a well-documented and extensive psychosocial history, and he continues to exhibit considerable evidence of his well-established intellectual developmental disorders. McCollum's intellectual disorders are known to be static in nature, meaning there is no known treatment to reverse the cognitive limitations inherent in such conditions;
b. McCollum continued to display evidence of impaired executive functioning (above and beyond that associated with his known intellectual developmental disorder) stemming from his previously diagnosed neurocognitive disorder. McCollum tends to make decisions about circumstances (and people) in a rather impulsive manner without consideration of (or adequate understanding of) the
subtleties and complexities that are most commonly associated with such decisions;
c. McCollum continues to experience symptoms consistent with a diagnosis of Post-Traumatic Stress Disorder stemming from his prior lengthy incarceration on death row after having been convicted of a crime that he did not commit. McCollum experiences intense physiological and psychological reactivity (i.e., flashbacks) when he sees police officers in his community, stating that when he sees them "it makes me think of what happened to me, it scares me. It reminds me of what happened out there";
d. McCollum has been unable to pass the written portion of the test to obtain a driver's license. McCollum agreed to "sign the papers" to engage Defendant's representation because "he gave us money. I agreed to sign the papers for him to handle my pardon and civil suit - because he gave us money, found me a better place. But he had me fooled." Regarding Defendant, McCollum "thought he was doing a good job, but I didn't know that he was taking that much money. I had no idea how much they were supposed to take"; and
e. McCollum remains unable to make and communicate important decisions regarding his person and his property, without the regular assistance of others. McCollum met the statutory definition of "incompetent adult" as detailed in N.C. Gen. Stat.§ 35A-1101(7) at the time that he entered into the representation agreement with Defendant and when he entered into the loans with MFI.

124) As of the date of this order, Tarlton continues to serve as McCollum's guardian ad litem.

125) McCollum currently lives in Virginia and has a conservator, the equivalent of a guardian in North Carolina, to help manage his financial affairs.

126) Since September 2015, Brown has had a guardian of his estate.

127) McCollum and Brown did not have the capacity to enter into contracts for the loans with MFI.

128) McCollum and Brown did not have the capacity to enter into representation agreements with Defendant.

129) McCollum did not have capacity to agree to the proposed settlement agreement.

130) At the time the representation agreements, loans, and proposed settlement . agreement with the Town of Red Springs were entered into, Defendant knew McCollum and Brown did not have the capacity to enter into the agreements or loans.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1) All patties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Patrick Michael Megaro, and over the subject matter.

2) Megaro's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

a. By claiming an irrevocable interest in McCollum and Brown's potential financial payments from the state, Defendant charged an improper fee in violation of Rule 1.5(a) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

b. By entering into a representation agreement with his clients when he knew they did not have the capacity to understand the agreement, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

c. By having McCollum sign off on a settlement agreement and representing to a court that McCollum had consented to the settlement when Defendant knew McCollum did not have the capacity to understand the agreement, Defendant made a false statement to a tribunal and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that was prejudicial to the administration of justice in violation of Rule 3.3(a), Rule 8.4(c), and Rule 8.4(d);

d. By charging and collecting one-third of McCollum and Brown's Industrial Commission award when his role in that process was minimal and *pro forma,* Defendant charged and collected an excessive fee in violation of Rule 1.5(a);

e. By misrepresenting to the United States District Court in his proposed settlement of the Civil Suit that some of his work and costs in that action were for actions for which he had already been paid by McCollum and Brown's Industrial Commission award, Defendant made a false statement to a tribunal and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that was prejudicial to the administration of justice in violation of Rule 3.3(a), Rule 8.4(c), and Rule 8.4(d);

f. By signing various Attorney Acknowledgements of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc., claiming to Multi Funding, Inc. that he had explained the terms of the loan agreements to McCollum and Brown when they were not competent to understand those terms or enter into those agreements, Defendant made a material misrepresentation to Multi Funding, Inc. and thereby engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

g. By lending McCollum and Brown money, both directly and/or through Derrick Hamilton, Defendant entered into a business transaction with his clients in violation of Rule l.8(a) and Rule 1.8(e);

h. By helping Geraldine get a $25,000.00 loan from Multi Funding, Inc. against any future recovery made by Brown, with the loan proceeds sent directly to Geraldine for Brown's rent when Geraldine was not Brown's guardian, Defendant misused entrusted funds in violation of Rule 1.15-2 and failed to represent Brown with competence or diligence in violation of Rule 1.1 and Rule 1.3;

i. By not promptly disbursing from his trust account $10,000.00 to which he was entitled as proceeds of a loan from Derrick Hamilton, Defendant failed to properly maintain and disburse fiduciary funds in violation of Rule 1.15-2(a) and failed to withdraw the amounts to which Defendant was entitled in violation of Rule 1.15-2(g);

j. By advancing money to McCollum and Brown for living expenses, and by guaranteeing repayment of various loans for McCollum and Brown, Defendant provided financial assistance to clients in connection with pending litigation in violation of Rule 1.8(e); and

k. By entering into a retainer agreement with McCollum that was invalid due to McCollum's lack of competency and then arguing that McCollum was competent in an effort to protect his fee despite such arguments potentially harming McCollum's then-current claims against Robeson County, the Red Springs Police Department, and the State of North Carolina, Defendant engaged in a conflict of interest, as Defendant's representation of McCollum

was materially limited by Defendant's personal interest in defending his fee, in violation of Rule 1.7.

3) The Hearing Panel concludes that the remaining rule violations alleged in the Complaint in the First Claim for Relief and the entirety of the Second Claim for Relief are not established by the facts set forth in the Findings of Fact above.

Based upon the pleadings, all other filings in the record, the foregoing Findings of Fact and Conclusions of Law, and the evidence presented at the hearing in this matter, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1) The findings of fact in paragraphs 1 through 130 above are reincorporated as if set forth herein.

2) In 2015, Defendant was reprimanded by the North Carolina State Bar's Grievance Committee for assisting in the unauthorized practice of law and making misleading statements about his legal services.

3) Defendant's course of misconduct set forth in this order began in February 2015 and continued through August 2017. During that period, Defendant not only engaged in a pattern of repeated similar acts of misconduct, but also engaged in a wide variety of Rule violations.

4) McCollum and Brown were exceptionally vulnerable to the type of manipulation, deception, and exploitation perpetrated by Defendant. These clients had intellectual deficits and a history of trauma during their lengthy wrongful incarceration. Evaluating clinicians repeatedly described them as susceptible to manipulation and undue influence. Defendant was aware of his clients' vulnerabilities. Instead of protecting them, he capitalized on their naivete and inability to understand.

5) By charging and collecting clearly excessive amounts of McCollum and Brown's Industrial Commission awards based on a fee agreement he knew the clients could not understand, and in a proceeding where his actual work was *de minimis* and there was little or no risk that his clients would not receive the maximum allowed by statute, Defendant financially exploited McCollum and Brown causing significant harm to his clients. Likewise, by arguing that McCollum was mentally competent in an effort to preserve his fee in the civil case, Defendant acted for his own financial benefit to the detriment of his client's legal interests.

6) Defendant used the attorney-client relationship as a foundation for obtaining money he had not earned from clients who lacked the knowledge and sophistication to question his actions or suspect his selfish motive. By elevating his own interests above the interests of McCollum and Brown, Defendant compromised the fiduciary relationship and caused significant harm to his clients.

7) Clients are entitled to attorneys they can trust to act with commitment and dedication to their interests, Defendant violated the trust inherent in the attorney-client relationship by prioritizing his own financial benefit over the best interests of his clients. By repeatedly deceiving and exploiting McCollum and Brown, Defendant has shown himself to be untrustworthy.

8) Defendant's willingness to deceive third parties and the court, as established by paragraphs (c), (e), and (f) in the Conclusions of Law above, further demonstrates that Defendant is untrustworthy.

9) By deceiving McCollum and Brown, collecting an unjustified amount of the funds they received as compensation for their wrongful incarceration, and allowing a third party to obtain a loan secured by Brown's potential settlement, Defendant intentionally created a foreseeable risk of significant harm to his clients.

10) There has been substantial media coverage of Defendant's conduct. Publicity surrounding a lawyer deceiving and exploiting mentally disabled clients debases the legal profession and demeans the justice system in the eyes of the public.

11) Defendant's conduct caused significant harm to the profession by reinforcing the negative stereotype that lawyers are greedy, selfish, and dishonest, and by diminishing the public's expectation that attorneys can be trusted to protect vulnerable clients.

12) Societal order depends in large measure on respect for the rule of law and deference to the decisions of our courts. To maintain this respect and deference, litigants and the general public must have faith in the integrity of our system of justice.

13) Defendant intentionally engaged in conduct that foreseeably undermines public faith in the legal system by deceiving and exploiting clients with diminished intellectual capacity in a case that had already drawn public attention because it involved the mistreatment of vulnerable people.

14) An attorney's duty to persuasively advocate for his client is qualified by his duty of candor towards the tribunal. Accordingly, lawyers must always be honest and forthright with the tribunal. It is unacceptable for a lawyer to be anything less than completely candid with the court. As indicated in paragraphs (c) and (e) in the Conclusions of Law above, Defendant made false statements to the tribunal in violation of this fundamental duty.

15) Attorneys as officers of the court must avoid conduct that undermines the integrity of the adjudicative process. When an attorney makes false statements to the court, it foreseeably causes significant harm to the profession and the administration of justice by eroding judges' and lawyers' ability to rely on another attorney's word.

16) Defendant cooperated in the disciplinary process and gave extensive testimony before the Hearing Panel.

17) Defendant's testimony during the disciplinary hearing, however, reflects a pervasive tendency to blame others for his misconduct rather than acknowledging wrongdoing. Specifically, Defendant claimed that the allegations of misconduct against him arose due to the animosity of other lawyers who had also represented McCollum and/or Brown, rather than his own intentional acts.

18) There is no indication that Defendant has taken ownership of his misconduct or its consequences. With a few minor exceptions[1] he has not acknowledged violating the Rules of Professional Conduct. Defendant has not expressed remorse or shown any insight regarding the ways in which he betrayed his clients' trust.

19) Defendant has not refunded any of the excessive fees he collected from McCollum and Brown, insisting that he is entitled to $500,000.00 for his participation in the *proforma* Industrial Commission proceedings. The evidence in this matter establishes that, at minimum, Defendant should be required to refund $250,000.00 of that money because he did not earn it. This proceeding was not designed or intended to calculate the precise value of the legal services Defendant provided. The finding herein regarding the amount of fees that were unearned should not be interpreted as a conclusive valuation of services rendered by Defendant. It is merely a determination that - at minimum - half of the fees Defendant collected from the Industrial Commission award were unearned and should be refunded,

20) Some of Defendant's former clients and friends believe that Defendant is a person of honesty, integrity, and good character.

21) Defendant's misconduct resulted in other sanctions, in that the U.S. District Court voided his representation agreement with McCollum and removed him, as counsel in McCollum's case.

Based on the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

CONCLUSIONS REGARDING DISCIPLINE

1) The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2) The Hearing Panel concludes that the following factors from §.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

1 Though Defendant denied committing any rule violations in his Answer to the Amended Complaint, he admitted at trial to engaging in technical trust account violations and to having inaccurate language in his fee agreement. He did not admit- either at trial or in any pleading - to any of the more substantive misconduct that reflects adversely on his capacity for honesty and loyalty to his clients.

a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
b. Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;

c. Elevation of Defendant's own interests above that of the client;

d. Negative impact of Defendant's actions on client's or public's perception of the profession;

e. Negative impact of Defendant's actions on the administration of justice; and

f. Acts of dishonesty, misrepresentation, deceit, or fabrication.

3) The Hearing Panel concludes that the following factor from §.0116(f)(2), which requires consideration of disbarment, is present in this case: Acts of dishonesty, misrepresentation, deceit, or fabrication.

4) The Hearing Panel concludes that the following factors from §.0116(f)(3), which are to be considered in all cases, are present in this case:

a. Prior disciplinary offenses;

b. Dishonest or selfish motive;

c. Indifference to making restitution;

d. Multiple offenses;

e. Refusal to acknowledge the wrongful nature of conduct;

f. Character or reputation;

g. Vulnerability of victim;

h. Full and free disclosure to the hearing panel or a cooperative attitude toward the proceedings; and

i. Imposition of other penalties or sanctions.

5) The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment.

6) Defendant's course of misconduct involving the manipulation and exploitation of vulnerable clients reflects that Defendant is either unwilling or unable to conform

his behavior to the requirements of the Rules of Professional Conduct. Defendant has refused to acknowledge the wrongfulness of his conduct and there is no evidence suggesting that he intends to modify his behavior. Accordingly, if Defendant were permitted to continue practicing law, he would pose a significant and unacceptable risk of continued harm to clients, the profession, the public, and the administration of justice.

7) The Hearing Panel finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to Defendant's clients, the administration of justice and the legal profession in the present case. Furthermore, the Panel finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

8) Pursuant to 27 N.C. Admin. Code Chapter I, Subchapter B, §.0129(d), the Hearing Panel finds and concludes that the public can only be adequately protected by an active suspension of Defendant's law license with reinstatement to practice conditioned upon compliance with reasonable requirements designed to protect the public and deter future misconduct by Defendant.

9) Nothing can remedy the injustices inflicted upon McCollum and Brown, or their further betrayal by the very lawyer who they trusted to seek redress for those injustices. The harm to McCollum and Brown would be mitigated, however, if Defendant returned a portion of the excessive fee he improperly collected from them. Accordingly, Defendant's ability to practice law in the future should be conditioned upon his reimbursing McCollum and Brown for a portion of the amount of unearned fees he collected.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER

1) Defendant's license to practice law in the State of North Carolina is suspended for five years, beginning 30 days from the date of service of this order upon Defendant.

2) Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3) Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0128. As provided in §.0128(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying his compliance with the rule.

4) The administrative fees and costs of this action, including deposition costs and expert witness costs, are taxed to Defendant. Defendant shall pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.

5) After serving three years of the active suspension of his license, Defendant may apply for a stay of the remaining period of suspension upon filit1g a verified petition pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0118(c) with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that Defendant has complied with the following conditions:

a. That Defendant paid the costs and the administrative fees of this action within 30 days of service upon him of the statement of costs by the Secretary;

b. That Defendant reimbursed McCollum and Brown $250,000.00 for the excessive fees he collected from them: $125,000.00 shall be payable to McCollum or any legal guardian, trustee, or other fiduciary with lawful authority to manage McCollum's financial affairs at the time the restitution is paid. $125,000.00 shall be paid to Brown or any legal guardian, trustee, or other fiduciary with lawful authority to manage Brown's financial affairs at the time the restitution is paid;

c. That Defendant completed 10 hours of Continuing Legal Education (CLE) accredited by the North Carolina State Bar on the topic of ethics and professionalism. This requirement is in addition to the general CLE requirements for reinstatement after two or more years of suspension set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0129(b)(3)(I);

d. That Defendant has arranged for an active member in good standing of the North Carolina State Bar who has been approved by the Office of Counsel and practices in the county of Defendant's practice to serve as Defendant's practice monitor. Before Defendant applies for a stay of the suspension, he must supply the Office of Counsel with a letter from the approved practice monitor confirming his or her agreement to:

i) Meet in person, not over the phone or video, with Defendant monthly for a period of two years to review Defendant's cases;

ii) Provide supervision to ensure that Defendant timely and completely handles client matters; and

iii) Provide written quarterly reports of this supervision to the Office of Counsel on the following dates as they occur during the two years following the stay of the suspension: January 30, April 30, July 30, and October 30. Defendant will be responsible for the cost, if any, charged by the practice monitor for this supervision;

e. That Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;

f. That Defendant responded to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order;

g. That Defendant did not engage in the unauthorized practice of law during the period of suspension;

h. That Defendant did not violate the Rules of Professional Conduct of any jurisdiction in which he is licensed or the laws of the United States or any state or local government during his suspension, other than minor traffic violations;

i. That Defendant properly wound down his law practice and complied with the requirements of27 N.C.A.C. 1B §.0128; and

j. That Defendant satisfied all of the requirements for reinstatement set forth in of 27 N.C.A.C. IB §.0129(b).

6) If Defendant successfully petitions for a stay, the suspension of Defendant's law license shall be stayed as long as Defendant complies and continues to comply with the following conditions:

a. Defendant must cooperate with the practice monitor as described in paragraph 5(d) above for two years following the stay of the suspension. The practice monitor must provide quarterly reports to the Office of Counsel as described in paragraph 5(d)(3) above for the entire two-year period. It is Defendant's sole responsibility to ensure that the practice monitor completes and submits the required reports;

b. Defendant must keep the North Carolina State Bar Membership Department advised of his current business and home addresses and notify the Bar of any change in address within ten days of such change;

c. Defendant must respond to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition received during the period of the stay; and

d. Defendant must not violate the Rules of Professional Conduct of any jurisdiction in which he is licensed or the laws of the United States or any

state or local government during the period of the stay, other than minor traffic violations.

7) If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6 above, the stay of the suspension may be lifted pursuant to 27 N.C. Admin, Code Chapter 1, Subchapter B, § .0118(a).

8) If Defendant does not seek a s ay of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraph 5 above before seeking reinstatement of his license to practice law, and must provide in his petition for reinstatement clear, cogent, and convincing evidence showing his compliance therewith.

9) The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter I, Subchapter B, §§.0118(a) and/or .0129(b)(l) throughout the period of the suspension, and any stay thereof, and until all conditions set forth in paragraph *5* above are satisfied.

5. Copies of the Amended Complaint and Order of Discipline are attached hereto as Petitioner's Exhibits 1 and 2 and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of hearing of this cause.

6. 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 Disciplinary Hearing Commission of the North Carolina State Bar and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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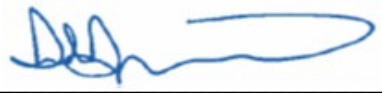
Amanda M. Kates
Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

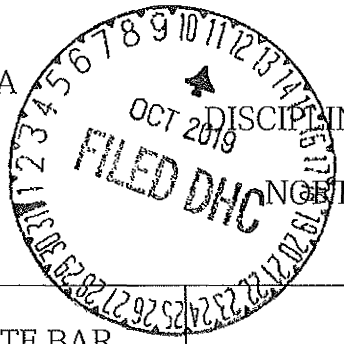
CERTIFICATE OF SERVICE

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 Patrick Michael Megaro, by personal service.

Patrick Michael Megaro
1300 N. Semoran Blvd., Ste. 195
Orlando, FL 32807



Amanda M. Kates



STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 18 DHC 41
THE NORTH CAROLINA STATE BAR, Plaintiff v. PATRICK MICHAEL MEGARO, Attorney, Defendant	AMENDED COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Patrick Michael Megaro ("Megaro"), was admitted to the North Carolina State Bar in 2013, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Orlando, Florida.

FIRST CLAIM FOR RELIEF
(H. McCollum and L. Brown)

4. Paragraphs 1-3 are incorporated as if fully set out herein.

5. In 1983, in Robeson County, H. McCollum ("McCollum") and L. Brown ("Brown") were wrongfully convicted of the rape and murder of an 11-year old girl and sentenced to death.

EXHIBIT
1

6. In September of 2014, after McCollum had spent nearly 31 years on death row and Brown had spent nine years on death row and 22 years in the general prison population, both McCollum and Brown were released from prison; their convictions and death sentences were vacated after they were proven innocent through, among other things, DNA evidence.

7. The evidence revealed that McCollum, 19-years old at the time, and Brown, 15-years old at the time, were coerced into confessing to the crimes after hours of intense interrogation by police officers without the presence of counsel or their parents, and that McCollum and Brown function, due to mental disabilities, at the level of elementary school children.

8. Shortly after McCollum and Brown were released from prison, Ken Rose, an attorney with the Center for Death Penalty Litigation, and WilmerHale, a law firm with offices across the United States, Europe, and Asia, agreed to file pardon petitions with Governor Pat McCrory and seek the statutorily mandated amount of $750,000.00 from the Industrial Commission on a *pro bono* basis for McCollum and Brown.

9. McCollum and Brown began receiving donations and financial assistance from various sources once they were released from prison and their situation caught the attention of the media.

10. Soon after the funds from donations and financial assistance were received, they were placed in the trust account of the Center for Death Penalty Litigation and were distributed to McCollum and Brown as needs arose.

11. On September 11, 2014, Ken Rose and WilmerHale filed the pardon petition on behalf of McCollum and Brown.

12. On September 15, 2014, Patricia J. Hansen, the Governor's Clemency Administrator under Governor McCrory sent Ken Rose and WilmerHale a letter noting that the Governor's "office has received your correspondence and documents requesting a pardon of innocence on behalf of Henry Lee McCollum and Leon Brown. All necessary documents have been received and this request is now being processed."

13. On September 23, 2014, District Attorney Luther Johnson Britt, III, sent Governor McCrory a letter urging him to grant McCollum and Brown pardons of innocence.

14. In January 2015, Kim Weekes ("Weekes") and Deborah Pointer ("Pointer"), two non-lawyer "consultant advisors," contacted Geraldine Brown Ransom ("Geraldine"), Leon Brown's sister, and claimed they could help McCollum and Brown.

15. Weekes and Pointer entered into an agreement with Geraldine, who was not a guardian for either McCollum or Brown at that point, to serve McCollum and Brown as "activist/advocate consultants" and to assist with "the pardon process."

16. In February 2015, Defendant was contacted by Weekes and Pointer regarding McCollum and Brown.

17. Throughout much of his representation of McCollum and Brown, Defendant shared information and worked with Weekes and Pointer on McCollum and Brown's case.

18. On February 27, 2015, Defendant entered into a representation agreement with McCollum, Brown, and Geraldine, who still was not a guardian for either McCollum or Brown, to handle McCollum and Brown's claims against Robeson County, the Red Springs Police Department, and the State of North Carolina.

19. Defendant's representation agreement with McCollum and Brown noted, *inter alia*, that Defendant would collect a contingency fee of between 27-33% of any monetary recovery or award in connection with McCollum and Brown's claims against Robeson County, the Red Springs Police Department, and the State of North Carolina.

20. Defendant's representation agreement with McCollum and Brown also noted that McCollum and Brown were "conveying an irrevocable interest in the net proceeds arising" from any recovery to Defendant.

21. Defendant's representation agreement with McCollum and Brown also indicated that if McCollum and Brown elected "to terminate th[e] agreement, it would not terminate [Defendant's] contingency interest in the outcome of" the case and that "under no circumstances [would Defendant's firm be] required to relinquish any part of the contingency fee provided [t]herein in order to" accommodate new counsel.

22. The language in the representation agreement was designed and intended to create a nonrefundable fee.

23. Defendant claimed that McCollum and Brown had the mental capacity to enter into this contract.

24. McCollum and Brown have IQs in the 50s.

25. Defendant knew at the time that he entered into the representation agreement with McCollum and Brown that both had IQs in the 50s.

26. Defendant claimed repeatedly that McCollum and Brown did not have the mental capacity to confess to the crimes back in 1983.

27. On March 2, 2015, Defendant gave $1,000.00 cash to McCollum and Brown.

28. On March 4, 2015, Defendant helped McCollum and Brown each to get loans from Multi Funding, Inc. for $100,000.00 at 19% interest, compounded every 6 months.

29. Neither McCollum nor Brown had the capacity to enter into contracts for the loans from Multi Funding, Inc.

30. Defendant signed a document entitled "Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc.," claiming that he had explained the terms of the loan agreements to McCollum and Brown.

31. Defendant read and signed at least two pages of the loan document for the March 2015 loan, including a page wherein he agreed to pay Multi Funding before paying his client: "I hereby consent and agree to fully execute this document to pay Multi Funding Inc. all funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

32. But for Defendant's signing of the Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc., neither McCollum nor Brown would have received the March 4, 2015 loans of $100,000.00 at 19% interest, compounded every 6 months.

33. In March of 2015, Defendant ensured that Weekes and Pointer were paid $10,000.00 from the initial loan proceeds to McCollum and Brown, pursuant to Defendant's agreement with Weekes and Pointer.

34. On March 16, 2015, Defendant sent letters to the attorneys who had represented McCollum and Brown *pro bono* for 20 years until they were exonerated, telling the attorneys to never contact McCollum and Brown again as it would violate the "rules of ethics" and would be "actionable as tortious interference of contract."

35. On June 4, 2015, Governor Pat McCrory granted a pardon of innocence to McCollum and Brown.

36. In August of 2015, Defendant filed a lawsuit in the United States District Court for the Eastern District of North Carolina on behalf of McCollum and Brown against various parties who were allegedly responsible for their wrongful conviction and incarceration (*McCollum v. Town of Red Springs*, Docket # 5:15-CV-451-BO, Eastern District of North Carolina, Western Division) ("Civil Suit").

37. In August of 2015, Brown, who suffers from bi-polar disorder and schizophrenia, had a breakdown and ended up in a group home.

38. In or around August of 2015, Defendant learned that Brown had suffered a breakdown and had moved into a group home.

39. As a result of Brown's breakdown, Defendant had Geraldine appointed as Brown's guardian by the Clerk of Superior Court in Cumberland County in an incompetency hearing on September 1, 2015.

40. Geraldine had no expertise or knowledge of how to serve as a guardian and was in need of money, making her a poor choice for a guardian.

41. Defendant told the Clerk of Superior Court in Cumberland County in the incompetency hearing on September 1, 2015 that he would ensure that "multiple levels of oversight" were present by placing all of Brown's assets – specifically including the anticipated Industrial Commission award of $750,000.00 – in a trust managed by a third party.

42. Defendant did not place Brown's award or assets in a trust.

43. On September 2, 2015, the Industrial Commission awarded $750,000.00 each as compensation for their wrongful imprisonment to McCollum and Brown.

44. Although Defendant represented McCollum and Brown at the September 2, 2015 Industrial Commission hearing, he had little to do with McCollum and Brown receiving this compensation: McCollum and Brown had been exonerated and the petition for pardon of innocence had been filed before Defendant's involvement.

45. Defendant's work on behalf of McCollum and Brown in the Industrial Commission proceeding was minimal.

46. Once a pardon of innocence had been granted by the governor, the request to the Industrial Commission for compensation was *pro forma* and the compensation amount of $750,000.00 was mandated by statute.

47. In October of 2015, the Industrial Commission sent both McCollum and Brown $750,000.00 in the form of a check for $1.5M to Defendant.

48. Defendant took one-third of the award from both McCollum and Brown, totaling $500,000.00.

49. McCollum and Brown were left with $500,000.00 each.

50. Defendant used nearly $110,000.00 each of McCollum and Brown's Industrial Commission award, totaling $220,000.00, to repay the loans he helped them get, even though there was some question as to whether the loans were enforceable because of McCollum and Brown's capacity to enter into the loan contracts.

51. Defendant charged a combined total of $21,173.88 in costs and expenses to McCollum and Brown for the Industrial Commission process.

52. Defendant used $25,972.14 of the Industrial Commission award to repay money he and his firm advanced to McCollum and Brown prior to their Industrial Commission award, including, *inter alia*, the following:

a. A cash payment of $250.00 to McCollum on March 2, 2015;
b. A second cash payment of $250.00 to McCollum on March 2, 2015;
c. A cash payment of $250.00 to Brown on March 2, 2015;
d. A second cash payment of $250.00 to Brown on March 2, 2015;
e. A Western Union payment of $221.50 to McCollum on June 15, 2015;
f. A Western Union payment of $221.50 to Brown on June 15, 2015;
g. A cash payment of $500.00 to McCollum on September 2, 2015;
h. A Money Order payment of $500.00 to McCollum on September 2, 2015;
i. A second Money Order payment of $500.00 to McCollum on September 2, 2015; and
j. A Western Union payment of $758.00 to McCollum on September 14, 2015.

53. A portion of these advances was for living expenses and not for the costs of the litigation.

54. Defendant put $10,000.00 each from McCollum and Brown's Industrial Commission award, totaling $20,000.00, into escrow for "future costs/expenses for the [civil] lawsuit" – the Civil Suit – despite the fact that the Civil Suit was being pursued on a contingency fee basis with costs being advanced by the firm, per the terms of Defendant's contract with McCollum and Brown: "It is often necessary for us[, Defendant's firm,] to incur expenses for items such as travel, lodging, meals, telephone calls, transcription, and the like. Similarly, some matters require substantial amounts of costly ancillary services such as photocopying, messenger and delivery services, and computerized legal research. HM[, Defendant's firm,] agrees to advance all such costs and expenses incurred in connection with the Matter, including, but not limited to, photocopying, messenger and delivery services, expert witnesses, court reporter fees, computerized research, travel (including mileage, parking, air fare, lodging, meals, and ground transportation), long-distance telephone calls, telecopying, court costs, filing fees, and other similar expenses. Certain of the preceding items may be charged at more than HM's[, Defendant's firm's] direct costs in order to cover overhead. Such costs are to be repaid out of the proceeds, if any, from the Matter, and costs shall be repaid to HM[, Defendant's firm,] prior to the division of funds[.]"

55. Defendant used the entire $20,000.00 he placed in escrow from McCollum and Brown's Industrial Commission award to partially pay for the litigation costs of the Civil Suit rather than advancing the costs from his firm's funds.

56. On March 11, 2016, Defendant helped McCollum get a loan for $50,000.00 at 18% interest, compounded every 6 months.

57. Defendant signed the Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc., claiming that he had explained the terms of the loan agreement to McCollum for the $50,000.00 loan.

58. Defendant read and signed at least two pages of the loan document for the March 2016 loan, including a page wherein he agreed to pay Multi Funding before paying his client: "I hereby consent and agree to fully execute this document to pay Multi Funding Inc. all funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

59. On October 27, 2016, Defendant helped McCollum get a loan for $15,000.00 at 18% interest, compounded every 6 months.

60. Defendant signed the Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc., claiming that he had explained the terms of the loan agreement to McCollum for the $15,000.00 loan.

61. Defendant read and signed at least two pages of the loan document for the October 2016 loan, including a page wherein he agreed to pay Multi Funding before paying his client: "I hereby consent and agree to fully execute this document to pay Multi Funding Inc. all

funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

62. The loan contracts provide that if McCollum were to retain new counsel and fail to cause the new counsel to execute a lien on any recovery in favor of the lender, McCollum would be subject to a lawsuit from the lender for damages, costs, and attorney fees.

63. But for Defendant's signing of the loan documents, McCollum would not have received the March 11, 2016 loan for $50,000.00 at 18% interest, compounded every 6 months nor the October 27, 2016 loan for $15,000.00 at 18% interest, compounded every 6 months.

64. In February of 2016, Geraldine was removed as guardian for contempt of court and stealing money.

65. Shortly after Geraldine was removed as guardian, Defendant helped Geraldine get a $25,000.00 loan from Multi Funding, Inc. against any future recovery made by Brown, with the loan proceeds sent to Geraldine allegedly for Brown's rent.

66. As a result of Geraldine receiving a $25,000.00 loan from Multi Funding, Inc. against any future recovery made by Brown, Multi Funding, Inc. perfected a lien for that amount against any future recovery made by Brown.

67. At the time Defendant helped Geraldine get a loan against any future recovery made by Brown allegedly for Brown's rent, Geraldine was no longer Brown's guardian; thus, any rent payments to Geraldine at this time were not for Brown's benefit.

68. At the time Defendant helped Geraldine get a loan against any future recovery made by Brown allegedly for Brown's rent, Brown was no longer residing with Geraldine; thus, any rent payments to Geraldine at this time were not for Brown's benefit.

69. Since approximately August of 2015, Brown had been living in a group home in Fayetteville.

70. On February 1, 2017, Derrick Hamilton ("Hamilton"), a friend of and occasional videographer for Defendant, wired Defendant $30,000.00, which was deposited into Defendant's trust account.

71. Twenty thousand dollars of the $30,000.00 wire transfer was for McCollum's benefit.

72. Ten thousand dollars of the $30,000.00 wire transfer was intended by Defendant and Hamilton to be a loan for Defendant's benefit.

73. Defendant did not disburse the $10,000.00 belonging to him from the trust account in a manner that identified the funds as Defendant's loan proceeds.

74. By not promptly disbursing from his trust account the $10,000.00 of the $30,000.00 wire transfer intended by Defendant and Hamilton to be a loan for Defendant's

benefit, Defendant commingled funds belonging to Defendant with entrusted funds belonging to Defendant's client.

75. In April of 2017, Defendant submitted to the United States District Court a proposed settlement of McCollum and Brown's Civil Suit against the Town of Red Springs for $500,000.00 each.

76. Similar wrongful imprisonment cases for fewer years of incarceration and fewer years on death row have been settled for several million dollars.

77. Defendant did not conduct asset discovery regarding the Town of Red Springs's ability to satisfy a judgment in excess of the town's insurance policy limits.

78. Defendant failed to discover the insurance policy limits of the Town of Red Springs.

79. Defendant asked the Court to approve the settlement and his 33% fee, claiming that his clients were competent to enter into the representation agreement and the settlement agreement and that the settlement was appropriate because McCollum had agreed to it and Brown's new guardian had as well.

80. The proposed settlement provided that the liens of the lenders of the loans Defendant helped McCollum and Brown would be paid out of the settlement proceeds.

81. Defendant represented to the Court in his proposed settlement pleading that his costs for the litigation were roughly $70,000.00.

82. In his pleading to the Court, Defendant claimed that he had done the following work for McCollum and Brown in the civil suit and that the following actions, among others, led to the roughly $70,000.00 in costs and justified his requested $330,000.00 fee: "counsel represented both Plaintiffs in their successful petitions to the Governor of North Carolina for Pardons of Innocence, which included several meetings with Governor Pat McCrory and/or his staff, submission of documents and information to the Governor's Office, and several meetings with Plaintiffs; (ii) counsel represented both Plaintiffs in their successful petitions for statutory compensation for wrongful imprisonment pursuant to North Carolina General Statutes § 148-82 et seq. in the North Carolina Industrial Commission, which included preparation of the petition, appearance in the Commission, and presentation of evidence at the hearing; (iii) counsel petitioned the Cumberland County Superior Court for a guardian for Leon Brown and appeared in that court at a hearing and presented evidence[.]"

83. Defendant had already been compensated for these services by the award from the Industrial Commission.

84. Defendant's statement to the Court that he needed to be compensated for services for which he had already been paid by the award from the Industrial Commission was a material misrepresentation.

85. The proposed settlement agreement would have left McCollum with $178,035.58 while Defendant would have received $403,493.96.

86. Neither McCollum nor Brown had the capacity to enter into contracts for the loans from Multi Funding, Inc.

87. McCollum did not have capacity to agree to the proposed settlement agreement.

88. Following the hearing wherein Defendant asked the Court to approve the settlement and his fee, the Court appointed Raymond Tarlton ("Tarlton") as McCollum's GAL.

89. On July 26, 2017, Tarlton filed a motion requesting that the Court determine whether the representation agreement between McCollum and Defendant was valid.

90. On August 10, 2017, the Court held a hearing to determine "the competence of Plaintiff McCollum to make decisions and enter into legally binding obligations."

91. Specifically at issue at this August 10, 2017 hearing was whether or not Defendant's retainer agreement with McCollum was invalid due to McCollum's low IQ and potential incompetency.

92. Defendant presented evidence to the Court at this August 10, 2017 hearing, including testimony of an expert of Defendant's own choosing, arguing that McCollum was competent to enter into the retainer agreement.

93. Defendant argued to the Court that McCollum was competent despite (a) previously arguing that McCollum did not have the mental capacity to confess to the crimes back in 1983; (b) McCollum's notable lack of mental capacity being an important part of McCollum's case against Robeson County, the Red Springs Police Department, and the State of North Carolina; and (c) McCollum potentially having claims of incompetency that might invalidate the contracts he signed with Pointer, Weekes, and Multi Funding.

94. On August 15, 2017, Defendant filed a motion to terminate Tarlton as GAL and "to dispense with further competency testing."

95. On October 13, 2017, Defendant sent a new retainer agreement to Brown's guardian.

96. On October 23, 2017, the Court held that Defendant did not have a valid representation agreement with McCollum and Brown: "Counsel [Defendant] was plainly on notice that his potential clients had intellectual disabilities and that their abilities to proceed without a guardian were at issue. Nonetheless, counsel [Defendant] entered into a representation agreement and has, to the Court's knowledge, never sought to have the agreement ratified by any duly appointed guardian for either plaintiff. Accordingly, the Court finds that, based on McCollum's incompetence, the representation agreement between counsel [Defendant] and McCollum is invalid."

97. On November 9, 2017, the Authorized Practice Committee of the North Carolina State Bar sent Weekes and Pointer Letters of Caution for engaging in the unauthorized practice of law in their work with Defendant for McCollum and Brown.

98. The Letters of Caution note that the Authorized Practice Committee "concluded that there is probable cause that [Weekes and Pointer's] activities violated the unauthorized practice of law statutes."

99. On December 14, 2017, the Court approved the settlement with the Town of Red Springs but not Defendant's 33% fee.

100. Also on December 14, 2017, Defendant had Joseph Duffy ("Duffy"), an employee of Multi Funding, sign an affidavit that Defendant had drafted.

101. This affidavit indicated, *inter alia*, that Defendant did not "guarantee, approve, or co-sign" the Multi Funding loans to McCollum and Brown, and that Defendant "simply acknowledged the existence of a lien."

102. The affidavit Defendant drafted and had Duffy execute contained materially false statements concerning Defendant's involvement in the loan process.

103. On April 13, 2018, Defendant was terminated as counsel for McCollum by McCollum's GAL.

104. On April 24, 2018 Defendant's law partner filed a motion challenging the GAL's authority to terminate Defendant.

105. On May 18, 2018, the Court ordered Defendant removed from the case "for good cause shown."

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

a) By claiming an irrevocable interest in McCollum and Brown's potential financial payments from the state, Defendant charged an improper fee in violation of Rule 1.5(a) and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c);

b) By claiming an irrevocable interest in McCollum and Brown's potential financial payments from the state and asserting that this right would survive termination of the representation, Defendant attempted to limit the clients' absolute right to discharge him in violation of Rule 1.16(a)(3) and made misstatements about his fees, the services he would provide, and the clients' rights to terminate the representation in violation of Rule 7.1(a) and Rule 8.4(c);

c) By working and sharing information with two non-attorney "consultant advisors" in representing McCollum and Brown, Defendant revealed confidential information obtained in the course of his representation of McCollum and Brown in violation of Rule 1.6(a);

d) By failing to conduct necessary discovery to ascertain the ability of the Town of Red Springs to pay any judgment in excess of its insurance policies and failing to determine the insurance policy limits of the Town of Red Springs, Defendant failed to represent McCollum and Brown with competence or diligence in violation of Rule 1.1 and Rule 1.3;

e) By using some of his clients' Industrial Commission award to pay for "litigation expenses" in the Civil Suit when that suit, according to the representation agreement, was to be pursued on a contingency basis with costs advanced by the firm, Defendant misused entrusted funds, engaged in embezzlement, and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation, in violation of Rule 1.15-2, Rule 8.4(b), and Rule 8.4(c);

f) By claiming in his contract for the Civil Suit that his firm would advance the costs of the litigation and then paying a significant portion of those costs out of McCollum and Brown's Industrial Commission Award, Defendant made misleading statements about his services in violation of Rule 7.1(a) and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c);

g) By entering into a representation agreement with his clients when he knew they did not have the capacity to understand the agreement, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

h) By having McCollum sign off on a settlement agreement and representing to a Court that McCollum had consented to the settlement when Defendant knew McCollum did not have the capacity to understand the agreement, Defendant made a false statement to a tribunal and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation that was prejudicial to the administration of justice in violation of Rule 3.3(a) and Rule 8.4(c) and Rule 8.4(d);

i) By charging and collecting one-third of McCollum and Brown's Industrial Commission award when his role in that process was minimal and *pro forma*, Defendant charged and collected an excessive fee in violation of Rule 1.5(a);

j) By representing to the Clerk of Superior Court in Cumberland County that he would set up a trust for Brown's funds and then failing to do so, Defendant made a false statement to a tribunal and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation that was prejudicial to the administration of justice in violation of Rule 3.3(a) and Rule 8.4(c) and Rule 8.4(d);

k) By misrepresenting to the United States District Court in his proposed settlement of the Civil Suit that some of his work and costs in that action were for actions for which he had already been paid by McCollum and Brown's Industrial Commission award, Defendant made a

false statement to a tribunal and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation that was prejudicial to the administration of justice in violation of Rule 3.3(a) and Rule 8.4(c) and Rule 8.4(d);

l) By signing various Attorney Acknowledgements of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc., claiming to Multi Funding, Inc. that he had explained the terms of the loan agreements to McCollum and Brown when they were not competent to understand those terms or enter into those agreements, Defendant made a material misrepresentation to Multi Funding, Inc. and thereby engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c);

m) By lending McCollum and Brown money, both directly and/or through his paralegal, Derrick Hamilton, Defendant entered into a business transaction with his clients in violation of Rule 1.8(a) and Rule 1.8(e);

n) By helping Geraldine get a $25,000.00 loan from Multi Funding, Inc. against any future recovery made by Brown, with the loan proceeds sent directly to Geraldine for Brown's rent when Geraldine was not Brown's guardian, Defendant misused entrusted funds in violation of Rule 1.15-2 and failed to represent Brown with competence or diligence in violation of Rule 1.1 and Rule 1.3;

o) By not promptly disbursing from his trust account $10,000.00 to which he was entitled as proceeds of a loan from Derrick Hamilton, Defendant failed to properly maintain and disburse fiduciary funds in violation of Rule 1.15-2(a) and failed to withdraw the amounts to which Defendant was entitled in violation of Rule 1.15-2(g);

p) By advancing money to McCollum and Brown for living expenses, and by guaranteeing repayment of various loans for McCollum and Brown, Defendant provided financial assistance to clients in connection with pending litigation in violation of Rule 1.8;

q) By guaranteeing repayment of various loans for McCollum and Brown, Defendant entered into business transactions with his clients in violation of Rule 1.8(a);

r) By drafting a materially false affidavit and having it executed, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) and suborned perjury in violation of N.C. Gen. Stat. § 14-210, thereby committing a felonious criminal act that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(b); and

s) By entering into a retainer agreement with McCollum that was invalid due to McCollum's lack of competency and then arguing that McCollum was competent in an effort to protect his fee despite such arguments potentially harming McCollum's then-current claims against Robeson County, the Red Springs Police Department, and the State of North Carolina, and potential invalid-contract claims against Pointer, Weekes, and Multi Funding, Defendant engaged in a conflict of interest, as Defendant's representation of McCollum was materially limited by Defendant's personal interest in defending his fee, in violation of Rule 1.7.

SECOND CLAIM FOR RELIEF
(G.H.)

106. Paragraphs 1-3 are incorporated as if fully set out herein.

107. On September 21, 2015, G.H. signed a contract with Defendant to represent her in filing an appeal of an equitable distribution judgment from G.H.'s civil divorce case in North Carolina.

108. Defendant failed to order a transcript within fourteen days of the filing of the Notice of Appeal.

109. Defendant failed to comply with Rule 7 by providing, "in writing, a designation of the parts of the proceedings to be transcribed; the name and address of the court reporter designated to prepare the transcript and where portions of the proceedings have been designated to be transcribed, [and] a statement of the issues the appellant intends to raise on appeal."

110. Defendant failed to make any "timely effort to obtain an extension of time for the transcript to be produced."

111. Defendant failed to serve the proposed record on appeal within thirty-five days of the date of the Notice of Appeal

112. Defendant was served with notice of hearing in G.H.'s case, to take place on February 10, 2016.

113. Defendant failed to appear at the February 10, 2016 hearing.

114. The Court in G.H.'s case noted that Defendant did "not have good cause for these delays."

115. Due to these administrative and procedural failures by Defendant, the Alamance County District Court entered an Order Dismissing Plaintiff's [G.H.'s] Appeal on April 26, 2016.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

a) By failing to appear in court at a duly noticed hearing on his client's behalf and by failing in various respects to comply with the Rules of Civil Procedure in his client's case, Defendant failed to ensure that his client's interests were protected, failed to act with reasonable diligence and promptness in representing a client, and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.3 and Rule 8.4(d).

WHEREFORE, Plaintiff prays that:

(1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28 as the evidence on hearing may warrant;

(2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

This the 11th day of October 2019.

Joshua T. Walthall, Deputy Counsel
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919-828-4620
Attorney for the Plaintiff

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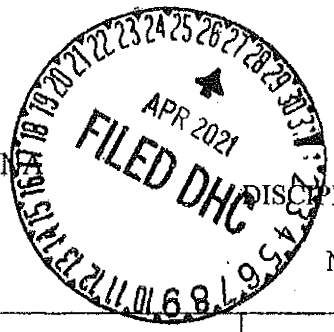
Attorney for the Plaintiff

Signed pursuant to 27 N.C. Admin. Code 1B § .0113(n) and §.0105(a)(10).

A. Todd Brown, Chair
Grievance Committee

The foregoing 14 pages are true and accurate copies of the official records of the N.C. State Bar

Secretary, N.C. State Bar



TATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 18 DHC 41
THE NORTH CAROLINA STATE BAR, Plaintiff v. PATRICK MICHAEL MEGARO, Attorney, Defendant	ORDER OF DISCIPLINE

This matter came on for hearing on March 15 – 19, 2021, by a hearing panel of the Disciplinary Hearing Commission composed of Fred W. DeVore, III, Chair, Richard V. Bennett, and Tyler B. Morris. Joshua T. Walthall and G. Patrick Murphy represented Plaintiff, the North Carolina State Bar. Defendant, Patrick Michael Megaro, was represented by F. Lane Williamson.

Based upon the record proper, the stipulations of the parties, the testimony and exhibits admitted at the hearing, and upon making credibility determinations of the witnesses who testified at the hearing, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar" or "Plaintiff"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Patrick Michael Megaro ("Megaro"), was admitted to the North Carolina State Bar in 2013 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Orlando, Florida.

4. In 1983, H. McCollum ("McCollum") and L. Brown ("Brown") were wrongfully convicted of the rape and murder of Sabrina Buie, an 11-year-old girl, and sentenced to death.

5. On direct appeal, McCollum and Brown were granted new trials by the North Carolina Supreme Court. *State v McCollum*, 321 N.C 557, 364 S.E.2d 112 (1988). McCollum

EXHIBIT 2

was retried in Cumberland County in 1991 and again convicted of the first-degree rape and first-degree murder of Buie. The court arrested judgment on the rape charge and McCollum was sentenced to death on the murder charge. In the penalty phase of McCollum's retrial, the jury found as mitigating circumstances that he was mentally retarded, that the offense was committed while he was under the influence of mental or emotional disturbance, that he is easily influenced by others, and he has difficulty thinking clearly under stress.

6. At Brown's 1992 retrial in Bladen County, he was convicted of first-degree rape. Brown was sentenced to life in prison. In the court's judgment, it recommended Brown receive psychological treatment in prison. Brown's appeal was denied but the opinion noted the evidence of Brown's subaverage intelligence with an IQ in the 49 to 65 range and limitations of his ability to read and write.

7. On April 3, 1995, McCollum filed a motion for appropriate relief ("MAR") in Robeson County. McCollum was represented in the MAR by Kenneth Rose ("Rose"), an attorney with the Center for Death Penalty Litigation ("CDPL"), and lawyers from the law firm Wilmer Hale.

8. The MAR alleged, among other claims, that McCollum's incriminating statement was unreliable due to his intellectual disabilities. His intellectual disabilities were established by the following mental health professionals:

a. Psychologist Dr. Faye Sultan, Ph. D., concluding, *inter alia*, that McCollum was mentally retarded with intellectual functioning falling in the range of an eight to ten-year-old, had poor reading comprehension, and was highly suggestible and subject to the influence of others, particularly authority figures;

b. Neuropsychologist Dr. Helen Rogers, Ph. D., concluding, *inter alia*, that McCollum was mentally retarded with neuropsychological testing showing he scored in the "impaired" or "seriously impaired" range, his ability to understand verbal communication was severely impaired, he had cognitive impairment beyond that expected for his level of mental retardation, and he was strongly suggestible and generally not capable of understanding and weighing the consequences of his choices;

c. Psychologist Dr. Richard Rumer, Ph. D., concluding, *inter alia*, that McCollum was mentally retarded with severely limited cognitive functioning, was susceptible to the influence of others, and demonstrated weakness in his ability to plan and carry out complex activities; and

d. Dr. George Baroff, Ph. D., Professor of Psychology at the University of North Carolina, concluding, *inter alia*, that McCollum suffered mental retardation – placing him at the bottom 3 percent of the general population - and a neuropsychological impairment, and that he had a reading level of third grade and a listening comprehension level at first grade.

9. In January 2002, Rose represented McCollum in filing an amended MAR seeking relief under N.C. Gen. Stat. §15A-2005 based on his subaverage intellectual functioning and

significant limitations in adaptive functioning. In support of his amended MAR, McCollum submitted a 2002 affidavit of Dr. Helen Rogers. In her affidavit, Dr. Rogers noted that in her 1995 testing McCollum had a full-scale IQ of 68 and significant subaverage intellectual functioning that placed him in the lowest 2-3 percent of the population in overall intellectual functioning. On verbal processing tests administered by Dr. Rogers, McCollum scored in the lowest one-half of one percent of the population. On the Wide Range Achievement Test- Revised, McCollum scored in the lowest .6 percent of the population on the reading and arithmetic portions of the test. Dr. Rogers concluded that her 1995 testing demonstrated McCollum suffered substantial deficits in two or more areas of adaptive functioning including functional academics and communication skills.

10. A 2002 affidavit of Dr. Richard Rumer was submitted in support of McCollum's amended MAR. Dr. Rumer found McCollum had a history of subaverage scores on intellectual testing with full-scale scores of 56, 61 and 69, and adaptive functioning deficits.

11. On August 26, 2014, Rose and Vernetta Alston ("Alston"), both with CDPL, filed a MAR claiming McCollum was innocent based in part on DNA testing on a cigarette butt found at the scene of Buie's murder. The DNA on the cigarette butt was consistent with the DNA of Rosco Artis, an inmate then serving a life sentence for the murder of a woman in the same area as Buie, a month after Buie's murder. Through separate counsel, Brown filed a similar MAR.

12. On September 2, 2014, the superior court granted MARs of McCollum and Brown and vacated their convictions and judgments. Robeson County District Attorney Luther Johnson Britt, III, did not oppose the court granting the MARs. McCollum and Brown were released from prison after serving 31 years for crimes they did not commit.

13. After McCollum and Brown's release from prison, Rose, Alston and attorneys with Wilmer Hale agreed to file pardon petitions with Governor Pat McCrory and seek the statutorily mandated amount of $750,000.00 from the Industrial Commission on a *pro bono* basis for McCollum and Brown.

14. In September 2014, attorneys Mike Lewis, Mark Rabil and Michigan lawyer Tom Howlett ("Howlett"), agreed to represent McCollum and Brown in civil litigation arising from the alleged misconduct of law enforcement officers and their agencies involved in the investigation and prosecution of McCollum and Brown on a contingency fee basis.

15. Rose had known McCollum for over twenty years, had many times visited McCollum on death row, had talked extensively with McCollum about his unwavering claim of innocence, knew the degree of McCollum's mental and emotional suffering while on death row, knew of McCollum's long-standing history of intellectual disabilities, and was personally concerned for McCollum's welfare after his release due to, among other issues, McCollum's vulnerability and suggestibility.

16. On September 11, 2014, Rose and Alston filed petitions for pardons of innocence on behalf of McCollum and Brown with Governor Pat McCrory.

17. On September 15, 2014, Governor McCrory's Clemency Administrator sent a letter to Rose and Alston notifying them: "All necessary documents have been received and this request is now being processed. You will be notified when a decision has been made on this request."

18. On September 23, 2014, Robeson County District Attorney Luther Johnson Britt, III, sent Governor McCrory a letter urging him to grant McCollum and Brown pardons of innocence. The support of the elected District Attorney of the district where the offenses occurred significantly strengthened McCollum and Brown's petitions for pardons of innocence.

19. With the CDPL taking the lead, McCollum and Brown began receiving charitable donations and financial assistance from various sources once they were released from prison, and their situation caught the attention of the media.

20. In January 2015, Kim Weekes ("Weekes") and Deborah Pointer ("Pointer"), who are not lawyers and referred to themselves as "consultant advisors," contacted Geraldine Brown Ransom ("Geraldine"), Brown's sister, and claimed they could help McCollum and Brown.

21. Weekes and Pointer entered into an agreement with Geraldine, who was not a guardian for either McCollum or Brown at that point, to serve McCollum and Brown as "activist/advocate consultants" and to assist with "the pardon process."

22. On February 2, 2015, Weekes and Pointer sent a letter to Rose notifying Rose that Weekes and Pointer were authorized to represent McCollum and Brown "in all and any of the Civil/Litigation of the Pardon/Fundraising of NC matters."

23. In late February 2015, Weekes and Pointer contacted Defendant about representing McCollum and Brown.

24. Following contact by Weekes and Pointer, Defendant read news accounts of McCollum and Brown's cases, reviewed transcripts of their MAR hearings that he found online, and did preliminary research on their cases.

25. Minimal research on the cases of McCollum and Brown would have disclosed their significant intellectual disabilities.

26. Moreover, review of the MAR transcript would have revealed that McCollum and Brown had low IQs and were unable to understand the confessions they were coerced into signing: Sharon Stellato, a staff member of The North Carolina Actual Innocence Commission, testified in extensive detail at the September 2, 2014 MAR hearing about the intellectual disabilities of McCollum and Brown. Consistent with the background of McCollum and Brown, Stellato noted that both had been diagnosed as mentally retarded. Testing in 1983 showed Brown's full-scale IQ was 54. Testing of McCollum at age 15 showed his full-scale IQ was 56 and his reading comprehension at the second-grade level.

27. On February 28, 2015, before Defendant was scheduled to meet with McCollum and Brown, Pointer warned Defendant: "Please make sure you do not discuss monetary amounts

in front of the brothers as per their sister. [McCollum] believes he understands monetary things which he does not. He has a local girlfriend now and is promising her all kinds of things. Geraldine will give her brothers a monthly stipend. In fact [Weekes] and I are recommending a monthly stipend to the family after we have them moved, settled, etc. from cash advance. Let's talk before you meet tmw."

28. On or about March 1, 2015, with knowledge that McCollum and Brown had been consistently diagnosed as mentally retarded with adaptive skills deficits and were unable to understand their confessions, Defendant entered into a representation agreement with them and Geraldine, who though not a guardian for either McCollum or Brown, represented to Megaro that she had power of attorney to act for McCollum and Brown to handle McCollum and Brown's civil claims against Robeson County, Red Springs Police Department, and the State of North Carolina.

29. At the time Defendant had McCollum and Brown execute the retainer agreement, he knew petitions for pardons had already been filed on their behalf.

30. Geraldine signed the representation agreement as attorney-in-fact, but no power of attorney was introduced as an exhibit at Defendant's hearing

31. Defendant's representation agreement with McCollum and Brown noted, *inter alia*, that Defendant would collect a contingency fee of between 27-33% of any monetary recovery or award in connection with McCollum and Brown's claims against Robeson County, the Red Springs Police Department, and the State of North Carolina.

32. Defendant's representation agreement with McCollum and Brown also noted that McCollum and Brown were "conveying an irrevocable interest in the net proceeds arising" from any recovery to Defendant.

33. Defendant's representation agreement with McCollum and Brown provided that if McCollum and Brown elected "to terminate th[e] agreement, it would not terminate [Defendant's] contingency interest in the outcome of" the case and that "under no circumstances [would Defendant's firm be] required to relinquish any part of the contingency fee provided [t]herein in order to" accommodate new counsel.

34. The language in the representation agreement created an impermissible nonrefundable fee.

35. On March 2, 2015, Defendant began working with Multi Funding, Inc., ("MFI") to arrange and obtain immediate funding through loans for McCollum and Brown. On that date, Defendant told representatives of MFI: "This case reads almost like the script to The Green Mile. Leon and Henry moved to Red Springs, NC from NJ with their mother and sister. Both have IQs in the 50s/60s."

36. Defendant knew at the time he entered into representation agreements with McCollum and Brown that both had scored in the 50s and 60s on IQ tests.

37. McCollum and Brown were easily manipulated and were particularly susceptible to manipulation and financial coercion, given their intellectual disabilities, decades in prison, and relative poverty.

38. On March 2, 2015, Defendant gave $1,000.00 cash to McCollum and Brown.

39. On March 4, 2015, Defendant facilitated McCollum and Brown each getting loans from MFI for $100,000.00 at 19% interest, compounded every 6 months.

40. Defendant read and signed at least two pages of the loan documents for the March 2015 loans, including pages wherein he agreed to pay MFI before paying his clients: "I hereby consent and agree to fully execute this document to pay Multi Funding Inc. all funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

41. Defendant signed a document entitled "Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc.," claiming that he had explained the terms of the loan agreements to McCollum and Brown.

42. But for Defendant's signing of the Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc., neither McCollum nor Brown would have received the March 4, 2015 loans of $100,000.00 at 19% interest, compounded every 6 months.

43. In March of 2015, Defendant ensured that Weekes and Pointer were paid $10,000.00 from the initial loan proceeds to McCollum and Brown.

44. On March 16, 2015, Defendant sent letters to Rose and Howlett, warning them to never contact McCollum and Brown again as it would violate the "rules of ethics" and would be "actionable as tortious interference of contract."

45. In March 2015, Defendant sent an associate, Charles Gallman, from New York to North Carolina to assess the situation because he was concerned that other lawyers were trying to "poach" the McCollum and Brown cases from him.

46. On June 4, 2015, following a public relations and social media effort directed by Defendant, Governor Pat McCrory granted pardons of innocence to McCollum and Brown.

47. On July 10, 2015, Defendant filed a joint petition in the Industrial Commission seeking compensation for McCollum and Brown pursuant to N.C. Gen. Stat. §148-84. In the second paragraph of the petition, Defendant represented to the Industrial Commission: "At all times hereinafter mentioned, both men had and still have limited mental abilities. Mr. McCollum's Intelligence Quotient (IQ) has been scored at 56, while Leon Brown's IQ has been scored at 54. Both of these IQ scores are within the intellectually disabled range, classified by some as mild retardation."

48. Defendant performed minimal work on behalf of McCollum and Brown in the Industrial Commission proceeding.

49. The attachments to the petitions for compensation Defendant filed with the Industrial Commission were almost exclusively the work product and documents provided by Rose and Alston.

50. In August of 2015, Defendant filed a lawsuit in the United States District Court for the Eastern District of North Carolina on behalf of McCollum and Brown against various parties alleged to be responsible for their wrongful conviction and incarceration (*McCollum v. Town of Red Springs*, Docket # 5:15-CV-451-BO, Eastern District of North Carolina, Western Division) ("Civil Suit").

51. In August 2015, Brown, who suffers from bi-polar disorder and schizophrenia, had a breakdown, and was hospitalized. He eventually ended up in a group home some months later.

52. As a result of Brown's breakdown, on August 17, 2015, Defendant filed a petition in Cumberland County to have Brown declared incompetent. In the petition, Defendant highlighted his own experience and training on how to recognize clients with mental health issues and noted that Brown's medical records from the Department of Correction shows a clear progression of mental illness, starting in 1984 and continuing in severity until his release.

53. As described in Defendant's August 2015 petition, Brown lacks the basic life skills necessary to take care of himself. Upon his release from prison, Brown abruptly stopped taking medication prescribed for his serious mental illness. He was involuntarily committed and had other admissions to mental health facilities resulting from his inability to make rational decisions about his medical care. Brown experienced episodes of bizarre behavior that included refusing to eat or drink, and he had to rely on his family and others for all his basic needs since his release from prison.

54. Defendant recognized the adaptive functioning deficiencies of his clients in Brown's incompetency petition stating: "Both brothers need help with budgeting their monthly allowance because they are unable to understand the concept of paying utility bills and making purchases. One thing is clear: neither Leon Brown nor Henry McCollum have a concept of budgeting or spending limits, nor do they have any experience of budgeting money, let alone large sums of money."

55. After a hearing on Brown's competency petition, Defendant proposed Geraldine for appointment as Brown's guardian by the Clerk of Superior Court in Cumberland County.

56. Geraldine had no expertise or knowledge of how to serve as a guardian and was in need of money, making her a poor choice for a guardian.

57. On September 2, 2015, the Industrial Commission conducted a brief hearing on McCollum and Brown's petition for statutory compensation. The transcript of the hearing before the Industrial Commission is seven pages long.

57. On September 2, 2015, the Industrial Commission conducted a brief hearing on McCollum and Brown's petition for statutory compensation. The transcript of the hearing before the Industrial Commission is seven pages long.

58. Pursuant to N.C. Gen. Stat. §148-84, McCollum and Brown were entitled to the maximum compensation authorized by N.C. Gen. Stat. §148-84: $750,000 each.

59. The State did not oppose compensation for McCollum and Brown in their N.C. Gen. Stat. §148-84 proceeding.

60. Although Defendant represented McCollum and Brown at the September 2, 2015 Industrial Commission hearing, McCollum and Brown had been exonerated mostly through the work of Rose, Alston and The North Carolina Actual Innocence Commission, and the petition for pardons of innocence had been filed before Defendant's involvement.

61. Given the pardons of innocence, McCollum and Brown's entitlement to the Industrial Commission award was clear and there was no dispute as to the amount they would recover.

62. A contingent fee for representation in the Industrial Commission was not justified because there was no risk that McCollum and Brown would not recover the maximum allowed by statute. The only fee to which Defendant was entitled was reasonable compensation for the minimal services rendered in connection to the Industrial Commission proceeding.

63. In October 2015, the Industrial Commission distributed $750,000.00 to McCollum and $750,000.00 to Brown in the form of a check delivered to Defendant for $1.5 million.

64. Defendant took as his fee one-third of the award from both McCollum and Brown, totaling $500,000.00.

65. McCollum and Brown were left with $500,000.00 each.

66. Defendant used nearly $110,000.00 each of McCollum and Brown's Industrial Commission award, totaling $220,000.00, to repay the loans he facilitated their obtaining, even though there was a significant issue as to whether the loans were enforceable because of McCollum and Brown's incapacity to enter into the loan contracts.

67. Defendant charged a combined total of $21,173.88 in costs and expenses to McCollum and Brown for the Industrial Commission process. These charges included costs related to the pardon process and related to Brown's incompetency proceeding.

68. Defendant used $25,972.14 of the Industrial Commission award to repay money he and his firm advanced to McCollum and Brown prior to their Industrial Commission award, including, *inter alia*, the following:

a. A cash payment of $250.00 to McCollum on March 2, 2015;

b. A second cash payment of $250.00 to McCollum on March 2, 2015;

c. A cash payment of $250.00 to Brown on March 2, 2015;

d. A second cash payment of $250.00 to Brown on March 2, 2015;

e. A Western Union payment of $221.50 to McCollum on June 15, 2015;

f. A Western Union payment of $221.50 to Brown on June 15, 2015;

g. A cash payment of $500.00 to McCollum on September 2, 2015;

h. A Money Order payment of $500.00 to McCollum on September 2, 2015;

i. A second Money Order payment of $500.00 to McCollum on September 2, 2015; and

j. A Western Union payment of $758.00 to McCollum on September 14, 2015.

69. Some of these advances were for living expenses and not for the costs of the litigation.

70. On October 21, 2015, Defendant disbursed $358,363.28 to McCollum as the proceeds from his Industrial Commission proceeding. Had McCollum let Rose, Alston and Howlett handle the Industrial Commission proceeding, McCollum would have received $750,000.

71. By May 11, 2016, seven months after Defendant disbursed $358,363.28 from the Industrial Commission proceeds to McCollum (who Defendant told the Clerk of Cumberland County had no concept of budgeting or spending limits), McCollum had spent all of the funds. As a result, Defendant helped McCollum get a second loan from MFI for $50,000.00 at 18% interest, compounded every 6 months.

72. Defendant signed another Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to MFI claiming that he had explained the terms of the $50,000.00 loan agreement to McCollum.

73. Defendant signed at least two pages of the loan document for the May 2016 loan, including a page wherein he agreed to pay MFI before paying his client: "I hereby consent and agree to fully execute this document to pay Multi Funding Inc. all funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

74. Defendant hired Dr. Thomas Harbin, a neuropsychologist, to do an assessment of McCollum's psychological and behavioral functioning to assist in McCollum's civil cases. On July 28, 2016, Dr. Harbin submitted a report of his evaluation finding, in part, that McCollum:

a. suffers from post-traumatic stress disorder;

b. suffers from intellectual disabilities;

c. is anxious, hypervigilant, paranoid, and unable to make many everyday decisions; and

d. has a profile suggesting that he will be overly dependent upon others for decision-making, will be overly influenced by others, lacks self-confidence and assertiveness, and will be easily influenced and manipulated by others.

75. On October 27, 2016, Defendant facilitated McCollum getting a third loan from MFI for $15,000.00 at 18% interest, compounded every 6 months.

76. Defendant again signed the Attorney Acknowledgement of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to MFI claiming that he had explained the terms of the $15,000.00 loan agreement to McCollum.

77. Defendant read and signed at least two pages of the loan document for the October 2016 loan, including a page wherein he agreed to pay MFI before paying his client: "I hereby consent and agree to fully execute this document to pay MFI Funding Inc. all funds due them at the close of this case, before final distribution to the Plaintiff or (his or her) successors and/or assigns."

78. The loan contracts provided that if McCollum were to retain new counsel and failed to cause the new counsel to execute a lien on any recovery in favor of the lender, McCollum would be subject to a lawsuit from the lender for damages, costs, and attorney fees.

79. But for Defendant's signing of the loan documents, McCollum would not have received the May 11, 2016 loan for $50,000.00 at 18% interest, compounded every 6 months nor the October 27, 2016 loan for $15,000.00 at 18% interest, compounded every 6 months.

80. In February of 2016, Geraldine was removed as guardian for mismanaging Brown's funds.

81. Months after Geraldine was removed as guardian and had informed Defendant of her removal, Defendant helped Geraldine get a $25,000.00 loan from MFI against any future recovery made by Brown, with the loan proceeds sent to Geraldine purportedly for Brown's rent.

82. As a result of Geraldine receiving a $25,000.00 loan from MFI against any future recovery made by Brown, MFI perfected a lien for that amount against any future recovery made by Brown.

83. At the time Defendant helped Geraldine get a loan against any future recovery made by Brown, Geraldine was no longer Brown's guardian; thus, any rent payments to Geraldine at this time were not for Brown's benefit.

84. In December 2016, there was a mediation in McCollum and Brown's cases against the Town of Red Springs.

85. At the mediation, Defendant presented a power point detailing the intellectual disabilities of McCollum and Brown. The presentation focused on the subaverage intellectual

functioning (IQ scores) and significant limitations in adaptive functioning of McCollum and Brown.

86. On February 1, 2017, Derrick Hamilton ("Hamilton"), a friend of and occasional videographer for Defendant, wired Defendant $30,000.00, which was deposited into Defendant's trust account.

87. Twenty thousand dollars of the $30,000.00 wire transfer was for McCollum's benefit.

88. Ten thousand dollars of the $30,000.00 wire transfer was intended by Defendant and Hamilton to be a loan for Defendant's benefit.

89. Defendant did not disburse the $10,000.00 belonging to him from the trust account in a manner that identified the funds as Defendant's loan proceeds.

90. By not promptly disbursing from his trust account the $10,000.00 of the $30,000.00 wire transfer intended by Defendant and Hamilton to be a loan for Defendant's benefit, Defendant commingled funds belonging to Defendant with entrusted client funds.

91. In settlement discussions with the Town of Red Springs, the competence of McCollum to agree to a settlement was raised by counsel representing the Town of Red Springs.

92. In anticipation of submitting a settlement proposal for court approval, Defendant engaged Dr. Harbin to evaluate McCollum's competency to enter into a settlement agreement with the Town of Red Springs.

93. Dr. Harbin conducted a second evaluation of McCollum and on or about March 8, 2017 produced a report finding, despite contrary findings in his July 28, 2016 report, that McCollum was able to manage his own financial and legal affairs, and to make or communicate important decisions concerning his person and finances.

94. In April 2017, Defendant submitted to the United States District Court for the Eastern District of North Carolina a proposed settlement of McCollum and Brown's civil suit against the Town of Red Springs for $500,000.00 each.

95. Defendant asked the Court to approve the settlement and his 33% fee, claiming that his clients were competent to enter into the representation agreement and the settlement agreement and that the settlement was appropriate because McCollum had agreed to it and Brown's new guardian had as well. J. Duane Gillian, an attorney who was the guardian of the estate for Brown, had approved the proposed settlement.

96. The proposed settlement provided that the liens securing the MFI loans that Defendant helped McCollum and Brown obtain would be paid out of the settlement proceeds.

97. Defendant represented to the Court in his proposed settlement pleading that his costs for the litigation were roughly $70,000.00.

98. In his pleading to the Court, Defendant claimed that he had done the following work for McCollum and Brown in the civil suit and that the following actions, among others, led to the roughly $70,000.00 in costs and justified his requested $330,000.00 fee: "counsel represented both Plaintiffs in their successful petitions to the Governor of North Carolina for Pardons of Innocence, which included several meetings with Governor Pat McCrory and/or his staff, submission of documents and information to the Governor's Office, and several meetings with Plaintiffs; (ii) counsel represented both Plaintiffs in their successful petitions for statutory compensation for wrongful imprisonment pursuant to North Carolina General Statutes § 148-82 et seq. in the North Carolina Industrial Commission, which included preparation of the petition, appearance in the Commission, and presentation of evidence at the hearing; (iii) counsel petitioned the Cumberland County Superior Court for a guardian for Leon Brown and appeared in that court at a hearing and presented evidence[.]"

99. Defendant had already compensated himself for these services with funds from McCollum and Brown's Industrial Commission awards.

100. Defendant's statement to the Court that he needed to be compensated for services for which he had already been paid by the award from the Industrial Commission was a material misrepresentation.

101. The proposed settlement agreement would have left McCollum with $178,035.58 while Defendant would have received $403,493.96.

102. On May 5, 2017, United States District Court Judge Terrance Boyle held a hearing related to approval of the proposed settlement between McCollum and Brown and the Town of Red Springs.

103. As threshold matters, Judge Boyle, citing U.S. Supreme Court documentation a dissenting opinion in a U.S. Supreme Court decision denying a writ of certiorari that McCollum was mentally retarded, had an IQ between 60 and 69, had a mental age of 9-years-old, and reads at a second-grade level, raised concerns about the competency of McCollum and Brown to enter into the settlement agreement and about Defendant's conflict of interest by entering into representation agreements with clients who were incompetent.

104. At the May 5, 2017 hearing, Judge Boyle rejected Dr. Harbin's March 8, 2017 evaluation as unpersuasive, and Defendant agreed that the court had the power to appoint McCollum a guardian ad litem ("GAL").

105. On or about May 10, 2017, Judge Boyle appointed Raleigh attorney Raymond Tarlton ("Tarlton") as GAL for McCollum.

106. On July 26, 2017, Tarlton filed a motion asking the Court to determine whether the representation agreement between McCollum and Defendant was valid based on McCollum's incapacity to enter into a representation agreement with Defendant.

107. On August 10, 2017, a hearing was held by Judge Boyle on the competency of McCollum to make decisions and enter into legally binding obligations.

108. Specifically at issue at this August 10, 2017 hearing was whether or not Defendant's representation agreement with McCollum was invalid due to McCollum's low IQ and intellectual disabilities.

109. Defendant presented evidence at the hearing to support his contention that McCollum was competent to accept the settlement agreement with the Town of Red Springs. Dr. Harbin testified and emphasized that his evaluation of McCollum was on the narrow issue of McCollum's competence to accept or reject the settlement offer and he acknowledged concern about McCollum's history of "blowing money."

110. Defendant argued to the Court that McCollum was competent despite (a) previously arguing that McCollum did not have the mental capacity to confess to the crimes back in 1983; (b) McCollum's notable lack of mental capacity being an important part of McCollum's case against Robeson County, the Red Springs Police Department, and the State of North Carolina; and (c) McCollum having claims of incompetency that could invalidate the contracts he signed with Pointer, Weekes, and MFI.

111. After the August 10, 2017 hearing, Judge Boyle asked the parties to submit recommendations of mental health experts to conduct a competency evaluation of McCollum.

112. On August 12, 2017, Defendant notified Dr. Harbin that Tarlton had nominated Dr. George Corvin, a forensic psychiatrist, to conduct an evaluation of McCollum.

113. On August 14, 2017, Dr. Harbin sent an email to Defendant stating: "Patrick, I don't mean to tell you your business and you may have already thought of this, but I would recommend that you have some rehearsal with [McCollum] and make sure he knows where his bank accounts are, how much is in them, how to write a check, what his income and bills are, etc." In response, Defendant wrote: "Point well taken, thank you."

114. On August 15, 2017, Defendant filed a motion to discharge Tarlton as GAL and to require no further evaluation of McCollum's competency.

115. On August 16, 2017, Judge Boyle entered an order directing Dr. Corvin to evaluate whether McCollum had the practical ability to manage his own affairs.

116. On September 15, 2017, Dr. Corvin submitted a comprehensive report of his evaluation to the court. Dr. Corvin found, among other things, that McCollum "clearly suffers from psychological and intellectual limitations impairing his ability to manage his own affairs and make/communicate important decisions regarding his life without the assistance of others."

117. On October 23, 2017, Judge Boyle entered an order finding that McCollum was not competent to manage his own affairs and that Defendant's representation agreement with McCollum was invalid due to McCollum's incompetency.

118. In his order Judge Boyle found: "Counsel [Defendant] was plainly on notice that his potential clients had intellectual disabilities and that their abilities to proceed without a guardian were at issue. Nonetheless, counsel [Defendant] entered into a representation agreement and has, to the Court's knowledge, never sought to have the agreement ratified by any duly appointed guardian for either plaintiff. Accordingly, the Court finds that, based on McCollum's incompetence, the representation agreement between counsel [Defendant] and McCollum is invalid."

119. On December 14, 2017, the Court approved the settlement with the Town of Red Springs, but not Defendant's fee. The Court permitted Defendant to stay on temporarily as counsel of record and held open the issue of fees for a later determination.

120. On April 13, 2018, Defendant was terminated as counsel for McCollum by McCollum's GAL.

121. On April 24, 2018, Defendant's law partner filed a motion challenging the GAL's authority to terminate Defendant.

122. On May 18, 2018, the Court ordered Defendant removed from the case "for good cause shown."

123. On January 29, 2021, Dr. Corvin conducted an evaluation of McCollum to determine whether, at the time they were executed, McCollum was competent to enter into an agreement for legal representation with Defendant and, separately, whether McCollum was competent to enter into the loan agreements with MFI. In his evaluation, Dr. Corvin found:

a. McCollum has a well-documented and extensive psychosocial history, and he continues to exhibit considerable evidence of his well-established intellectual developmental disorders. McCollum's intellectual disorders are known to be static in nature, meaning there is no known treatment to reverse the cognitive limitations inherent in such conditions;

b. McCollum continued to display evidence of impaired executive functioning (above and beyond that associated with his known intellectual developmental disorder) stemming from his previously diagnosed neurocognitive disorder. McCollum tends to make decisions about circumstances (and people) in a rather impulsive manner without consideration of (or adequate understanding of) the subtleties and complexities that are most commonly associated with such decisions;

c. McCollum continues to experience symptoms consistent with a diagnosis of Post-Traumatic Stress Disorder stemming from his prior lengthy incarceration

on death row after having been convicted of a crime that he did not commit. McCollum experiences intense physiological and psychological reactivity (i.e., flashbacks) when he sees police officers in his community, stating that when he sees them "it makes me think of what happened to me, it scares me. It reminds me of what happened out there";

d. McCollum has been unable to pass the written portion of the test to obtain a driver's license. McCollum agreed to "sign the papers" to engage Defendant's representation because "he gave us money. I agreed to sign the papers for him to handle my pardon and civil suit — because he gave us money, found me a better place. But he had me fooled." Regarding Defendant, McCollum "thought he was doing a good job, but I didn't know that he was taking that much money. I had no idea how much they were supposed to take"; and

e. McCollum remains unable to make and communicate important decisions regarding his person and his property, without the regular assistance of others. McCollum met the statutory definition of "incompetent adult" as detailed in N.C. Gen. Stat. § 35A-1101(7) at the time that he entered into the representation agreement with Defendant and when he entered into the loans with MFI.

124. As of the date of this order, Tarlton continues to serve as McCollum's guardian ad litem.

125. McCollum currently lives in Virginia and has a conservator, the equivalent of a guardian in North Carolina, to help manage his financial affairs.

126. Since September 2015, Brown has had a guardian of his estate.

127. McCollum and Brown did not have the capacity to enter into contracts for the loans with MFI.

128. McCollum and Brown did not have the capacity to enter into representation agreements with Defendant.

129. McCollum did not have capacity to agree to the proposed settlement agreement.

130. At the time the representation agreements, loans, and proposed settlement agreement with the Town of Red Springs were entered into, Defendant knew McCollum and Brown did not have the capacity to enter into the agreements or loans.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Patrick Michael Megaro, and over the subject matter.

2. Megaro's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

a. By claiming an irrevocable interest in McCollum and Brown's potential financial payments from the state, Defendant charged an improper fee in violation of Rule 1.5(a) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

b. By entering into a representation agreement with his clients when he knew they did not have the capacity to understand the agreement, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

c. By having McCollum sign off on a settlement agreement and representing to a court that McCollum had consented to the settlement when Defendant knew McCollum did not have the capacity to understand the agreement, Defendant made a false statement to a tribunal and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that was prejudicial to the administration of justice in violation of Rule 3.3(a), Rule 8.4(c), and Rule 8.4(d);

d. By charging and collecting one-third of McCollum and Brown's Industrial Commission award when his role in that process was minimal and *pro forma*, Defendant charged and collected an excessive fee in violation of Rule 1.5(a);

e. By misrepresenting to the United States District Court in his proposed settlement of the Civil Suit that some of his work and costs in that action were for actions for which he had already been paid by McCollum and Brown's Industrial Commission award, Defendant made a false statement to a tribunal and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that was prejudicial to the administration of justice in violation of Rule 3.3(a), Rule 8.4(c), and Rule 8.4(d);

f. By signing various Attorney Acknowledgements of Explanation of Terms to Plaintiff, Of Irrevocable Lien and Assignment to Multi Funding, Inc., claiming to Multi Funding, Inc. that he had explained the terms of the loan agreements to McCollum and Brown when they were not competent to understand those terms or enter into those agreements, Defendant made a material misrepresentation to Multi Funding, Inc. and thereby engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

g. By lending McCollum and Brown money, both directly and/or through Derrick Hamilton, Defendant entered into a business transaction with his clients in violation of Rule 1.8(a) and Rule 1.8(e);

h. By helping Geraldine get a $25,000.00 loan from Multi Funding, Inc. against any future recovery made by Brown, with the loan proceeds sent directly to Geraldine for Brown's rent when Geraldine was not Brown's guardian, Defendant misused entrusted funds in violation of Rule 1.15-2 and failed to represent Brown with competence or diligence in violation of Rule 1.1 and Rule 1.3;

i. By not promptly disbursing from his trust account $10,000.00 to which he was entitled as proceeds of a loan from Derrick Hamilton, Defendant failed to properly maintain and disburse fiduciary funds in violation of Rule 1.15-2(a) and failed to withdraw the amounts to which Defendant was entitled in violation of Rule 1.15-2(g);

j. By advancing money to McCollum and Brown for living expenses, and by guaranteeing repayment of various loans for McCollum and Brown, Defendant provided financial assistance to clients in connection with pending litigation in violation of Rule 1.8(e); and

k. By entering into a retainer agreement with McCollum that was invalid due to McCollum's lack of competency and then arguing that McCollum was competent in an effort to protect his fee despite such arguments potentially harming McCollum's then-current claims against Robeson County, the Red Springs Police Department, and the State of North Carolina, Defendant engaged in a conflict of interest, as Defendant's representation of McCollum was materially limited by Defendant's personal interest in defending his fee, in violation of Rule 1.7.

3. The Hearing Panel concludes that the remaining rule violations alleged in the Complaint in the First Claim for Relief and the entirety of the Second Claim for Relief are not established by the facts set forth in the Findings of Fact above.

Based upon the pleadings, all other filings in the record, the foregoing Findings of Fact and Conclusions of Law, and the evidence presented at the hearing in this matter, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 through 130 above are reincorporated as if set forth herein.

2. In 2015, Defendant was reprimanded by the North Carolina State Bar's Grievance Committee for assisting in the unauthorized practice of law and making misleading statements about his legal services.

3. Defendant's course of misconduct set forth in this order began in February 2015 and continued through August 2017. During that period, Defendant not only engaged in a pattern of repeated similar acts of misconduct, but also engaged in a wide variety of Rule violations.

4. McCollum and Brown were exceptionally vulnerable to the type of manipulation, deception, and exploitation perpetrated by Defendant. These clients had intellectual deficits and a history of trauma during their lengthy wrongful incarceration. Evaluating clinicians repeatedly described them as susceptible to manipulation and undue influence. Defendant was aware of his clients' vulnerabilities. Instead of protecting them, he capitalized on their naivete and inability to understand.

5. By charging and collecting clearly excessive amounts of McCollum and Brown's Industrial Commission awards based on a fee agreement he knew the clients could not understand, and in a proceeding where his actual work was *de minimis* and there was little or no risk that his clients would not receive the maximum allowed by statute, Defendant financially exploited McCollum and Brown causing significant harm to his clients. Likewise, by arguing that McCollum was mentally competent in an effort to preserve his fee in the civil case, Defendant acted for his own financial benefit to the detriment of his client's legal interests.

6. Defendant used the attorney-client relationship as a foundation for obtaining money he had not earned from clients who lacked the knowledge and sophistication to question his actions or suspect his selfish motive. By elevating his own interests above the interests of McCollum and Brown, Defendant compromised the fiduciary relationship and caused significant harm to his clients.

7. Clients are entitled to attorneys they can trust to act with commitment and dedication to their interests. Defendant violated the trust inherent in the attorney-client relationship by prioritizing his own financial benefit over the best interests of his clients. By repeatedly deceiving and exploiting McCollum and Brown, Defendant has shown himself to be untrustworthy.

8. Defendant's willingness to deceive third parties and the court, as established by paragraphs (c), (e), and (f) in the Conclusions of Law above, further demonstrates that Defendant is untrustworthy.

9. By deceiving McCollum and Brown, collecting an unjustified amount of the funds they received as compensation for their wrongful incarceration, and allowing a third party to obtain a loan secured by Brown's potential settlement, Defendant intentionally created a foreseeable risk of significant harm to his clients.

10. There has been substantial media coverage of Defendant's conduct. Publicity surrounding a lawyer deceiving and exploiting mentally disabled clients debases the legal profession and demeans the justice system in the eyes of the public.

11. Defendant's conduct caused significant harm to the profession by reinforcing the negative stereotype that lawyers are greedy, selfish, and dishonest, and by diminishing the public's expectation that attorneys can be trusted to protect vulnerable clients.

12. Societal order depends in large measure on respect for the rule of law and deference to the decisions of our courts. To maintain this respect and deference, litigants and the general public must have faith in the integrity of our system of justice.

13. Defendant intentionally engaged in conduct that foreseeably undermines public faith in the legal system by deceiving and exploiting clients with diminished intellectual capacity in a case that had already drawn public attention because it involved the mistreatment of vulnerable people.

14. An attorney's duty to persuasively advocate for his client is qualified by his duty of candor towards the tribunal. Accordingly, lawyers must always be honest and forthright with the tribunal. It is unacceptable for a lawyer to be anything less than completely candid with the court. As indicated in paragraphs (c) and (e) in the Conclusions of Law above, Defendant made false statements to the tribunal in violation of this fundamental duty.

15. Attorneys as officers of the court must avoid conduct that undermines the integrity of the adjudicative process. When an attorney makes false statements to the court, it foreseeably causes significant harm to the profession and the administration of justice by eroding judges' and lawyers' ability to rely on another attorney's word.

16. Defendant cooperated in the disciplinary process and gave extensive testimony before the Hearing Panel.

17. Defendant's testimony during the disciplinary hearing, however, reflects a pervasive tendency to blame others for his misconduct rather than acknowledging wrongdoing. Specifically, Defendant claimed that the allegations of misconduct against him arose due to the animosity of other lawyers who had also represented McCollum and/or Brown, rather than his own intentional acts.

18. There is no indication that Defendant has taken ownership of his misconduct or its consequences. With a few minor exceptions,[1] he has not acknowledged violating the Rules of Professional Conduct. Defendant has not expressed remorse or shown any insight regarding the ways in which he betrayed his clients' trust.

19. Defendant has not refunded any of the excessive fees he collected from McCollum and Brown, insisting that he is entitled to $500,000.00 for his participation in the *pro forma* Industrial Commission proceedings. The evidence in this matter establishes that, at minimum, Defendant should be required to refund $250,000.00 of that money because he did not earn it. This proceeding was not designed or intended to calculate the precise value of the legal services Defendant provided. The finding herein regarding the amount of fees that were unearned should not be interpreted as a conclusive valuation of services rendered by Defendant. It is merely a

[1] Though Defendant denied committing any rule violations in his Answer to the Amended Complaint, he admitted at trial to engaging in technical trust account violations and to having inaccurate language in his fee agreement. He did not admit – either at trial or in any pleading – to any of the more substantive misconduct that reflects adversely on his capacity for honesty and loyalty to his clients .

determination that—at minimum—half of the fees Defendant collected from the Industrial Commission award were unearned and should be refunded.

20. Some of Defendant's former clients and friends believe that Defendant is a person of honesty, integrity, and good character.

21. Defendant's misconduct resulted in other sanctions, in that the U.S. District Court voided his representation agreement with McCollum and removed him as counsel in McCollum's case.

Based on the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, the Hearing Panel makes the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0116(f) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from § .0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

(a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;

(b) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;

(c) Elevation of Defendant's own interests above that of the client;

(d) Negative impact of Defendant's actions on client's or public's perception of the profession;

(e) Negative impact of Defendant's actions on the administration of justice; and

(h) Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel concludes that the following factor from § .0116(f)(2), which requires consideration of disbarment, is present in this case: Acts of dishonesty, misrepresentation, deceit, or fabrication.

4. The Hearing Panel concludes that the following factors from § .0116(f)(3), which are to be considered in all cases, are present in this case:

(a) Prior disciplinary offenses;

(b) Dishonest or selfish motive;

(c) Indifference to making restitution;

(d) Multiple offenses;

(e) Refusal to acknowledge the wrongful nature of conduct;

(f) Character or reputation;

(g) Vulnerability of victim;

(h) Full and free disclosure to the hearing panel or a cooperative attitude toward the proceedings; and

(i) Imposition of other penalties or sanctions.

5. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment.

6. Defendant's course of misconduct involving the manipulation and exploitation of vulnerable clients reflects that Defendant is either unwilling or unable to conform his behavior to the requirements of the Rules of Professional Conduct. Defendant has refused to acknowledge the wrongfulness of his conduct and there is no evidence suggesting that he intends to modify his behavior. Accordingly, if Defendant were permitted to continue practicing law, he would pose a significant and unacceptable risk of continued harm to clients, the profession, the public, and the administration of justice.

7. The Hearing Panel finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to Defendant's clients, the administration of justice and the legal profession in the present case. Furthermore, the Panel finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

8. Pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0129(d), the Hearing Panel finds and concludes that the public can only be adequately protected by an active suspension of Defendant's law license with reinstatement to practice conditioned upon compliance with reasonable requirements designed to protect the public and deter future misconduct by Defendant.

9. Nothing can remedy the injustices inflicted upon McCollum and Brown, or their further betrayal by the very lawyer who they trusted to seek redress for those injustices. The harm to McCollum and Brown would be mitigated, however, if Defendant returned a portion of the excessive fee he improperly collected from them. Accordingly, Defendant's ability to practice law in the future should be conditioned upon his reimbursing McCollum and Brown for a portion of the amount of unearned fees he collected.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER

1. Defendant's license to practice law in the State of North Carolina is suspended for five years, beginning 30 days from the date of service of this order upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0128. As provided in § .0128(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying his compliance with the rule.

4. The administrative fees and costs of this action, including deposition costs and expert witness costs, are taxed to Defendant. Defendant shall pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.

5. After serving three years of the active suspension of his license, Defendant may apply for a stay of the remaining period of suspension upon filing a verified petition pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0118(c) with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that Defendant has complied with the following conditions:

(a) That Defendant paid the costs and the administrative fees of this action within 30 days of service upon him of the statement of costs by the Secretary;

(b) That Defendant reimbursed McCollum and Brown $250,000.00 for the excessive fees he collected from them: $125,000.00 shall be payable to McCollum or any legal guardian, trustee, or other fiduciary with lawful authority to manage McCollum's financial affairs at the time the restitution is paid. $125,000.00 shall be paid to Brown or any legal guardian, trustee, or other fiduciary with lawful authority to manage Brown's financial affairs at the time the restitution is paid;

(c) That Defendant completed 10 hours of Continuing Legal Education (CLE) accredited by the North Carolina State Bar on the topic of ethics and professionalism. This requirement is in addition to the general CLE requirements for reinstatement after two or more years of suspension set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0129(b)(3)(I);

(d) That Defendant has arranged for an active member in good standing of the North Carolina State Bar who has been approved by the Office of Counsel and practices in the county of Defendant's practice to serve as Defendant's practice monitor. Before Defendant applies for a stay of the suspension, he must supply the Office of Counsel with a letter from the approved practice monitor confirming his or her agreement to:

i) Meet in person, not over the phone or video, with Defendant monthly for a period of two years to review Defendant's cases;

ii) Provide supervision to ensure that Defendant timely and completely handles client matters; and

iii) Provide written quarterly reports of this supervision to the Office of Counsel on the following dates as they occur during the two years following the stay of the suspension: January 30, April 30, July 30, and October 30.

Defendant will be responsible for the cost, if any, charged by the practice monitor for this supervision;

(e) That Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;

(f) That Defendant responded to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order;

(g) That Defendant did not engage in the unauthorized practice of law during the period of suspension;

(h) That Defendant did not violate the Rules of Professional Conduct of any jurisdiction in which he is licensed or the laws of the United States or any state or local government during his suspension, other than minor traffic violations;

(i) That Defendant properly wound down his law practice and complied with the requirements of 27 N.C.A.C. 1B § .0128; and

(j) That Defendant satisfied all of the requirements for reinstatement set forth in of 27 N.C.A.C. 1B § .0129(b).

6. If Defendant successfully petitions for a stay, the suspension of Defendant's law license shall be stayed as long as Defendant complies and continues to comply with the following conditions:

(a) Defendant must cooperate with the practice monitor as described in paragraph 5(d) above for two years following the stay of the suspension. The practice monitor must provide quarterly reports to the Office of Counsel as described in paragraph 5(d)(3) above for the entire two-year period. It is Defendant's sole responsibility to ensure that the practice monitor completes and submits the required reports;

(b) Defendant must keep the North Carolina State Bar Membership Department advised of his current business and home addresses and notify the Bar of any change in address within ten days of such change;

(c) Defendant must respond to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition received during the period of the stay; and

(d) Defendant must not violate the Rules of Professional Conduct of any jurisdiction in which he is licensed or the laws of the United States or any state

or local government during the period of the stay, other than minor traffic violations.

7. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6 above, the stay of the suspension may be lifted pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0118(a).

8. If Defendant does not seek a stay of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraph 5 above before seeking reinstatement of his license to practice law, and must provide in his petition for reinstatement clear, cogent, and convincing evidence showing his compliance therewith.

9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §§ .0118(a) and/or .0129(b)(1) throughout the period of the suspension, and any stay thereof, and until all conditions set forth in paragraph 5 above are satisfied.

Signed by the Chair with the consent of the other hearing panel members, this the 27th day of April, 2021.

Fred W. DeVore, III, Chair
Disciplinary Hearing Panel

The foregoing 24 pages are true and accurate copies of the official records of the N.C. State Bar

Secretary N.C. State Bar

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

Rule 1.02. General Powers

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

Rule 1.03. Additional Rules in Disciplinary Matters

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

Rule 1.04. Appointment of Panels

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

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

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

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

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

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

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

(4) Exceptions.

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

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

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

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

(5) Format. An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

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

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

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

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

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

Rule 1.06. Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07. Hearing Setting and Notice

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

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

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

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

Rule 1.08. Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09. Pretrial Procedure

(a) **Motions.**

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

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

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

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

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

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

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

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

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

Rule 1.10. Decisions

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

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

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

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

Rule 1.11. Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12. BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02. Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

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

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

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

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

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

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

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

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

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

(f) **Preparation of the Reporter's Record.**

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

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

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

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

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

(6[1]) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

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

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

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

[1] So in original.

Rule 4.03. Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

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

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

Rule 4.04. Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05. Requisites of Briefs

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

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

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

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

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

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

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

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

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

Rule 4.06. Oral Argument

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

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

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

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

Rule 4.07. Decision and Judgment

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

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) Mandate. In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05. Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

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

Rule 8.06. Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04. Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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