

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

IN THE MATTER OF §
JAMES DAVID OGLE §
STATE BAR CARD NO. 24047540 §

CAUSE NO. 54879

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, James David Ogle, (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 3000 Brush Creek Road, Oklahoma City, Oklahoma 73120.

3. On or about October 29, 2012, a Complaint (Exhibit 1) was filed in the Supreme Court Bar Docket State of Oklahoma in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. James David Ogle, Respondent*, Rule 6, OBAD #1936.

4. On or about March 25, 2013, a Trial Panel Report (Exhibit 2) was filed in the Supreme Court Bar Docket State of Oklahoma in a matter styled, *State of Oklahoma ex rel.*

Oklahoma Bar Association, Complainant, v. James David Ogle, Respondent, Rule 7, OBAD #1928, SCBD #5902 and *State of Oklahoma ex rel Oklahoma Bar Association, Complainant, v. James David Ogle, Respondent*, Rule 6, OBAD #1936, SCBD #5940. The Trial Panel Report established that Respondent (1) learned of a bribery plan, did nothing to stop the plan, assisted in the payment of monies to a facilitator of the bribe and actively participated in a cover-up, (2) failed to report the professional misconduct of the two other lawyers involved in the bribe, (3) knowingly assisted two co-conspirators to violate the Rules of Professional Conduct, (4) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, (5) committed a criminal act that reflects adversely on the Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects, and (6) engaged in conduct that is prejudicial to the administration of justice.

5. On or about October 1, 2013, a Bar Disciplinary Proceedings Opinion (Exhibit 3) was filed in the Supreme Court Bar Docket State of Oklahoma in a matter styled, *State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. James David Ogle, Respondent*, SCBD #5940 Comp.w/SCBD 5902, that states in pertinent part as follows:

...The opinion disposes of the pending Rule 7 and Rule 6 proceedings in which James David Ogle is the Respondent. The charges arise out of actions that led to the Respondent's entering a plea of guilty to the misdemeanor crime of Obstruction of a Public Officer, in violation of 21 O.S. §540. After de novo review of the record presented, we order the Respondent suspended for two years and one day, commencing from August 22, 2012, the date of his interim suspension...

Certified copies of the Complaint, Trial Panel Report and Bar Disciplinary Proceedings Opinion are attached hereto as Petitioner's Exhibits 1 through 3, 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 through 3 at the time of the hearing in this case.

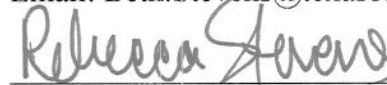
6. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an

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 Supreme of the State of Oklahoma and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

Rebecca (Beth) Stevens
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
P.O. Box 12487, Capitol Station
Austin, Texas 78711-2487
Telephone: 512.427.1350
Facsimile: 512.427.4167
Email: Beth.Stevens@texasbar.com



Rebecca (Beth) Stevens
State Bar Card No. 24065381

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 James David Ogle by personal service.

James David Ogle
3000 Brush Creek Road
Oklahoma City, Oklahoma 73120



Rebecca (Beth) Stevens

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

SECTION 1: GENERAL PROVISIONS	1
Rule 1.01 Definitions	1
Rule 1.02 General Powers.....	1
Rule 1.03 Additional Rules in Disciplinary Matters	1
Rule 1.04 Appointment of Panels	1
Rule 1.05 Record Retention	2
Rule 1.06 Trial Briefs	2
Rule 1.07 Service	2
Rule 1.08 Publication.....	2
Rule 1.09 Photocopying Costs.....	2
Rule 1.10 Abstracts	2
Rule 1.11 Hearing Setting and Notice.....	3
Rule 1.12 Time to Answer	3
Rule 1.13 Facsimile and Electronic Filing	3
Rule 1.14 Hearing Exhibits	4
Rule 1.15 BODA Work Product and Drafts	4
Rule 1.16 BODA Opinions	4
SECTION 2: ETHICAL CONSIDERATIONS	5
Rule 2.01 Representing or Counseling Parties in Disciplinary Matters	5
And Legal Malpractice Cases	5
Rule 2.02 Confidentiality.....	5
Rule 2.03 Disqualification and Recusal of BODA Members	5
Rule 2.04 Communications with BODA	6
SECTION 3: CLASSIFICATION APPEALS	6
Rule 3.01 Notice of Appeal.....	6
Rule 3.02 Complaint on Appeal	6
Rule 3.03 Notice of Disposition.....	6
SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS	6
Rule 4.01 Signing, Filing, and Service	6
Rule 4.02 Computation of Time	7
Rule 4.03 Record on Appeal.....	7
Rule 4.04 Time to File Record	8
Rule 4.05 Copies of the Record.....	9
Rule 4.06 Requisites of Briefs	9
Rule 4.07 Oral Argument	10
Rule 4.08 Motions Generally	11
Rule 4.09 Motions for Extension of Time	11
Rule 4.10 Decision and Judgment.....	11
Rule 4.11 Involuntary Dismissal.....	12
SECTION 5: PETITIONS TO REVOKE PROBATION	12
Rule 5.01 Initiation and Service	12
Rule 5.02 Hearing	12
SECTION 6: COMPULSORY DISCIPLINE MATTERS	13
Rule 6.01 Initiation of Proceeding	13
Rule 6.02 Notice of Decision	13
SECTION 7: RECIPROCAL DISCIPLINE MATTERS	13
Rule 7.01 Initiation of Proceeding	13
Rule 7.02 Order to Show Cause	13
Rule 7.03 Attorney's Response	13
SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS	13
Rule 8.01 Appointment of District Disability Committee	13
Rule 8.02 Hearing Order	14
Rule 8.03 Provisions for Physical or Mental Examinations.....	15
Rule 8.04 Ability to Compel Attendance.....	15
Rule 8.05 Respondent's Right to Counsel	15
Rule 8.06 Limited Discovery	15
Rule 8.07 Hearing	16
Rule 8.08 Notice of Decision	16
Rule 8.09 Confidentiality.....	16
SECTION 9: DISABILITY REINSTATEMENTS	16
Rule 9.01 Petition for Reinstatement	16
Rule 9.02 Discovery	17
Rule 9.03 Physical or Mental Examinations	17
Rule 9.04 Judgment	17
SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT	18
Rule 10.01 Docketing by the Clerk	18
Rule 10.02 Appellate Rules to Apply.....	18

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

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

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

Rule 1.02 General Powers

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

Rule 1.03 Additional Rules in Disciplinary Matters

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

Rule 1.04 Appointment of Panels

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

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

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

Rule 1.05 Record Retention

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

Rule 1.06 Trial Briefs

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

Rule 1.07 Service

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

Rule 1.08 Publication

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

Rule 1.09 Photocopying Costs

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

Rule 1.10 Abstracts

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

Rule 1.11 Hearing Setting and Notice

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

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

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

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

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

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.13 Facsimile and Electronic Filing

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

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

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

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

Rule 1.14 Hearing Exhibits

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

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

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

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

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

SECTION 2: ETHICAL CONSIDERATIONS

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

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

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

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

Rule 2.02 Confidentiality

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

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

Rule 2.03 Disqualification and Recusal of BODA Members

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

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

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

Rule 2.04 Communications with BODA

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

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

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

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

Rule 3.02 Complaint on Appeal

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

Rule 3.03 Notice of Disposition

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

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

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

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

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

Rule 4.02 Computation of Time

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

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

Rule 4.03 Record on Appeal

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

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

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

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

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

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

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

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

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

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

Rule 4.04 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

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

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
 - (i) the appellant failed to request a reporter's record; or
 - (ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
 - (b) the appellant is not entitled to proceed without payment of costs.

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

Rule 4.05 Copies of the Record

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

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

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

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

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

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

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

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

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

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

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

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

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

Rule 4.08 Motions Generally

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

Rule 4.09 Motions for Extension of Time

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

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

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

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

Rule 4.10 Decision and Judgment

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

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

- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

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

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

Rule 4.11 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

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

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

Rule 5.02 Hearing

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

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

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

Rule 6.02 Notice of Decision

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

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

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

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

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

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02 Hearing Order

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

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

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

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

Rule 8.03 Provisions for Physical or Mental Examinations

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

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

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

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

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

Rule 8.06 Limited Discovery

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

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

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

Rule 8.07 Hearing

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

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

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

Rule 8.08 Notice of Decision

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

Rule 8.09 Confidentiality

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

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

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

Rule 9.03 Physical or Mental Examinations

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

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

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

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

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

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

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

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

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

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

Rule 10.02 Appellate Rules to Apply

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

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

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA

OCT 29 2012

MICHAEL S. RICHIE
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA ex rel.)
OKLAHOMA BAR ASSOCIATION,)
)
Complainant,)
)
v.)
)
JAMES DAVID OGLE,)
)
Respondent.)

5940

RULE 6

OBAD # 1936

SCBD #

FILED

OCT - 5 2012

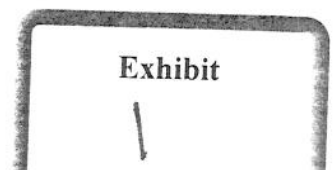
Office Of Chief Justice
Bar Docket

COMPLAINT

State of Oklahoma *ex rel.* Oklahoma Bar Association (Complainant) by and through its General Counsel Gina L. Hendryx, for its complaint against James David Ogle (Respondent), alleges and states:

1. The Respondent is a member of the Oklahoma Bar Association and is licensed to practice law by the Supreme Court of the State of Oklahoma. Respondent was so licensed at all times relevant to this Complaint. Respondent's current membership status in the Oklahoma Bar Association is "suspended" pursuant to SCBD #5902 (August 22, 2012).

2. To the best knowledge, information, and belief of the Complainant, the Respondent has committed specific acts which constitute professional misconduct in violation of the Oklahoma Rules of Professional Conduct (ORPC) 5 O.S. 2001, Ch. 1, App. 3-A, and the Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2001, Ch.1, App. 1-A, and are cause for professional discipline as provided in the RGDP. These standards of conduct, adopted and enforced by the Supreme Court of the State of Oklahoma, provide



guidelines by which all attorneys are to practice law in Oklahoma.

3. These proceedings are commenced pursuant to Rule 6, RGDP. There is a pending Rule 7, RGDP proceeding filed in this tribunal against this Respondent (*See State of Okla. ex rel. Okla. Bar Ass'n v. Ogle*, Supreme Court of the State of Oklahoma, SCBD 5902, OBAD 1928).

4. The official Oklahoma Bar Association roster address of the Respondent is: James David Ogle, OBA #17476, 9905 S. Pennsylvania Avenue, Oklahoma City, OK 73159.

COUNT I

5. On or about March 16, 2007, Respondent, Robert Samuel Kerr, IV (Kerr), and Josh T. Welch (Welch) met with new client Jeremy Robert Stapley (Stapley). Stapley had been charged with driving under the influence and was seeking representation on the criminal charge, as well as, the driver's license revocation hearing before the Department of Public Safety (DPS).

6. Subsequent to the meeting, Respondent, Welch, and Kerr agreed to offer a bribe to the investigating Edmond Police Department officer to not appear at the DPS hearing. Respondent instructed Kerr to have Welch make contact with a former Edmond Police Department Officer Chris Caplinger (Caplinger) to assist in the offer of the bribe.

7. Said contact was made, the bribe was offered and paid by Caplinger, and the officer failed to appear at the DPS hearing. Unbeknownst to Respondent, the Edmond Police officer was cooperating with the Edmond Police Department and the offer and payment of the bribe was recorded.

8. On July 30, 2010, Respondent, Kerr, and Welch were each charged with one felony count of Bribing an Officer in violation of 21 O. S. 381. Each eventually plead to one misdemeanor count of Obstruction of a Police Officer in violation of 21 O.S. 540. Subsequent to his plea, Respondent was suspended from the practice of law pursuant to Rule 7, RGDP (See SCBD 5902). Kerr was also suspended from the practice of law pursuant to Rule 7, RGDP (See SCBD 5869). The Kerr matter is pending before this tribunal for the imposition of final discipline. Welch was suspended from the practice of law pursuant to Rule 7, RGDP (See SCBD 5868). Welch's Resignation Pending Disciplinary Proceedings in currently pending approval before this tribunal.

9. In addition to his guilty plea to the misdemeanor offense of Obstruction of a Police Officer which is the subject of the Rule 7, RGDP proceeding, Respondent committed further acts which violated the provisions of the ORPC and warrant the imposition of professional discipline pursuant to Rule 6, RGDP. Specifically, Respondent misappropriated the entrusted funds of an unrelated client (Fontenot) to pay Caplinger for his fee and for the amount of the bribe. Respondent signed the check and letter transmitting the funds to Caplinger and delivered same. Said documents referenced the "Fontenot "matter even though no work was performed by Caplinger on the Fontenot representation. Respondent and Welch used false and fraudulent billing statements to purposefully deprive Fontenot of advanced funds through fraud and deceit.

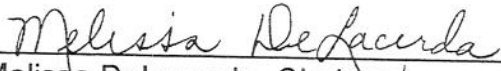
10. In documents provided in his criminal matter, Respondent stated that he became aware of the offer and payment of the bribe after the event and that he had no prior knowledge of the plan to offer the bribe. Once he became aware that the bribe had been paid, he stated that he did nothing "to stop this train wreck" and that he did not react


"logically, lawfully, properly and ethically". By his own admissions, Respondent knew in August, 2007 that Kerr and/or Welch had violated the ORPC by participating in the bribing of a police officer. Respondent had a duty pursuant to the ORPC to report same to the appropriate professional authority but did not do so.

11. Respondent's actions constitute professional misconduct in violation of Rules 1.15, 8.3(a) and 8.4(a)(c) ORPC and Rule 1.3, RGDP and warrants the imposition of professional discipline.

WHEREFORE, premises considered, Complainant requests that the Respondent be disciplined as this Court finds equitable and proper, and for such other relief as this Court finds appropriate.

Done at the direction of the Professional Responsibility Commission this the 5th day of October, 2012.



Melissa DeLacerda, Chairperson
Professional Responsibility Commission


Gina L. Hendryx OBA #10330
General Counsel
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
405.416.7083(o) 405.416.7007(f)

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 5th day of October, 2012, a true and correct copy of the foregoing Complaint was mailed by certified mail, return receipt requested to James David Ogle, 9905 S. Pennsylvania Avenue, Oklahoma City, OK 73159, Mack K. Martin, 125 Park Avenue, Oklahoma City, OK 73102, and Patrick T. Cornell, Professional Responsibility Tribunal Chief Master, P.O. Box 847, Clinton, OK 73601.


Gina L. Hendryx

5

SERVICE COPY

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA BEFORE THE PROFESSIONAL RESPONSIBILITY TRIBUNAL

STATE OF OKLAHOMA, *ex rel.*)
OKLAHOMA BAR ASSOCIATION,)
)
Complainant,)
vs.)
JAMES DAVID OGLE,)
Respondent.)

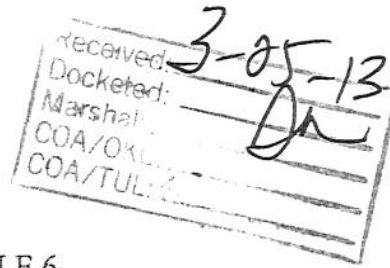
RULE 7
OBAD # 1928
SCBD # 5902

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA
MAR 25 2013
MICHAEL S. RICHIE
CLERK

AND

STATE OF OKLAHOMA, *ex rel.*)
OKLAHOMA BAR ASSOCIATION,)
)
Complainant,)
vs.)
JAMES DAVID OGLE,)
Respondent.)

RULE 6
OBAD # 1936
SCBD # 5940



TRIAL PANEL REPORT

Pursuant to Rule 6, Rules Governing Disciplinary Proceedings ("RGDP"), 5 O.S. 2001, Ch.1, app. 1, app.1-A RGDP, the assigned Trial Panel of the Professional Responsibility Tribunal hereby submits this report and recommendation to the Oklahoma Supreme Court.

PROCEDURAL HISTORY OF THE CASE

On August 20, 2012, the Complainant ("OBA") through its general counsel sent a letter to the Chief Justice of the Oklahoma Supreme Court pursuant to Rules 7.1 and 7.2 of the Rules Governing Disciplinary Proceedings ("RGDP"), 5 O.S. 2011, Ch.1, app. 1-A (SCP

Exhibit

2

enclosing certified copies of the information and judgment and sentence on a plea of guilty misdemeanor entered in the case of State of Oklahoma v. James David Ogle (“Respondent”), Oklahoma County District Court, CF-2010-5113. Thereafter on August 22, 2012, the Supreme Court of Oklahoma entered an *Order of Immediate Interim Suspension* suspending Respondent from the practice of law until further Order of the Court. Pursuant to Rule 7.4 of the RGDP, Respondent was given until September 17, 2012, to show cause in writing why a *Final Order of Discipline* should not be imposed.

On September 6, 2012, the Respondent through counsel filed Notice in the Supreme Court of the State of Oklahoma of his intent to waive or not seek to show cause as to why the Interim Suspension by the Court should not remain in full force and effect until the final Order of discipline was entered.

Thereafter, on October 5, 2012, the OBA filed its Complaint (SCBD 5940) herein pursuant to Rule 6, RGDP, alleging violations of Rules 1.15, 8.3(a) and 8.4 (a)(c) of the Oklahoma Rules of Professional Conduct (“ORPC”) and Rule 1.3 RGDP. On October 8, 2012, Respondent filed a timely Response entitled *Brief in Support of Mitigation of Discipline and Request for Hearing*.

On October 10, 2012, the OBA filed its *Motion for Joinder* of the above two matters and on the same date the Supreme Court granted said Motion.

This matter was heard before a Trial Panel of Professional Responsibility Tribunal on January 16, 2013. The OBA was represented by Gina L. Hendryx general counsel. The Respondent, James David Ogle, was present and represented by Mack K. Martin and Derrick Chance. A quorum of the Professional Responsibility Tribunal was present consisting of William G. LaSorsa, Presiding Master, Cody Hodgden, Lawyer Member and Kirk Pittman, Lay Member.

FINDINGS OF FACT

The Professional Responsibility Tribunal finds the following facts were established by clear and convincing evidence.

The Complainant introduced eight (8) Exhibits (Nos. 1-8) with the Stipulation and Agreement of Respondent's counsel. In addition the OBA presented two (2) witnesses; Tommy Butler and James David Ogle the Complainant, then rested. The Respondent called six (6) witnesses; Drew Neville, Honorable Lori Walkley, John Carwile, Daniel G. Webber, Jr., Charles E. Geister, III, and Dean Valerie K. Couch then rested.

Having reviewed the testimony of witnesses and the Exhibits introduced into evidence the Trial Panel finds that due and lawful notice of the *Complaint* and *Notice of Hearing* has been given in the form and manner provided by law. The Trial Panel further finds as follows, to-wit:

1. The Respondent is a member of the Oklahoma Bar Association and is licensed to practice law by the Supreme Court of the State of Oklahoma. The Respondent was so licensed at all times relevant to this matter.
2. Respondent was admitted to the Oklahoma Bar Association on September 25, 1997.
3. Respondent's OBA Member number is 17476 and his official roster address is 9905 South Pennsylvania Avenue, Oklahoma City, OK 73159.
4. Respondent is also a member of the Texas State Bar Association.
5. That on August 22, 2012, the Supreme Court issued an *Order of Immediate Interim Suspension* in SCBD No. 5902 suspending the Respondent from the practice of law.

6. In approximately 2003 Respondent partnered with Josh Welch to form the law firm of Ogle & Welch located in Oklahoma City.
7. In approximately 2005 Respondent's nephew, Robert Samuel Kerr, IV, joined the firm as legal intern and later became an associate after he was admitted into the Oklahoma Bar Association in 2006.
8. In the Spring of 2007 Ogle & Welch undertook representation of an individual charged with the misdemeanor crime of driving under the influence of alcohol and in conjunction with that representation, the firm actively took part in a series of decisions and transactions which led to an Edmond police officer receiving money as a bribe so that he would not appear at a Department of Public Safety hearing. Robert Samuel Kerr was to serve as Defense Counsel at that hearing.
9. On July 30, 2010, Respondent was charged in the District Court in and for Oklahoma County, Oklahoma with the felony crime of Bribing an Officer (State of Oklahoma v. David Ogle, CF-2010-5113). Thereafter, on August 15, 2012, the felony charge was reduced to a misdemeanor charge of Obstruction of a Police Officer. The Respondent pled guilty to that charge and was placed on a two-year deferred sentence.
10. Pursuant to Rule 7.2, RGDP, the *Judgment and Sentence* in State of Oklahoma v. James David Ogle (Oklahoma County, CF-2010-5113) is conclusive evidence of the conviction of the crime upon which this proceeding is based and warrants the imposition of professional discipline.
11. The Respondent testified of his involvement with the plan to bribe a police officer. Specifically, Respondent admitted he learned about the bribery plan and did

nothing to stop it; assisted in the payment of monies to a facilitator of the bribe; and actively participated in a cover-up.

12. By his testimony, Respondent admitted he violated Rule 8.3 (a), ORPC by failing to report the professional misconduct of the two (2) other lawyers involved in the bribe.
13. By his testimony, Respondent admitted he violated Rule 8.4 (a), ORPC by violating the Rules of Professional Conduct and knowingly assisting his two (2) co-conspirators to violate the Rules of Professional Conduct.
14. By his testimony, Respondent admitted he violated Rule 8.4 (c), ORPC by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.
15. While the OBA did not allege any other violations of Rule 8.4, ORPC the Tribunal finds Respondent violated Rules 8.4 (b), ORPC by committing a criminal act that reflects adversely on the Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects, and 8.4 (d), ORPC by engaging in conduct that is prejudicial to the administration of justice.
16. The Trial Panel finds the OBA failed to prove by clear and convincing evidence a violation of Rule 1.15, ORPC as alleged in its Complaint on the basis the evidence presented in the form of Respondent's testimony is conflicting in the following particulars, to wit:

During an exchange of questions by the OBA General Counsel and answers by the Respondent

Q. (Referring to Complainant's Exhibit No. 7, p. 2) This was to pay the bribe, reimburse the cost of the bribe. Correct?

A. Yes, ma'am.

Q. And the references were to cover it up?

A. Yes, ma'am.

Q. By charging this expense to the Fontenot case, you and Mr. Welch were charging one client for expenses incurred for another client. Isn't that correct?

A. I do not believe that's the appearance of that. I - - I don't have a specific correlation to the Trust account, if Mr. Fontenot was - - was charged. So, I - - I think the intention of - - of myself and the intention of Mr. Welch would have eventually been yes, to cover that, I assume. Because I originally thought this was a Trust account check until our discussion recently, the back of Exhibit No. 7.

Q. Alright. So this check came out of your operating account?

A. Yes, ma'am. (Hearing Transcript p. 50, Line 15-51, Line 10)

Q. (By Ms. Hendryx) Well, let's be very clear. Let's break it down. You agree that that letter in that billing created false and fraudulent billings for the account of Clyde Fontenot?

A. Yes, ma'am. (Hearing Transcript p.52, Lines 18 - 22)

Q. And you also heard your counsel state with regard to the Rule 6 Complaint that you acknowledge and admit that you violated the rules as alleged in the Rule 6 Complaint?

A. That's Correct.

Q. And is that true?

A. That is true.

Q. Do you need to review the Rule 6 Complaint or are you fully aware of the allegations and as you sit here today you freely and openly admit that you violated the Rules as alleged in the Rule 6 Complaint?

A. I believe that I did.

Q. Well, "I believe I did" and "I did" are two different things. Did you violate the rules as we have previously alleged in the Rule 6 Complaint?

A. Yes. (Hearing Transcript, p.73, Lines 12- p.74, Line 3)

Additionally, as an attachment to this Report, the Trial Panel includes pp. 189-194 of the Transcript to better outline the parties' positions with respect to this issue.

(See Attachment 1)

MITIGATING CIRCUMSTANCES

1. Prior to his suspension from the practice of law, the Respondent had been a practicing member of the Oklahoma Bar for approximately fifteen (15) years. During that time he had no Bar Discipline matters. The six (6) witnesses who testified on behalf of the Respondent were all experienced, respected lawyers and judges. All of them substantially testified to similar characteristics they had observed over many years in the Respondent's behavior, and characterized Respondent as "a good lawyer", "always prepared", "congenial to opposing counsel", "very respectful of the Court", "honest", and "hard-working". All witnesses uniformly believed the bribe incident was aberrant behavior of the Respondent.
2. No evidence was presented which would indicate the Respondent initiated the idea of bribing a police officer. In fact, the evidence is uncontradicted that the Respondent did not know anything about the bribe until after the plan had been initiated by his two (2) co-conspirators¹.

¹ The Trial Panel is aware of the Report of the Trial Panel in State of Oklahoma, ex rel. Oklahoma Bar Ass'n v. Robert Samuel Kerr, IV (OBAD #1914;SCBD No. 5869) and the decision of the Supreme Court in the same matter decided on December 11, 2012; 2012 OK 108. Both the PRT Report and the Court's Decision implicate James David Ogle as the initiator of the criminal activity which resulted in the Rule 7 Proceeding herein. However, no evidence was presented in the hearing before this Tribunal that indicated that Mr. Ogle was the instigator. In fact, the evidence showed Mr. Ogle did not learn of the conspiracy until after the fact. Neither of the two (2) co-conspirators in the criminal activity testified in the case against Mr. Ogle.

3. Upon receiving notice of his suspension, Respondent acted appropriately and followed the Rules with respect to notification to clients.
4. Respondent's legal career demonstrates an active role in Bar activities including being past President of the Oklahoma Criminal Defense Lawyers Association, working on committees for the Federal Courts, he was active in the Oklahoma County Bar Association Board of Directors serving on the Fee Grievance Committee.
5. Respondent readily admits his actions in this matter were unethical, unprofessional, and criminal, all of which brought shame and disrepute upon all members of the Oklahoma Bar Association.
6. During the past (6) six years after the incident occurred no evidence was presented of any wrongdoing by Respondent.
7. For the majority of the years he has practiced, Respondent has made CLE presentations on an average of two (2) to three (3) times per year.
8. His personal life has suffered not only financially but emotionally as well during the past six (6) years.
9. No evidence was presented suggesting the Respondent received any special remuneration or personal benefit from the crime he committed.
10. The Respondent appeared to be honest, forthright and deeply remorseful at the Hearing. His remorse appears to be very sincere.
11. No evidence was presented suggesting the Respondent has shown any propensity for immoral, unethical or illegal conduct, other than the crime for which he has been convicted. The evidence suggests in the interim between the commission of this crime and the hearing (approximately six (6) years), Mr. Ogle has conducted himself

with integrity and humility and has expressed to others his sincere remorse. A number of witnesses called on Respondent's behalf testified they had seen a copy of *Respondent's Brief in Support of Mitigation of Discipline and Request for Hearing* prior to their testimony. With the exception of the facts surrounding the crime which was committed, no evidence was submitted which suggested that during the fifteen (15) years since the Respondent was admitted into the Oklahoma Bar that his life has been anything but that of a law abiding citizen and honorable member of the Oklahoma Bar Association.

12. There is no evidence to indicate, Respondent has not fully cooperated with the Oklahoma Bar Association.

AGGRAVATING CIRCUMSTANCES

- a. There was evidence presented which indicated Respondent was deceitful to law enforcement agencies during their respective investigations of the events surrounding the crime, shortly after the commission of the crime.
- b. Respondent admits he was acting in the role of a mentor to his nephew, Robert Samuel Kerr, IV, a newly admitted attorney in his first year of practice. At no time during the entire bribing incident did Respondent act appropriately in light of his mentor responsibilities to his mentee.
- c. The evidence reflected a great deal of adverse publicity was generated in news coverage of the events surrounding the crime committed.

CONCLUSIONS OF LAW

1. The evidence at trial clearly reflects that the Respondent has admitted to professional misconduct in the following particulars:
 - a. His criminal conviction which stemmed from his conspiracy to bribe a police officer.
 - b. The evidence also clearly reflects the Respondent has violated Rules 1.3, RGDP and Rules 8.3(a), 8.4(a), 8.4(b), 8.4(c), and 8.4(d), ORPC.
2. The Complainant has not met its burden of proving by clear and convincing evidence Respondent's violation of Rule 1.15, ORPC.

RECOMMENDATION

The Complainant has offered a number of Supreme Court Decisions². All of the cases cited by the Bar Association deal with lawyers and bribes. While one can argue those cases are distinguishable because they involved lawyers holding public office; as officers of the Court, it is difficult, at best, to fathom the behavior of the Respondent and his co-conspirators. This Trial Panel cannot sum up the concern for the damage caused by such activities any better than to cite the Supreme Court's language citing the *James* case

“...such activities...brings shame and disrepute to all members of the bench and bar, and cannot do else, if continued, but to destroy our system of justice, which, in a free society, depends for its effectiveness upon the continued confidence and trust of the people. The people must be able to rely on the integrity and honesty of their judges and lawyers, and it is the duty of this Court, whenever conduct of a lawyer,

² State of Oklahoma ex rel, Oklahoma Bar Ass'n v. Hall, 1977 OK 117; State of Oklahoma ex rel, Oklahoma Bar Ass'n v. Scanland, 1970 OK 94; State of Oklahoma ex rel, Oklahoma Bar Ass'n v. James, 1969 OK 119

such as reflected by this record, is brought to its attention, to prevent such individual from continuing to enjoy the solemn trust and high responsibility with which he was invested as a member of the Bar of this State³.

The Complainant has asked that the Respondent be disbarred from the practice of law. The Respondent has requested this Tribunal to recommend a lesser penalty of two (2) years suspension.

The severity of the sanction for professional misconduct depends upon all the circumstances, including the willfulness and seriousness of the violations, the Respondent's willingness to acknowledge the seriousness of the wrongdoing and to take responsibility for it, and the degree of cooperation the Respondent demonstrates in the investigation and resolution of the grievance. See *State ex rel. Okla. Bar Ass'n v. Wallace*, 1998 OK 65, 961 P.2d 818, 828

This Panel finds that punishment of the Respondent should not be the central concern in determining the appropriate professional discipline. He has been sufficiently punished both criminally, and in no small degree professionally. He and his family have been publicly humiliated. This Panel is concerned with recommending a professional discipline that will serve to deter similar conduct and will preserve and protect the public trust and confidence in those individuals licensed by this Court.

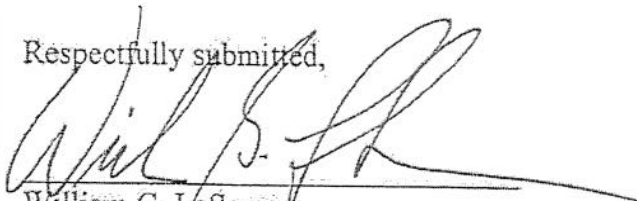
This panel respectfully recommends to the Court that Respondent be suspended for two (2) years plus one (1) day and further recommends that Respondent be required to pay the costs associated with this matter.

³ *State of Oklahoma ex rel, Oklahoma Bar Ass'n v. James*, 1969 OK 119, ¶ 23, 463 P.2d. 972, 977; see also *State ex rel, Oklahoma Bar Ass'n v. Kerr*, 2012 OK 108, 291 P. 3d 198, 200.

DATED this 22nd day of March, 2013.

ALL TRIAL PANEL MEMBERS CONCUR

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William G. LaSorsa', written over a horizontal line.

William G. LaSorsa,
Presiding Master

Cody Hodgden,
Lawyer Member

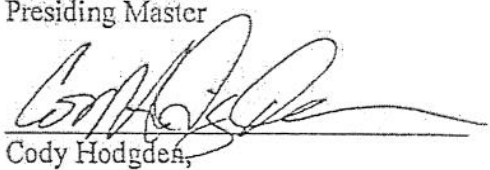
Kirk Pittman,
Non-Lawyer Member

DATED this 22nd day of March, 2013.

ALL TRIAL PANEL MEMBERS CONCUR

Respectfully submitted,

William G. LaSorsa,
Presiding Master



Cody Hodgden,
Lawyer Member

Kirk Pittman,
Non-Lawyer Member


DATED this 22nd day of March, 2013.

ALL TRIAL PANEL MEMBERS CONCUR

Respectfully submitted,

William G. LaSorsa,
Presiding Master

Cody Hodgden,
Lawyer Member



Kirk Pittman,
Non-Lawyer Member

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2013, a copy of the foregoing "Report of the Trial Panel" was filed in the Oklahoma Supreme Court and that a file stamped copy by the Supreme Court was mailed prepaid to the following:

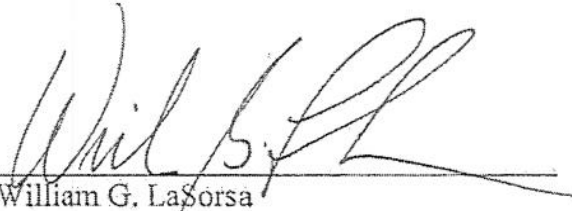
Gina L. Hendryx
1901 N. Lincoln Blvd
Oklahoma City, OK 73152
ATTORNEY FOR COMPLAINANT

Mack K. Martin
125 Park Avenue, Fifth Floor
Oklahoma City, OK 73012
ATTORNEY FOR RESPONDENT

William G. LaSorsa, Esq.
15 East 5th Street, Suite 3800
Tulsa, OK 741034309
TRIAL PANEL PRESIDING MASTER

Cody B. Hodgden
P.O. Box 529
Woodward, OK 73802
TRIAL PANEL LAWYER MEMBER

Kirk V. Pittman
P.O. Box 267
Seiling, OK 73663
TRIAL PANEL NON-LAWYER MEMBER


William G. LaSorsa

1 afternoon break. Just a brief break, five minutes?

2 MS. HENDRYX: That's great. Thank you.

3 MR. LASORSA: Thank you.

4 (A break was taken, 2:24 to 2:29 p.m.)

5 MR. LASORSA: Let's go back on the
6 record.

7 During the recess there was a question raised,
8 and I want to make an effort to clear up what may
9 be an ambiguity in the mind of one or more of us on
10 the Tribunal.

11 Complainant's Exhibit Number 7 is the letter
12 that was written to Mr. Caplinger. The second page
13 of that was a check made payable to Mr. Caplinger
14 in the amount of \$750. As I understand the
15 testimony, Mr. Ogle admitted that his signature is
16 on both of those documents, i.e., on the letter and
17 on the check.

18 MR. MARTIN: Correct.

19 MR. LASORSA: It is my understanding also
20 that this check was a departure from normal
21 practice of the firm, or at least Mr. Ogle, in that
22 he paid for services after they were rendered, but
23 this check was to be used as part of the bribe and
24 part of money going to Mr. Caplinger for his
25 efforts to facilitate that bribe.

1 Am I correct so far?

2 MR. MARTIN: Correct, yes.

3 MR. LASORSA: He also testified that he
4 used money or the firm used money from Claude
5 Fontenot's trust account, the money that was on
6 deposit for his behalf to fund this check. Is that
7 correct?

8 MR. MARTIN: We're not sure of that.
9 This is an operating account check, not a trust
10 account check.

11 MR. LASORSA: I understand that. The
12 testimony was that it was an operating account, it
13 wasn't a trust account, but there was other
14 testimony from Mr. Ogle I believe that said that
15 money was taken from Mr. Fontenot's trust account
16 to pay --

17 MR. MARTIN: I believe the testimony was,
18 and he'll tell you, he's not sure if that occurred
19 or not. But he's not saying it didn't occur; he's
20 just not sure.

21 MR. LASORSA: There isn't any evidence
22 before this committee -- or before this Tribunal to
23 show that money was transferred -- any documentary
24 evidence to show that money was transferred from
25 Mr. Fontenot's trust account to fund this check.

1 Is that fact in dispute or is it stipulated that
2 Mr. Fontenot's trust account money was used to fund
3 this check?

4 MR. MARTIN: We don't know if -- in all
5 honesty, we don't know, and Mr. Ogle's testimony
6 was he doesn't remember whether or not it was
7 funded or not.

8 MS. HENDRYX: The question was
9 Mr. Fontenot has money on retainer to pay expenses,
10 and this money was -- this check was assessed
11 against those funds of Mr. Fontenot. The evidence,
12 that being the notation on the check and the
13 letter, secondarily the statement that was read out
14 of Mr. Welch's affidavit which said, "Said plea was
15 further based on my acting jointly together and in
16 concert with Defendant Ogle to create false and
17 fraudulent billings for the account of my client
18 Claude Fontenot to hide unethical illegal payments
19 to Caplinger", and Mr. Ogle agreed with that
20 statement.

21 Furthermore, Mr. Ogle was asked if he admitted
22 the allegations in the Rule 6 complaint, and the
23 Rule 6 complaint specifically made 1.15 allegations
24 that he inappropriately converted funds of one
25 client to cover another client's costs, and he said

1 yes, he admitted to those counts.

2 So, no, there's not a ledger here showing it
3 going from one place to the other, but the
4 testimony and the documentary evidence that he has
5 acknowledged supports the evidence of those facts.

6 MR. LASORSA: Mr. Martin, do you agree
7 with that statement?

8 MR. MARTIN: I agree with it to the
9 extent that Mr. Ogle admitted the allegations of
10 the complaint. But his testimony was he didn't
11 know whether or not funds were actually taken from
12 the trust account or not. I mean, I have to stand
13 by that because that was his sworn testimony. And,
14 other than that, I don't know how to respond.

15 MR. LASORSA: If I may just have a
16 moment?

17 MR. HODGDEN: My concern was that the
18 check certainly creates the implication that there
19 were funds taken from the Ogle & Welch trust
20 account that were held for the benefit of
21 Mr. Fontenot to cover this check. I mean, that's
22 the implication, but I wasn't sure that the record
23 was clear on that, whether or not that was actually
24 the case or not, or whether this was just a
25 reference to the other client and the other client

1 was not adversely affected by this. So is it your
2 position that the -- I guess it is, that the other
3 client, Mr. Fontenot, was adversely affected by
4 this and that the funds that Ogle -- that were
5 being held in the Ogle & Welch trust account for
6 the benefit of and actually belonged to
7 Mr. Fontenot were used to subsequently cover this
8 check?

9 MS. HENDRYX: It's our position that the
10 coverup caused these checks to appear to be
11 expenditures on the Fontenot account. Furthermore,
12 the allegations in the statements in the affidavit,
13 the sworn affidavit of Mr. Welch that he used to
14 resign states that they acted together to create
15 false and fraudulent billings for the account of my
16 client Fontenot. So those charges were charged
17 against him to his account, to the account he had
18 with the firm, the trust account. Now, if you look
19 at the case law, there are three levels of --

20 MR. HODGDEN: That's not evidence in this
21 case though.

22 MS. HENDRYX: Well, it was read to him
23 and he acknowledged and accepted it and said it was
24 true, so he adopted it as his own statement.
25 Furthermore, he was asked under the Rule 6

1 complaint, which sets out those exact allegations
2 of Rule 1.15 of misconduct with the trust account,
3 the Fontenot moneys, assessing a bill against him
4 that was not a Fontenot bill. He acknowledges and
5 states that those allegations are true.

6 Now, the question becomes what degree of
7 misconduct is that pursuant to Rule 1.15. And I
8 have a case that discusses simple commingling to
9 conversion to misappropriation, and I can give you
10 that now if you want, but my position is at the at
11 least that's a simple conversion, using one
12 client's funds for the benefit of another. Now,
13 did he get the money back? Did they properly
14 account for it? We weren't supplied with those
15 records; I can't tell you that. But the initial
16 step of inappropriately using one client's money to
17 cover another client's expenses, I believe the
18 evidence supports that.

19 MR. LASORSA: Thank you, Gentleman and
20 Lady. You may begin.

21 MR. HODGDEN: I didn't mean to throw you
22 off there, but that was a question that I probably
23 should have addressed the issue earlier in
24 Mr. Ogle's testimony but I didn't.

25 MS. HENDRYX: And I had in my closing to

Professional Reporters

800.376.1006

www.proreporters.com

2013 OK 78

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT BAR DOCKET
STATE OF OKLAHOMA
OCT - 1 2013

MICHAEL S. RICHIE
CLERK

STATE OF OKLAHOMA, ex rel.)
OKLAHOMA BAR ASSOCIATION,)
)
Complainant,)
)
v.)
)
JAMES DAVID OGLE,)
)
Respondent.)

SCBD 5940
Comp.w/SCBD 5902
FOR OFFICIAL
PUBLICATION

BAR DISCIPLINARY PROCEEDINGS

¶0 This opinion disposes of the pending Rule 7 and Rule 6 proceedings in which James David Ogle is the Respondent. The charges arise out of actions that led to the Respondent's entering a plea of guilty to the misdemeanor crime of Obstruction of a Public Officer, in violation of 21 O.S. §540. After de novo review of the record presented, we order the Respondent suspended for two years and one day, commencing from August 22, 2012, the date of his interim suspension.

RESPONDENT SUSPENDED FOR TWO YEARS AND ONE DAY AND ORDERED TO PAY COSTS

Gina Hendryx, General Counsel, OKLAHOMA BAR ASSOCIATION, Oklahoma City, Oklahoma, for the Complainant.

Mack K. Martin, MARTIN LAW OFFICE, Oklahoma City, Oklahoma, and G. Derek Chance, BABBIT, MITCHELL & CHANCE, Oklahoma City, Oklahoma, for the Respondent.

Exhibit
3

EDMONDSON, J.

¶1 James David Ogle (Respondent), OBA No. 17476, was admitted to practice law in the State of Oklahoma in 1997. He currently stands suspended in SCBD 5902 pursuant to Rules 7.1 and 7.2 of the Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011, ch. 1, app. 1-A. A complaint was brought pursuant to Rule 6, RGDP against the Respondent in SCBD 5940. The matters were joined for hearing before a trial panel of the Professional Responsibility Tribunal (PRT), for briefing and for consideration by this Court, and are resolved by a single opinion.

¶2 The Respondent was a partner, along with Josh T. Welch, in the law firm Ogle & Welch, located in Oklahoma City. The Respondent's nephew, Robert Samuel Kerr, IV, joined the firm as a legal intern and then as an associate after being admitted to the Oklahoma Bar Association in 2006. In 2007, Ogle & Welch represented a client charged with the misdemeanor crime of driving under the influence of alcohol. Kerr was to represent the client before the Department of Public Safety (DPS). The firm actively took part in a series of transactions that led to an Edmond police officer receiving money as a bribe so that he would not appear at the DPS hearing. The firm made contact with a former Edmond police officer, Chris Caplinger, to assist in the bribe offer. An account of the facts appears in *State ex rel. Oklahoma Bar Ass'n v. Kerr*, 2012 OK 108, 291 P.3d 198.

¶3 Ogle was charged on July 30, 2010, in the District Court of Oklahoma County in *State of Oklahoma v. James David Ogle, Oklahoma County District Court, CF-2010-5113*, with the felony crime of Bribing an Officer in violation of 21 O.S. § 381, On August 15, 2012, the felony was reduced to a misdemeanor charge of Obstruction of a Public Officer in violation of 21 O.S. § 540, and the Respondent entered a plea of guilty to the misdemeanor offense. The Respondent received a two-year sentence, deferred. The Oklahoma Bar Association (Bar) transmitted certified copies of the information and judgment and sentence on a misdemeanor plea of guilty to the Chief Justice and Rule 7 proceedings were commenced against Ogle in SCBD 5902.

¶4 On August 22, 2012, this Court entered an Order of Immediate Interim Suspension pursuant to Rule 7. Ogle was given an opportunity to show cause in writing why a final order of discipline should not be imposed. He filed a notice of intent to waive or not show cause. Under Rule 7, the information, judgment and deferred sentence are conclusive evidence of conviction of the crime upon which the proceeding is based and warrant the imposition of professional discipline. We directed the Professional Responsibility Tribunal (PRT) to conduct a hearing and make a recommendation to this Court as to the final discipline to be imposed.

¶5 On October 5, 2012, the Bar filed a complaint pursuant to Rule 6, RGDP, alleging that the Respondent violated Rules 1.15, 8.3(a) and 8.4(a)(c) of the

Oklahoma Rules of Professional Conduct (ORPC), 5 O.S. 2011, ch.1, app. 3-A, and Rule 1.3, RGDP. Under Rule 6, the Bar has the burden of establishing every violation by clear and convincing evidence. An order of this Court dated October 29, 2012, granted the Bar's motion to join the two proceedings for hearing, briefing and disposition.

¶6 A hearing was held on January 16, 2013, before a trial panel of the PRT. The Respondent was present and represented by counsel. The Bar called its investigator, Tommy Butler, and the Respondent as witnesses. The Respondent's witnesses were Drew Neville, Honorable Lori Walkley, John Carwile, Daniel G. Webber, Jr., Charles E. Geister, III, and Dean Valerie K. Couch. The panel took evidence in mitigation on the Rule 7 charges. On the Rule 6 charges, the panel found that Ogle violated Rule 1.3, RGDP, and Rules 8.3(a), 8.4(b), 8.4(c) and 8.4(d) of the Oklahoma Rules of Professional Conduct.¹ The trial panel found that the complainant failed

¹ Rule 1.3. Discipline for Act Contrary to Prescribed Standards of Conduct.

The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority.

(continued...)

to prove by clear and convincing evidence a violation of Rule 1.15, ORPC.²

¶7 The trial panel recommended to this Court a suspension of two years and one day as appropriate discipline. The Complainant seeks disbarment. Ogle asserts that suspension for two years or less would be sufficient discipline to ensure the protection of the public, the preservation of the integrity of the Bar and the deterrence of similar conduct. We treat the Respondent's recommendation as a request for

¹(...continued)

* * *

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

* * *

²Rule 1.15 details a lawyer's responsibility for safekeeping the property of clients and third parties. Ogle admitted that he signed the check and letter transmitting the funds and delivered them to Caplinger. The documents referred to another client, for whom work had not been performed. In its brief to this Court, the Bar concedes that it failed to meet its burden of proof on this allegation. We have reviewed the record and find that a violation of Rule 1.15 was not established by clear and convincing evidence. The check was drawn on the firm's operating account and there was no evidence that funds of the other client were withdrawn from the trust account as a result.

leniency. The Respondent has admitted that he knowingly participated in the bribe after he learned about it. He has admitted violation of the Rules of Professional Conduct by failing to stop or report the conduct and interfering with the administration of justice. On de novo review of the record, we find that the remaining Rule 6 allegations were established by clear and convincing evidence. It remains for this Court to determine the level of discipline to be imposed in both the Rule 6 and Rule 7 matters.

¶8 Although each proceeding is unique, the Supreme Court is guided by similar cases in determining the appropriate discipline to be imposed. *State ex rel. Oklahoma Bar Ass'n v. Golden*, 2008 OK 39, 201 P.3d 862, amended on denial of rehearing. Disciplinary proceedings against the other two conspirators have concluded. Josh T. Welch resigned from the Oklahoma Bar Association pending the disciplinary proceedings against him in SCBD 5868. Welch admitted making arrangements to discourage a police officer from appearing to testify in a hearing before the DPS concerning the revocation of driving privileges. *State ex rel. Oklahoma Bar Ass'n v. Welch*, 2012 OK 83, 292 P.3d 510. Resignation pending disciplinary proceedings is tantamount to disbarment and Welch may not apply for reinstatement for five years from the date of his interim suspension. *In re Reinstatement of Jones*, 2006 OK 33, 142 P.3d 380.

¶9 In *State ex rel. Oklahoma Bar Ass'n v. Kerr*, 2012 OK 108, 291 P.3d 198, we suspended Kerr for a period of two years and one day, commencing on the date of his interim suspension. Suspension for two years and one day requires the lawyer to seek reinstatement to the Oklahoma Bar Association and to prove the grounds for reinstatement by clear and convincing evidence. We found as mitigating evidence that Kerr did not initiate the illegal scheme and that he acted under the direction of his supervisors, Josh Welch and David Ogle.

¶10 Judicial officers and public officials have been disbarred for soliciting bribes. In *State ex rel Oklahoma Bar Assn. v. Scanland*, 1970 OK 94, 475 P.2d 373, 376, the respondent was an assistant district attorney who offered a bribe to a police detective to remove the arrest record of a certain individual and deliver it to him for destruction. The evidence established the charges and Scanland was disbarred. We stated that fewer things are more damaging to public respect for the administration of justice than a corrupt public prosecutor. We could think of few offenses more serious in the eyes of the public than for one who speaks and acts with the authority and prestige of such office to attempt to corrupt a police officer. We compared a District Attorney, or his assistant, as a minister of justice to a degree second only to judges.

¶11 In *State ex rel. Oklahoma Bar Assn. v. Hall*, 1977 OK 117, 567 P.2d 975, 978,

we disbarred former Governor David Hall, who extorted a bribe to use the influence of his office to persuade the board of the Oklahoma Employees Retirement System to invest \$10,000,000.00 in a particular corporation's obligations. We likened the Chief Executive as a minister of justice to that of other public officials such as district attorneys and judges, and said that using the authority of high office to extort a bribe was a crime involving moral turpitude.

¶12 In *State ex rel Oklahoma Bar Association v. James*, 1969 OK 119, 463 P.2d 972, a county judge solicited a bribe on two occasions from attorneys in return for awarding them a larger fee. Throughout the proceedings, James insisted that he merely solicited funds for campaign expenses. The judge made it clear that he would extend his judicial favors only if he received financial remuneration in return. Those actions brought shame and disrepute to the bench and bar. In the cases involving public officials, we emphasized that persons who are in a position of trust are held to a higher standard because of their positions as servants of the public. James was disbarred.

¶13 In a case that involved an attorney who was not a public official, a client was asked if he would be willing to bribe certain public officials if necessary. *State ex rel Oklahoma Bar Assn. v. Evans*, 1987 OK 108, 747 P.2d 277. The act of bribery was never completed. We suspended Evans for four years for violating Disciplinary

Rule 9-101(C): “A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official.” Though Evan’s improper conduct was limited to raising the issue and suggesting the efficacy of that tactic, we observed that such conduct is a serious departure from conduct required of any member of the bar. We also recognized the personal harm done to the reputation in the community of the public officials who were said to be receptive to such a bribe. *1987 OK 108*, ¶ 8.

¶14 Factors considered when determining proper discipline include comparing the circumstances of the case with previous disciplinary matters, examining an attorney’s past record of professional behavior and evaluating mitigating circumstances. *State ex rel. Oklahoma Bar Ass’n v. Doris*, *1999 OK 94*, *991 P.2d 1015, 1025*, corrected. Although discipline should be administered fairly and evenhandedly, the extent of discipline must be decided on a case-by-case basis because each situation will usually involve different transgressions and different mitigating circumstances. Also, we must consider the deterrent effect upon the offending lawyer and other attorneys who might contemplate similar conduct in the future. *State ex rel Oklahoma Bar Ass’n v. McMillian*, *1989 OK 16*, *770 P.2d 892, 899*. Ogle testified that he learned of the bribe before the DPS hearing and that he signed a firm check in the amount of \$750.00, along with a letter on the firm’s letterhead to show the money came from

another client's account instead of the firm's operating account., and gave both to Caplinger when he came to the office. Ogle also admitted that during the investigation and before being charged, he lied to the OSBI and to District Attorney David Prater, insisting that he had no involvement in the matter. There was no evidence that Ogle initiated the scheme, but there was clear and convincing evidence that he participated in covering it up. The case was high-profile and generated a great deal of press coverage.

¶15 Ogle offered in mitigation the testimony of lawyers and judges who attested to his good reputation and standing in the community prior to the actions for which he was charged. They believed it was totally out of character for Ogle to behave as he did. Ogle was active in the Oklahoma County Bar Association and served on its board of directors. He served on the board of directors, and was at one time president, of the Oklahoma Criminal Defense Lawyers Association, as well as being a member of the National Association of Criminal Defense Lawyers. He was a presenter in numerous continuing legal education programs and spoke in schools whenever requested. Ogle's witnesses testified that he had been a very good lawyer, who willingly gave of his time for civic and educational matters whenever asked. Ogle has had no previous formal discipline by the OBA or any other bar association. He expressed a great deal of remorse and shame for the the effect of his actions on

the legal profession and for the devastating effect that his actions caused to his family and to their financial security. We take these mitigating factors into account in determining the level of discipline to be imposed.

¶16 Ogle's conduct occurred during the course of his practice of law and within the attorney-client relationship. That conduct places into question his professional honesty and his dedication to the administration of justice. Such conduct, admitted by Ogle in his testimony and briefs, has brought disrepute upon the legal profession and reflects adversely on his fitness as a lawyer. Ogle did not instigate the bribe, but he chose not to stop it or report it, and he facilitated it. He chose to say nothing when evidence of the investigation came to light. He lied to the District Attorney and others during the investigation. We consider the harm caused to the public perception of the judicial system as a whole to be more significant than the mitigating factors introduced. We agree with the recommendation of the PRT that suspension from the practice of law for a period of two years and one day is appropriate discipline in this matter.

¶17 A suspension for two years or less allows the suspended attorney to resume the practice of law upon expiration of the time period imposed. A disbarred lawyer may not seek readmission to the Oklahoma Bar Association for a term of five years. Suspension for two years and one day requires the attorney to seek readmission to the

Oklahoma Bar Association in order to practice law in this state. A suspension from the practice of law for a period in excess of two years is tantamount to disbarment in that the suspended lawyer must follow the same procedures for readmittance as would a disbarred counterpart.³ *In the Matter of the Reinstatement of Munson*, 2010 OK 27, ¶12, 236 P.3d 96. An applicant for reinstatement to the bar bears a heavy burden of showing, by clear and convincing evidence, that reinstatement is warranted. *In the Matter of the Reinstatement of Massey*, 2006 OK 21, 136 P.3d 610. The requirements for a lawyer seeking reinstatement are more stringent than for a lawyer who seeks admission to the bar for the first time. *In the Matter of the Reinstatement of Fraley*, 2005 OK 39, ¶37, 115 P.3d 842.

¶18 After de novo review of the record presented, we order the Respondent suspended for two years and one day, commencing from August 22, 2012, the date of his interim suspension, and he is ordered to pay the costs of the proceeding in the amount of \$1,878.05 within sixty (60) days of the date of this opinion.

**RESPONDENT SUSPENDED FOR TWO YEARS AND ONE DAY
AND ORDERED TO PAY COSTS**

³The factors considered in determining fitness for reinstatement to the bar are: 1) the applicant's present moral fitness; 2) demonstrated consciousness of the conduct's wrongfulness and the disrepute it has brought upon the legal profession; 3) the extent of rehabilitation; 4) the seriousness of the original misconduct; 5) the conduct after resignation, the time elapsed since the resignation; 7) the character, maturity and experience of the applicant when he or she resigned; and 8) present legal competence. 2010 OK 27, ¶13.

¶19 COLBERT, C.J., REIF, V.C.J., WATT, WINCHESTER, EDMONDSON,

TAYLOR, COMBS, JJ. - Concur

¶20 KAUGER, J. and GURICH, J. - Not Participating