

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

**IN THE MATTER OF
DAVID JOHN PETTINATO
STATE BAR CARD NO. 24080035**

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CAUSE NO. 67468

AGREED JUDGMENT OF SUSPENSION

On this day the above-styled and numbered reciprocal disciplinary action was called for hearing before the Board of Disciplinary Appeals. Petitioner appeared by attorney and Respondent appeared in person as indicated by their respective signatures below and announced that they agree to the findings of fact, conclusions of law, and orders set forth below solely for the purposes of this proceeding which has not been fully adjudicated. Respondent waives any and all defenses that could be asserted under Rule 9.04 of the Texas Rules of Disciplinary Procedure. The Board of Disciplinary Appeals, having reviewed the file and in consideration of the agreement of the parties, is of the opinion that Petitioner is entitled to entry of the following findings, conclusions, and orders:

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

- (1) Respondent, David John Pettinato, Bar Card No. is 24080035, is an attorney licensed and authorized to practice law in the State of Texas by the Supreme Court of Texas.
- (2) On or about November 7, 2022, a Petition for Approval of Conditional Guilty Plea for Consent Judgment was filed with the Supreme Court of Florida in a matter styled, *The Florida Bar, Complainant, v. David John Pettinato, Respondent*, Supreme Court Case No. SC-, The Florida Bar File Nos. 2018-10(13D), 2019-10(13D).
- (3) On or about November 7, 2022, a Conditional Guilty Plea for Consent Judgment - Exhibit A to the Petition for Approval of Conditional Guilty Plea for Consent Judgment, was filed, that states in pertinent part:

6. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

A. The Florida Bar File No. 2018-10,276 (13D): Respondent was co-counsel for a Colorado corporation in an insurance dispute matter against Auto-Owners Insurance Company. In September 2015, the court ordered the parties to select an appraiser pursuant to the appraisal provision in the policy at issue. When the parties could not agree on the ground rules for the appraisal, the court-imposed guidelines to govern the appraisal process, including disclosure requirements.

The court's guideline required each appraiser "after making a reasonable inquiry," to "disclose to all parties and any other appraiser any known facts that a reasonable person would consider likely to affect his or her impartiality, including (a) a financial or personal interest in the outcome of the appraisal; and (b) a current or previous relationship with any of the parties (including their counsel or representatives) or with any of the participants in the appraisal proceeding, including licensed public adjusters, witnesses, another appraiser, or the umpire." Respondent and his co-counsel requested from managing members of their firm any disclosures that may be required, and none were identified.

Thereafter, the appraiser completed a court-ordered disclosure with assistance from respondent. The disclosure indicated the appraiser had no significant prior business relationships with respondent's firm that would affect his professional appraisal.

Auto-Owners Insurance Company objected to the use of the chosen appraiser. The court found the chosen appraiser's disclosure insufficient as the appraiser had been involved in prior cases with respondent and respondent's firm, respondent appeared in the appraiser's brochure five years prior, and an attorney within respondent's firm had incorporated and was the registered agent for the appraiser's company. As a result, the court dismissed the matter with prejudice and awarded attorney fees and expenses against respondent and his co-counsel individually.

B. The Florida Bar File 2019-10, 196 (13D): Respondent represented plaintiffs, Tibor Kormanyos and Laura Murphy, in a lawsuit against their insurance provider, Avatar Property

and Casualty Insurance Company (Avatar), for alleged breach of policy by denying a water loss claim. Prior to respondent's representation of the policyholders, on March 26, 2016, public adjustor Craig Kobel emailed Mr. Kormanyos and instructed him and Ms. Murphy to sign, have notarized, and return a Proof of Loss that was attached to the email, as was required by the policy. On March 29, 2016, at 8:19 pm, Mr. Kormanyos and Ms. Murphy signed the document and returned it to Mr. Kobel via email. Mr. Kobel then emailed the document to Eileen Keeler, an office manager within his office, and instructed her to notarize the document. On March 30, 2016, Mr. Kobel submitted the notarized document to Avatar as a sworn Proof of Loss. On May 2, 2016, Avatar denied the claim of Mr. Kormanyos and Ms. Murphy. On August 22, 2016, respondent filed suit against Avatar on behalf of Mr. Kormanyos and Ms. Murphy. On November 29, 2017, Mr. Kormanyos, Ms. Murphy, and Mr. Kobel individually executed affidavits in opposition to Defendant's Motion for Summary Judgment and Defendant's Motion to Dismiss. In these affidavits, Mr. Kormanyos, Ms. Murphy, and Mr. Kobel affirmed they had submitted a sworn Proof of Loss to Avatar, as required by policy, referring to the Proof of Loss that was notarized by Ms. Keeler.

On December 8, 2017, counsel for Avatar took the deposition of Mr. Kormanyos. The evening before the deposition, on December 7, 2017, respondent first learned that the sworn Proof of Loss was not properly notarized. To correct the issue with the notarization of the original Proof of Loss, respondent provided opposing counsel a second Proof of Loss, executed the morning of December 8, 2017, just prior to the deposition. During the deposition, Mr. Kormanyos testified that he and Ms. Murphy went to the UPS Store where Ms. Keeler notarized the original Proof of Loss in their presence.

Respondent attempted to clarify the misstatements and inform the parties of the issue with the Initial Proof of Loss during the deposition, in his response brief, and in the hearing on August 22, 2018, but failed to do so in a timely manner.

C. By virtue of the foregoing, respondent admits he violated the following Rules regulating The Florida Bar: 4-4.1 (b) (Truthfulness in Statements to Others); 4-3.3(a)(1) (Candor

Toward the Tribunal); 4-3.4(c) (Fairness to Opposing Party and Counsel); 4-8.4(d) (Misconduct).

- (4) On or about November 17, 2022, an Order was entered by the Supreme Court of Florida in a matter styled, *The Florida Bar, Complainant, v. David John Pettinato, Respondent*, Supreme Court Case No. SC22-1515, Lower Tribunal No(s): 2018-10,276 (13D); 2019-10,196 (13D); that states in pertinent part as follows:

. . . The conditional guilty plea and consent judgment for discipline are approved and respondent is suspended from the practice of law for ten days, effective thirty days from the date of this order so that respondent can close out his practice and protect the interests of existing clients. If respondent notifies this Court in writing that he is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall fully comply with Rule Regulating the Florida Bar 3-5.1(h). Respondent shall also fully comply with Rule Regulating the Florida Bar 3-6.1, if applicable. Respondent is further directed to comply with all other terms and conditions of the consent judgment.

- (5) Respondent, David John Pettinato, is the same person as the David John Pettinato, who is the subject of the Order entered by the Supreme Court of Florida; and
- (6) The Order entered by the Supreme Court of Florida is final.

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

- (1) This Board has jurisdiction to hear and determine this matter. TEX. RULES DISCIPLINARY P. R. 7.08(H).
- (2) Reciprocal discipline identical, to the extent practicable, to that imposed by the Supreme Court of Florida, is warranted in this case.
- (3) Respondent should be actively suspended from the practice of law for a period of ten (10) days.

It is, accordingly, **ORDERED, ADJUDGED, AND DECREED** that Respondent, David John Pettinato, State Bar Card No. 24080035, is hereby **SUSPENDED** from the practice of law in

Texas for a period of ten (10) days. Respondent shall be actively suspended from the practice of law for a period of ten (10) days beginning Feb. 10, 2023, and extending through Feb. 19, 2023.

It is further **ORDERED, ADJUGED, and DECREED** that Respondent, David John Pettinato, during said suspension is prohibited from practicing law in Texas; holding himself out as an attorney at law; performing any legal service for others; accepting any fee directly or indirectly for legal services; appearing as counsel or in any representative capacity in any proceeding in any Texas or Federal court or before any administrative body; or holding himself out to others using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law", or "lawyer."

It is further **ORDERED** that, within fifteen (15) days of the signing of this judgment, Respondent shall notify each of Respondent's current clients and opposing counsel in writing of this suspension.

In addition to such notification, it is further **ORDERED** that Respondent shall return any files, papers, unearned monies and other property belonging to current clients in Respondent's possession to the respective clients or to another attorney at the client's request.

It is further **ORDERED** that Respondent shall file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within fifteen (15) days of the signing of this judgment, an affidavit stating all current clients and opposing counsel have been notified of Respondent's suspension and that all files, papers, monies and other property belonging to all current clients have been returned as ordered herein.

It is further **ORDERED** that Respondent shall, within fifteen (15) days of the date of this judgment, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court or tribunal, in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address, and telephone number of the client(s) Respondent is representing. Respondent is also **ORDERED** to mail copies of all such notifications to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further **ORDERED** that Respondent shall file with the State Bar of Texas, Statewide Compliance Monitor, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within fifteen (15) days of the date of this judgment, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address, and telephone number of the client(s) Respondent is representing in Court.

It is further **ORDERED** that, within fifteen (15) days of the date of this judgment, Respondent shall surrender his law license and permanent State Bar Card to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

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

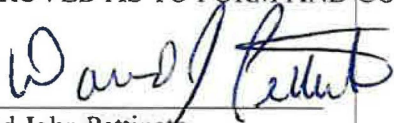
It is further **ORDERED** that this Judgment of Suspension shall be made a matter of public record and be published in the *Texas Bar Journal*.

Signed this 11th day of January 2023.

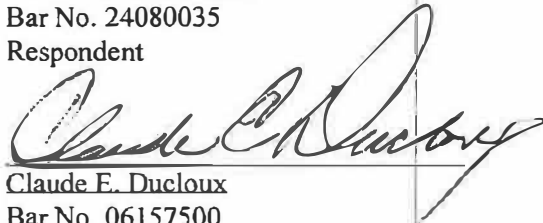


CHAIR PRESIDING

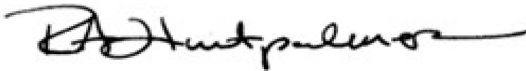
APPROVED AS TO FORM AND CONTENT:



David John Pettinato
Bar No. 24080035
Respondent



Claude E. Ducloux
Bar No. 06157500
Counsel for Respondent



Richard Huntpalmer
Bar No. 24097857
Attorney for Petitioner