



FILED  
6/2/25

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

**THE BOARD of DISCIPLINARY APPEALS**  
*Appointed by the Supreme Court of Texas*

**IN THE MATTER OF  
KENNETH MICHAEL PLAISANCE,  
STATE BAR CARD NO. 24045166**

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**CAUSE NO. 69894**

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**PETITIONER'S RESPONSE TO RESPONDENT'S  
ANSWER AND MOTION FOR SUMMARY JUDGMENT**

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**TO THE BOARD OF DISCIPLINARY APPEALS:**

COMES NOW Petitioner, the Commission for Lawyer Discipline ("CFLD"), and files this Response to Respondent's, Kenneth Michael Plaisance ("Respondent"), Answer and Motion for Motion for Summary Judgment. In support thereof, Petitioner would show the Board the following:

**I. INTRODUCTION**

Petitioner filed its Petition for Reciprocal Discipline with the Board of Disciplinary Appeals against Respondent on August 13, 2024. Following numerous failed attempts at service, Petitioner filed its First Amended Petition on November 5, 2024. Thereafter, and following more failed attempts at service, Petitioner filed its Second Amended Petition on February 20, 2025. Thereafter, an Order to Show Cause was issued to Respondent by the Board of Disciplinary Appeals on February 25, 2025, requiring Respondent to show cause within 30 days of the Order why identical discipline should not be imposed. Respondent was served with a copy of the Second Amended Petition and Order to show cause via certified mail on March 10, 2025.

On March 18, 2025, Respondent sent a letter to this Board asking for a 30-day extension to file responsive pleadings and to continue the Show Cause Order of February 25, 2025. In the letter, Respondent attests that he received the Second Amended Petition on March 14, 2025. On March

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19, 2025, Respondent filed a pleading entitled “Made Respondent Motion to Dismiss.” On March 21, 2025, Respondent filed the following: Motion to Dismiss the Original and First Amended Petition for Reciprocal Discipline, Second Motion to Dismiss the Original and First Amended Petitions for Reciprocal Discipline, and a document entitled, “Cases Involving Texas Disciplinary Counsel and Online Defamation of Attorneys.”

In response, on March 25, 2025, this Board entered an Order on Respondent’s Motions. The order identifies Plaintiff’s Second Amended Petition and Show Cause Order as the live pleadings. The Board’s order acknowledges that Respondent’s pleadings raise defenses under Texas Rule of Disciplinary Procedure 9.04(A) and (D), as well as an argument under Texas Rule of Disciplinary Procedure 17.06, and states that Respondent’s request for additional time is “**DISMISSED** as moot.” Further, the Board instructed Respondent to file an Amended answer should he wish to assert further arguments or defenses. The Board’s order also denies any request by Respondent seeking immediate dismissal of the disciplinary action as well as Respondent’s request to strike all documents attached to Petitioner’s petition and to remove pleadings from the Board’s website. On the same day the Board entered their March 25, 2025, order, Respondent filed a Motion for Summary Judgment.

In order to provide this Board with briefing in support of the Reciprocal Disciplinary Petition and to address the defenses argued by Respondent in his many pleadings, on March 25, 2025, Bar Counsel reached out to Respondent via email regarding a proposed agreed motion for continuance and briefing schedule. When Respondent did not respond to Bar Counsel, Petitioner filed its Opposed Motion for Continuance and Proposed Briefing Schedule on March 27, 2025. When the Board emailed Respondent to inquire about his opposition or lack thereof, Respondent responded that he was in agreement with the proposed motion.

On March 31, 2025, Respondent filed his Answer and Defenses to the Original Petition for Reciprocal Discipline. On April 7, 2025, the Board entered an order granting Petitioner's Motion for Continuance and the Reciprocal Disciplinary Matter, originally scheduled to occur April 25, 2025, was moved to occur July 25, 2025, at 9:00 am. The order also ordered that all briefing in response to Respondent's answer, defenses, and any other responsive pleadings or dispositive motion be filed no later than June 2, 2025. To that end, Petitioner now files this Response to Respondent's Answer and Defenses.

## **II. BACKGROUND**

This is a Reciprocal Disciplinary matter arising out of discipline imposed against Respondent in Louisiana. The pertinent underlying facts of the grievance which led to Respondent's sanction are as follows.

On June 14, 2017, Lawan Rousell<sup>1</sup> ("Lawan"), a minor, was a passenger in a vehicle driven by his father, Larry Taylor ("Taylor"), which collided with an eighteen-wheeler driven by Travis James d/b/a CMDT Trucking. *See generally Exhibit 2* at Bates Nos. 100 - 105. Lawan and Taylor both suffered serious bodily injuries. *Id.* On June 15, 2017, Melvia Hodges, individually and on behalf of Lawan, signed a retainer agreement with Respondent through which Respondent agreed to provide representation to Melvia Hodges, individually and on behalf of Lawan. *Id.* and *Exhibit 2* at Bates Nos. 123 – 125. On July 27, 2017, Progressive Insurance agreed to tender policy limits in the amount of 15,000 for claims asserted by Melvia Hodges on behalf of Lawan against Taylor through Taylor's Progressive insurance policy. *Id.* at Bates No. 106. While representing Lawan in Lawan's claims against Taylor (driver of the car that rear ended the 18-wheeler and in which Lawan

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<sup>1</sup> The Federal Pleadings spell minor Lawan Rousell's name with two "L"s. The Louisiana Documents spell Lawan Roussel's name with two "S"s. This brief will use the Federal case spelling.

was a passenger at the time of the collision), Respondent filed a joint petition in State Court on behalf of Melvia Hodges and Larry Taylor against the 18-wheeler driver, despite warnings from multiple other attorneys that a non-waivable conflict of interest existed between Lawan and Taylor. *Exhibit 2* at Bates Nos. 128, 156-157, 160, and 186 – 2012 and *Exhibit 3* at Bates Nos. 231 – 255.

Due to the conflict, and at the urging of numerous consulting attorneys, on June 14, 2018, Michael Ecuyer (“Attorney Ecuyer”) filed a Complaint for Damages on behalf of Melvia Hodges, as Lawan’s guardian. *See Exhibit 2* at Bates Nos. 148 – 155. On June 16, 2018, Taylor and Lawan’s federal cases were consolidated into case number 2:18-cv-05889. In or around August 2018, attorney Craig Robinson (“Attorney Robinson”) was retained and substituted as attorney of record in the federal case to represent Taylor. *Id.* at Bates No. 160.

Thereafter, on October 16, 2018, Respondent filed a pleading in the consolidated federal matters entitled Motion/Petition to Intervene to Collect Attorneys Fees in Memo Incorporated, asserting an attorney’s lien and asking the trial court to award 40% of Lawan’s settlement funds to Respondent for attorney’s fees. *See generally Exhibit 3*. In the motion, Respondent acknowledges that he was informed of a conflict of interest but acquired a conflict-of-interest waiver. *Id.* at 223. Respondent justifies his argument by attaching a copy of the contingency fee agreement signed by Melvia Hodges, on behalf of Rousell, as well as the two separate waivers of a conflict of interest signed by both Melvia Hodges on behalf of Lawan and signed by Taylor. *Id.* at 228 – 234. The matter settled at a mediation held in May of 2019; Respondent did not appear. *Exhibit 2* at Bates No. 104.

In response, on September 4, 2019, Attorney Ecuyer filed a Memorandum in Support of Motion to Determine Conflict-Free Status and Entitlement to Attorney’s Fees. Attorney Ecuyer argued that the potential for an unwaivable conflicted always existed “with respect to the dual

representation of Lawan and Taylor because Taylor rear-ended the eighteen-wheeler after the truck effected an illegal U-turn and, therefore, Taylor likely had some liability in the matter.” *Exhibit 2* at Bates No. 101. Attorney Ecuyer further argued that “[t]his concern for a potentially unwaivable conflict should have become heightened when, following the collision, Taylor’s drug screen tested positive for THC, indicating that marijuana was present in his system.” *Id.* Attorney Ecuyer’s pleading goes on to explain how, prior to filing in Federal Court, Respondent sought out other firms to handle the litigation in Federal Court. Attorney Ecuyer also explains the many warnings given to Respondent by several of the attorneys consulted during the search for Federal litigation counsel. *Id.* at Bates Nos. 101-103.

On July 19, 2019, Attorney Ecuyer contacted the Louisiana Office of the Disciplinary Counsel regarding whether it would be acceptable under the Louisiana Ethics rules to share fees with an attorney with a potential unwaivable conflict of interest. *Id.* at Bates Nos. 104-105. Attorney Ecuyer stated that he was told to seek a determination from the Court, which prompted Attorney Ecuyer to file the motion with the court to determine the fee dispute. *Id.* Finally, Attorney Ecuyer stated that, due to Respondent’s intervention, defense counsel refused to pay out settlement of the claims for Melvia Hodges, on behalf of Lawan. *Id.* at Bates No. 105.

On October 7, 2019, the Court entered their order on the Motion to Determine Conflict-Free Status and Entitlement to Attorney’s Fees. *See generally Exhibit 4.* The Court ruled that, “it was clear from the outset that there was a possibility that Taylor was at least partially liable for the injuries sustained by [Lawan].” *Id.* at Bates Nos. 256-257. The Court further held that, “[t]here is no evidence that this conflict was waived by the parties. Accordingly, Plaisance was operating under a conflict of interest during his representation of both Plaintiff and Taylor. Because Plaisance received a fee from the settlement of Taylor’s claims, he is not entitled to share in the fees from the

settlement of [Lawan's] claims.” *Id.* at Bates No. 257.

The Louisiana Attorney Disciplinary Board became involved in these matters when Attorney Ecuyer filed a grievance against Respondent based on Respondent's actions surrounding the Lawan/Taylor matters. Accordingly, in December of 2021, the Office of Disciplinary Counsel (“LA OCD”) filed formal charges against Respondent alleging that his conduct violated Louisiana Rules of Professional Conduct: 1.4 – for failure to communicate with a client, 1.7(a) – for engaging in representation that allowed a conflict of interest between concurrent client, 3.1 – for seeking to collect attorneys’ fees in pursuit of a conflicted representation, and 8.4(d) for engaging in conduct prejudicial to the administration of justice. *See Exhibit 1* at Bates No. 5.

A formal hearing in front of a hearing committee was set to occur on May 11, 2022, however, on April 11, 2022, Respondent filed a motion to continue the hearing. *Id.* The LA OCD opposed the continuance, and the motion was denied by the hearing committee on April 18, 2022. *Id.* On April 25, 2022, Respondent filed a Motion for Summary Judgment, however, such motion is prohibited prior to the completion of the evidentiary record, and the motion was denied on April 27, 2022. *Id.*

Thereafter, on May 9, 2022, attorney Luke Fontana (“Attorney Fontana”) entered a notice of appearance on behalf of Respondent and filed a second motion to continue. *Id.* The motion was denied the same day. Then, On May 11, 2022, another motion to continue was sent by fax to the LA OCD by Attorney Fontana. *Id.* The fax attached a “doctor’s note indicating that Respondent was unable to attend the hearing ‘due to health concerns’,” and neither Attorney Fontana nor Respondent appeared at the hearing. *Id.* at Bates Nos. 5 – 6. At the hearing, LA OCD “introduced documentary evidence and called attorney Michael Ecuyer of the Gainsburgh firm to testify before the committee.” *Id.* at Bates No. 6.

In a strange turn of events, when contacted by an LA ODC investigator, Attorney Fontana denied ever representing Respondent. *Id.* at Bates No. 6. When asked, Respondent indicated that he had paid Attorney Fontana's paralegal to retain Attorney Fontana. *Id.* "Under these circumstances, the [hearing] committee reopened the hearing to receive evidence and testimony regarding this conflicting information. The second hearing took place on September 23, 2022." *Id.*

Again, Respondent failed to attend the hearing, and no one appeared on his behalf. *Id.* Bar Counsel for the LA ODC entered Respondent's October 5, 2020, sworn statement as evidence. *Id.* Respondent's statement averred that he was aware of the conflict of interest between Lawan and Taylor, which is why he obtained conflict of interest waivers signed by Taylor and Melvia Hodges. *Id.* Respondent stated that he believed that the question of an unwaivable conflict was not settled one way or the other in this matter. *Id.*

Attorney Ecuyer also testified at the hearing. *Id.* at Bates No. 7. Attorney Ecuyer testified that "he and other attorneys repeatedly told respondent that he could not represent both Mr. Taylor and Lawan," and that he told Respondent that "the conflict of interest was not waivable." *Id.* Attorney Ecuyer also testified that Respondent's attempt to secure a portion of the settlement funds delayed the funds being disbursed to Lawan for eight or nine months. *Id.* Additionally, Attorney Fontana appeared and testified that he had never spoken with, was never retained by, and did not file any pleadings on behalf of Respondent. *Id.* Attorney Fontana testified that he speculated that his paralegal, who boasted an extensive criminal history spanning several states, had taken Respondent's retainer and falsely communicated the representation to Respondent, and that he had not heard from the paralegal in a significant amount of time. *Id.* at Bates Nos. 7-8.

Ultimately, the committee found that:

- Respondent disregarded the requirement of a conflict-free representation of Mr. Taylor and Lawan jeopardizing their

- constitutional Sixth Amendment Rights;
- Respondent jeopardized their recovery of damages for their injuries;
- Respondent caused additional work by and placed additional burdens upon legal counsel in at least two law firms who were required to prevent his violation of the Rules of Professional Conduct;
- Respondent unnecessarily increased the workload of both the United States District Court for the Eastern District of Louisiana and the United States Fifth Court of Appeals;
- Respondent contributed to the erosion of trust in the integrity of the bar and the judicial system;
- Respondent delayed, for approximately eight or nine months, the payment of damages in the form of settlement funds to three plaintiffs and their families due to his persistent litigation;
- Respondent caused added expenses, including costs and attorney's fees, for all parties due to his motion to intervene in the federal court settlement and his frivolous appeal to the United States Fifth Circuit Court of Appeals;
- Because of the increased attorney's fees, respondent reduced the parties' recoveries;
- Even if respondent believed he was represented at the May 11, 2022 disciplinary hearing, he has since learned he was not; yet he still has not provided any mitigating evidence or an explanation for his absence at the September 23, 2022 hearing;
- The medical note provided to the committee was presented by fraudulent means either by respondent or by Mr. Fontana's paralegal; respondent has provided no subsequent information regarding his absence, the fraudulent filing, or his position as to the formal charges; and
- Despite the September 23, 2022 hearing, the committee is unable to reach a conclusion as to whether respondent's absence at the May 11, 2022 hearing was due to his own attempted fraud or because he was the victim of Mr. Fontana's paralegal.

*Id.* at Bates No. 9.

The hearing committee also “determined respondent violated the Rules of Professional conduct as charged,” “respondent knowingly and intentionally violated duties owed to his clients, the legal system, and the legal profession, which caused actual harm,” and “recommended Respondent be suspended from the practice of law for two years and one day, with one year deferred.” *Id.* at Bates Nos. 9 – 10.

The hearing committee's findings were next sent to the Louisiana Disciplinary Board ("LDB"). The LDB further found that although Respondent requested his sworn statement, scheduled for September 10, 2020, be postponed so he could obtain counsel, Respondent admitted that he made no effort to retain an attorney. *Id.* Respondent also admitted that he knew Taylor was potentially at some fault for the motor vehicle collision, but he never disclosed to his clients that an unwaivable conflict of interest would exist in representing Taylor and Lawan simultaneously. *Id.* The LDB also found that Respondent failed to adequately participate in the LA ODC's investigation and the hearing before the hearing committee. *Id.* at Bates No. 11. The LDB determined that Respondent violated Louisiana Rules 1.4, 1.7(a), 3.1, and 8.4(d). *Id.* The LDB also determined that Respondent knowingly and intentionally violated duties owed to his clients, the legal system, and the legal profession, which caused actual harm. *Id.* "After further considering the court's prior case law addressing similar misconduct, the [LDB] recommended respondent be suspended from the practice of law for two years and one day, with one year deferred." *Id.* at Bates No. 12. "Neither respondent nor the [LA] ODC filed an objection to the board's report and recommendation." *Id.*

Accordingly, after consideration, on February 6, 2024, the Louisiana Supreme Court entered their final Order stating, "[u]pon review of the findings and recommendation of the hearing committee and the disciplinary board, and considering the record, it is ordered that Kenneth M. Plaisance, Louisiana Bar Roll number 19738, be and he hereby is suspended from the practice of law for a period of two years and one day, with one year deferred." *Id.* at Bates No. 14.

### **III. ARGUMENT AND AUTHORITY**

- A. Respondent has failed to prove by clear and convincing evidence that he is entitled to any defense to the Petition for Reciprocal Discipline.

Part 9 of the Texas Rules of Disciplinary Procedure governs Reciprocal Discipline Matters.

Rule 9.01 states that,

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“[u]pon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, including by any federal court or federal agency, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04...

TEX RULES DISCIPLINARY P.R. 9.01, *reprinted in* Tex. Gov’t Code Ann. tit. 2, subtit. G, app. A-1 (West 2013).

Petitioner has filed a certified copy of the Order Per Curium, dated February 6, 2024, entered by the Supreme Court of Louisiana styled Supreme Court of Louisiana, Case No. 2023-B-1460, styled *In Re: Kenneth M. Plaisance*. To the best of Petitioner’s knowledge, at no time during this proceeding has Respondent argued that his judgment is not final. As such, the Respondent’s sanction and finding of misconduct are conclusive.

Rule 9.04 of the Texas Rules of Disciplinary Procedure enumerates five defenses available to contest a Reciprocal Disciplinary Matter. TEX RULES DISCIPLINARY P.R. 9.04. In order for Respondent to avail himself of these defenses, Respondent is required to prove by clear and convincing evidence that he has met the requirements of the defense. *Id.* Respondent has failed to meet that burden.

*1) The conduct for which Respondent was sanctioned constitutes Professional Misconduct in this State.*

In his Answer, Respondent “denies the existence of” of the rule violations found by the Louisiana Disciplinary Board. Respondent denies that he knowingly and intentional violated Louisiana Ethics Rules 1.4 (failure to communicate the existence of an unwaivable conflict of interest), 1.7 (concurrent conflict of interest), 3.3 (seeking to collect attorney’s fees in pursuit to a

conflicted representation)<sup>2</sup>, or 8.4(d) (conduct prejudicial to the administration of justice). *Respondent's Answer at 2 – 3*. Respondent further argues that none of these rules exist in the Texas Rules of Professional Conduct. Respondent is wrong.

- i. Each of the of the Louisiana Ethics Rules Respondent is found to have violated has a directly analogous rule under the Texas Rules of Professional Conduct

To begin, Respondent was found to have knowingly and intentionally violated Louisiana Ethics Rules 1.4. *Exhibit 1* at Bates Nos. 11 – 12. Louisiana Rule 1.4 reads as follows:

- (a) A lawyer shall:
  - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.
- (c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

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<sup>2</sup> Both the LBD and the Louisiana Supreme Court clarify that the LA ODC mistakenly listed 3.3 as the alleged rule violation, but meant to allege rule 3.1 (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.” LA ST BAR ART 14 RPC Rule 3.1.) *See Exhibit 1* at Bates No. 5 and 11-12. Rule 3.1 is the rule that was found to have been violated by Respondent. *Id.*

LA ST BAR ART 14 RPC Rule 1.4. None of the judgments specify which subpart is implicated, but, given the surrounding context – detailed at length above, it is reasonable to infer that, at minimum, subsections (a) and (b) are implicated.

Analogous Texas Rules of Professional Conduct 1.03 reads: (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.03, *reprinted in* Tex. Gov't Code., tit. 2, subtit. G, app. A (West 2013) (Tex. State Bar R. art. X §9). While Louisiana Rule 1.4 goes into more detail regarding how you can fail to adequately communicate with your client in violation of the Rule, the spirit and purpose of Texas Rule 1.03 and Louisiana Rule 1.4 are identical. As explained above, Respondent was found to have improperly explained the presence and potential harms of the conflict of interest to Taylor, Melvia Hodges, and Lawan. *Exhibit 1* at Bates No. 13. Accordingly, it is within this Board's discretion to find that Louisiana Rule 1.4 is analogous to Texas Rule 1.03 and therefore Respondent is subject to Reciprocal Discipline and a sanction which is as identical as is practicable.

Next, Respondent was found to have knowingly and intentionally violated Louisiana Rule 1.7(a). Rule 1.7 reads as follows.

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

LA ST BAR ART 14 RPC Rule 1.7.

Analogous Texas Rule of Professional Conduct 1.06 reads as follows.

- (a) A lawyer shall not represent opposing parties to the same litigation.
- (b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:
  - (1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyers firm; or
  - (2) reasonably appears to be or become adversely limited by the lawyers or law firm's responsibilities to another client or to a third person or by the lawyers or law firm's own interests.
- (c) A lawyer may represent a client in the circumstances described in (b) if:
  - (1) the lawyer reasonably believes the representation of each client will not be materially affected; and
  - (2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.
- (d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.
- (e) If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.
- (f) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.

Louisiana's Rule 1.7 and Texas's Rule 1.06 are identical in spirit and largely identical in their composition. Both rules state that a lawyer should not engaged in representing two clients at

the same time if one of those clients could be reasonably harmed or limited by the representation of the other. Likewise, both rules contemplate situations where an attorney could represent both parties. Under both rules, a respondent is required to secure a waiver from each client with the presenting potential conflict. But the rules also require that an attorney to fully explain the nature and potential harms of the conflict itself. Respondent's waiver fail to explain the true nature of the conflict between dual representation of Lawan and Taylor. *See Exhibit 3* at Bates Nos. 231-234. Upon inspection of the waivers themselves, Respondent only informs his clients that "there may be a conflict of interest because of two insurance companies [being] sued under Progressive Corporation." *Id.* Respondent entirely fails to discuss how Lawan likely has claims to be made directly against Taylor which could thereby limit the recovery of Taylor. Accordingly, it is well within the discretion of this Board to determine that Respondent is subject to Reciprocal Discipline and a sanction that is as identical as is practicable.

Respondent was also found to have knowingly and intentionally violated Louisiana Rule Louisiana Rule 3.1 Louisiana Rule 3.1 states that, "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law...LA ST BAR ART 14 RPC Rule 3.1. Texas Rule 3.01 is almost verbatim the same as 3.1. It states, "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 3.01. Accordingly, in this Board's broad discretion, it should be found that Respondent is subject to Reciprocal Discipline and should be sanctioned as identical as is practicable.

Finally, Respondent was found to have knowingly and intentionally violated Louisiana Rule 8.4(d). Rule 8.4(d) states that [i]t is professional misconduct to engage in conduct that is prejudicial to the administration of justice. LA ST BAR ART 14 RPC Rule 8.4. Analogous Texas Rule of Professional Conduct 3.01 states that [a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous. The Louisiana Supreme Court specifically held that Respondent “attempted to obtain a fee he was barred from receiving because of the conflict and filed frivolous pleadings, all of which delayed the parties receipt of their settlement funds for months. Respondent’s delaying tactics spilled over into the disciplinary proceedings, and he failed to appear at both disciplinary hearings without explanation.” *Exhibit 1* at Bates Nos. 13-14. Accordingly, it is within this Board’s discretion to find that Respondent is subject to Reciprocal Discipline and should be sanctioned as identical as is practicable.

*2) Respondent was not denied due process during the Louisiana Disciplinary Proceeding.*

Rule 9.04(A) allows Respondent a defense in the event “that the procedure followed in the other jurisdiction on the disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.” TEX RULES DISCIPLINARY P.R. 9.04(A).

Respondent asserts that he was denied due process because Attorney Ecuyer, who filed the grievance against him, was “made the chairperson/judge of LABD (Louisiana Board of Discipline) presiding over Respondent’s hearing,” and that Attorney Ecuyer “had a strong influence over the Board and its decisions.” *Respondent’s Answer* at 5. Bar Counsel was able to secure an affidavit from Attorney Ecuyer, attached herein as Exhibit 5. *See generally Exhibit 5*. In his affidavit, Attorney Michael J. Ecuyer expressly states that he “did not serve as a member of Mr. Plaisance’s Hearing Committee, but rather was called as a witness at the hearing and presented testimony in

the matter.” *Exhibit 5* at Bates No. 259. Attorney Ecuyer goes on to state that he “served as chair of another Hearing Committee for the Louisiana Attorney Disciplinary Board from 2010 to 2015, and again from 2018 through 2023.” *Id.* Finally, Attorney Ecuyer states that he has “never served on a Disciplinary Hearing Committee with any of the three people who served on Mr. Plaisance’s Hearing Committee.” *Id.*

Respondent also alleges that he was denied due process when the Louisiana Disciplinary Hearing Committee denied his multiple motions for continuance and held two hearings without his presence. Respondent would have this court believe that the fault of Respondent’s failure to attend either hearing was due to prejudice or abuse of discretion in the Louisiana Disciplinary process. What Respondent fails to acknowledge is that nowhere in the underlying disciplinary process did Respondent raise a due process objection or defense. Respondent also failed to object to or appeal the recommendations of the Hearing Committee, the Louisiana Board of Discipline, or the Louisiana Supreme Court. Further, as explained above, when the Louisiana Hearing Committee learned that there were conflicting stories and issues surrounding Respondent’s purported retained counsel, they reopened the hearing to allow Respondent to testify and provide evidence and defenses regarding Attorney Fontana, as well as the facts and allegations surrounding the alleged underlying misconduct. While Respondent does allege that he was under doctor’s orders not to attend any hearings, the Louisiana Hearing Committee, the Louisiana Disciplinary Board, and the Louisiana Supreme Court all found that Respondent failed to produce evidence to substantiate the doctor’s note and further failed to attend the second hearing without further explanation.

Accordingly, Respondent has failed to prove his defense by clear and convincing evidence and therefore remains subject to Reciprocal Discipline and imposition of a sanction as identical as is practicable to that imposed by the Louisiana Supreme Court Order.

- 3) *Respondent has failed to prove that there was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board of Disciplinary Appeals should not accept as final the conclusion on the evidence reached in the other jurisdiction.*

At the time this hearing will commence on July 25, 2025, numerous attorneys will have explained to numerous tribunals the vast depth of evidence showing that Respondent knowingly and intentionally entered into representation for potentially adverse parties in order to obtain prohibited fees. This brief alone attaches three separate cases worth of evidence specifically enumerating each time Respondent was warned against the simultaneous representation of Lawan and Taylor.

It is incumbent upon Petitioner to point out that Respondent ironically misstates numerous details in his attempts to argue the infirmity of proof. For instance, Respondent argues that he “informed Larry Taylor Jr. that he could not represent him and his son Lawan Rousell at the same time and that Mr. Taylor can do it pro se or get another attorney.” *Respondent’s Answer* at 6. However, the available evidence shows that Respondent represented Taylor and Lawan simultaneously. *See Exhibit 3* at Bates Nos. 228 – 234. Additionally, Respondent alleges that “Mr. Taylor was legally represented by Progressive insurance company’s legal counsel – Attorney Pat Derougn.” *Respondent’s Answer* at 6. First, there is no such person involved in this matter named Pat Derougn, though there is a Pat DeRouen, who was lead counsel for Progressive Northern Insurance on behalf of the eighteen-wheeler driver. *See Exhibit 2* at Bates No. 185

Finally, Respondent’s answer repeatedly alleges that attorney Ferdinand Valteau was somehow involved and retained to alleviate Respondent’s conflict of interest and to represent Larry

Taylor. *Respondent's Answer* at 6-7. Respondent specifically states that “Larry Taylor Jr. was represented by Progressive Insurance Company’s legal counsel under Mr. Taylor’s policy, was represented by Ferdinand Valteau in State Court and by Craig Robinson in Federal Court. *Respondent's Answer* at 8. However, Attorney Valteau’s name does not appear anywhere in the pleadings in the underlying motor vehicle litigation or any of the Louisiana Discipline documents. Contradictorily, Respondent signed as lead attorney of record the Louisiana State Court Petition for Damages filed on behalf of “Plaintiffs Larry Taylor Jr., Melvia Taylor, aka Melvia Hodges, Individually, and as Natural Mother, and Parent and Administrator of Her Minor Child – (name redacted), and Larry Taylor Jr., Individually and as Natural Father and Co-Administrator of the Minor (name redacted).” *Exhibit 3* at Bates Nos. 236 – 254. This pleading, filed and submitted by Respondent himself, is attached to Respondent’s Motion/Petition to Intervene to Collect Attorneys Fees Memo Incorporated. *Id.*

Based on the available evidence, and the conclusive findings of the Order from the Supreme Court of Louisiana, Respondent’s conduct is undoubtedly in violation of both the Texas and Louisiana ethics rules. Accordingly, Respondent has failed to prove this defense by clear and convincing evidence and therefore remains subject to Reciprocal Discipline and imposition of a sanction as identical as is practicable to that imposed by the Louisiana Supreme Court Order.

*4) Respondent has failed to prove that the discipline imposed by Louisiana warrants substantially different discipline.*

Rule 15.01 of the Texas Rules of Disciplinary Procedure states that a disciplinary tribunal should consider the following factors when imposing a sanction: the duty violated; Respondent’s level of culpability; potential or actual injury caused by the Respondent’s misconduct; and the existence of aggravating or mitigating factors. *See generally* TEX RULES DISCIPLINARY P.R. 15.02.

As previously argued, every rule Respondent is found to have violated has a directly  
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analogous rule in Texas. Respondent is therefore subject to Reciprocal Discipline and should be sanctioned as identically as is practicable. Further, under the Texas guidelines for imposing sanctions, the analogous sanctions as enumerated in Rule 15.04(D)(2) states that, “[s]uspension is generally appropriate when a Respondent knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.” TEX RULES DISCIPLINARY P.R. 15.04(D)(2). This is exactly in line with Respondent’s actions.

Likewise, under Texas Rule 15.05(B), “[s]uspension is generally appropriate when a Respondent knows that he or she is abusing the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. TEX RULES DISCIPLINARY P.R. 15.05(B). The Louisiana Court found that Respondent’s frivolous filings caused settlement funds to be delayed in their disbursal for eight to nine months.

Accordingly, Louisiana’s imposition of a suspension for the duration of two years and a day, with one year deferred is in line with the Texas Sanction Guidelines. This is tantamount to what we could call in Texas a two-year and one day partially probated suspension with one-year-active suspension.

*5) Respondent failed to prove that imposition of a Public Reprimand would result in grave injustice.*

Respondent is tasked with proving by clear and convincing evidence each of his defenses. Aside from mentioning that imposition of Reciprocal Discipline would result in grave injustice, he provides no evidence, case law, or other argument to support his defense. Accordingly, he has failed to meet his burden of proof and is therefore subject to Reciprocal Discipline and imposition of a sanction as identical as is practicable to that imposed by the Louisiana Supreme Court Order.

*6) Petitioner is well within the applicable Statute of Limitations*

In Respondent's Motion to Dismiss submitted on March 21, 2025, "Respondent asserts and pleads that the Petition for Reciprocal Discipline is moot because the cause of action has been adjudge [sic] under the Axiom of Res Judicata, and is moot because of the 4 year time limitation rule in the Texas rules of Disciplinary Procedure 17.06. The cause action and the alleged misconduct appear to happen in 2017." While the facts and actions lending themselves to the underlying personal injury litigation occurred in 2017, Respondent's Louisiana Disciplinary Sanction, which provides the basis for the instant proceeding, was not complete until February 6, 2024. The Original Reciprocal Disciplinary Petition was originally filed on August 13, 2024. As explained above, Petitioner spent months attempting personal service of the Reciprocal Petition, First Amended Petition, and Second Amended Petition to no avail. *See generally Petitioner's Original, First, and Second Amended Petitions for Reciprocal Discipline.* Service was ultimately achieved in March of 2025 via certified mail. Accordingly, Petitioner is well within their four-year statute of limitations.

Accordingly, Respondent's statute of limitations defense fails and Respondent remains subject to Reciprocal Discipline and this Board should impose a sanction that is as identical as is practicable to that of the Louisiana Supreme Court.

#### **IV. CONCLUSION**

For the above reasons, Petitioner respectfully asks that Respondent be subject to Reciprocal Discipline as identical as is practical to the discipline, suspension for two years and one, with one year deferred, as imposed by the Louisiana Supreme Court, and enter a sanction of a two year and one day partially-probated suspension, with one-year-active suspension against Respondent Kenneth Michael Plaisance.

Respectfully submitted,

**Seana Willing**

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Amanda M. Kates

State Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document has been served on Respondent, Kenneth Plaisance, via electronic mail at [kplaws88@gmail.com](mailto:kplaws88@gmail.com) on this 2<sup>nd</sup> day of June 2025.



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Amanda M. Kates