



FILED

Mar 19 2025

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

*

CAUSE NO. 69894

STATE BAR CARD NO. 24045166

*

MADE RESPONDENT MOTION TO DISMISS

COMES NOW, Made Respondent in the above-captioned matter, and files this Motion to Dismiss, including a Special Exception, and in support thereof would respectfully show this Honorable Court as follows:

I. Lack of Due Process

1. The Respondent asserts that the disciplinary proceedings in the original jurisdiction failed to provide due process, in that, Respondent was not allowed legal representation and was not present at the hearing or disciplinary proceedings which violates the made defendant's rights under both the Texas and United States Constitutions.

II. MISCONDUCT DOES NOT WARRANT IDENTICAL DISCIPLINE

3. Even if the alleged misconduct occurred, it does not warrant identical discipline in Texas. Any disciplinary action taken in the original jurisdiction should not be given effect in the State of Texas because the Negligence Laws in Louisiana as it applies to the alleged client are different from the Negligence laws of Texas. Thus, the determination fact as it applies to Texas law would yield a different outcome if it happened in Texas.

Louisiana uses a pure comparative negligence model. Louisiana Civil Code Article 2323 provides that in any action for damages where a person suffers injury, death, loss, the degree or percentage of fault of all persons causing or contributing to the injury, death or loss shall be determined, regardless of whether the person is a party to the action or a nonparty and regardless of the person's insolvency, ability to pay, immunity by statute, including but . . . if the a person suffers injury, death or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death or loss. Thus, in

Louisiana, the clients may recover damages to a degree or percentage even if they were 90% at fault.

In contrast, the Texas Negligence Law is distinguishable because Texas uses a modified comparative negligence model. Texas Civil Practice and Remedies Code Section 33.001 provides that a plaintiff may not recover damages, if their percentage of responsibility is greater than 50 percent of responsibility for each plaintiff, each defendant, each settling person, and/or each responsible third party. The alleged client would not be entitled to damages in Texas, and thus the legal representation would not be warranted or wise. In such circumstances, the attorney would not represent the alleged client. Moreover, imposing reciprocal sanctions on a person with a Texas license who has been disciplined by a licensing authority of another state is not warranted, if the conduct would not have been sanctionable had the same set of occurrence and circumstance that was done happened in Texas. Thus, if the accident happened in Texas and the party in which Respondent allegedly represented struck the rear of another vehicle, he or she would have been adjudicated as being 100% at fault or more than 50 percent at fault. Thus, would not have been entitled to damages. In addition, because of the modified comparative negligence law and the same set facts (rear end collision) there would not be a conflict of interest or a unwaivable conflict of interest or collection of attorneys' fee in pursuit to a conflict of interest.

III. IN THE ALTERNATIVE, RESPONDENT MOVES FOR A TRIAL/JURY TRIAL IN TEXAS

4. The Texas Disciplinary Rules and the applicable reciprocal discipline statute require a thorough, independent evaluation of the facts and circumstances of each case before imposing discipline.

5. The misconduct alleged in the Disciplinary Counsel's petition does not rise to the level that would justify identical disciplinary action in Texas.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully requests that this TRIBUNAL grant this Motion to Dismiss and Special Exception, and order the following relief:

- a. Dismiss the Disciplinary Counsel 's petition in its entirety.
- b. In the alternative, require the Disciplinary Counsel to state a cause of action using Texas Negligence Laws Section 33.001 to determine both negligence and how it applies to conflict of interest in Texas.

c. Respondent also request a jury trial as pursuant to the 7th Amendment of the United States Constitution and the Texas Constitution (change in venue) and be appointed counsel under the 6th Amendment of the United States Constitution and Texas Constitution.

d. Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,



Kenneth Michael Plaisance

ATTORNEY AT LAW

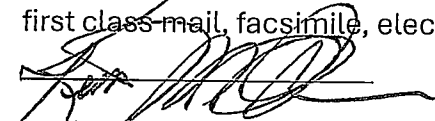
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon opposing counsel by first class mail, facsimile, electronically or hand delivery on this 19th day of March 2025.


KENNETH M. PLAISANCE