

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

IN THE MATTER OF
CYNTHIA L. BEST
STATE BAR CARD NO. 24014755

§
§
§

CAUSE NO. 59479

AGREED JUDGMENT OF SUSPENSION

On the 9 day of October 2017, 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 pro se, 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. 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 and orders:

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

- (1) Respondent, Cynthia L. Best, whose Bar Card No. is 24014755, is an attorney licensed by the Supreme Court of Texas to practice law, but not currently authorized to practice law in the State of Texas.
- (2) On or about April 21, 2017, an Agreement for Discipline by Consent was filed before the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Cynthia L. Best, Bar No. 014731, Respondent*, PDJ 2016-9122, State Bar File Nos. 16-0318 and 16-0820.
- (3) On or about May 9, 2017, a Decision and Order Accepting Discipline by Consent was filed before the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Cynthia L. Best, Bar No. 014731, Respondent*, PDJ 2016-9122, [State Bar File Nos. 16-0318 and 16-0820].

- (4) On or about May 9, 2017, a Final Judgment and Order was entered before the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Cynthia L. Best, Bar No. 014731, Respondent*, PDJ 2016-9122, [State Bar File Nos. 16-0318 and 16-0820], that states in pertinent part as follows:

...IT IS ORDERED Respondent, CYNTHIA L. BEST, Bar No. 014731, is suspended from the practice of law for sixty (60) days for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order ...

- (5) In the Agreement for Discipline by Consent, Respondent conditionally admitted that her conduct violated Rule 42, ERs 3.1 (Meritorious Claims and Contentions), 3.4(c) (Fairness to Opposing Party and Counsel), 4.4(a) (Respect for Rights of Others), and 8.4(d) (Conduct Prejudicial to the Administration of Justice). The Agreement for Discipline by Consent reads as follows:

1. Respondent was licensed to practice law in Arizona on May 15, 1993.
2. Respondent represented Elizabeth Davis against Ms. Davis's ex-husband Ryan Davis in a family law case in Maricopa County Superior Court, Case No. FC2014-051436. At issue in the case were legal decision-making and parenting time regarding the Davis' two minor children, along with spousal maintenance and child support from Mr. Davis to Ms. Davis. Ms. Davis was unemployed and alleged that Mr. Davis became violent when he abused alcohol.
3. On March 5, 2014, Mr. Davis filed a Motion for Temporary Orders RE: Legal Decision Making and Parenting Time. By minute entry dated March 10, 2014, the trial court set a hearing on temporary orders for April 11, 2014.
4. To prepare for the temporary orders hearing, Respondent decided to obtain Mr. Davis's employment records from The Desert Highlands Association ("DHA"), to determine his income regarding the issues of spousal maintenance and child support and gather evidence on Mr. Davis's fitness as a parent specifically relate to abuse of alcohol or drugs. On March 24, 2014, Respondent's law firm served a Notice of Deposition and a subpoena on DHA, directing it to produce several categories of personnel items since Mr. Davis's hiring date.

5. The Notice of Deposition was issued pursuant to Rules 26 and 30, Ariz. R. Civ. P., and 52, Ariz. R. Fam. L. P. The production date specified in both the Notice of Deposition and the subpoena was April 21, 2014, ten days beyond the date the trial court set for the temporary orders hearing. The production date was an error.
6. On March 25, 2014, the day after serving DHA with the Notice of Deposition and subpoena, Respondent recognized the error because the temporary orders hearing already had been set for April 11 and, therefore, the April 21 records production date would be too late for the trial. March 25 was the first date Respondent reviewed the subpoena, which had been drafted and signed by an associate. Respondent had her associate contact DHA's general counsel to inform him of the mistake and request the documents in time for the April 11, 2014 trial. DHA hired the law firm Fennemore Craig to address subpoena-related issues with Respondent. Fennemore Craig assigned the case to attorney Jessica Post, Complainant in matter no. 16-0820. On April 1, 2014, Respondent's firm received a letter from Ms. Post.
7. Respondent told Ms. Post that she needed the records for the April 11, 2014, hearing. Ms. Post asked Respondent why she needed the records for an April 11 hearing when the Notice of Deposition and subpoena called for a production date of April 21. Although there had been prior communication with DHA's general counsel on the reason for the need for accelerated production, Respondent explained it in an email to Ms. Post on April 4, 2014, stating:

It happened because we originally thought 30 days was reasonable to respond but then the judge set a temporary orders hearing for April 11 and that sped up the timetable.
8. The trial court had set the April 11 hearing on March 10, 2014, two weeks before Respondent served the Notice of Deposition and subpoena. In her appellate reply brief on Respondent and Ms. Davis's subsequent appeal, Respondent argued: "Mother's attorney did not mislead the Association; the Association misread the e-mail.: The Arizona Court of Appeals later concluded that the rationale Respondent expressed for accelerating the deadline for DHA to respond to the subpoena was false.
9. Respondent's subpoena called for production of:

All non-privileged Documents or electronically stored communications pertaining to RYAN DAVIS, including but not limited to:

- 1) Human Resources Records;
- 2) Corrective actions;
- 3) Financial records;
- 4) Performance reviews;
- 5) Security reports and videos;
- 6) Memoranda; and
- 7) Correspondence since his date of hiring.

10. In a letter dated April 1, 2014, Ms. Post told Respondent that DHA agreed to produce Mr. Davis's Human Resource Records save for confidential medical information; Corrective Actions; W-2 Forms, and other "financial records" if Respondent described them more particularly; and Performance Reviews. Ms. Post also agreed to Respondent's accelerated timetable but objected to some of the requests. She informed Respondent that the subpoena as written would have required DHA to review more than 700 hours of security video footage and search every email sent during Mr. Davis's employment. Upon learning that information, Respondent immediately agreed not to require DHA to respond to the video and email requests.
11. Ms. Post asked Respondent and Mr. Davis (Respondent's opposing party) to agree to a protective order in view of the sensitive nature of its personnel files and, later, for a HIPPA [sic] release. Ms. Post asked respondent to prepare the protective order. In Respondent's experience, protective orders are rarely used in Family Law cases, and she explained to Ms. Post that she was not familiar with them and did not understand the concept of producing documents pursuant to a protective order with the opposing party's signature. Ms. Post then prepared a stipulation in lieu of a protective order, to which Respondent agreed and signed.
12. Although Respondent and Ms. Post had an ongoing dialogue over the disclosure of Mr. Davis's DHA records, Respondent grew concerned about the approaching date of the temporary orders hearing. Respondent told Ms. Post in an April 3, 2014, email that she would file an expedited motion to enforce the subpoena "so we do not run out of time." DHA already had agreed to produce most of the records before the April 11, 2014, hearing date.

13. On April 3, 2014, Respondent filed the motion (“Expedited Motion for the Court to Order Disclosure of Petitioner’s File”), in which she asked the trial court for an order directing DHA to produce all requested materials by April 8, 2014. In her motion, Respondent asked the court for an order to produce the requested documents and that no protective order was required. The motion also requested an award of attorney’s fees against DHA. Respondent did not serve the motion on Ms. Post.
14. Were this matter to proceed to a contested hearing, Respondent would contend that she believed that she was not required to serve Ms. Post with the motion because the motion was aimed at the opposing party, not at DHA. She would further claim that she intended to serve Ms. Post (or at least provide her with a courtesy copy), but inadvertently neglected to do so. The State Bar would contend: (a) that Respondent’s motion as drafted and served was frivolous; (b) that the motion was in actuality aimed at DHA because, first, in her April 3, 2014 email, Respondent told Ms. Post, but not the opposing party, that she intended to file the motion; second, the Notice of Deposition and Subpoena that were the objects of the motion were served on and directed to DHA, not the opposing party; third, in her motion, Respondent asked for a court order to produce the requested materials, which, given that the subpoena was directed to DHA, could only reasonably have been interpreted as a request for an order directed at DHA; fourth, in the context of the subpoena, Respondent’s request for attorney fees could reasonably have been interpreted as attorney’s fees against DHA, not the opposing party; sixth [sic], although in her later appeal, Respondent claimed, “The Expedited Motion was not against the Association specifically. It was not against any party specifically,” she also continued to assign blame to DHA, stating: “The Association was placing conditions and roadblocks on Mother receiving the information,” and, on page 50 of her Opening Brief, she argued: “The Association should be ordered to pay Mother’s attorney fees and costs for defending this matter in the court below and for being forced to bring this appeal [emphasis added].” If this case went to a hearing, Respondent would accept that the trial court and Court of Appeals ruled against her, but would argue she did not intend to harm DHA but only intended to protect her client’s interests as the hearing quickly was approaching.
15. While Respondent did attach emails with Ms. Post demonstrating the two lawyers’ communications about the production, Respondent did not certify in writing that she had

made a good faith effort to resolve the dispute. Respondent claims that she believed at the time that, due to the way she had stated the basis of the motion, such a certification was not required. Both the trial court and Court of Appeals later disagree.

16. Ms. Post learned of Respondent's motion on April 7, 2014, through Mr. Davis's lawyer. Upon learning about the motion, Ms. Post demanded that Respondent immediately withdraw it. Respondent refused to immediately withdraw her motion and told Ms. Post that, when she received DHA's personnel file on Mr. Davis, she would withdraw the motion. Ms. Post imposed a deadline on Respondent to withdraw the motion or else she would have to file a response to the motion and request attorney's fees.
17. Respondent did not withdraw the motion. Ms. Post filed a response to the morning of April 8, 2014, in which she requested sanctions, including attorney's fees. On April 9, 2014, Ms. Post produced 148 pages of personnel documents to Respondent.
18. On April 10, 2014, the trial court denied Respondent's motion in part because: (a) Respondent did not serve it on DHA, stating that was a violation of applicable rules of procedure; (b) Respondent did not certify in writing that she made a good faith effort to resolve the dispute, stating that was a violation of Rule 65(A) (2) (c), Ariz. R. Fam. L. P.; (c) the motion was premature given the April 21, 2014, deadline contained in the Notice of Deposition and subpoena.
19. Ms. Post, on DHA's behalf, filed a request for an award of attorney's fees with the trial court. Respondent filed a response, and Ms. Post filed a reply. Thereafter, Respondent files a sur-reply, which the trial court struck as unauthorized under the applicable rules of procedure. The trial court awarded DHA \$3,000 in attorney's fees against Respondent's client, Ms. Davis.
20. Respondent continued to represent Ms. Davis on appeal *pro bono* to The Arizona Court of Appeals, Division One, in "*In re the Award of Attorney Fees: Elizabeth A. Davis, Respondent/Appellant v. Desert Highlands Association, Appellee*," No. CV14-0668 FC.
21. Respondent filed Opening and Reply Briefs totaling 85 pages.
22. The Court of Appeals upheld the trial court's ruling that Respondent failed to take reasonable steps to avoid imposing an

undue burden or expense on DHA, in violation of Rue 52.C.1. Ariz. R. Fam. L. P., and affirmed the award of attorney's fees against Ms. Davis. In so holding, the appellate court stated:

These facts support the conclusion by the trial court that Best did not take reasonable actions to avoid imposing undue burden or expense. Indeed, given the high level of cooperation that Best received from the Association, it is difficult to discern how the discovery dispute was anything other than imaginary. Put simply, no motion should ever have been filed.

23. The Court of Appeals emphasized a lawyer's obligation to tread lightly on non-parties to litigation from whom discovery is sought.

24. "Given the frivolous nature of the appeal," the Court of Appeals assessed attorney's fees of \$13,286.50 and costs of \$140.00 against Respondent only. After settlement negotiations with Ms. Post, respondent paid the assessment against her five weeks after the Court of Appeals issued its mandate. As part of the resolution of this Complaint, on March 28, 2017, Respondent delivered a check to DHA for \$3,400 in full satisfaction of the judgment against Ms. Davis.

- (6) Respondent, Cynthia L. Best, is the same person as the Cynthia L. Best, who is the subject of the Final Judgment and Order entered by the Supreme Court of Arizona; and
- (7) The Final Judgment and Order from the Supreme Court of Arizona is final.
- (8) Respondent, Cynthia L. Best, was reinstated to the practice of law in Arizona on August 18, 2017.

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. Rule 7.08(H), Texas Rules of Disciplinary Procedure;
- (2) Reciprocal discipline identical to that imposed by the Supreme Court of Arizona is warranted in this case.

It is, accordingly, ORDERED, ADJUDGED, AND DECREED that Respondent, Cynthia L. Best, State Bar Card No. 24014755, is hereby SUSPENDED from the practice of law in Texas for a period of sixty (60) days beginning October 10, 2017, and ending December 9, 2017.

It is further ORDERED, ADJUDGED and DECREED that Respondent, Cynthia L. Best during said suspension is prohibited from practicing law in Texas, holding herself out as an attorney at law in Texas, performing any legal service for others in Texas, accepting any fee directly or indirectly for legal services performed in Texas, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body, or holding herself out to others or using her name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer" in Texas.

It is further ORDERED that Respondent, Cynthia L. Best, within thirty (30) days of the date of this judgment, shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court, if any, in which Respondent, Cynthia L. Best, has any legal matter pending, if any, of her suspension, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court. Accordingly, Respondent has executed, and simultaneously submits, an affidavit asserting that she has no current clients in the State of Texas and no pending legal matters in any court in the State of Texas.

It is further ORDERED 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 thirty (30) days of the date of this judgment, an affidavit stating Respondent has notified in writing each and every justice of the peace, judge, magistrate, 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. Accordingly, Respondent has executed, and simultaneously submits, an affidavit asserting that she has no current clients in the State of Texas and no pending legal matters in any court in the State of Texas.

It is further ORDERED that Respondent, Cynthia L. Best, within thirty (30) days of the date of this judgment, shall notify each of her current clients and opposing counsel, if any, in writing, of her suspension. In addition to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in his possession but which belong to current or former clients, if any, to those respective clients or former clients within thirty (30) days of the date of this judgment. Accordingly, Respondent has executed, and simultaneously submits, an affidavit asserting that she has no current clients in the State of Texas and no pending legal matters in any court in the State of Texas.

It is further ORDERED 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 thirty (30) days of the date 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. If Respondent should be unable to return any file, papers, money or other property to any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of his inability to return to said client any file, paper, money or other property. Accordingly, Respondent has executed, and simultaneously submits, an affidavit asserting that she has no current clients in the State of Texas and no pending

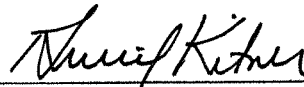
legal matters in any court in the State of Texas.

It is further ORDERED that Respondent, Cynthia L. Best, within thirty (30) days of the date of this judgment, surrender her Texas 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. Respondent has executed, and simultaneously submits, an affidavit asserting that she is no longer in possession of her bar card.

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.

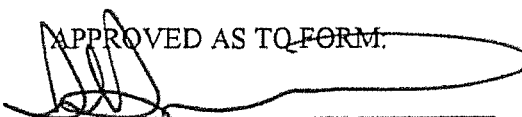
IT IS FURTHER ORDERED that this Agreed Judgment of Suspension shall be made a matter of public record and be published in the Texas Bar Journal.

Signed this 9 day of October 2017.

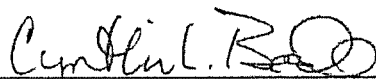


Chair Presiding
BOARD OF DISCIPLINARY APPEALS

APPROVED AS TO FORM.



Amanda M. Kates
Assistant Disciplinary Counsel
State Bar No. 24075987
ATTORNEY FOR PETITIONER



Cynthia L. Best
State Bar No. 24014755
RESPONDENT